

RECOGNITION OF GENOCIDE AS A FORM OF MORAL REPAIR**Evarada Abednego Don *****ABSTRACT**

The article offers a critical appraisal of the forms of reparation applicable to the crime of genocide examining their legal foundation, practical implementation and normative significance within international law. Although genocide is recognized as the “crime of crimes”, the reparation regime addressing its harm remains fragmented and inconsistently applied drawing on international jurisprudence, human right mechanism, and transitional justice practice, in order to address the particular collective and intergenerational effects of genocide, the article adopts a doctrinal approach method to discuss important kinds of reparation, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Particular attention is given to challenges such as the destruction of the group identity, loss of cultural heritage, mass displacement, and the difficulty of quantifying collective harm. The paper argues that conventional individual – centric models of reparation are insufficient for genocide and that more holistic, group-base, and culturally grounded approaches are required. The article further highlights the importance of survivor participation, symbolic and memorial measures, and institutional reforms in achieving meaningful redress. Ultimately, it recommends that a coherent victim-centre framework – integrating both material and symbolic dimensions – its essential to address the profound moral and social ruptures caused by genocide and to strengthen long-term prospects for justice and reconciliation.

Key Words: Reparation, Genocide, Restitution, Compensation, Rehabilitation

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1.1 Introduction

Genocide inflicts harms of a magnitude and nature that transcend conventional understanding of mass atrocity. Defined by its intent to destroy protected groups in whole or in part, the crime strikes at the foundation of human identity, social cohesion and collective existence. While international criminal law has made significant strides in defining and prosecuting genocide, the development of a coherent and enforceable framework for reparations remains comparatively under-explored. Yet for affected individuals and communities, reparations are often the most tangible expression of justice – serving not only to acknowledge suffering but also to restore dignity, rebuild social structures and enable long-term recovery.¹

The complexity of repairing genocide lies in the layers of harm: the physical and psychological trauma suffered by victims; the erasure of culture, language and heritage; the destruction of governance systems and community life; and the intergenerational consequences that persist long after violence ceases. Traditional models of reparation, largely tailored to individual violations, struggle to address such expansive, collective injuries. Furthermore, political constraint, limited resources and the absence of robust enforcement mechanisms frequently impede the implementation of meaningful redress.

The article situates the appraisal of reparation forms within the broader landscape of international law, transitional justice and comparative practice. It argues that addressing genocide requires a reconceptualization of reparation – one that balances individual and collective needs, situates redress within cultural and historical context, and prioritizes survivor agency. By critically examining existing approaches and identifying gaps, the article seeks to contribute to a more effective and victim-centered reparation framework for one of the gravest crimes known to humanity.

1.2 Origin of the Term “Genocide”

Before 1944, there was no such thing as "genocide." It is a very specific phrase used to describe violent actions against groups that are intended to end the group's existence. Although attempts

¹ R. Lemkin, *Axis in Occupied Europe*, in Endowment for International Peace, (Washington D.C: Carnegie, 1944).

to exterminate groups have been a significant part of human history, these attempts were typically recognized either by describing the event or by classifying it under a very broad term, such as massacre, mass murder, put to the sword, barbarism, or inhumanity. Even the international community's efforts to create humanitarian law in the late 19th and early 20th centuries were entirely concentrated on crimes against humanity and war crimes. Genocide was not included in either of the Hague Treaties or Geneva Conventions. When the horrific extent of the Nazi slaughter of Jews became apparent during World War II, British Prime Minister Winston Churchill realized that this was an unnamed crime.

The legal idea was first used in 1944 by Polish international law professor Raphael Lemkin. In order to push the UN for an international genocide convention, he relocated to New York at the close of World War II after fleeing from the German takeover of Poland in 1939 to Sweden. He went on to teach law at Yale and Duke Universities and received four Nobel Peace Prize nominations.

Lemkin addressed the historical annihilation of racial, religious, and other social groups in a paper he presented at an international conference in Madrid in 1933. In his 1944 book "Axis Rule in Occupied Europe," Raphael Lemkin attempted to explain Nazi policies of systematic murder, especially the extermination of European Jews. He created the term "genocide" by fusing the Latin word for murder, "cide," with the Greek word for race or tribe, "geno." When Lemkin came up with this new word, he had in mind a well-thought-out scheme of various activities intended to destroy the fundamental pillars of national groups' existence in order to completely eradicate the groups themselves.

