

BOOK ANNOTATIONS

The Future Law of Armed Conflict. Edited by Matthew C. Waxman & Thomas W. Oakley. New York, NY: Oxford University Press, 2022. Pp. 293. \$99 (hardcover).

REVIEW BY ZACHARY FRIEDEN

In *The Future Law of Armed Conflict*, editors Matthew C. Waxman and Thomas W. Oakley paint a bleak picture of a world where armed conflict becomes high-tech, decentralized, privatized, and unaccountable, and international law is seemingly powerless to control it. The essays contend with a wide variety of future technological and geopolitical developments that will affect the way Law of Armed Conflict (LOAC) is created and applied in 2040 and beyond. But given the current lackluster compliance with and enforcement of LOAC, the book overstates LOAC's power in general, and these developments in future armed conflict will only weaken the already-insufficient LOAC regime.

The book begins with an essay on the historical context of LOAC. The chapter documents the successes and failures of international agreements regulating armed conflict, from the 1899 and 1907 Hague Declarations on Balloons, which sought to regulate weaponized hot air balloons, to agreements on chemical warfare in the mid-1900s and conventions on the use of land mines in the late 1900s. The author suggests that the world powers of the last century often reacted to technological advances in warfare through international law, with mixed results, but cautions about predicting the future and believes that the same reactionary motivation will not exist in modern times.

The next chapter discusses the rules regulating resort to force, or *jus ad bellum*. The author argues that instead of generating new international law on this issue, existing *jus ad bellum* doctrine will simply be adapted to meet changing technological circumstances. The doctrine has successfully been adapted before, particularly with the accommodation of non-state terror groups following the 9/11 attacks and the inclusion of combat drones within the principles of self-defense, necessity,

and proportionality. While the author suggests that inclusion of cyberspace within the *jus ad bellum* doctrine is well-accepted, they raise important questions: does a debilitating cyberattack allow a victim to invoke the self-defense doctrine? How will pre-emptive strikes work in an era of hypersonic weapons that can deliver a devastating attack without warning?

Several of the following essays consider LOAC in the context of cyberspace and modern technology. One chapter discusses artificial intelligence (AI) in military decision-making and contends with the difficulties of “coding” algorithms in LOAC. The author argues that AI will be a major part of military operations in the future and that AI can improve decision-making by leveraging data to make recommendations to commanders in the face of uncertainty. But there are also significant issues in “coding” the data when it comes to LOAC: how does one translate vague legal concepts like “proportionality” into an algorithm?

Similarly, another chapter discusses big data in LOAC. Given that AI will have significant military applications, data is becoming increasingly important, not only in the collection and processing of data—likely through government partnerships with private corporations—but also in the safety and potential targeting of data. The important question here is how far LOAC will incorporate big data: how do we talk about “proportionality” in relation to data? Is an attack on a database considered an “armed attack” that permits self-defense? Another chapter considers the extent to which LOAC applies to cyber conflict. The author argues that new rules are unlikely to develop and that LOAC is successful in setting norms for cyberwarfare, but there is a significant degree of ambiguity in applying LOAC to cyberspace – there are questions about sovereignty, jurisdiction, and whether a cyberattack constitutes “use of force.”

Several chapters consider new “domains” for LOAC. One essay discusses “human enhancements” and suggests that current LOAC is largely incapable of dealing with technological advances in that space. Another essay looks at modern naval warfare and discusses the decentralization of navies into private parties, such as China’s “maritime militia” of fishing boats, which poses quandaries about whether fishing vessels that conduct surveillance for a state military are military vessels. Further, an essay looks at the militarization of space, where the

author argues that new treaties are unlikely and that states must rely on “soft law” because of the competing interests of different states. Past the question of whether “Earth law” can be used in space, LOAC also has an unclear application in space because the area is dominated by corporate entities and much space infrastructure has dual military-civilian use.

