

Contents

Introduction: The Emergence of an Individual Right to Reparation for Victims of Armed Conflict	
<i>Christian Marxsen</i>	<i>page</i> 1
I. Reparation in International Law	1
II. Developments towards an Individual Right to Reparation	5
III. The Trialogue on Reparation	10
1. The Right to Reparation for Victims of Armed Conflict: The Intertwined Development of Substantive and Procedural Aspects	
<i>Shuichi Furuya</i>	16
I. Introduction	16
II. A State-Centred Right to Reparation: Historical Developments until the 1990s	20
A. The Situation before World War II	20
B. A Framework for Settling the Consequences of World War II	22
C. Lump-Sum Settlements before the 1990s	27
III. A Victim-Oriented Perspective of the Right to Reparation: A Turning Point	28
A. A Growing Victim Focus in the United Nations	29
B. Advancement in the International Criminal Tribunals and Court	34
C. <i>Ad Hoc</i> Reparation Mechanisms Created since the Early 1990s	39
D. New Cases on Past Violations: Evaluating the Findings of Domestic Courts	46

IV.	Victims to Be Redressed	51
	A. The Nature of Armed Conflict	52
	B. Applicable Law in Armed Conflict	53
	C. Harms Caused by Violations of International Law	55
	D. The Nature of the Person to Be Redressed	60
V.	The Obligation to Make Reparation	62
	A. Duty-Bearers of Reparation	62
	B. Forms of Reparation	65
	C. Waiver or Limitation of Reparation Claims	67
VI.	The Procedural Right to Reparation	71
	A. The Right to Access an Effective Mechanism	71
	B. Developing the Right to Be Heard	75
	C. The Right to Equal Treatment without Discrimination	76
VII.	Common Principles of <i>Ad Hoc</i> Reparation Mechanisms	77
	A. Collecting, Registering, and Processing Claims	78
	B. Valuing and Verifying Claims	81
	C. The Victim's Choice of an Appropriate Mechanism	84
	D. The Financial Basis of the Mechanism	86
VIII.	Conclusions	89
2.	Operationalising the Right of Victims of War to Reparation	
	<i>Cristián Correa</i>	92
	I. Introduction	92
	II. The Possible Legal Foundations for an Individual Right to Reparation	94
	A. The Right of Victims to Obtain Reparation under International Human Rights Law	95
	B. The Right of Victims to Obtain Reparation under International Humanitarian Law	103
	C. The Application of International Human Rights Law to Armed Conflict and the Right of Victims to Reparation	110
	III. The Practical Realisation of the Right to Reparation in Armed Conflict	114
	A. Reparation under International or Inter-State <i>Ad Hoc</i> Mechanisms	116
	B. Reparation through State Administrative Processes	126

C.	Lessons for Designing Reparation Policies for Armed Conflict	163
IV.	Conclusions	174
3.	International Human Rights Adjudication, Subsidiarity, and Reparation for Victims of Armed Conflict	
	<i>Clara Sandoval</i>	179
I.	Introduction	179
II.	Subsidiarity in International Human Rights Law	182
III.	The Inter-American Court of Human Rights and Its Jurisprudence on Reparation	187
A.	Gross Human Rights Violations, Victims, and Domestic Reparation Programmes in Guatemala, Peru, and Colombia	190
B.	The Jurisprudence of the Court on Domestic Reparation Programmes: From Rectification to Deference	197
C.	The Judgments in <i>Yarce</i> and <i>Vereda La Esperanza v. Colombia</i> : Is the Court Revisiting Its Approach to Subsidiarity?	209
D.	The Reasoning of the Court behind Deference in Relation to Domestic Reparation Programmes: Problems and Consequences	214
E.	The Court's Shift towards Subsidiarity: What Explains This Approach?	216
IV.	The European Court of Human Rights and Its Jurisprudence on Reparation	222
A.	The Court's Standard Approach to Subsidiarity and Reparation	222
B.	Changes in the Court's Treatment of Subsidiarity and Reparation	226
C.	The Court's Jurisprudence on War-Related Large-Scale Human Rights Violations and Domestic Reparation Programmes	236
D.	What Explains the Approach of the Court to Subsidiarity when Dealing with Reparation?	244
E.	The Reasoning of the Court on Remedial Measures: Problems and Consequences	250

V.	What Should Regional Human Rights Courts Do When Faced with Challenges to Domestic Reparation Programmes?	252
A.	The International Law Test	253
B.	The Public Policy Test	257
VI.	Conclusions	260
	Conclusion: Reparation for Victims of Armed Conflict – At the Interface of International and National Law	
	<i>Anne Peters</i>	265
I.	Introduction	265
II.	Regime Interaction and Cross-Fertilisation	268
III.	The Impact of Human Rights	270
IV.	The Interaction between International and Domestic Law	273
V.	‘Transformative Reparation’? Between Law and Politics, Courts and Legislators, the Past and the Future	277
VI.	Outlook	280
	<i>Index</i>	285