A. Introduction

“International law is not victim oriented”. Those who expect redress through international judicial settlements have consistently been cautioned against “over-optimism as regards the results”. Even after victims issues began to take a more central stage following the “internationalization of human rights and humanization of international law”, the remedies available – such as *restitutio in integrum* or compensation equivalent in value to that which was lost – have seemed woefully inadequate in mass atrocity situations; where that which was lost can never be restored, and no amount of money is equal to its value. In practical terms, the law has had “no uniform rules governing reparations” and only “a chaos of conflicting decisions” to guide it. The work undertaken in recent years to codify victims’ rights and access to reparations, and the creation of a Trust Fund for...
Victims at the International Criminal Court (ICC), have only confirmed that “[t]he law alone cannot repair the scars of war”.8 The Trust Fund has taken the form of an assistance programme with a “justice component”9 – and it is important to keep these two concepts distinct.10 Thus, although it is already actively assisting victims through its autonomous procedure, the Trust Fund’s ‘justice component’ has not yet been triggered as the Court has yet to order any reparations.

The Regulations of the ICC Trust Fund11 contain many features commonly found in the practice of “mass claims processes” (MCPs), which are ad hoc tribunals, commissions, or administrative programmes established to resolve claims for reparation “when a large number of parties have suffered damages arising from the same diplomatic, historic or other event … sometimes borrowing concepts and procedures from each other, but often inventing unique solutions in light of particular legal and practical perspectives”.12

Section I of this article highlights the work of the Permanent Court of Arbitration in the field of mass claims, as secretariat to international mass claims processes, documentation and research center,13 and as convener of a special study on this

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8 Archbishop Desmond Tutu, member of the Board of Directors of the Trust Fund for Victims, speaking at its inaugural ceremony, April 2004, available at www.icc-cpi.int.
10 Cf Bassiouni, supra n. 1, at 206 (“an important distinction must be made between criminal and civil legal proceedings that are driven by the concept of responsibility as opposed to human and social solidarity reflected in social assistance and support programs that are driven by other considerations.”) Cf Elazar Barkan, “A Moral and Political Dilemma,” in Reparations: Interdisciplinary Inquiries 1, at 6 (Jon Miller and Rahul Kumar eds, Oxford University Press 2007) (“The question of whether reparation is a social justice movement or a moral justice claim is never clear, and the movement often trips over its own lack of clarity”).
12 Howard M. Holtzmann, “Mass Claims,” para. 1, in Max-Planck Encyclopedia of Public International Law online edition (R. Wolfrum gen. ed., Oxford University Press, forthcoming 2008): Two MCPs described elsewhere in the present volume are the Claims Resolution Tribunal (CRT) for dormant bank accounts in Switzerland, and the work of the Conference on Jewish Material Claims Against Germany (Claims Conference), both of which have made significant contributions to the practice of MCPs. See Judah Gribetz and Shari C. Reig, “The Swiss Banks Holocaust Settlement” in this volume; Gideon Taylor, Greg Schneider and Saul Kagan, “The Claims Conference and the Historic Jewish Efforts for Holocaust-Related Compensation and Restitution” in this volume.
13 During their period of active operations, most MCPs maintain websites with information for claimants, relevant legal documents and rules, claims statistics, and texts of awards, etc. These websites may be taken off line once the mandate ends without most of their information being published in paper form. The PCA has made such dismantled websites publicly available, alongside links to active processes, via its own website, thereby becoming an important documentation center and source of information about past and present MCPs. See www.pca-cpa.org > PCA Services > Mass Claims Processes.