Lemkin was a key player in the trials of Nazi war criminals at the Nuremberg International Military Tribunal. Additionally, he advocated before the United Nations during its debate on Genocide, which ended with a resolution by the General Assembly declaring that genocide is a crime under international law that is condemned by the civilized world and for which perpetrators and accomplices face consequences. The United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 as a result of Lemkin's ceaseless efforts. Signatory governments agreed to prohibit and punish "genocide," which was made an international crime by this convention.

1.3 Conceptualization of Genocide

Scholars have established many definitions of genocide to align with their views of governmental mass killings. Along with the legal term in the 1948 Genocide Convention, these are several more definitions of genocide that scholars and researchers have come up with. Frank Chalk and Kurt Jonassohn say that genocide is a form of one-sided mass murder in which a state or other authority tries to get rid of a group because the people who do it define the group and its members. Helen Fein describes genocide as a continuous, intentional act by a perpetrator to physically annihilate a group of individuals, either directly or indirectly, by obstructing their biological and social reproduction, irrespective of the victims' capitulation or perceived threat.

Israel W. Charny says that "genocide is the mass killing of substantial numbers of human beings, when not in the course of military forces of an avowed enemy, under conditions of the essential defenselessness and helplessness of the victims." Steven T. Katz says that genocide only happens when the people who do it really want to kill off an entire group, even if they do it well. Barbara Harff and Ted Gurr say that genocide happens when a state or its agents make and carry out policies that kill a lot of people from a group that is mostly defined by their shared traits, like race, religion, or nationality.

Intent and action are the two components of the crime of genocide according to both the legal and alternative definitions. "Intentional" refers to having a purpose. Statements or directives can be used to directly demonstrate intent. More often, though, it needs to be deduced from a methodical series of well-coordinated actions. This definition was approved by the International Criminal Court (ICC), which also expanded its application to encompass people of all ranks and statuses. In addition to genocide, other crimes against humanity that are covered by the International Criminal Court include (apart from genocide) government-perpetrated killings, extermination campaigns, enslavement, illegal deportation, torture, rape, sexual slavery, forced disappearances, and apartheid. Considering both sociological meanings, it is likely that governments killed over 174 million individuals in the 20th century. The majority of these murders—about 110 million individuals – are the result of communist regimes, particularly the USSR under Lenin and Stalin and their successors, who killed roughly 62 million people, and China under Mao Tse-Tung, who killed roughly 35 million. This death toll is also mostly the

result of various totalitarian or authoritarian regimes, most notably Hitler's Germany, which killed over 21 million people, and Chiang Kai-Chek's Nationalist government of China, which killed roughly ten million. Khmer Rouge Cambodia, Japan, North Korea, Mexico, Pakistan, Poland, Russia, Turkey, Vietnam, and Tito's Yugoslavia are among the other governments that have killed fewer millions of people.

Although its legal definition makes it difficult to conduct empirical and historical research, genocide is also a topic of social science and academic study. Because of this, there have essentially been two definitions of genocide used in study. One is the desire to murder individuals due to their affiliation with a particular group. Any deliberate government killing of defenseless and unarmed individuals for any reason is a second definition.

Genocide is essentially a result of a nation's system of governance. People's level of freedom and the probability that the government will commit a democratic act are highly correlated. Almost no internal genocide has been committed by a modern democratic government. While other regimes have been partially or completely autocratic and dictatorial, the majority of genocide has been committed by totalitarian governments. Genocide is more likely to occur during times of war or during internal upheavals like revolution, rebellion, or foreign intrusions, regardless of the form of government.

But it's crucial to remember that genocide encompasses both the deliberate and actual eradication of all members of a minority group. Accordingly, the killing of one individual may qualify as genocide if it is a part of a larger set of acts intended to wipe out the group to which the individual belonged. This requirement of intention is crucial since it has been the biggest obstacle to indigenous people's claims of genocide in Australia being heard in court.

Therefore, the 2001 attack on the World Trade Center in the United States is an example of mass murder but not, by any means, genocide. Undoubtedly, Americans made up the majority of the victims. Not only was it a tiny portion of the "Americans" group overall, but it was also an isolated incident. This does not absolve the 9/11 perpetrators of their crimes. It indicates that they should not be arraigned before a genocide tribunal.

Therefore, mass murder and genocide are not the same thing, even though one action may be both if it was meant to start a trend of eradicating a certain group of people based on their race,

religion, or other characteristics. Summary mass murder has been used to commit genocide in frontier massacres of indigenous peoples, such as those that occurred in Rwanda and the Holocaust. However, as seen by the 9/11 attacks in the United States in 2001 and the Boko Haram mass murders in Nigeria, summary mass murder can occur without genocide. As seen by the ongoing post-frontier destruction of indigenous genoi in whole or in part, genocide can also occur without summary mass murder. Here, we want to emphasize that the definitional problem is not the degree question.

