



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

SURVIVORS: THOSE LEFT IN THE SHADOW OF WAR

Reparation, Power, and Silent Suffering

Shouryaditya Shrivastava

Those who witness war are always convinced that it is without precedent, that the world will be a place it has never been before, and the witnesses are often proven partly wrong. The elements of war change, new Borders are drawn, giving them new titles, and old allies become new enemies and vice versa. Only the shape of things, the appetite for power and its impact on ordinary lives are the ones whose souls remain unchanged forever, having a tedious impact. As George Santayana observed, **“Those who fail to learn from history are doomed to repeat it”**¹

What comes back most faithfully is a single instinct. Great powers, however unlike one another in language or creed or flag, share one reflex. When their dominance is threatened, whether the threat is real or only imagined, they do not yield. They harden. They reach for whatever instrument lies within arm's length, and they use it, and they tell themselves, as the powerful always have, that the price will be worth paying. The price is almost never paid by the people who decide to incur it.

It is paid in kitchens and stairwells and crowded market squares. It is paid by a farmer who never read the treaty, by a child who cannot find the words for what she saw, by an old man who buries his sons in the order they were born. These are the civilians, a bloodless word for people with names, who become collateral in the cold grammar of strategy. They did not start the war. They could not have stopped it. They endure it anyway, and for the most part they endure it in silence,

¹ George Santayana, *The Life of Reason: Reason in Common Sense* (Charles Scribner's Sons 1905) 284.

because silence is what the world has always asked of them in exchange for the privilege of having survived.

There is an old and bitter way of putting it. Those who managed to save themselves, people used to say, had God at their side; and those who could not, they too met God. It sounds like consolation until you hold it up to the light. What it actually describes is a lottery. A coin spinning over a village, indifferent to how it lands. For most of recorded history that was the end of the matter. The lucky lived. The unlucky were mourned, if they were lucky enough to be remembered at all. And the law had nothing to say to either of them.

The twentieth century changed that, though not quickly, and not out of kindness. The same century that industrialised killing on a scale the old empires could never have imagined also did something the old empires never troubled to do. It kept records, and it slowly grew a conscience to match them. Out of the wreckage of its worst decades came an idea so plain that it is strange it took so long to arrive: that a person harmed in war is not merely a number to be tallied, but a human being to whom something is owed.

For the most of its lengthy existence, the law of nations was a discussion between governments that took place behind the backs of the people who genuinely supported them. The damaged human being was, at most, a unit of damage on a ledger settled in some far-off capital, and a wrong committed during a war was a wrong committed by one sovereign against another. The scholarship that maps the modern turn, and here I am thinking of the patient work of Cristián Correa, Shuichi Furuya and Clara Sandoval on reparation for victims of armed conflict,² describes a slow migration of the law's attention. Away from the wounded dignity of states, and toward the lived experience of the individual who was harmed. The suffering of a person is no longer the incidental exhaust of a quarrel between nations. It is a violation in its own right. And a violation, in law, is something that demands to be repaired.

That instinct, that it must be repaired, is among the oldest in the whole architecture of international law. Nearly a century ago, in a dispute over a nitrate factory at Chorzów, the Permanent Court of International Justice found words that have outlived almost everything else from that era.

²Cristián Correa, Shuichi Furuya & Clara Sandoval, *Reparation for Victims of Armed Conflict* (Cambridge University Press 2020).

Reparation, the Court said, must as far as possible wipe out all the consequences of the illegal act and re-establish the situation that would, in all probability, have existed had the act never been committed.³ Wipe out all the consequences. It is an impossible standard, and the judges surely knew it. You cannot un-burn a house or un-widow a wife. But the impossibility is the whole point. The law sets its face toward a restoration it can never fully reach, and in doing so it refuses to accept that what happened was simply the way of things. Over the century that followed, that refusal slowly grew teeth.

