

VICTIM REDRESS FROM NUREMBERG AND TOKYO TO THE ICTY AND ICTR

Miriam Cohen

Ph.D. candidate, Leiden University; LL.M., Harvard Law School; LL.M. (Cantab), Cambridge University; LL.M., Université de Montréal.

I. INTRODUCTION

International prosecutions pertaining to international crimes are not a very contemporary phenomenon. Since the end of the Second World War, international prosecutions were held in Nuremberg and Tokyo. However, victims' rights to obtain reparations for crimes which they suffered were not part of this "justice system".

One of the main innovations of the ICC as compared to other international criminal tribunals has been to incorporate victims' rights within the framework of an international criminal tribunal. It stems from the jurisprudence of the *ad hoc* international criminal tribunals that trial and accountability of perpetrators are their goals. In the *Obrenović* case, Trial Chamber I of the ICTY stated, in this regard, that "[i]ndividual accountability for the crimes committed and commensurate punishment is the aim of criminal proceedings involving such grave crimes"¹.

This Note describes the different models established by the ICTY and ICTR pertaining to redress for victims of international crimes in order to assess the feasibility and desirability, based on a lessons learned approach, of including a civil redress dimension in international criminal trials. In this perspective, this study examines the different international criminal institutions' approach to victims' redress. To what extent are international criminal courts and tribunals concerned with victims' redress? Is a system of victim redress as part of the international criminal process a good way to address victims' redress in international criminal law? This Note only looks at redress within criminal trials and not in a separate mechanism, such as a trust fund connected to criminal proceedings.

In this context, in this Note, I first briefly recall the legacy of the Nuremberg and Tokyo trials, the *ad hoc* criminal tribunals and their approaches to reparation. Lastly, an assessment

is made as to whether the inclusion of reparation proceedings within the scope of the criminal process is the right approach to victims' redress in international criminal justice.

In this light, my argument is that while it is important that reparation to victims of international crimes be part of international criminal justice, so as to have a more complete system, it should not be an integral part of international criminal proceedings, and other mechanisms linked with international criminal justice (e.g. administrative mechanisms) should take the lead in the award of reparation.

II. WHERE IT ALL BEGAN: THE NUREMBERG AND TOKYO TRIALS

The Nuremberg and Tokyo trials did not provide for a possibility of victims reparation². As a consequence, since victims of Nazi crimes were not able to claim and obtain civil redress during the international criminal proceedings, against the perpetrators, they obtained reparation through other means, mainly through lump-sum agreement, on the basis of State responsibility³.

The main point of interest, in my view, of the precedent of Nuremberg and Tokyo trials and reparations after World War II is that civil redress in relation to those crimes was mainly based on the law of state responsibility at the international plane⁴. These trials did not set up a regime for civil redress, or individual civil responsibility, at the international level, for victims of World War II crimes (international crimes). Thus, under this regime, to obtain reparation, State responsibility needed to be triggered. Fast forwarding to recent conflicts, the problem is of course when State responsibility cannot be engaged, that is, when the State (machinery) is not necessarily involved in the international crime, and in this scenario, civil redress would not be possible⁵.

In this respect, it seems worth referring to a Report prepared in November 2000 in which the Committee dwelt upon the question of victims' reparation. The Report

states that it is the view of the judges of the International Tribunal for the Former Yugoslavia that the victims of the crimes over which the International Tribunal has jurisdiction have a right in law to compensation for the injuries that they have suffered.

(...) the judges have considered the possibility that the Security Council might be requested to amend the Statute of the International Tribunal in order to confer upon it the power to order the payment of compensation to the victims of the crimes that were committed by the persons whom it may convict.

(...) the judges have, however, come to the conclusion that it is neither advisable nor appropriate that the Tribunal be possessed of such a power, in particular, for the reason that it would result in a significant increase in the workload of the Chambers and would further increase the length and complexity of trials. The judges doubt, moreover, whether it would be possible for the Tribunal to secure adequate resources to fund such awards as it might make. Furthermore, they consider that it would be inequitable that the victims of crimes which were committed by persons who are not prosecuted and convicted by the Tribunal would not benefit from any orders of compensation that the Tribunal might make.¹⁵

The foregoing does not however suggest that the Tribunal did not deem that reparation had no role to play in the aftermath of the mass atrocities that happened in the region. In this sense, it was noted that in order to bring about reconciliation in the former Yugoslavia and to ensure the restoration of peace, it was necessary that the victims of crimes within the jurisdiction of the Tribunal receive compensation for their injuries¹⁶.