The apartheid government in South Africa does not, despite the fact that the actions of the Nazis in Europe, the Turkish in Armenia, and the Australians against the Aborigines, among other instances, all amount to genocide. Slavery of African Americans is comparable. The genocide tribunal is the incorrect court in both situations. Therefore, regardless of the number of people killed, oppression, cruelty, and even mass murder do not always qualify as genocide. The debate over what exactly qualifies as genocide makes genocide studies unique. Although the term "genocide" was coined in the 20th century, its historical incidence predates that. Raphael Lemkin, a Polish jurist, introduced the term "genocide" in 1944, characterizing it as "a systematic scheme of various actions targeting the obliteration of the fundamental basis of the existence of national groups with the objective of exterminating the groups themselves." The United Nations later adopted a modified version of this definition in 1944. Lemkin's definition of genocide is oversimplified in direct response to the Holocaust of the Jewish people during World War II. Other historical and modern instances of genocide have been given by a number of academics in the decades that followed. The following questions have emerged in a heated discussion on the meaning of genocide itself: Was there only one real genocide, the Holocaust? Is it even necessary to have a comparative area of genocide studies? And should every possible instance of genocide be classified as mass murder and examined as such?

Definitions have varied from the most inclusive, which consider a broad range of historical occurrences to be genocide, to the most restricted, which limit the field to specific instances of genocide. Scholars who support the Holocaust's uniqueness have offered some of the most exclusive definitions of genocide. David Stannard, the author of *American Holocaust*, concurred that the Holocaust was a horribly unusual occurrence. In addition, he identified numerous other genocides as distinct occurrences. Stannard saw nothing wrong with asserting that historical

events were unique, but he thought it was wrong to do so at the expense of downplaying the actual severity of suffering endured by other groups. Furthermore, Steven Katz made a strong case that asserting one's uniqueness does not support a "moral claim" that lessens the misfortunes experienced by other people. He made the following statement in support of the Holocaust's uniqueness: I am not claiming that the Holocaust was more evil than the Armenians during World War I, the destruction of Native American communities over the ages, Stalin's annihilation of Ukraine, the treatment of the Gypsies during World War II, and the enslavement and mass murder of Black Africans during the New World slavery enterprise. I am completely avoiding this kind of fruitless debate over what one would call comparative misery since I am aware of no approach or procedure that would enable one to balance up, quantify, and compare such immense evil and suffering.

Katz, however, was not interested in demonstrating that the Holocaust was more terrible or heinous than past genocides. All he wanted to do was demonstrate how it was unlike anything that had ever occurred. Stannard and others disagree with Katz's direct denial of Pierre Papazian's claims that it is incorrect to equate individuality with degrees of moral evil. They believed that designating degrees of moral evil was inextricably linked to arguments of Holocaust incomparability. They believed that any assertion that the Holocaust was unique was an insult to the victims of other genocides as well as the annihilation of the native American Indian populations. "The execution of the aim to completely exterminate any national, ethnic, racial, or economic group, as determined by the perpetrator," is how Steven Katz defined genocide. This term is predicated on the idea of genocidal intent, which is the full annihilation of a group.

On the other hand, some people have used the term "genocide" to refer to anything from slavery and race-mixing to birth control and abortion. According to some Native American history experts, the sheer quantity of deaths – whether from direct murder, illness, or other secondary colonial causes – amounts to genocide. These instances obviously show discontent with Katz's limited notions of genocide. Some academics have tried to provide a more nuanced explanation of the phrase in an effort to bridge the gap between those who use the term too liberally and those who deny its validity to a few historical cases. Roger Smith proposed dividing genocide into five categories. The following are among them: monopolistic, utilitarian, institutional,

ideological, and retributive genocides. He separated the idea of genocide into various categories according on the motivation of the offender. Smith seems to be on both extremes of the spectrum. While exclusionists have a wider range of murderous categories, exclusivists can concentrate on their specific form of genocide. For quite different reasons, several groups have been targeted for extinction throughout history. Both Raphael Lemkin's definition and the United Nations' codified definition are expanded by this more departmentalized version.

William D. Rubinstein, on the other hand, proposed a different classification of genocide that was based on historical differences rather than the motivation of the offender. Genocide in Pre-Literate Societies; Genocide during the Era of Empires and Religions, circa 500 BC–1492; Genocide in the Age of Totalitarianism, 1914–1979; "Ethnic Cleaning" in the Modern Era; and Genocide, 1945–present are his five chronologies. Rubinstein encourages academics to examine genocides in light of historical quirks by employing a chronological structure. The application of this paradigm could result in a more comprehensive knowledge of historical genocides and the ways in which genocide has changed over time. Mass murder is undoubtedly as old as humanity, but it wasn't until the 20th century that it became a major global phenomenon deserving of the term "genocide."

