Reparation for Gross Violations of Human Rights Law and International Humanitarian Law at the International Court of Justice

By Conor McCarthy*

A. Introduction

The issue of reparation for gross violations of human rights law and international humanitarian law has been placed firmly under the scrutiny of the International Court of Justice (ICJ) in recent years. Three cases in particular have brought questions regarding reparation to increased prominence in the jurisprudence of the Court. These include Democratic Republic of the Congo v. Uganda, the Bosnia-Genocide case and the Wall advisory opinion. In particular, the findings by the Court in the first of these cases indicate some of the many difficult issues which arise in respect of reparation for gross violations of human rights law and humanitarian law. In that case the ICJ found in paragraph four of the judgment’s dispositif that:

…Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law.

* Jesus College, Cambridge.


2 D.R.C. v. Uganda (Merits), id.
The Court also found that Uganda had violated obligations owed under international law to the Democratic Republic of the Congo (DRC) through “acts of looting, plundering and exploitation of Congolese natural resources” committed by members of the Ugandan Armed Forces and “by its failure to comply with its obligations as an occupying power in the Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources”.

These findings represent the Court’s most wide-ranging determinations to date in a contentious case regarding a state’s responsibility for violations of both human rights and humanitarian law and as such raise many important questions regarding reparation in respect of such conduct. Of course, the Court’s determination on the merits that the obligation to make reparation has arisen is only the first stage in seeking compliance with and enforcement of that obligation. First, it is necessary to determine what the obligation to make reparation entails in concrete terms. This may be the subject of negotiation or a subsequent procedure before the Court. Once the substance of what the obligation to make reparation entails is determined, the issue is then one of post-adjudicative enforcement. This study will explore several key issues raised by the recent jurisprudence of the ICJ. The analysis will have three parts.

The first part examines three important issues that arise from the Court’s recent jurisprudence, in particular its judgment in the Bosnia-Genocide case that largely determine the form and extent of reparation required. How is wrongful conduct involving a composite act defined, what forms of harm are recoverable and what principles of causation should be applied? Many human rights and humanitarian law obligations are violated by a course of conduct rather than by a single act. How such conduct is defined has a significant impact in determining the extent of the injury. The relevant principles of causation and how these are applied to acts or omissions are also key factors determining the scope of a state’s obligation to make reparation, as are the forms of injury treated as recoverable. Recent cases have given the ICJ the opportunity to develop its jurisprudence on these issues, and this chapter appraises these recent developments and their impact on awards for reparation. The second and third parts examine questions of negotiated settlement and post-adjudicative enforcement, considering in particular the key issues raised by gross violations of human rights and humanitarian law that are highlighted by judgment on the merits in D.R.C. v. Uganda.

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3 Id. Paragraph (4) of the dispositif.
4 In DRC v. Uganda the Court reserved a reparation procedure, in the event that the parties failed to reach agreement on the issue, in paragraphs (6) and (14) of the judgment’s dispositif. D.R.C. v. Uganda (Merits), supra n. 1.