The question is, certainly so, not related to whether or not victims of the crimes under the jurisdiction of the Tribunals deserve compensation: this much does not seem to be denied. The question is whether the way in which the Tribunals dealt with the issue of reparation – i.e. directing it to the appreciation of domestic courts – is satisfactory and attainable.

Be that as it may, the interesting aspects of this 2000 Report refer, in my opinion, to the challenges of including reparation (i.e. civil) dimensions within international criminal trials.

The challenges put forth in the Report provide the rationale for not entertaining the idea of including victims' reparations within the mandate of the Tribunal. These remain pertinent to date in the context of the critiques of the ICC reparation system and the challenges it will face in the implementation of this mandate. It can also flesh out important considerations for the proposition of other methods of implementing reparation for victims.

In a nutshell, it seems that practical considerations played an important role in the decision not to have the Tribunal deal with reparation. The following were some of the reasons: the impact of reparation claims on the Tribunal's daily work; the possibility of causing delays in the accused's trial; the costs related to implementing reparation awards, among others¹⁷.

The ICTY and ICTR mechanisms allow for three kinds of reparation¹⁸: restitution of property and proceeds, compensation, and rehabilitation. For restitution of property, Article 24(3) of the ICTY Statute and Article 23(3) of the ICTR Statute¹⁹ govern the institution. However, be that as it may, as it has been argued, victims have not received compensation through the Tribunals and according to Common Rule 106 of the ICTY/ICTR, issues concerning compensation are delegated to national courts or other competent bodies²⁰.

While these seem to be reasonable concerns, there is a broader issue which appears to have been overlooked: does the approach of the Tribunals to leave reparation matters to domestic jurisdictions winds up amounting to very little compensation or no reparation at all for victims? As it has already been pointed out that, given the nature of the crimes and the system of prosecution thereof (in an international tribunal set up in The Hague), it may be very difficult for victims to access domestic courts in order to claim reparation, and if they are able to do so, they may encounter many practical difficulties to substantiate their claim for reparation²¹. Furthermore, one of the reasons for setting up an international tribunal to address the crimes committed in the former Yugoslavia (and the same is true for Rwanda) was precisely because it was not possible to prosecute the alleged perpetrators in the State of the *locus delictum* where difficulties may, similarly, arise in relation to civil redress as it happens with criminal prosecutions²².

Moreover, as a matter of legal principle, it does not seem entirely equitable that victims who have had their property taken are eligible to

is especially limited to compensation issues where the issue is factually clear and where there is no dispute as to quantum before the court. In that jurisdiction, extensive inquiry into compensation issues by criminal courts is expressly abjured.³¹

While these proposals appear to point to some possible ways of redress for victims of crimes, they are only the tip of the iceberg. For such proposals to have any effect for victims, more thought would have to go into whether they are actually feasible and desirable in practice³². It seems rather unsatisfactory to cite a few examples of how victims can obtain redress and leave it in the hands of others³³.

It seems clear, from a theoretical perspective, that the driving force behind this one-sided system of justice is that the Tribunals have taken a retributive approach to international criminal justice in the aftermath of the atrocities committed in the Balkans and Rwanda³⁴. Their practical concerns are, certainly, a matter to be taken into due account. Nonetheless, principles, the integrity of a justice system (one that takes due account of offenders and victims, punishment and reparation) should have trumped practical considerations. The realization of justice needs to be complete – victims should not be an oversight or left to their efforts to obtain redress. Such an approach may lead victims with barely any type of redress as history teaches us³⁵.

The investigation, trial, and punishment of the perpetrators of atrocities committed against victims is a form of attaining justice and providing redress for victims; but one that starts from the offender, by counting the number of convictions, and estimating by these numbers, the success of the institutions, is not sufficient. Certainly, some justice is better than no justice at all; however, a singular outlook to justice seems far from the best solution.