A significant portion of the body of extant research in the discipline of genocide studies has focused on the definitional issue. The authors of the texts typically base their own definitions on protective self-serving objectives, yet they nevertheless diverge surprisingly much on how to apply it and what its particular ramifications are. Genocide, according to Steven Katz, depends on "intent" or the "actualization of intent." Others, however, charge Katz with deliberately defining genocide in ways that exclude other instances of genocide and more closely align with the Holocaust. Genocide has been defined by each side to best serve their interests, support their own research, and minimize that of others. Therefore, it is impossible to stop genocide from happening by exploiting and manipulating the concept of genocide.

Unfortunately, the different academics focused their studies on modern-day instances of genocide, the Holocaust's singularity, and intense arguments about the definition of genocide itself. All areas of the current literature on genocide are rife with these scathing arguments. As a result, the literature currently available on genocide studies not only leaves an intellectual vacuum but also places the reality of human sorrow in a subordinate role, which this book aims

to address. Understanding the causes of genocide, how to foresee it, and how to stop it from happening again are the objectives of this dissertation.

1.4 Forms of Genocide Reparation

Financial reparation, land restitution, admission of the crime, and the restoration of cultural heritage are the four types or forms of reparation used in those choices. All of these verdicts, even those that just touch on the implementation mechanism or modalities of reparations, emphasize the necessity of providing full compensation for injuries, whether material or moral, inflicted by a state's global crime.

1.4.1 Financial Reparation

According to the Basic Principles, monetary reparations must be commensurate with the seriousness of the infraction and the particulars of each case, and they are intended to address economically measurable harm.² Examples of financial reparations that fall within the categories of material and non-material damages are not all included in this document. The sole goal of financial compensation is to make up for the harm that the injured person has suffered. Financial reparations are not punitive in character; rather, they serve to make up for actual damages brought about by a globally wrongful act, according to the Commentary to the International Law Commission (ILC) Articles.³ When restitution is not feasible or feasible, or when it does not completely heal the harmed party, this type of compensation is taken into consideration.⁴ Financial reparations are likewise restricted to "financially assessable damage" under the ILC Articles.⁵ In international practice, this type of restitution is most frequently employed.

Material damages are losses or damage to property that cannot be fixed by restitution because it is impossible. Financial compensation also includes other material damages that are easy to

² U.N.G.A Res. 147, 21 March 2006, A/RES/60/147, Annex, para. 20.

³ See especially the International law Commission (ILC) Articles, Commentary to Art. 36 at 99, para. 4.

⁴ ILC Articles, Art. 36, 98.

1. 'The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable-damage including loss of profits insofar as it is established.'

⁵ ILC Articles, Commentary to Art. 36, 98 – 99, para. 1.

measure, like lost income and earning potential, missed chances for work, school, or other social services, and the costs of legal, medical, or other related services. The Basic Principles talk about moral damages as well as material damages, but the term "financially assessable" in the ILC Articles is meant to keep compensation for what is sometimes called "moral damage" to a state out of the picture. This is damage that happens when rights are violated but not actual damage to people or property. The International Court of Justice (ICJ) has thus far regarded the matter as one of satisfaction. It's clear that terms like "pain and suffering" are hard to put a price on, and the Court has avoided trying to place a price on the moral harm done to victims of human rights and humanitarian law abuses by giving them a little amount of money. In the famous Chorzow Factory case, compensation is used instead of *restitutio in integrum* when the latter type of reparation is not possible:

The principles for determining the compensation owed for a violation of international law are restitution in kind, or if that is not possible, payment of an amount equal to the value of the restitution in kind; and, if necessary, damages for losses that cannot be covered by restitution in kind or payment in lieu of it.

The Court has typically focused on material damages and typically as an alternative to restitution when discussing financial reparations in relation to war crimes and human rights violations while talking about monetary compensation for human rights abuses and war crimes. For instance, the Court stated that "Israel has the obligation to compensate the persons in question for the damages suffered" in the Wall advisory decision. If it was no longer possible to return the land, orchards, businesses, and agricultural land that Israel had taken in the occupied Palestinian territory as a result of building the wall.⁶

The Court thought about Israel's duty to pay "all natural or legal persons who suffered any kind of material damage as a result of the wall's construction." in addition to returning property or making up for its loss. This revelation presents prospects for those who suffered material losses, both natural and legal. Apart from compensation for lost property, The Court has always recognized material damages as a remedy. These include any other easily quantifiable costs or damages, such as medical bills, lost income, and missed business chances. The Court, on the

⁶ Wall, ICJ Reports 2004, 198, para. 152.

other hand, did not let the more difficult calculation of non-material damages, which would include things like humiliation, pain and suffering, and mental anguish. As a result, while the Court allowed for future It limited the types of damages that might be paid to natural and legal persons for material damages by not allowing pay for moral damages.

