

**PRECISION ATTACK AND REPARATION OF THE VULNERABLE UNDER INTERNATIONAL HUMANITARIAN LAW: AN APPRAISAL\***

**Abstract**

*In every armed conflict, the defenseless, helpless, civilian women, children, and people living with disability are prone to suffer as major casualties, rendered homeless, become internally displaced, and the rest. The aim of this study was to appraise precision attack and reparation of the vulnerable under international humanitarian law. Its objectives were to analyze the related concepts, to examine the challenges of precision, to assess the forms of reparation, to examine IHL legal framework on reparation, and to appraise the findings of the study. The research methodology was doctrinal approach, using analytical and descriptive research design. It was observed that the principles of IHL properly addressed the vulnerable right in armed conflicts when there is strict adherence, and the ongoing invasion of Ukraine by Russian Forces is inclusive. The main sources of data collection were various legal literatures, both from the physical library and the e-library. The study recommended that principles of IHL should be practically adopted by States' legislation and held in high regards to protect the vulnerable, who are not limited to women and children, in armed conflicts. Finally, this study was made to be significant to all stakeholders in IHL and the vulnerable right.*

**Keywords:** Precision Attack, Reparation of the Vulnerable, International Humanitarian Law, Appraisal

**1. Introduction**

International Humanitarian Law (IHL) is that branch of international law which is concerned with established principles and legal framework for rules of engagement in armed conflicts. It is a specialized form of international law that is technical and restrictive in scope, principles, and obligations. In a sharp distinction from international human rights law, IHL basically deals with armed conflicts, whereas the former deals with non-armed conflicts in the international relations between State actors. Over the years, IHL has made tremendous impacts in promoting international law and sustainable international relation. However, it is not bereft of some manifest challenges. The challenges of IHL are classified based on the respective principles of IHL. IHL principles include the principle of proportionality, distinction, precaution, humane treatment, unnecessary suffering, balance of military necessity with humanity, and the principle of equality of belligerents and non-reciprocity. These principles interplay in the basic concepts of IHL which are not limited to the concept of precision attack and reparation. There is no doubt that a set of persons would suffer more than the other sets where there is violation of these principles and the related concepts. Obviously, the vulnerable, which are not restricted to women, children and physically challenged become more susceptible to the brunt of the armed conflict. This is the crux of the problem which this study seeks to address. Sequel to this, it is the aim of this study to appraise precision attack and reparation of the vulnerable under International Humanitarian Law.

**2. Historical Background of IHL in Armed Conflicts**

Legal justification for the use of force in armed conflict and humanitarian intervention is traceable to the submission of Grotius that war can be undertaken as punishment on the wicked where the hands of the punisher are clean, also for the oppressed and their helpless interest.<sup>1</sup> But for Vattel,<sup>2</sup> an exceptional right to intervene in support of the oppressed when they themselves revolt against their oppressive government is allowed. However, there is no right of intervention or interference in the domestic affairs of another State in other circumstances. The pre-UN Charter era had no established State practice of reliance upon a right of humanitarian intervention to justify the use of force in armed conflicts. An instance of humanitarian intervention by the World Powers was in the case of the moribund Ottoman Empire in the 19<sup>th</sup> century which intention was for the protection of Christian and Jewish populations, this still face a lot of criticisms from IHL experts. However, even in those cases where armed force was actually used, as in the naval battle of Navarino in 1827 in support of the Greek rebellion or in the French occupation of Lebanon and Syria (at the time, parts of the Ottoman Empire) in 1860–61, the legal justifications relied on by the intervening States, when any were offered, referred to treaty obligations of the Ottoman Empire, to consent to the intervention, and to the protection of trade interests, the prevention of piracy, and so forth. Even the US intervention in Cuba during the latter's war with Spain in 1898, described sometimes as genuine humanitarian intervention, was justified by the US on the basis of protection of US citizens and

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<sup>1</sup> A Gentili, *Oxford Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (CUP Cambridge, 2003).