The end of the book focuses on the diplomatic side of future armed conflict. The interconnectedness of our world, particularly in cyberspace, as well as the blurred lines between “private” and “public” activities (e.g., international trade as a private activity but also involved with public export control) threatens the concept of neutrality in LOAC. Further, several chapters suggest that future armed conflict will be more pluralistic, claiming that the future will be based more on coalition warfare and there will be broader involvement from smaller states, non-governmental organizations, non-state armed groups, and corporate entities in LOAC and International Humanitarian Law (IHL). These essays argue that broad involvement will increase the legitimacy of LOAC and IHL, but such engagement simultaneously undermines the law’s credibility through “legal interoperability” issues where different actors apply different interpretations and legal frameworks to LOAC/IHL, leading to conflict and confusion. One essay argues that interoperability issues will creep into NATO and create an E.U. and non-EU divide, especially given conflicting approaches to data between NATO countries, E.U. strategic autonomy, and more domestic accountability on LOAC within E.U. countries.

The final two chapters discuss privatization, with an emphasis on Russia and China. The privatization chapter argues that private military contractors (PMCs) are becoming a mainstay of military operations, and compares the U.S., which regulates PMCs domestically and uses them for support services, with Russia, which uses unaccountable, uncontrollable PMCs as an integral part of their offensive operations. The author indicates that current international law on PMCs is “virtually meaningless” and that LOAC must account for the “offensive” and “non-offensive” distinction to be capable of regulating PMCs. The chapter on China looks at China’s increasing involvement in international law but argues that China is co-opting international institutions and using them to positively affirm its atrocities. They argue that China’s power on the world

stage will only serve to undermine the legitimacy of international law.

Where the book succeeds is in providing a broad look at what armed conflict, and the law surrounding it, may be in the next several decades. The authors take a realistic approach to these predictions—eschewing issues they deem to be implausible, such as fully autonomous lethal weapons—and focusing on the large trends we are already seeing today and will see in the coming years. Further, they are not excessively optimistic about the role of LOAC. Many of the essays emphasize that the generation of “new law” is unlikely due to an increasingly polarized and decentralized world, and for better or worse, much of future LOAC will thus be the application and interpretation of existing LOAC doctrine. In this way, the book does an excellent job of probing how existing law will react to modern circumstances and raises important questions that scholars and lawmakers will have to contend with going forward.

While the book gives us much to think about, many of the essays are unable to provide answers to the big questions they raise. This is a necessary limitation given the nature of the book: analyzing what a large body of international law will look like in the next twenty years is an inherently speculative exercise, a point which many of the authors note. Further, predicting “future warfare” based on the last century is a herculean task given that warfare in 2040 will look entirely different than warfare in 1940. One cannot accurately paint a picture of what warfare in space or cyberspace in a multipolar world will entail based on an era in which technology was much more “primitive” and geopolitics much less complicated. On this note, while the book does not necessarily provide much clarity on how to address these big issues, perhaps that is a strength—emphasizing that this is a fluid area of law and identifying key gaps that lawmakers must fill in order to make LOAC a legitimate force in the future.

A larger issue in the book is the assumption that LOAC is even *capable* of addressing future warfare. To the authors’ credit, the book maintains a healthy skepticism about whether, in the absence of new law, LOAC is able to fill in the gaps to meet future challenges. But this presents a tension, as throughout the book is the implicit assumption that international law is a strong force that can adapt and be effective at regulating armed conflict. That premise is, at best, highly de-

batable, and a historical look at the limited success of existing LOAC doctrine seems to suggest that the authors understate the weakness of LOAC.