IV. REPARATIONS INTEGRATED IN INTERNATIONAL CRIMINAL PROCEEDINGS: THE RATIONALES AND CHALLENGES OF INCLUDING REPARATIONS AS PART OF THE INTERNATIONAL CRIMINAL JUSTICE SYSTEM

Victims and offenders are part of modern international criminal law doctrine and discourse: international crimes exist because offenders have

victimised individuals. Be that as it may, as I have discussed, international criminal law, from its inception, was concerned solely with the offenders, while victims had mainly a passive role. This perhaps can be explained by the need to move from a system essentially based on State responsibility to one where individuals can be held liable for their actions, and thus the rights of victims could have become an afterthought.

A) The goals of international criminal justice

It is overly optimistic and somewhat unrealistic to attempt an exhaustive description of the aims of international criminal justice³⁶. At this juncture, my purpose is solely to discuss some ideas as to the role of international criminal tribunals and international criminal justice as it pertains specifically to victim reparation.

Authors have dwelled upon the aims of international criminal law as a doctrine, and international criminal justice, more generally. According to one author, "International Criminal Law exists for two purposes: to end impunity in order to prosecute the perpetrators of the world's most horrendous crimes and to bring some form of justice and solace to their victims."³⁷ Others may view international criminal justice as a system whereby the trial and punishment of offenders are its ultimate goal.

The postulate that bringing justice to victims is one of the aims of international criminal law does not mean that the notion of "international justice" necessarily encompasses civil redress to victims within the realm of international criminal proceedings. The concept of justice for victims of international crimes could be seen as part of one theory of the goals of international criminal justice: trial and punishment of the offender. In this sense, a narrow approach as to the endeavour of justice for victims would be to claim that by seeking the prosecution and eventual punishment of the offender, victims have justice.

In this prism, if international criminal justice is aimed at solely trying and punishing offenders, then there seems to be no room for including victims in the equation, other than passive expectators of the trial and final judgment of their offenders³⁸.

The interesting question at this juncture seems to be whether the goals of international criminal justice have evolved in the sense of accepting the possibility of victim redress as one of the main objectives of international justice. In

such a scenario, victim redress would be an integral part of international criminal justice, which would move away from an offender-outlook to a model that includes a dimension for victims. It may be that an approach to international criminal justice purely on terms of retributive justice is not sufficient to encompass the complexities of the aftermath of mass atrocity.

Having discussed briefly the goals of international criminal justice, the next question pertains to the rationale or reasons for moving away from a model of international criminal justice which focuses on the offender, his/her trial and punishment, to one which includes a dimension for victims.

B) Reasons for including victims within the realm of international criminal justice

The inclusion of reparation within international criminal justice raises interesting questions of the justifications for including civil redress within international criminal law. While reparation for victims may not fit with the traditional objectives of international criminal law, there may be separate reasons for including victims in the process.

At the theoretical level, different justifications may be invoked for the inclusion of redress within international criminal justice. In my view, the inclusion of reparation in international criminal law reflects some elements of restorative justice, but it cannot be solely justified in terms of restorative justice theory.

Be that as it may, it might be too premature to assess the impact of restorative theory on reparations in international criminal law given that, for example, it is not yet clear how reparations under international criminal law may transform relationships between offenders, victims and the communities they come from. This may be explained for example by the nature of international criminal trials which only focus on prosecution of a limited number of offenders. Thus, it may be too optimistic to expect that the inclusion of reparation in international criminal law is justified entirely by restorative justice theory. Furthermore, it may be a difficult task to restore the community within the parameters of criminal trials.

A more sensible rationale for including civil redress within a traditionally criminal process (international criminal trials) may be justified

in the idea of "victim empowerment". This idea resonates with the notion that victims were the ones that suffered the international crimes and leaving them as merely passive expectators, without a role in the justice process, could exacerbate their suffering. Thus, including a dimension for civil redress to victims could be justified as a way to empower victims and assist them to get some sort of closure while attending to their needs.