<sup>2</sup> I Brownlie 'Humanitarian Intervention' in JN Moore (ed) *Law and Civil War in the Modern World* (Johns Hopkins University Press Baltimore, 1974) 217-8.

property in Cuba, the protection of US commercial interests, and even self-defence, along with a somewhat perfunctory reference in President McKinley's war message to the 'large dictates of humanity'.<sup>3</sup>

History casts a heavy shadow over any intervention claimed to be 'humanitarian'. In the pre-Charter period, there were strong connections between any type of forcible intervention with a (proclaimed) humanitarian aid and, on the other hand, the colonialist enterprise.<sup>4</sup> The US intervention in 1898, for example, led to Cuba becoming a US protectorate. In all instances of forcible intervention during this period, humanitarian considerations were, if present at all, commingled with numerous other less laudable considerations, and were never exclusively or explicitly relied on as sufficient legal justifications in themselves. The establishment of a system of collective security under the UN Charter radically changed the framework within which humanitarian intervention could be invoked and discussed. The UN has the power to intervene, including for humanitarian purposes, in any Member State under Chapter VII UN Charter. The reservation of domestic jurisdiction of Art 2 (7) UN Charter does not apply in such a situation.<sup>5</sup> The invocation of Chapter VII about powers of the UN Security Council is limited by Article 39 of the UN Charter to situations which constitute a threat to the peace, a breach of the peace, or an act of aggression.<sup>6</sup> UN practice, since 1990s, has established that even internal situations related to widespread violations of human rights or to the existence of a more broadly understood humanitarian crisis, may constitute 'threats to the peace'. In support of this practice reference is often made to trans-boundary effects such as refugee flows and the destabilization of the region. This type of collective humanitarian intervention is juxtaposed to unilateral humanitarian intervention, i.e. intervention by one or more States in another State, acting alone or through an international organization other than the UN, on the basis of humanitarian considerations but on their own authority. Even intervention by a group of States or an international organization is unilateral in this sense when it takes place without proper authorization by the UN Security Council, to which the UN Charter gives the monopoly on the right to authorize the use of force (with the exception of the right of self-defence, which is limited *rationemateriae* and *rationetemporis*).<sup>7</sup> 'Unilateral' here is not the antonym of 'multilateral'. Intervention by a group of States or an international organization on its own authority is literally multilateral, not unilateral; but the legally significant point is that it is not collective because it does not take place in accordance with the procedure the UN Charter has established for this purpose.

### 3. Precision Attack vis-a-vis International Humanitarian Law (IHL)

#### The Concept of Precision

Some questions fondly asked in this milieu are – what is precision? Which aspects of IHL bear on precision attack? How might improvements in precision technologies affect the nature of armed conflict? And, how might such changes influence the application and interpretation of IHL by belligerents? Precision is often wrongly characterized as a weapon's capacity to strike the precise point at which it is aimed (known as the 'aim-point'). In fact, this ability is correctly labelled 'accuracy.' It is measured in terms of Circular Error Probable (CEP), the radius of a circle within which one-half of the weapons will fall. Accuracy is a key element of precision, but the terms are not synonymous. Rather, precision refers to:

The ability of joint forces to locate, survey, discern, and track objectives or targets. It is also the ability to select, organize, and use the correct systems to generate desired effects, assess results, and reengage with decisive speed and overwhelming operational tempo as required, throughout the full range of military operations.<sup>8</sup>

Precision in IHL encompasses the ability to locate and identify a target, strike it accurately in a timely fashion, and determine whether desired effects have been achieved or restrike is needed. Precision strikes therefore require more than accurate weapon systems. It is the robust command, control, communications, computers, intelligence, surveillance, and reconnaissance (C<sup>4</sup>ISR). For instance, it can be as determinative of success as the weapon

<sup>3</sup>International Law Commission, *Draft Articles on State Responsibility*, Article 37, 325. The commentary on Article 36 of the Draft Articles on State Responsibility, 352, explains that satisfaction 'is concerned with non-material injury, specifically non-material injury to the State, on which a monetary value can be put only in a highly approximate and notional way'. The commentary on Article 37 explains that 'satisfaction...is the remedy for those injuries, not financially assessable, which amount to an affront to the State.'

<sup>4</sup>N Krisch, 'Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo' In *European Journal of International Law*(2002) (13)330–1.

<sup>5</sup>*UN Charter*, Art 2 (7).

<sup>6</sup>*Ibid*, Art. 39.

<sup>7</sup> International Law Commission, *Commentary on Article 36 of the Draft Articles on State Responsibility*, 263.