The book's brief discussion of chemical weapons is instructive. The 1925 Geneva Protocol on Gas and Bacteriological Warfare boasts 145 nations as parties to the agreement, which prohibits the use of chemical and bacteriological warfare. Despite the agreement, Italy used gas in Ethiopia in 1935-1936, Japan used biological weapons in China in 1937-1945, and there was extensive chemical use in the Iran-Iraq war in 1980-1988 (to which the U.N. issued a presidential statement in 1986). In 1993, concern about chemical weapons inspired the Chemical Weapons Convention, which was aimed at disarmament. Yet in 2012, and for years afterwards, the Syrian government continued to use chemical weapons in the country's civil war. As the author describes, outside powers "chose to do relatively little" about it, and finally in 2018, they made "a relatively minor pinprick" by launching missiles at four chemical weapons installations in Syria. Despite Syria's significant LOAC violations, the fact that major world powers categorically failed to address these atrocities against civilians is a sobering and deeply troubling look at the reality of LOAC and whether it is genuinely capable of regulating potentially catastrophic twenty-first century armed conflict.

This is not to say that LOAC has been *useless*. While LOAC has been somewhat successful in regulating nations that subscribe to the international law regime like the U.S. and the E.U. states, it is difficult to contend with a future characterized by multipolarity, powerful non-state armed groups, artificial intelligence in military decision-making, privatized armies, and states that generally fail to recognize the international rule of law. For example, there is scant mention, if any, of recent events that seriously call into question the effectiveness of LOAC and international law in this realm as a whole—Russia's recent invasion of Ukraine and the war crimes committed by Russian forces during the ongoing conflict, nor the genocide of Uyghur Muslims in China. It is well established that these actions are *illegal* as far as LOAC and international law is concerned. But where is the enforcement? Outside of sanctions or starting World War III, it seems that there is little, if anything, that can actually be done to enforce this legal regime that is somehow meant to protect us from catastrophe.

Much of the book emphasizes that LOAC is, has been, and will continue to be an important source of international norms, and that it in itself is a major benefit to the LOAC regime. But as for whether LOAC can be more than that in a rapidly evolving world, only time will tell.

The Long Peace Process: The United States of America and Northern Ireland, 1960-2008. Andrew Sanders. Liverpool, UK: Liverpool University Press, 2019. Pp. xi, 314. \$47.99 (paperback).

REVIEWED BY WILLIAM FRIEND

Most accounts of America's involvement in the conflict in Northern Ireland center on United States Special Envoy for Northern Ireland George Mitchell and the President who appointed him, Bill Clinton. This historiographical focus on the early 1990s to the 1998 Good Friday Agreement is understandable. These years featured plenty of outsized characters (Clinton, Gerry Adams, and Ian Paisley among others), nail-biting negotiations, and ultimately, one of America's few unalloyed foreign policy successes—a Northern Ireland more or less at peace. Yet to reduce the America-Northern Ireland connection solely to the Clinton years is to miss decades of rich transatlantic social, political, and legal history.

Fortunately for scholars and lay readers like, Andrew Sanders's *The Long Peace Process: The United States of America and Northern Ireland, 1960-2008* provides an expansive view of America's role in "The Troubles." Sanders's thesis is that long before the 1990s, America's political and civic engagement with the Northern Irish conflict played a significant role in the course of the conflict and its ultimate resolution. While Sanders presents a persuasive case, Sanders also brushes past enough exposition and details to potentially make it difficult for non-specialists to follow his arguments.

The Long Peace Process begins nearly a century ago with Senator Joe Robinson's visit to Ireland in 1925. In his dispatches back to the United States, the Senator observed that "no one is justified in dreaming that complete social and political harmony will ever come between Ulstermen [Northern Protestants] and the inhabitants of Southern Ireland." The book then fast forwards through a whirl-wind tour of

America's policy toward Northern Ireland from Presidents Harry Truman to Lyndon Johnson, with only a brief slow down to detail President John F. Kennedy's familial connection to Ireland and pro-Irish Republican rhetoric. Sanders's speedy overview from 1925 onward serves a purpose—to quickly bring us to the year 1968, when the violent conflict between Northern Ireland's Catholic and Protestant communities known as "The Troubles" erupted onto the scene.