C) Critiques of including reparations within international criminal justice

The question that arises here is whether international criminal law and international justice should encompass a dimension for redress for victims, or whether victims' rights and interests are better represented under another system altogether.

Critiques and challenges of the reparation scheme are numerous.³⁹ These can be divided into mainly two sets of considerations: first, practical considerations of including civil redress within international criminal trials; secondly, theoretical and conceptual considerations pertaining to the role and objective of international criminal justice.

The practical considerations include the dichotomy between civil/tort law and criminal law and how this dichotomy could be resolved in practical terms. One of the possibilities would be to deal with civil redress in a separate set of proceedings, connected with international criminal trials but not entirely within international criminal proceedings. An example would be the institution of Trust Funds (or another administrative mechanism) connected with judicial proceedings⁴⁰.

Another possibility would be to institute special chambers within international criminal courts which have expertise and are dedicated to the civil redress part of proceedings. This is yet unprecedented in international justice, which at its current print either provides an avenue within international criminal proceedings or mass claims types of procedures.

A recurring and apparent concern refers to financial issues and the idea that victims may be deprived of reparation in case the offender lacks the financial resources to honour the award.⁴¹ Other pragmatic critiques refer to the limited capacities - both relating to human and financial aspects - of navigating reparations requests.⁴² Other sets of considerations refer to the

complexities of operating a system of reparations for victims in parallel with all the other activities of an international criminal tribunal.⁴³

Main critiques in this respect pertain to the conception of an international trial as a means to deliver justice to the international community by putting the offender on trial and punishing the convicted persons. This criticism is translated in the idea that criminal trials have no place for the vindication of victim rights and civil redress. The focus, in this prism, is on the accused – his/her punishment and his/her rights in the process – and the international community; such considerations seem to align with the idea of retributive justice.

Some of the criticism sheds light on the question of whether the ICC system is the right system for victims to receive reparation and the question of the actual goal of reparations within the Rome Statute. One of the main concerns is to avoid re-victimisation, when it comes to repairing in the aftermath of mass crimes⁴⁴.

These critiques also speak to the question of inclusion in, or otherwise exclusion from, a system of justice which exists because atrocities were committed to victims, in the first place. Certainly, the input of the victims, their interests, concerns, and fears, shall be taken into account in the process to avoid extending the pain suffered by them. The challenges of a system which is mandated to provide reparations for victims is coupled with the challenges victims themselves face⁴⁵. Thus the need to keep victims as an active part of the process and devise reparations which will be both effective and creative so as to take into account the interests at stakes, and the difficulties involved.

V. CONCLUSIONS

In this Note the goal was to review the approaches of the ICTY and ICTR regarding victim redress. Victims' roles in these courts and mechanism are that of passive expectators and their international criminal proceedings are not the *fora* for dealing with claims of reparation.

The approach of both tribunals as to the inclusion of reparation for victims sheds light on the rhetoric question of whether justice is completely realized solely by the prosecution of offenders while keeping reparation for victims a separate endeavour. The argument advanced is not that international criminal courts and tribunals should “embrace it all” and single-handedly accomplish the prosecution of alleged offenders and reparation for victims. Nevertheless, the idea that justice, the so-called “international justice”, only has a retributive and prosecutorial dimension is troublesome, especially in situations of armed conflicts involving so many victims of mass atrocities and shattered communities. This begs the question as to whom justice is serving and who it is supposed to serve.

I argue that justice for international crimes does not stop at international courts and tribunals. It should be a synergy of international and domestic institutions that work together to realize justice. The problem, however, with the approach of the international *ad hoc* criminal tribunals is that they “wash their hands” off the question of reparation, leaving the victims to their luck in reverting to domestic courts for this purpose.⁴⁶