The Application of the Genocide Convention case offers insight into the requisite causation element for securing monetary reparations in the context of mass atrocities, specifically genocide. The court struck down Bosnia's bid for restitution from Serbia for its role in the genocide that happened during the war that ended the former Yugoslavia. The Court said that Serbia was not directly liable for the crimes in Srebrenica, even though it had not done enough to stop genocide as required by international law. As is usual, the Court first thought about the potential of restitution while deciding what the right amount of compensation should be in this case. The Court then considered compensation because restitution was not feasible. The Court determined that the pertinent inquiry regarding the applicability of financial reparations was "whether there is a sufficiently direct and certain causal nexus between the wrongful act, the Respondent's breach of the obligation to prevent genocide, and the injury suffered by the Applicant, encompassing all damage of any kind, whether material or moral, inflicted by the acts of genocide." In other words, the Court needed to be "sufficiently certain" that the slaughter wouldn't have happened if Serbia had done its duty to stop genocide. In other words, the Court needed to be "sufficiently certain" that the massacre would not have happened if Serbia had done its job to stop genocide. The Court says that Serbia's failure to stop the genocide may have played a big role in the suffering that was done, but it needs to be certain that the breach caused the loss before it can give money for material and moral damages.

In accordance with the methodology set forth by the International Court of Justice (ICJ) in the Bosnia-Genocide case, compensation for Serbia's failure to prevent genocide shall be evaluated based on the totality of harm inflicted by the conduct in question. This is accurate, at least about positive responsibilities. Compensation can only be awarded if there is adequate evidence that the unlawful act or acts would not have transpired without the involvement of the responsible party.

Due to the high standard that applies, the ICJ would frequently be unable to offer compensation for violations of international law that come under the obligation to prevent internationally recognized crimes including crimes against humanity, war crimes, and genocide.

1.4.2 Land Restitution

According to the ILC Articles, The objective of restitution is "to restore the condition that prevailed prior to the commission of the wrongful act.". According to the Commentary to the ILC Articles, restitution is consequently the first kind of reparation that is always taken into account. According to the Basic Principles, restitution can be employed whenever it is practical and is defined as either the return of property or the restoration of fundamental rights. According to a ruling by the Permanent Court of International Justice (PCIJ), "(r)estitution in kind" was the first step in the repair process. In situations where such restitution is not practical, compensation for losses and damages is the next appropriate fix. Examples of how the ICJ has applied the restitution principles to particular victims include the restoration of fundamental rights and the return of property. Restitution is sometimes neither straightforward nor feasible, especially in cases where humanitarian law and human rights have been breached.

1.4.3 Acknowledgement of the Crime

One of the earliest types of restitution that the ICJ employed was satisfaction.⁷The Court acknowledged Bosnia's "entitlement to reparation in the form of satisfaction" in the Application of the Genocide Convention case." even if it rejected compensation as a legitimate form of atonement.⁸In order to demonstrate that Serbia had not complied with its responsibilities under the Genocide Convention, the Court incorporated an operative paragraph in its ruling.⁹When Serbia's violation was restricted to not taking appropriate action to stop genocide rather than actively taking part in the crime,, it was judged appropriate to acknowledge culpability. Although the Court specifically enumerated the transgressions of international humanitarian law and

⁷ Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), (Merits), ICJ Reports 1949, 36.

⁸ Application of the Genocide Convention, ICJ Reports 2007, 165 – 166, paras. 462 – 33.

⁹ Ibid, para. 463.

human rights in its operative paragraphs,¹⁰ reparations in the form of satisfaction are rarely applied.

An admission of guilt in a decision that is already meant to deliberate and determine whether or not violations of international law have happened would seem to be of little use as a kind of reparation from a purely material basis. However, the significance of this type of compensation cannot be overstated, as part of the Court's mandate is to support the rule of law worldwide.