From 1968 onwards, the narrative of *The Long Peace Process* slows considerably. The chapters, comprising about fifty pages each and roughly divided by presidential administration, detail the Northern Irish policies of Presidents Nixon and Ford, Carter, Reagan, H.W. Bush, and Clinton (followed by shorter sections on W. Bush and Obama) as well as the Congressional, judicial, and civil society activity that coincided with their tenures. One of the strengths of *The Long Peace Process* is its focus on high diplomacy *as well as* popular engagement with The Troubles. Sanders charts the long arc of executive policy toward Northern Ireland, from JFK's pro-Republican slant to Reagan's support for Thatcher's hardline anti-Republican policy to Clinton's 'honest broker' peacemaking. But Sanders also explores the changing role of Irish America's involvement in The Troubles between 1968 and 1998, from a source of fundraising for the arms purchases of the Irish Republican Army (IRA) in the 1970s to a persistent force for humanitarian and peace efforts in the 1980s and 1990s.

The Long Peace Process also includes rich veins of foreign relations legal history. For example, the U.S. arms embargo on Northern Ireland's Royal Ulster Constabulary (RUC) police force was triggered by members of Congress complaining that the State Department was violating § 502(B) of the Foreign Assistance Act of 1961, which banned security support for state institutions that engaged in patterns of human rights abuses, in selling arms to the RUC. *The Long Peace Process* details Congress' efforts to keep the embargo in place via Congress' statutory interpretation of the clause and the bitter protests by the British Foreign Office and 10 Downing Street. Another dense nugget of foreign policy legal history that Sanders covers—and that is probably worth a book of its own—is the United States-Northern Ireland extradition imbroglio. In the late 1970s, several IRA militants wanted on murder charges fled to the United States. Although the United States and the United

Kingdom had an extradition agreement, this agreement was subject to a “political offense exception.” As defined in the Ninth Circuit’s ruling in *Quinn v. Robinson*, the political offense exception stated that fugitives whose offenses were incidental to or in the course of “an uprising or other violent political disturbance” were not to be extradited.

This exception, presumably calculated to preserve each country’s neutrality in the case of internal strife within the other, created a massive headache for the transatlantic relationship during the Reagan-Thatcher years. From the late 1970s to the late 1980s, U.S. Courts repeatedly refused to extradite IRA suspects to the United Kingdom or Ireland, arguing that they fell under the political offense exception. Even when Congress changed the law to allow for the extradition of accused violent offenders, Courts such as the Second Circuit still refused to extradite certain IRA members, arguing that the extradition treaty amendments targeted specific IRA members in contravention of U.S. law. The battles over extradition pitched America against the United Kingdom, the judicial branch against the executive and legislative branches and legal formalism against foreign policy priorities. The extradition fights also served to keep Northern Ireland a live political issue in the United States and force a reckoning among the American public with the IRA’s increasingly violent actions.

If there is a critique to be had of *The Long Peace Process*, it is that the book’s narrative would have benefited from additional context. Given the length of time it covers, *The Long Peace Process* is a fairly slim read. In terms of concision and readability, this length is a virtue. While the book is concise and readable, enough key details are left out of *The Long Peace Process* that readers lacking a prior grounding in Northern Irish history and the events of The Troubles may find themselves adrift in the narrative. For example, a paucity of content on Northern Ireland pre-1925 leaves readers with minimal context around Irish partition, the Protestant settlement of Ireland, or Anglo-Irish relations. As such, lay readers may find it hard to understand why exactly The Troubles began or became so violent and intractable. *The Long Peace Process* could have started with a short primer on Northern Ireland and Anglo-Irish history to provide non-specialists with some necessary context, perhaps doing so through the lens of American engagement with Ireland starting in the nineteenth century.