NOTES

1. Judgment, *Obrenović*, (IT-02-60/2-S), Trial Chamber I, 10 December 2003, p. 46.
2. Concerning the legacy of the Nuremberg and Tokyo trials pertaining to reparation, see eg. Yael Danieli, "Reappraising the Nuremberg trials and their legacy: The role of victims in international law", *Cardozo L. Rev.* 27 (2005), 1633; Christian Pross, *Paying for the past: The struggle over reparations for surviving victims of the Nazi terror*. JHU Press, 1998; Benjamin B. Ferencz, "International Criminal Courts: The Legacy of Nuremberg", *Pace Int'l L. Rev.* 10 (1998), 203; Won Soon Park, "Japanese Reparations Policies and the "Comfort Women" Question", *positions* 5, no. 1 (1997), 107-136.
3. See Ariel Colonomos and Andrea Armstrong, "German Reparations to the Jews after World War II: A Turning Point in the History of reparations", in *The Handbook of Reparations*, Pablo de Greiff (ed.), O.U.P. (2006), pp. 390-419. See also, John Authers, "Making Good Again: German Compensation for Forced and Slave Laborers", in *The Handbook of Reparations*, Pablo de Greiff (ed.), O.U.P. (2006), pp. 420-450.
4. See *ibid.*
5. For example, the attempt in Rome to include State responsibility for reparation for victims, see report on the Establishment of an International Criminal Court, Draft Statute and Draft Final Act, U.N. Doc. A/Conf.183/2/Add.1, 1998, article 73: "[b] The Court may also [make an order] [recommend] that an appropriate form of reparations to, or in respect of victims, including restitution, compensation and rehabilitation, be made by a state]: [if the convicted person is unable to do so himself/herself; [and if the convicted person was, in committing the offence, acting on behalf of that state in an official capacity, and within the course and scope of his/her authority]]; c) [in any case other than those referred in subparagraph b), the Court may also recommend that states grant an appropriate form of reparations to, or in respect of, victims, including restitution, compensation and rehabilitation]." cited by Thordis Ingadottir, "The Trust Fund of the ICC", in *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court*, Dinah Shelton (ed.), Transnational Publishers, Inc, New York, 2000, p. 159.
6. "Judgment of the Tribunal", 41 *American Journal of International Law* (1947), 172.
7. In the criminal dimension, see concerning the relationship between individual and State responsibility: Beatrice I. Bonafè, *The relationship between state and individual responsibility for international crimes*, BRILL, 2009; Pierre-Marie Dupuy, "International Criminal Responsibility of the Individual and International Responsibility of the State", (2002); André Nollkaemper, "Concurrence between individual responsibility and state responsibility in international law", *International and Comparative Law Quarterly* 52, no. 3 (2003), 615-640.
8. See M. C. Bassiouni, "Assessing Conflict Outcomes: Accountability and Impunity", in M. C. Bassiouni (ed.), *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimization, and Post-Conflict Justice*, (Antwerp, Intersentia, 2010), 3, at 6: '[...] it is estimated that 92 to 101 million persons have been killed between 1945 and 2008. That does not include those who have died as a consequence of these conflicts, which a World Health Organization projection puts at twice the estimated number of persons killed during these conflicts. [...] The 313 conflicts studied in this project reveal that they involve systematic human rights violations, including genocide, crimes against humanity, torture, slavery and slave-related practices, disappearances, rape and population displacement'.
9. See C. Ferstman and M. Goetz, "Reparations before the International Criminal Court: the Early Jurisprudence on Victim Participation and its Impact on Future Reparations Proceedings", in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, Nijhoff, 2009, pp. 313-353, at p. 315.
10. Restitution of unlawfully taken property has been further developed in the Rules of Procedure and Evidence of the Tribunals: see Rule 98 *ter* (B), of the ICTY "rules of evidence", adopted on 10 July 1998: "If the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its judgement. The Trial Chamber may order