As early as 1907, the states gathered at The Hague wrote a quiet but radical sentence into the laws of war. A belligerent that violates the rules shall, if the case demands, be liable to pay compensation, and shall be answerable for all acts committed by the members of its armed forces.⁴ Seventy years later the same principle passed almost word for word into the Additional Protocol to the Geneva Conventions,⁵ proof that it had not been the fluke of one anxious conference but a thread the law meant to keep. And when the International Law Commission at last codified the rules of state responsibility at the turn of this century, it stated the obligation without ornament. A state responsible for a wrongful act must make full reparation, whether by restitution, by compensation, or by satisfaction, singly or in combination.⁶

These were never only words on paper. The idea had already been put to the test. After Iraq's invasion of Kuwait, the United Nations created a Compensation Commission that processed millions of claims and paid out tens of billions of dollars, funded from a share of Iraqi oil revenues,⁷ the largest exercise in mass reparation the world had ever attempted. A smaller commission tried something similar between Eritrea and Ethiopia, with far more modest and disappointing results. Together, they showed both halves of the truth. That reparation on an industrial scale is possible, and whether it actually reaches the wounded depends on power, money, and political will far more than on principle.

Then, in 2005, the United Nations General Assembly accomplished what the century had been working toward. It adopted a set of Basic Principles on the right of victims to a remedy and

³*Factory at Chorzów* (Ger. v. Pol.), Merits, 1928 P.C.I.J. (ser. A) No. 17.

⁴Hague Convention (IV) respecting the Laws and Customs of War on Land, art. 3 (1907).

⁵Protocol Additional to the Geneva Conventions (Protocol I), art. 91 (1977).

⁶Articles on Responsibility of States for Internationally Wrongful Acts, arts. 31, 34 (ILC 2001).

⁷United Nations Compensation Commission, established by S.C. Res. 692 (1991).

reparation,⁸ marking the first time the international community has laid down, in one place, what a person wounded by grave crimes is truly entitled. The paper identifies five types of repair, each addressing a distinct type of loss. Restitution entails returning what was taken, such as the land, house, liberty, or name. Compensation: When it is impossible to return it, pay for what can be tallied as well as what cannot. Rehabilitation: the medical care, the counselling, the legal help a broken life needs in order to be rebuilt. Satisfaction: a public recognition, the truth spoken loudly, an apology, and the body returned for burial. And pledges of non-repetition, the commitment, supported by genuine reform, that it would not be repeated to the next family in the next valley.

Take a moment to look over the five again and really consider what they're striving to achieve. You'll find that only one of them is truly centred around money. This is the portion that the phrase "reparation" tends to obscure. We hear that and envision a paycheck. A number, settlement, or transaction that completes the file. However, money, while extremely important to individuals attempting to feed children amid ruins, was never the only consideration. The deeper job of repair is to restore a person to personhood. It is the official document admitting that you were wronged, that it was not your fault, and that you were nothing. The exact force that ruined your world admits, in a voice loud enough for your neighbours to hear, that it was you who broke it.

Anyone who has sat with survivors understands that acknowledgement is frequently more important than compensation. Consider a mother who has spent years being informed that her son just disappeared. Perhaps he fled away. That there is no evidence, no bodies, and no one to blame. She is due more than just money. She is entitled the truth, as told by those who buried it. She is owed her son's name, which is accurately recorded in the official report. Reparation, at its best, is the law attempting to restore not the dead, who cannot be restored, but the dignity that was taken away with them.

And there is a type of restoration that extends beyond any particular survivor. When a state erects a memorial, observes a day of sorrow, or educates the next generation about what was formerly done in their country's name, it is doing repair in the register known as satisfaction. Repair is dedicated not just to the current claimant but also to the memory of those who did not survive to claim anything. Societies that have experienced atrocities, apartheid, tyranny, and genocide have

⁸Basic Principles and Guidelines on the Right to a Remedy and Reparation, G.A. Res. 60/147 (16 Dec. 2005).

learned that telling the truth formally is a form of reparation in and of itself. It is unable to revive. But it may deny the second death that follows the first, the erasure, the official shrug, the insistence that nothing occurred at all.