<sup>8</sup>M N Schmitt, *Precision Attack And International Humanitarian Law* (George Marshall European Center for Security Studies, 2001) 446.

employed.<sup>9</sup> The failed Operation Iraqi Freedom decapitation campaign and the two mistaken attacks against an International Committee of the Red Cross (ICRC) warehouse in Afghanistan during Operation Enduring Freedom exemplify this reality. The weapons were delivered very accurately. But ‘perishable’ (transitory) intelligence frustrated repeated attempts to kill members of the Iraqi leadership, while target misidentification and subsequent poor communication among Coalition forces contributed to the accidental bombings of International Committee of the Red Cross (ICRC) facilities. The prevalent impacts of precision attacks which are felt on International Humanitarian Law raise four major concerns. These are proportionality, undifferentiating attack, perfidy, precautions in attack, and protected status.

### **Precision Technologies**

The technologies available to conduct a precision attack vary widely from military to military. They can be grouped broadly into two categories. Some technologies allow greater battle space transparency, thereby enhancing the attacker’s ability to detect, identify and fix a potential target, as well as assess the mission’s results.<sup>10</sup> Others facilitate the attack itself by enabling the attacker to penetrate (or neutralize) enemy defences, enhancing command and control, and improving accuracy and other weapon characteristics such as penetrability. Although it is beyond the scope of this short research to describe the many systems that foster precision in modern warfare, it may prove enlightening to describe a few. In the first category, the E-8C Joint Surveillance Target Attack Radar System (JSTARS) has proved particularly useful against ground targets. A battle management, command and control, intelligence, surveillance and reconnaissance aircraft, the JSTARS provides ground and air commanders with information supporting attacks against enemy ground forces.<sup>11</sup> A second type of UAV, the Global Hawk, operates at high level to boost survivability and enlarge coverage. It contains synthetic aperture radar, a ground moving target indicator and high-resolution electro-optical and infrared sensors. Indeed, the Defense Advanced Research Project Agency (DARPA), the US governmental organization with responsibility for the development of future military technologies, has adopted detection, precision ID, tracking, and destruction of elusive surface targets as one of eight strategic thrusts.<sup>12</sup> In great part, this is because current systems fielded by high-tech forces are, as demonstrated in recent operations like Operation Iraqi Freedom, survivable and accurate. By contrast, stealth aircraft reach their targets alone and undetected, thereby allowing them to locate their aim-point and release their guided weapons under relatively benign circumstances. This dramatically enhances precision.<sup>13</sup> More significant is the Joint Direct Attack Munition (JDAM). The weapon’s concept is quite simple. Guidance tail kits are attached to existing unguided free-fall bombs, rendering them guided.<sup>14</sup>

### **Challenges of Precision Attacks that may avail as Defense under IHL**

Beyond technology, numerous factors influence the level of achievable precision. One is the environment in which the attack is carried out. Many weapon systems are undeliverable or degraded during night time or in poor weather. Features of the target area may also detract from precision. For instance, smoke can obscure visual target identification and fires may foil the use of infrared equipment. Heavy defences along the ingress and egress routes and in the target area can distract the attacker or cause the platform launching the weapon to be unstable as it takes defensive manoeuvres. Finally, the nature of the conflict may be such that it is difficult to reliably identify the enemy. Operation Iraqi Freedom, where Iraqi forces donned civilian attire and used civilians and civilian objects as shields, is the typical example in contemporary warfare. Like enemy tactics, those adopted by the attacker bear on precision. The issue of launching weapons from altitude became a cause célèbre for critics of NATO’s bombing campaign against the former Federal Republic of Yugoslavia. Although much of the criticism evidenced misunderstanding of modern weaponry, launch altitude and range do affect accuracy. For instance, unguided weapons are less accurate the higher the altitude or the greater the distance from the target, whereas guided weapons often become more accurate because they have longer to come to their aim-point. There has similarly been criticism of firing weapons from ‘beyond visual range’ (BVR). Doing so forfeits any advantages derived from actually seeing the target (VID or ‘visual ID’), but improves precision through launch in a lower threat

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<sup>9</sup>S Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (OUP Oxford, 2001).