- restitution as provided in Rule 105.” Rule 88 (B) of the ICTR make a provision to the same extent.
11. See S. Malmström, “Restitution of Property and Compensation to Victims”, in R. May et al. (eds.), *Essays on ICTY Procedure and Evidence*, Kluwer Law International (2001), p. 375, cited in I. Bottiglierio, *Redress for Victims of Crimes Under International Law*, Nijhoff (2004), p. 198.
 12. See Rule 105 of the ICTY and the ICTR Rules of procedure and Evidence, amended on 30 November 1999, IT/32/Rev.
 13. See Rules 106 (B) of the ICTR Rules of Procedure and Evidence, with a very minor difference in wording: “Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation” (emphasis added).
 14. See I. Bottiglierio, *Redress for Victims of Crimes Under International Law*, Nijhoff (2004), p. 201.
 15. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000, p. 1. The Report further argued that the Security Council excluded the possibility of the Tribunal hearing victims’ claims for compensation: “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000, p. X. See also, in this regard, V. Morris and M. Scharf, *An Insiders Guide to the International Criminal Tribunals for the Former Yugoslavia* (1995), p. 167, 286-287, cited in UN Doc. S/2000/1063, para. 24, in support of the idea that the Security Council was aware of the issue of reparation for victims but decided not to address it.
 16. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000, p. 2.
 17. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000, p. X.
 18. See generally, S. Malmstrom, ‘Restitution of Property and Compensation to Victims’, in R. May et al. (eds.), *Essays on ICTY Procedure and Evidence: In Honour of Gabrielle Kirk McDonald* (2001), at 373–84.
 19. Further elaborated by Common Rule 105 of the ICTY and ICTR Rules of Procedure and Evidence (RPE) and Rule 98ter(B) of the ICTY RPE/Rule 88 of the ICTR RPE.
 20. Anne-Marie De Brouwer, “Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families”, *Leiden Journal of International Law* 20, no. 1 (2007), 207, at pp. 214-215.
 21. See I. Bottiglierio, *Redress for Victims of Crimes Under International Law*, Nijhoff (2004), p. 202.
 22. I. Bottiglierio, *Redress for Victims of Crimes Under International Law*, Nijhoff (2004), p. 202.
 23. Carla del Ponte, “Compensating victims with Guilty Money”, interview with Carla del Ponte, Chief Prosecutor of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, in *Judicial Diplomacy: Chronicles and reports on International Criminal Justice*, The Hague, 9 June 2000.
 24. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000.
 25. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000, para. 32.
 26. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000.
 27. “Victims’ Compensation and Participation”, Appendix to a letter dated 12 October 2000 from the President of the ICTY addressed to the Secretary-General, ANNEX to UN Doc. S/2000/1063 of 3 November 2000. See also, I. Bottiglierio, *Redress for Victims of Crimes Under International Law*, Nijhoff (2004), pp. 206-207.
 28. Cf. Letter of the President of the ICTR to the United Nations Secretary-General, annex to