On a more granular level, *The Long Peace Process* references a number of events and concepts that are otherwise left unexplained to readers. For example, Sanders at one point alludes to Congressional scrutiny over ‘Diplock Courts’ used in trial proceedings against militants in Northern Ireland. However, the book fails to provide an explanation of what Diplock Courts were, only briefly mentioning that they were Courts designed to protect the legal system from jury tampering. In similar fashion, the 1985 Anglo-Irish Agreement is repeatedly invoked without ever being fully described or explained, a missed opportunity given the important role the 1985 Agreement played in the eventual settlement of The Troubles. Understanding the tradeoffs between concision and exposition, Sanders could have added enough supplementary detail to make the book more accessible to readers lacking prior knowledge without sacrificing the book’s smooth reading experience.

Overall, Sanders’ *The Long Peace Process* provides readers with a much more contextualized account of America’s role in the Northern Irish conflict than most books on the subject provide. Sanders successfully argues that the decades of attention paid by American political leaders and civil society actors to Northern Irish affairs helped promote the eventual blossoming of a Northern Irish peace process. This accomplishment primarily came via transatlantic pressure applied to all sides—Irish Republicans (including the IRA), Unionists (including loyalist paramilitaries), and the British—to meet at the negotiating table or risk disapprobation from America’s political leaders and public opinion. Although the degree and direction of American pressure fluctuated between 1968 and 2008, America’s general balancing of interests across the decades acted to nudge each of Northern Ireland’s stakeholders in the direction of bargaining versus violent confrontation.

Overall, Sanders presents a convincing and credible thesis that is likely to be of interest to students and scholars of foreign relations law and diplomatic history. Readers can extrapolate a variety of broad-based lessons from Sanders’ book. For example, beyond the narrow context of Ireland and Irish Americans, *The Long Peace Process* is a fascinating case study in the helpful (and harmful) roles that diaspora communities can play in political and social conflagrations in the old country. The influence of diaspora communities can be direct—for

example, Sanders shows that Irish America's funding of IRA arms purchases, and the gradual closing of this financial tap as the human cost of the IRA's violent attacks became more publicized, had a significant impact on the IRA's choice of strategy. The influence of diasporas can also be indirect—for example, many American politicians (including non-Irish ones) took strong stances on Northern Ireland in an attempt to woo Irish-Catholic voters. As the political salience of Irish American identity has waned, so too, shows Sanders, has the space that Northern Ireland takes up on party platforms and America's foreign policy agenda.

In another broad lesson applicable beyond the United States-Northern Ireland context, Sanders also highlights the complex interplay between foreign relations law and foreign policy and the situations in which the former does and does not constrain the latter. For example, the refusal by U.S. Courts to extradite IRA fugitives to the United Kingdom damaged transatlantic relations despite President Reagan's desire to maintain close ties with Margaret Thatcher's England. The executive and legislative branches were relatively constrained by the judicial branch and often powerless to do anything but apologize to the British for the actions of the courts, which they could not influence. By contrast, Bill Clinton cut through layers of objections by lawyers and State Department officials when he decided to grant Irish Republican leader Gerry Adams a visa to the United States despite Adams's probable past links to political violence. When the locus of foreign relations law is centered in Article III courts, this can significantly hamper an Administration's foreign policy priorities. However, in contexts where legal determinations are centered in the executive branch, the case study of Northern Ireland shows that Presidents can and will go a long way to make sure that previous legal precedent does not hamper their political goals—in Clinton's case, his efforts for peace in Northern Ireland. Overall, students of foreign policy law, diplomatic history, and transatlantic relations will all find new information and new lessons to take away from Sanders's thoroughly engrossing work.

Practices of Reparations in International Criminal Justice. Christoph Sperfeldt. Cambridge, United Kingdom: Cambridge University Press. 2022. Pp. xiv, 392. \$75 (ebook).