States would attempt to avoid being labelled as violators because they are sensitive about how other people see and understand them. The International Court of Justice (ICJ) appears to have restricted the use of satisfaction as recompense to situations in which a breach of international law is seen to be so serious and affronting that it violates a state's sovereignty, but does not include tangible harm. These harms are sometimes of a symbolic nature, resulting from the obligation's violation itself, regardless of the material ramifications for the state in question, as the ILC opinion itself points out.¹¹

The ILC Articles see stopping ongoing violations as a separate legal requirement, even if the Basic Principles say it is a form of satisfaction. To get paid for damages in circumstances of repeated offenses, the wrongdoing must stop. The ICJ has largely used the end of ongoing violations in incidental procedures on provisional measures, although it has also been used in other conclusions. Several states who applied have requested the Court to temporarily tell the respondent state to stop violating their sovereignty and injuring their people and property. In a number of provisional measures orders, the Court has told one or both parties to stop breaking the law, do what is necessary to stop certain infractions, or not do anything that would make the matter worse. In the Armed Activities case, the Court used the phrase "affirmative obligations" and said, "Both parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law." In the case of Georgia v. Russian Federation, the same kind of terminology was used to protect people, groups of people, or institutions. The Court first said that Israel had

¹⁰ Nicaragua case, (Merits), ICJ Reports 1986, 146 – 150, para. 292, Wail, ICJ Reports 2004, 201 – 202, para. 163; Armed Activities case, ICJ Reports 2005, 279 – 283, para. 345; Application of the Genocide-Convention case, ICJ Reports 2007, para. 271.

¹¹ ILC Articles, Commentary to Art. 37, 106, para. 3.

to stop building the wall right now and take down the barrier to make up for the damage done by breaking its international legal responsibilities.

The restoration of fundamental rights as a type of restitution and the termination of continuing violations as a distinct kind of reparations appear to be two sides of the same coin. Therefore, freeing the US diplomatic employees from illegal arrest in the Tehran Hostages case can be regarded as reparation in the form of rights restoration. That same move, meanwhile, might also be seen as the end of Iran's continuous breach of its commitments pursuant to the Vienna Convention on Diplomatic Relations. The ILC Articles state that the issue of cessation often closely relates to that of redress, especially restitution.

In certain situations, such as when hostages are released or confiscated property or items are returned, the outcome of cessation may be identical to reparation.¹² Although restitution is motivated by proportionality, the ILC Articles' Commentary points out that a party may need to go beyond its previous conduct in order to comply with legal duties rather than merely going back to them.¹³ Remarkably, proportionality underpins all types of reparations in the Basic Principles, making the end of persistent infractions a valid form of satisfaction.¹⁴ Although it still has to specify the precise form and, preferably, the classification of these remedies, the Court has made considerable use of the responsibility to end continuing violations, including those that would stop the infringement of or restore individual rights.

A state must carry out a variety of international legal obligations in order to stop recurrent infractions. Thus, the Court emphasized that Serbia was still required by the Genocide Convention to punish genocide perpetrators, including by bringing Ratko Mladic before the International Criminal Tribunal for the former Yugoslavia (ICTY). A declaration to that effect was deemed appropriate satisfaction by the Court, suggesting that it also qualifies as the conclusion of an ongoing breach, namely the failure to prosecute Mladic. Another component of that specific type of cessation, which is also acknowledged as a form of fulfillment under the

¹² ILC Articles, Commentary to Art. 30, 89, para. 7.

¹³ Ibid.

¹⁴ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 147, 21 March 2006, A/RES/60/147; 13 IHRR 907 (2006), Annex, para. 8.

Basic Principles and Guidelines, is bringing criminals to justice. It is argued that a state's obligation to make amends for an internationally wrongful conduct includes an obligation to bring criminal charges against individuals involved. This kind of compensation usually plays a major part in reestablishing the rights of governments or individuals affected by serious abuses of humanitarian law and human rights, as demonstrated by the ICJ's frequent use of cessation in its findings.

1.4.4 Return of Cultural Heritage

In the Wall advisory ruling, the Court found that the Israeli government's building of a wall in the Occupied Palestinian Territory violated its obligations under international law rather than being justified by security considerations. Despite the Court's usual focus on state-to-state accountability, this historic advisory decision recommended state-to-individual reparation. The International Court of Justice (ICJ) told Israel to "make reparation for the damage caused to all the natural or legal persons concerned" because the wall's construction destroyed houses, businesses, and farmland. The Court said that Israel is "under the obligation to return the land, orchards, olive grove and other immovable property seized from any natural or legal person" during the wall's construction. This is based on the *Charzow Factory* decision's principle of restitution. This advisory opinion was the first to include the right to individual reparations for violations of human rights and international humanitarian law in the ICJ's case law. It also stressed how important it is to return people's property in connection with those crimes.