<sup>10</sup> Article 57 of *Additional Protocol I to the Geneva Conventions* (12 August 1949), *The Protection of Victims of International Armed Conflicts* (12 December 1977), D Schindler and JToman (eds.), *The Laws of Armed Conflict* (Dordrecht Netherlands, 2004) 711.

<sup>11</sup> D Murphy, ‘Contemporary Practice of the United States relating to international law,’ In *American Journal of International Law* (Vol. 96, 2002) 247.

<sup>12</sup>M N Schmitt, *Precision Attack and International Humanitarian Law* (N.P., 2002) 448.

<sup>13</sup>A Dworkin, ‘The Yemen strike,’ *Online Database* <[www.crimesofwar.org/onnews/news-yemen.html](http://www.crimesofwar.org/onnews/news-yemen.html)> accessed on 21<sup>st</sup> March, 2022.

<sup>14</sup>Brownlie(n1) 128.

environment. Even the rules of engagement (ROE) may affect precision.<sup>15</sup> As an example, rules of engagement may require ‘positive identification’ (PID) before engaging a target or mandate the use of certain weapons systems against particular targets, such as those in an urban area. A major influence on precision operations is the type of targeting involved. Targets are either ‘planned’ or ‘immediate.’ Planned targets are those known to exist in the operational area and are attacked in accordance with an air tasking order (ATO), mission-type order, or fire support plan. They may either be ‘scheduled’ or ‘on-call.’ The former are targets to be attacked at a specific time according to a set schedule. By contrast, the latter are known to exist, but are included in the air tasking order only in response to evolving situations. Immediate targets are not identified (or selected for attack) soon enough to be included in the normal targeting process. Such targets are either ‘unplanned’ or ‘unanticipated.’ Unplanned immediate targets are known, but are not detected, located or selected for attack in time for inclusion in the targeting cycle. Unanticipated immediate targets are those of which the attacker was unaware but, once detected, are targeted because their destruction, damage or neutralization contributes to campaign objectives. Targets in any of the four categories may be ‘time-sensitive.’ They require immediate attack ‘because they pose (or will soon pose) a danger to friendly forces or are highly lucrative, fleeting targets of opportunity.’ Some are ‘fleeting’ because they are mobile (as in the case of the Iraqi leadership) or because the enemy may employ CC&D (camouflage, concealment, and deception) techniques to conceal them.<sup>16</sup>

In association with precision, rules of engagement can be defined in the United States perspective as ‘directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.’<sup>17</sup> The ability to engage in precision attack against a particular target is always situational. However, as a general matter, planned targets are more conducive to precision attack than unplanned. Within these categories, scheduled targets and unplanned targets are preferable to on-call and unanticipated targets respectively. Obviously, the more time-sensitive a target, the less the opportunity to assess the target or plan the attack, and the fewer the attack options (systems, tactics, etc.) that will be available. To disable the enemy by striking at these targets, an increasing number of militaries have adopted effects-based targeting processes and doctrines. Effects-based targeting which was made possible by precision technologies such as advanced intelligence, surveillance and reconnaissance (ISR), accurate weaponry, and stealth involves deconstructing enemy systems to identify those components thereof the attack on which will best yield a defined effect that supports the campaign objectives. Consider, for example, misuse of a media facility to direct military operations. The desired effect is neutralization of the offending transmissions, not destruction of the facility. This being so, it may be more effective to temporarily shut down the station by dropping carbon filaments on the power lines that feed it electricity, rather than bombing the facility itself, particularly if the attacking commander envisages using it for his or her own.

#### 4. Reparations under IHL

##### Meaning and Nature of Reparation

Reparation for the victims or survivors of torture, which is their right under international and many national laws, is becoming more and more a realistic possibility. As a result, many legal academics and lawyers, sociologists, medical practitioners and psychologists are now discussing the concept of reparation, what it entails and why it is so important. However, only a few of these experts have actually sought the opinions and experiences of survivors themselves.<sup>18</sup> For instance, how do they perceive reparation? What are their expectations of achieving it? What do they need or want when they follow the route to redress? In fact, the major concern of IHL in reparation is the torture survivors’ perceptions of the processes of obtaining reparation, the difficulties of obtaining reparation, the meanings of specific forms of reparation expressed by survivors, and the different levels of expectations held by disparate individuals and socio-political groups.<sup>19</sup> Reparation for human rights violations is for the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts. Reparation should respond to the needs and wishes of the victim.<sup>20</sup> Although the legal right to reparation for human rights violations is now a firmly established principle in international law,

<sup>15</sup> US Central Command Air Forces, ‘Assessment and Analysis Division, Operation Iraqi Freedom: By the Numbers,’ *Online Database* <[www.globalsecurity.org/military/library/report/2003/uscentaf\\_oif\\_report\\_30apr2003.pdf](http://www.globalsecurity.org/military/library/report/2003/uscentaf_oif_report_30apr2003.pdf)> accessed on 21<sup>st</sup> March, 2022.