REVIEWED BY ELIZABETH KELLEY

Combining documentary analysis with local fieldwork, Christoph Sperfeldt takes a practical, impact-centric approach to international criminal reparations in his latest work, *Practices of Reparations in International Criminal Justice*. Sperfeldt is a senior lecturer at Macquarie University, whose research and professional background in Cambodia enabled interviews with institutional actors surrounding the Extraordinary Chambers in the Courts of Cambodia (ECCC). Similar interviews with individuals involved in International Criminal Court (ICC) cases in the Democratic Republic of the Congo, in addition to larger-scale data collection, round out Sperfeldt's analysis of how different reparations frameworks have shaped outcomes for victims. The result is a greater level of victim-centricity than is possible in a purely theoretical approach: where theory-based scholarship has considered the *idea* of victims, Sperfeldt's study of practice considers the impact on actual victims.

Sperfeldt examines reparations through case studies, considering the first two cases from the ICC and ECCC that reached the reparations phase. In the ICC, these were the cases of *Katanga* and *Lubanga*, the former of which concerned murder, attacking a civilian population, destruction of property, and pillaging, and the latter of which concerned recruitment of child soldiers. In the ECCC, Cases 001 and 002 tried leaders of the Khmer Rouge for genocide and crimes against humanity.

Reparations seek to acknowledge and repair the causes and consequences of harm inflicted during atrocities. Reparations can include compensation, access to information, symbolic measures like apologies, and measures to improve economic, social, and cultural rights such as housing, healthcare, and education. The International Criminal Court (ICC) issued its first reparations order in 2012 and the Trust Fund for Victims (TFV), the body responsible for implementing that order, had not yet completed reviewing victims' applications for reparations as of June 2022. As Sperfeldt highlights, even the most

recent authoritative research on reparations still focuses on legal frameworks in The Hague, rather than the practices of implementation that have developed in the context of these first cases. Continued debate as to theory is certainly necessary, as is demonstrated by the confusion that resulted from the ICC's decision to instruct judges to issue reparation orders without a guiding framework. However, the practices and results of reparations so far are essential to guide decision-making going forward.

Sperfeldt begins with a review of the conceptual goals within international criminal justice, particularly accountability for offenders and reparation for victims. He then shifts his focus onto the four case studies, which he traces through negotiations over their mandates; pre-trial challenges in victim identification, assistance, and representation; adjudication, decisions, and appeals; and finally, the implementation of reparation orders. At each stage of these cases, the decisions of diplomats, judges, advocates, and NGOs shape both the process of seeking court-ordered reparations and eventual outcomes (judicial or otherwise) in ways that often fail to advance the interests of survivors. Despite all actors pursuing the common goal of compensating survivors of mass atrocities, inevitable trade-offs combined with a lack of ideological and methodological cohesion have produced, in the words of former ICC judge Elizabeth Odio Benito, "a state of disarray." By tracking each court's approach in these cases, along with the corresponding impact on victims, Sperfeldt highlights the ripple effects of decisions for structuring reparations and challenges some widely-held notions about best practices—for instance, funding community projects is a more efficient use of funds than small individual payments. Several unresolved questions emerge in this analysis, particularly whether judicial bodies are well-suited to the task of administering reparations after mass atrocities, who should lead decision-making and implementation, and what form reparations should take. While Sperfeldt does not provide answers to such questions, his analysis provides a basis for further consideration and improvement of reparations mechanisms.

I. QUESTIONING PRACTICE

The ICC and ECCC take as their models domestic systems of criminal justice, incorporating the French civil party system, in which a victim can intervene in a criminal trial and request compensation. This, as Sperfeldt notes, is an analogy that does not scale well. Coupling accountability and reparation makes sense on an individual scale, where a victim's testimony can both advance the case and help the victim feel heard. Moreover, the perpetrator personally compensating the victim lends a sense of justice that provision of services by a third party may not. When dealing with mass atrocities, however, the model breaks. Thousands of victims cannot each participate actively in a trial, creating an inverse relationship between how many victims the court recognizes and how much attention and compensation each victim can feasibly receive. Further, the process of selecting which victims will get to participate creates a harmful hierarchy of victimhood, which delegitimizes those not selected. Even after reducing the group from thousands of victims to under one hundred participants, there still remains a problem of representation; each victim cannot have an independent attorney for practical reasons, but pooling the victims together under one representative forces the representative to exercise discretion in which requests to put forth on behalf of the group. Each of these steps risks revictimization and further harm of those the system seeks to benefit.