The court ruled in the *Armed Activities* case that Uganda had to pay for all the damage it caused to the DRC because it "illegally used force, violated sovereignty and territorial integrity, violated international human rights law and international humanitarian law, looted, plundered, and exploited the DRC's natural resources." The Court said that "those acts resulted in injury to the Democratic Republic of Congo (DRC) and to persons on its territory," therefore Uganda had to pay the necessary remedies. The Court determined that "those acts resulted in injury to the DRC and to persons on its territory" due to the severity and scope of the violations, necessitating Uganda to make The Court decided that "it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act." This was based mostly on its previous

decisions, like the *Chorzow Factory* case. If the parties can't agree, the Court will keep hearing arguments on how much money should be paid.

Two key tenets of international restitution responsibilities seem to be reaffirmed by the ruling in the *Armed Activities* case. First, the ruling acknowledged that harm had been done to the DRC and to individuals on its soil, adopting a methodology akin to that of the *Wall* advisory opinion. Therefore, by recognising Uganda's responsibility for damage sustained by individuals in the DRC, the Court appears to indirectly embrace the need to make the necessary repairs, even though it is resolving an interstate issue. Thus, it might be argued that the DRC has the authority to ask for specific compensation on behalf of its people who were harmed by Uganda's actions. This would entail giving back property to those who have committed a certain type of international law infringement, like stealing and plundering private property, in accordance with the guidelines set forth in the *Chorzow Factory* case. Second, when the parties cannot agree on the amount of compensation, the ICJ's reparations processes are distinct from its merits proceedings and ultimately call for an independent hearing.¹⁵ The DRC would be able to "prove and demonstrate the precise harm that was caused by the particular acts of Uganda that constitute internationally wrongful acts for which it is accountable." through such a process, which may include lengthy hearings and evidence.¹⁶ However, from a practical standpoint, it is a challenging procedure since it is harder to evaluate and identify the harm sustained with a level of confidence that is sufficient to both parties as time goes on.

1.5 The Importance of Genocide Reparation to Victims

One way to recognise, address, and make amends for historical injustices committed against marginalised communities is through reparation. In the worldwide conversation about systematic inequality and historical injustice, reparations have taken front stage. The idea of compensation embodies a moral and political commitment to recognise and right wrongs, whether they are related to the transatlantic slave trade, colonial exploitation, indigenous dispossession, or the aftermath of wars and genocides. Particularly in relation to racial justice movements, the concept has acquired popularity in activist, academic, and policy circles. Reparations are still a crucial

¹⁵ Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), (Merits), ICJ Reports 1986, 149, para. 292 (12) Nicaragua case).

¹⁶ *Armed Activities* case, 82, paras. 260 – 61.

instrument for social justice and healing, despite ongoing discussions on its structure and viability.

Reparations have been applied in a variety of ways throughout history. Germany set a pattern for state-sponsored retribution after World War II by making reparations to the state of Israel and Holocaust survivors.¹⁷ Similarly, the Civil Liberties Act of 1988 provided cash compensation and an official apology to Japanese Americans who were detained during World War II¹⁸, these examples illustrate that reparations are not unprecedented and can be both symbolic and material.

On the other hand, African and indigenous descendants of enslaved peoples have frequently been left out of significant reparations. With ideas like "40 acres and a mule," attempts to propose reparations for slavery in the United States began in the years following the Civil War, but these pledges were never kept.¹⁹ Racial gaps in wealth, education, and health outcomes have been sustained by this long-standing failure to make repairs.

Principles of justice, especially restorative justice, which places an emphasis on mending the harm caused by injustice, serve as the foundation for reparations. Justice necessitates both forward-looking measures (like non-discrimination) and backward-looking obligations (like acknowledgement and restitution), according to philosophers like John Rawls (1971) and Marka Minow (1998). As stated by Boxill,²⁰ the social contract and moral integrity are undermined when reparations are not made since it is implied that society accepts wrongs from the past.

According to Brooks, ethnically, reparations also satisfy the moral need of acknowledgement,²¹ Restoring victims' standing in society and confirming their dignity depend heavily on their admission of wrongdoing. Reparation is therefore about confirming memory, identity, and suffering in addition to providing compensation.

¹⁷ E. Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (U.K: W.W. Norton and Company, 2000), 168.

¹⁸ R. Daniels, *Prisoners Without Trial: Japanese Americans in World War II* (U.K: Hill and Wang, 1993), 48 – 52.

¹⁹ T. N Coates, "The case for Reparations" *The Atlantic* (2014)

<<http://www.theatlantic.com/magazine/archive/2014/06/the-case-reparations/361631/>> (Accessed 23 August, 2025).