<sup>16</sup> *Operational Law Handbook* (US Army Judge Advocate, 2013).

<sup>17</sup> *Ibid.*

<sup>18</sup> W J Miller, *International Commercial Law* (Minder & Co., 2015) 33.

<sup>19</sup> V Lowe ‘The Principle of Non-Intervention: Use of Force,’ In V Lowe and C Warbrick (eds) *The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst* (Routledge, 1994) 66–8.

<sup>20</sup> D Schindler and J Toman (eds.), *The Laws of Armed Conflict* (Dordrecht Netherlands, 2004) 137.

little light has been shed on the nature of the needs and wishes of survivors. It is usually taken for granted that survivors need reparation as part of their recovery or rehabilitation. On a psychological level, it is often implicitly and sometimes explicitly assumed that receiving some form of reparation necessarily brings about closure for survivors.<sup>21</sup> A clear distinction must be drawn between the legal and moral right to reparation and the wants and needs of individual survivors. The legal framework exists and must be upheld, but there are different perceptions as to the nature and scope of the rights and how they might be exercised as a first step towards a better understanding of what survivors want and expect from reparation. This in turn will help to make the services offered as effective as possible.

### **Reparations Mechanisms**

The reparations mechanisms include – transitional justice, reparations, environmental liability, civil defense, war reparations, and slave reparations.

### **Reparation Law**

The various forms of reparation law and their scope and content, covering both monetary and non-monetary reparations, may be summarized in its five forms. These forms consist of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations.<sup>22</sup> The right to a remedy and reparation for the breach of human rights is a fundamental principle of international law recognized in numerous treaty texts and affirmed by a range of national and international courts. The larger part of the Principles and Guidelines, with strong domestic law implications, sets out the status and the rights of victims, and corresponds to the title of the document as it refers to the right of victims to a remedy and reparation, as particular provided under principles 11-23.<sup>23</sup>

### **Forms of Reparations for the Vulnerable under IHL**

A core component of the Principles and Guidelines, denoting a broad range of material and symbolic means to afford reparation to victims, is laid out in the principles describing the various forms of reparation. They were formulated with the Articles on State Responsibility of the International Law Commission in mind.<sup>24</sup>

The five forms of reparations are explained inter alia –

- (1) Restitution,
- (2) Compensation,
- (3) Rehabilitation,
- (4) Satisfaction, and
- (5) Guarantees of non-repetition.

### **Restitution**

Restitution refers to measures which ‘restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred’.<sup>25</sup> Examples of restitution include, but not limited to restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment, and return of property. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. In cases of substantial harm to the environment, restitution, if ordered, include restoration of the environment, reconstruction of the infrastructure, replacement of community facilities, and reimbursement

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<sup>21</sup>*Ibid.*

<sup>22</sup> B Simma ‘NATO, the UN, and the Use of Force: Legal Aspects’ In *European Journal of International Law*(1999) (10)1–22.

<sup>23</sup>*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*, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

<sup>24</sup> ICC Statute, Article 79, which states that ‘(1) A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims. (2) The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund. (3) The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.’

<sup>25</sup>(n23) principle 19.

of the expenses of relocation, whenever such harm results in the dislocation of a community. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims are expected to receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor-in-title is expected to provide restitution to the victims. This is provided under Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>26</sup>

### **Compensation**

Compensation is what is provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case (principle 20). The damage giving rise to compensation may result from physical or mental harm. It may also arise from lost opportunities, including employment, education, social benefits, or moral damage. Compensation costs required for legal services, expert assistance, medicine, medical services, psychological services, and social services. Where compensation is not fully available from the offender or other sources, States are expected to provide financial compensation to:

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.

