

RESOLUTION NO 2 /2010

REPARATION FOR VICTIMS OF ARMED CONFLICT

The 74th Conference of the International Law Association, held at The Hague, The Netherlands, 15-20 August, 2010:

HAVING CONSIDERED the Report of the International Committee on Reparation for Victims of Armed Conflict and the Declaration of International Law Principles on Reparation for Victims of Armed Conflict (Substantive Issues) and the pertinent Commentaries as a contribution to the progressive development of international law;

RECOGNISING the importance of formulating a Declaration of International Law Principles with Commentaries on this topic;

ADOPTS the Declaration as incorporated in the Report and annexed to this Resolution;

REQUESTS the Secretary-General of the International Law Association to forward a copy of the Final Report and of this Resolution to the Secretary-General of the United Nations, appropriate international and regional organisations, the United Nations Human Rights Council, the President of the International Court of Justice, the Presidents of the International Criminal Court, of the International Criminal Tribunal for the former Yugoslavia, of the International Criminal Tribunal for Rwanda, and of other international tribunals, the Board of Directors of the International Criminal Court Trust Fund for Victims, the International Committee of the Red Cross, and circulate it widely amongst the community of international lawyers, in particular expert bodies dealing with international humanitarian law;

INVITES the Committee to continue and complete its work on the (Draft) Declaration of International Law Principles on Reparation for Victims of Armed Conflict (Procedural Issues) and the (Draft) Model Statute of an *Ad Hoc* International Reparation Commission.

DECLARATION OF INTERNATIONAL LAW PRINCIPLES ON REPARATION FOR VICTIMS OF ARMED CONFLICT (SUBSTANTIVE ISSUES)

SECTION I *General Part*

ARTICLE 1 *Reparation*

1. For the purposes of the present Declaration, the term “reparation” is meant to cover measures that seek to eliminate all the harmful consequences of a violation of rules of international law applicable in armed conflict and to re-establish the situation that would have existed if the violation had not occurred.
2. Reparation shall take the form of restitution, compensation, satisfaction and guarantees and assurances of non-repetition, either singly or in combination.

ARTICLE 2
Armed Conflict

For the purposes of the present Declaration, the term “armed conflict” is understood in the way as it is used under international humanitarian law.

ARTICLE 3
Applicable Law

The primary norms the violation of which may give rise to the secondary rights and obligations reflected in the present Declaration are the rules of international law applicable in armed conflict, the object and purpose of which is to protect the victim in the sense of Article 4.

ARTICLE 4
Victim

1. For the purposes of this Declaration, the term “victim” means natural or legal persons who have suffered harm as a result of a violation of the rules of international law applicable in armed conflict.
2. This provision is without prejudice to the right of other persons – in particular those in a family or civil law relationship to the victim – to submit a claim on behalf of victims provided that there is a legal interest therein. This may be the case where the victim is a minor child, incapacitated or otherwise unable to claim reparation.

ARTICLE 5
Responsible Party

1. For the purposes of the present Declaration, the term “responsible party” means States and International Organizations responsible for a violation of rules of international law applicable in armed conflict.
2. Responsible parties may also include non-State actors other than International Organisations responsible for a violation of rules of international law applicable in armed conflict. Such responsibility is without prejudice to the responsibility of States and International Organizations under international law for violations of such rules committed by non-State actors.

SECTION II
Rights of Victims of Armed Conflict

ARTICLE 6
Right to Reparation

Victims of armed conflict have a right to reparation from the responsible parties.

ARTICLE 7
Restitution

Restitution consists of measures that re-establish the situation which existed before the violation of rules of international law applicable in armed conflict occurred.

ARTICLE 8
Compensation

Compensation covers any financially assessable damage.

ARTICLE 9
Satisfaction

1. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.
2. Satisfaction shall not be out of proportion to the harm.

ARTICLE 10
Assurances and Guarantees of Non-Repetition

The responsible party is under an obligation to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

SECTION III
Obligations of Responsible Parties

ARTICLE 11
Obligation to Strengthen the Rights of Victims

1. Responsible parties shall make every effort to give effect to the rights of victims to reparation.
2. They shall establish programmes and maintain institutions that facilitate access to reparation, including possible programmes addressed to persons affected by armed conflicts other than the victims defined in this Declaration.

SECTION IV
Obligations of the International Community and States

ARTICLE 12
Promotion of Justice, Peace and Reconciliation

1. The international community is called upon to provide assistance in the larger process of promoting justice, peace and reconciliation during and after armed conflict.
2. To this end, it shall in particular foster a culture of rule of law, including respect for victims' rights and trust in government institutions.

ARTICLE 13
Reparation under National Law

Notwithstanding and without prejudice to the rights set out in the present Declaration, States shall assure that victims have a right to reparation under national law. Nothing in this article shall affect or limit any right of victims or other persons to reparation that may already exist under national law.

SECTION V
Final Clauses

ARTICLE 14

Interpretation and Progressive Development

1. Nothing in the present Declaration may be construed as limiting any existing rights, arising under domestic or international law, pertaining to victims of armed conflict or other persons who have suffered from the consequences of armed conflict.
2. States are encouraged to confirm expressly, supplement, extend, and amplify the principles contained in the present Declaration.
3. Any international agreement dealing with the topics covered by the present Declaration shall be interpreted in accordance with the purpose and spirit of the principles contained in the Declaration.

ARTICLE 15

Non-retroactivity

1. The rights and obligations reflected in the present Declaration shall have no retroactive effect.
2. This is without prejudice to any rules set forth in the present Declaration, which exist independently of the Declaration.

ARTICLE 16

Statutes of limitation

Statutes of limitation may not unduly impact the exercise of the rights and obligations reflected in the present Declaration.