²⁰ B. R. Boxill, *A Moral Theory of Reparations* in R. C Simon (ed.), *The Ethic of Reparations* (London: Rowman and Littlefield, 2003), 17 – 44.

²¹ R. C. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (U.S.A: University of California Press, 2004), 60.

By resolving systemic inequities that stem from past wrongs, reparations have the power to change society. Reparations can deceive inclusion and equality by reallocating resources, reaffirming cultural identity, and altering institutions. For example, the post-apartheid South African affirmative action and land redistribution programs were intended to be tools for social change as well as compensation.²²

Furthermore, by promoting healing and reconciliation, reparations help avert future hostilities. Reparations, both monetary and symbolic, have been essential in post-conflict communities like Rwanda and Colombia in order to restore confidence and maintain peace. Cycles of violence and resentment can be broken when victims feel noticed and appreciated.

Reparations are criticised and confronted with many obstacles despite their significance. They are criticised for being too expensive, polarising, or impractical. Others contend that the wrongs of the past shouldn't be borne by the present generation. Proponents respond, however, that the effects of past injustices are still felt now and continue to influence current events.²³ Furthermore, reparations are about structural change and societal accountability rather than just personal shame.

The form of compensation is another topic of discussion. While some favour symbolic gestures, institutional reforms, or educational initiatives, others urge direct payments. The variety of atonement methods, ranging from Australia's Sorry Day to Canada's Truth and Reconciliation Commission, shows that there is no one-size-fits-all approach and that reconciliation needs to be tailored to the particular environment.

1.6 Conclusion

This article has argued that the formal recognition of genocide constitutes a critical form of moral repair for victimized communities and the international moral order more broadly. Beyond its legal and historical dimensions, genocide recognition functions as an ethical response to radical wrong doings, affirming the dignity of victims, restoring moral truth, and challenging the

²² C. Walker, Landmarked: Land Claims and Land Restitution in South Africa (2008) 8(4) *Journal of Agrarian Change*, 586 – 617.

²³ W. A Darity and A. K Mullen, *From Here to Equality: Reparations for Black Americans in the Twenty-First Century* (U.S.A: University of Work Carolina Press, 2020), 214 – 218.

structures of denial that perpetrates harms. Recognition is not merely symbolic, it is a normative act that acknowledges responsibility, reassert shared moral values, and reopens the possibility of trust between victims, perpetrators and international community.

The analysis demonstrates that moral repair requires more than material compensation or judicial accountability alone. Without acknowledgement and recognition, reparative efforts remain incomplete, as the moral injury inflicted by genocide involves the negotiation of a group's humanity and historical existence. Recognition directly confronts this injury by publicly validating victim's experiences and affirming that such crimes violates foundational moral principles. In this sense, genocide recognition operates as a bridge between historical truth, ethical accountability and social recognition.

At the same time, the article recognizes the limitations and risk of recognition when it is delayed, politicized, or detached from substantive reparative measures. Recognition that lacks sincerity follows – through, or victim's participation may fail to achieve moral repair and may even exacerbate mistrust. Therefore, genocide recognition should be understood not as an endpoint but as an essential component of a broader ongoing reparative process.

Ultimately, treating genocide recognition as moral repair reframes it from a discretionary political gesture into a moral obligation grounded in justice, dignity, and collective responsibility. This framework offers a more robust ethical justification for recognition and underscores its centrality to post-genocide recovery and the prevention of future atrocities.

1.7 Recommendation

- 1. Integrate Moral Frameworks in Recognition Practices** – States and international institutions should explicitly frame genocide recognition as an act of moral repairs, not solely as a legal or diplomatic statement. These include acknowledging moral wrong doing, responsibility, and the enduring impact on victimized communities.
- 2. Ensure Victim-Centre Recognition Processes** – Recognition efforts should meaningfully involve survivors and descendant communities. Their voices, narratives,

and priorities must shape how recognition is articulated, commemorated and institutionalized.

3. **Link Recognition to substantive Reparative Measures** – Genocide recognition should be accompanied by concrete actions such as reparations, educational reforms, memorilization initiative, and guarantees of non-recurrence. Moral repair requires consistency between words and deeds.
4. **Promote Educational and Institutional Embedding** – Government and international organizations should incorporate recognized genocide into educational curricula, public memory institutions, and official histories to prevent denial and foster long-term moral accountability.
5. **Depoliticize Recognition Mechanism** – International bodies should work towards clearer principle-base standards for genocide recognition to reduce selective acknowledgement driven by geopolitical interest which undermines moral repair.