As to whether the damage is financially assessable in order to be compensated, the commentary on State Responsibilities examines that:

Compensable personal injury encompasses not only associated material losses, such as loss of earnings and earning capacity, medical expenses and the like, but also non-material damage suffered by the individual. Sometimes, it is not universally, referred to as 'moral damage' in national legal systems. Non-material damage is generally understood to encompass loss of loved ones, pain and suffering as well as the affront to sensibilities associated with an intrusion on the person, home or private life.<sup>27</sup>

The establishment, strengthening, and expansion of national funds for compensation to victims should be reinvigorated. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

### **Rehabilitation**

Rehabilitation includes medical and psychological care, as well as legal and social services.<sup>28</sup>

### **Satisfaction**

Satisfaction includes a broad range of measures, including verification of the facts with full and public disclosure of the truth, an official declaration or a judicial decision restoring the dignity, the reputation, and the rights of the victim. That is, the search for the disappeared, the recovery and the reburial of remains, public apologies, judicial and administrative sanctions, commemoration, and human rights training as provided under principle 22.<sup>29</sup>

### **Guarantees of Non-repetition**

Guarantees of non-repetition comprises of broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry and psychological and social services. These are in line with principle 23.<sup>30</sup>

## **IHL Legal Framework for Reparation of the Vulnerable**

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<sup>26</sup> F R Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (3rd ed. Ardsley Transnational Publishers, 2005) 44.

<sup>27</sup> International Law Commission, *Commentary on Article 36 of the Draft Articles on State Responsibility*, 263.

<sup>28</sup>(n23) principle 21.

<sup>29</sup>*Hague Convention* (IV), Article 3 (cited in Vol. II, Ch. 42, § 110); *Additional Protocol I*, Article 91 (adopted by consensus) (1907)

<sup>30</sup>(n23).

This is provided for as the 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, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.<sup>31</sup> It can be briefly captured as

*The General Assembly,*  
Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, other relevant human rights instruments and the Vienna Declaration and Programme of Action,  
...*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court ....<sup>32</sup>

The United Nations General Assembly therefore adopts the following as Basic Principles and Guidelines<sup>33</sup> on reparation in international law:

- III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law ....
- V. Victims of gross violations of international human rights law and serious violations of international humanitarian law....
- IX. Reparation for harm suffered....<sup>34</sup>

## **6. Conclusion**

There is no denying that widespread and egregious violations of human rights and of international humanitarian law are no longer within the 'exclusive' domestic jurisdiction of States but constitute a matter of concern of the international community as a whole. They require corrective action by the community, through the procedures it has established to this end. The question of what can be done when the primary vehicle for such action, the UN Security Council, appears unwilling or unable to act, poses itself with great force in the face of human suffering. It appears, however, that it is the unwillingness of States to commit the material and financial resources required for intervention, as well as their politically-motivated reluctance to meddle in certain situations, rather than the problematic constitutional structure of the UN, which prevents intervention in most cases. What has also become evident through the responses to the instances of alleged humanitarian intervention that have occurred since the establishment of the UN, is that States are not willing to discard the prohibition of the use of force and the collective machinery of the UN in favour of a right of unilateral humanitarian intervention. In the rare event where there is a humanitarian emergency, and where most States agree that intervention is needed but the UN is unable to act, maybe due to recalcitrant vetoes or narrowly failing the two-thirds majority required for General Assembly action, States may be willing to accept humanitarian considerations in mitigation of the occasional violation of the prohibition of the use of force and limit their response accordingly. Furthermore, it is recommended that Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions in armed conflict. This is in relation to afore discussed forms of reparation which result from the failure of precision attacks. Succinctly put therefore, principles of international humanitarian law should be practically adopted by States' legislation and held in high regards to protect the vulnerable, who include the civilian women, children, physically challenged, and the disadvantaged individuals in armed conflict. Infact, this should be the case in the ongoing armed conflict in Ukraine by the Russian forces.

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<sup>31</sup>UN Commission on Human Rights, Res. 1998/70; UN General Assembly, Res. 48/153; UN Security Council, Res. 686 (Vol. II, Ch. 12, § 472)

<sup>32</sup>*Ibid.*

<sup>33</sup> UN General Assembly, resolution 60/147 of 16 December 2005,

<sup>34</sup>*Ibid.*