Chapter 14

Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda

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1 Introduction

Victims of international crimes have a recognised right to reparations which has been affirmed and developed in international law and transitional justice mechanisms. Traditionally in international law reparations were owed only to injured states by other states responsible for breaching an international obligation. With the growth of human rights law, individuals are also recognised as right holders when the state fails to fulfil its obligations under such laws. The recent Lubanga decision before the International Criminal Court (ICC), establishes that individuals can also be held responsible for reparations to victims of international crimes, moving beyond the state focus. However, little attention has been paid to the responsibility of non-state armed groups, despite the prevalence of internal armed conflicts and atrocities committed by such groups over the past few decades.¹

This chapter is made up of five sections. It begins by briefly outlining the purpose of reparations, focusing in particular on the issue of responsibility. Carrying on this theme, section two will address the current recognition in international law of the responsibility of armed groups for reparations. This section finds that while international law remains state-centric when it comes to obligations for reparations, there are tentative signs to expand this to individuals under international criminal law, as well as to armed groups. The subsequent section addresses why non-state armed groups should be responsible for reparations, noting the difficulties in doing so, but that their

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¹ See data by the Uppsala Conflict Data Program which finds that intrastate conflict in 2011 numbered 27 in comparison to 1 interstate conflict. Reference to the term armed groups is intended to cover non-State armed entities which are organised and use violence to achieve their political, religious, or ethnic objectives.
input, especially considering the scale of violence they can carry out, can bet-
ter achieve accountability and redress for victims. The fourth section of this
chapter examines State practice in Northern Ireland, as well as in Colombia
and Uganda, which have all suffered protracted internal armed conflicts, with
armed groups accounting for the majority of violence. The experience of these
case studies reveals the important role armed groups can play in reparation
mechanisms. The final section concludes by finding that while international
law inadequately addresses the issue of responsibility for reparations beyond
the state for serious violations of international human rights law or interna-
tional humanitarian law, there is growing State practice to make non-state
armed groups responsible for reparations. This final section tries to elucidate
what such responsibility entails. Any discussion on responsibility of particu-
lar actors should be tempered by the understanding that in practice conflicts
have differing levels of responsibility, due to their complexity, requiring
legal regimes to respond to these various levels.

2 Responsibility and Reparations

Reparations are victim-centred measures of redress firmly established
in international law. Reparations encompass three important elements:
(1) acknowledgement of victims’ suffering; (2) remedy of their harm; and
(3) made by those responsible. For the purposes of this chapter, responsibility
for reparations is the key component. Responsibility is tied to accountability,
which is concerned with ensuring that those who are culpable for causing the
violation are appropriately sanctioned. For reparations holding those respon-
sible through obligating them to make reparations to victims does provide a
measure of accountability for such crimes or violations. For victims attaching
responsibility for reparations to perpetrators, whether individual or organisa-
tional, provides an important psychological function in appropriately directing

2 Germany v Poland, The Factory At Chorzow (Claim for Indemnity) (The Merits), Permanent
Court of International Justice, File E. c. XIII. Docket XIV: I Judgment No. 13, 13 September
1928 (‘Chorzow Factory’ case), para. 125.
3 Jann K. Kleffner, The collective accountability of organized armed groups for system
crimes, in H. van der Wilt and A. Nollkaemper (eds.) System criminality in international law,
(Cambridge University Press 2009) 238–269, p. 240. For the purpose of reparations this is not
punitive, but to hold those individuals or organisation responsible to remedy the harm they
have caused.
4 Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-
01/06-2904, 7 August 2012, para. 179.