- a letter of 14 December 2000 by the United Nations Secretary-General, Kofi Annan, to the United Nations Security Council, UN Doc. S/2000/1198 of 15 December 2000.
29. Letter of the President of the ICTR to the United Nations Secretary-General, annex to a letter of 14 December 2000 by the United Nations Secretary-General, Kofi Annan, to the United Nations Security Council, UN Doc. S/2000/1198 of 15 December 2000.
30. Letter of the President of the ICTR to the United Nations Secretary-General, annex to a letter of 14 December 2000 by the United Nations Secretary-General, Kofi Annan, to the United Nations Security Council, UN Doc. S/2000/1198 of 15 December 2000, paras. 13-14. The latter refers in this regard to the work of Elias, R., *The Politics of Victimization: Victims, Victimology and Human Rights* (New York and Oxford: Oxford University Press, 1986), especially pages 162, 212 and 238.
31. Letter of the President of the ICTR to the United Nations Secretary-General, annex to a letter of 14 December 2000 by the United Nations Secretary-General, Kofi Annan, to the United Nations Security Council, UN Doc. S/2000/1198 of 15 December 2000, para. 15.
32. See e.g. Morris and M. P. Scharf, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia* (1995), Vol. 1, at 167, 286-7, concerning the possibility of establishing a claims commission for the victims. Concerning failed attempts by former Prosecutor Carla del Ponte to amend the Statute to be able to compensate victims, see Anne Marie de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (2005), at 406-9, cited in: Anne-Marie De Brouwer, "Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families", *Leiden Journal of International Law* 20, no. 1 (2007), 207, at p. 215.
33. For an account that it was not the Tribunals' role to provide compensation for victims, see Ralph Zacklin, "The Failings of Ad Hoc International Tribunals", *J. Int'l Crim. Just.* 2 (2004), 541, at p. 544.
34. See generally on retributive justice Mark A. Drumbl, "Sclerosis Retributive Justice and the Rwandan Genocide", *Punishment & Society* 2, no. 3 (2000), 287-307.
35. See example Irene Scharf, "Kosovo's War Victims: Civil Compensation or Criminal Justice for Identity Elimination", *Emory Int'l L. Rev.* 14 (2000), 1415, at p. 1423, who claims that: "Given the apparent present inability of the Yugoslav courts to provide civil remedies to the victims at issue here, the question follows whether the United-Nations-created Yugoslav Tribunal might offer any assistance in developing a system to provide civil compensation to the victims. Unfortunately, the answer to that question is apparently negative, for the statute establishing the Tribunal does not provide for financial "or other compensation for damages suffered by the victims" of the war.
36. See generally on this question, Mirjan Damaska, "What Is the Point of International Criminal Justice", *Chi.-Kent L. Rev.* 83 (2008), 329; Payam Akhavan, "Beyond impunity: can international criminal justice prevent future atrocities?", *The American Journal of International Law* 95, no. 1 (2001), 7-31.
37. Michael Bachrach, "The Protection and Rights of Victims under International Criminal Law", 34 *International Lawyer* 7 (2000).
38. Mark Drumbl distinguishes three main objectives of punishment in international criminal justice: 1) deterrence; 2) retribution; 3) expressivism. He argues that these objectives are not completely attained, see Mark Drumbl, *Atrocity, Punishment and International Law* (Cambridge: Cambridge University Press, 2007), ch. 6.
39. See e.g. E. A. Posner, *A Minimalist Reparations Regime for the International Criminal Court*, available at: <http://uclalawforum.com/reparations#Posner>
40. See M. Cohen, "Paving the Way to Reparations for International Crimes: The ICC Trust Fund and Beyond", *Revista do Instituto Brasileiro de Direitos Humanos*, 2014.
41. See e.g. C. Ferstman and M. Goetz, Reparations before the International Criminal Court: the Early Jurisprudence on Victim Participation and its Impact on Future Reparations Proceedings, in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, Nijhoff, 2009, pp. 313-353, at p. 316
42. Cf. C. Van den Wyngaert, "Victims before international criminal courts: some views and concerns of an ICC Trial judge", *Case Western Reserve University*, 21 November 2011.

43. C. Van den Wyngaert, "Victims before international criminal courts: some views and concerns of an ICC Trial judge", *Case Western Reserve University*, 21 November 2011.
44. See e.g., B. Hamber, "The Dilemmas of reparations: In Search for a Process-Driven Approach", in *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, pp. 146-147; N. Gómez, "Psychological Reparation: Latin American Indigenous communities, in Reparations for Indigenous Peoples: International and comparative Perspectives 158 (Federico Lenzerini ed., 2008), pp. 155-159.
45. See T. Antkowiak, "An Emerging Mandate for International Courts: Victim-Centered Remedies and Restorative Justice", *Stanford Journal of International Law*, 2011, p. 284 (discussing the challenges that victims of human rights abuse suffer and the need to take the preferences and needs of victims into account).
46. See on the feasibility of transcending the distinction between punishment and court-ordered restitution, M. Groenhuijsen, "Victims' Rights and Restorative Justice: Piecemeal Reform of the Criminal Justice System or a Change of Paradigm?", in H. Kaptein and M. Malsch (eds.), *Crime, Victims and Justice: Essays on Principles and Practice* (2004), 63, at p. 73. In this respect, according to Van Boven, compensation during criminal proceedings can be regarded as follows: "First, it makes the criminal offender more aware that not only was a wrong committed against public order and public welfare but, in addition, an injury was inflicted on one or more human beings. Second, it establishes a link between punitive measures and measures of reparation. Third, it tends to facilitate and expedite the process of obtaining civil damages.": T. van Boven, "The Perspective of the Victim", in Y. Danieli, E. Stamatopoulou, and C. J. Dias (eds.), *The Universal Declaration of Human Rights* (1999), 13, at p. 21.