But in this case, the honest essay must take its time and present the most difficult part of the narrative. Despite the beauty of the ideas, there is still a great gap between the village and the page. A right is not yet a right if it cannot be asserted. It's a promise, and promises made to those who lack authority tend to be broken. Think about what it really need to claim it. Most of the time, a victim has to figure out what went wrong, gather evidence of it years or even decades later, locate a forum that will consider the claim, endure the drawn-out litigation process, and, in the most brutal part of it, hope that the person who is ultimately found to be at fault may be forced to pay. Each of those steps is a wall. Most victims never clear the first.

Even when the law works exactly as it was designed to, it tends to arrive long after the wound has set. In 2022 the International Court of Justice ordered Uganda to pay the Democratic Republic of the Congo reparations for the devastation of a war that had ended almost twenty years earlier. The sum was three hundred and twenty-five million dollars, to be paid in five yearly instalments.⁹

The criminal courts have struck the same wall from the other side. When the International Criminal Court began ordering individual war criminals to compensate their victims, it discovered almost at once that men who burn villages are rarely solvent. In its very first reparations case the convicted man was found to be indigent, unable to pay a cent of what he owed. The Court's answer, a Trust Fund for Victims drawing on voluntary contributions to do what the perpetrator could not, is humane and necessary. It also tells you everything about the state of the system. We have had to build funds to keep the promise of reparation precisely because the promise, left to itself, so often fails.

It is partly for this reason that the most meaningful repair, after mass atrocity, has rarely come from a courtroom at all. It comes, when it comes, from administrative programmes. A government deciding, as a matter of policy, to register the harmed, to pension the widows, to return the seized land, to fund the clinics. These programmes can reach thousands where a lawsuit reaches a handful. But they are creatures of politics, which means they live or die by the willingness of those in power

⁹Rome Statute of the ICC, arts. 75, 79 (1998); *Prosecutor v. Lubanga*, Trust Fund for Victims.

to spend money admitting a wrong. And that willingness, to put it gently, is not the most reliable resource in public life.

Although the legal right is evident, acknowledged, and defined, it is still a locked door for the average individual. Power will always use its tools, and common people will always take the brunt of this. History repeats itself. The law of restitution is where we determine if justice eventually accumulates or if history just repeats itself. They maintain that the suffering was significant, that a wrong was done, and that the obligation does not go away simply because the strong choose to forget, even though reparations cannot make up for past atrocities.

Those who see survivors as citizens with legitimate claims rather than as collateral help to heal the scars of war. The relevant legal precepts are previously established.

So the real question is not whether history is cyclical. It is. The question is the one the survivors have been asking all along, quietly, from the edge of every conflict we would rather not remember. When the powerful have finished, and the dust comes down, will anyone come for us? Whether the answer is yes was never up to history. It is up to us.

References

1. Cristián Correa, Shuichi Furuya & Clara Sandoval, *Reparation for Victims of Armed Conflict* (Max Planck Trialogues on the Law of Peace and War, Vol. 3, Cambridge University Press 2020). [Cambridge University Press](#).
2. *Factory at Chorzów* (Germany v. Poland), Merits, Judgment No. 13, 1928 P.C.I.J. (ser. A) No. 17 (13 Sept. 1928). [Permanent Court of International Justice](#).
3. Convention (IV) respecting the Laws and Customs of War on Land and its Annex, art. 3 (The Hague, 18 Oct. 1907). [ICRC IHL Databases](#).
4. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 91 (8 June 1977).
5. International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, arts. 31, 34–37 (2001). [United Nations](#).
6. United Nations Compensation Commission, established by Security Council Resolution 692 (20 May 1991), pursuant to Resolution 687 (1991).
7. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147 (16 Dec. 2005). [OHCHR](#).
8. *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda), Reparations, Judgment, 2022 I.C.J. (9 Feb. 2022). [International Court of Justice](#).
9. Rome Statute of the International Criminal Court, arts. 75 & 79 (17 July 1998); *Prosecutor v. Lubanga*, reparations proceedings and the Trust Fund for Victims.
10. The author used ChatGPT (OpenAI) and Claude (Anthropic) for grammar checking, language refinement, and research assistance. All substantive analysis, verification of authorities, and conclusions remain the author's own.