At the compensation stage, defendants are almost uniformly declared indigent for the purposes of reparations, as awards frequently scale in the millions of dollars. Maintaining the model of a domestic criminal trial, which links accountability with compensation, places an evidentiary burden on the victims despite the fact that their reparations will not be paid by the defendant and will be independent of the defendant's sentence. Sperfeldt contrasts the approaches of the ICC and ECCC in this respect, noting that the ICC's strict adherence to judicial procedure dramatically reduced the number of victims the court ultimately recognized and led the court to reject several suggestions for reparations. While this approach was softened somewhat on appeal, the logic of judicial proceedings remained. The ECCC took a different approach by ruling out the possibility of individual monetary compensation and not requiring that reparations come directly from the defendant.

In doing so, they enabled broader victim recognition and freed reparations from the delays associated with judicial process and appeals.

The great strength of Sperfeldt's analysis is in his examination of the implementation of reparations. In many ways, considerations of implementation overlap with the question of whether courts are the mechanisms best equipped for this task. Collective reparations are a relatively new concept, and in practice, they tend to resemble development projects: community-based, donor-funded measures to promote recovery in afflicted regions. Besides being extremely difficult to administer, particularly for judges with no training in the area of development finance, collective reparations have generated a "projectification" of reparations in which the relationships between the participating parties are reconfigured to account for the role of donors and NGOs in implementing projects. Once reparations are formulated as projects, they are executed according to the donor's timeline and specifications, with victims as passive beneficiaries—gone is the idea of aiding victims in reclaiming autonomy and asserting rights. The risk that the desires of third parties supersede those of the victims not only threatens the empowerment of victims but also risks inflicting further harm.

Projectification also blurs the line of what is considered a reparation. To expedite implementation, some projects begin before a decision is rendered in the case and are only retroactively determined to be reparations. NGOs may also implement concurrent and similar non-judicial measures distinguished only by the lack of a legal blessing and absence of bureaucracy. Distinguishing reparations from NGO projects and foreign aid becomes increasingly difficult, begging the question of whether it is worth doing so at all—does the benefit of a victim knowing a certain project is a reparation for harm justify the resources expended on maintaining a barrier between reparation and aid? While the victim interviews that Sperfeldt provides suggest that maintaining a judicial veneer on portions of development projects adds delays, costs, and red tape with little benefit, institutions and scholars acting on the lessons Sperfeldt has gathered nonetheless need to grapple with balancing this compensation-focused view with the frequent desire of survivors for information and validation through the judicial system.

In the two situations comprising Sperfeldt's analysis, his research challenged the view that collective measures are better able to maximize the number of beneficiaries and are preferred by victims. In the ICC *Katanga* case in the Democratic Republic of the Congo, which ordered reparations for the recruitment of child soldiers, reparations were divided between small symbolic cash payments to victims and a larger grant for collective reparations in a form to be decided later. Victims were generally pleased with payments of \$250 and making direct cash payments eliminated the cost of approval, oversight, and implementation that collective reparations entail. In fact, the appellate court eventually allowed for additional individual reparations by ruling that collective reparations can include individualized benefits. Many of the risks suggesting against individual reparations, particularly that of community tension based on who benefitted from the awards, ultimately did not materialize. It is impossible to ascertain to what extent the preference for individual rather than collective compensation observed here stems from situational factors. Ituri survey respondents indicated that their preferred reparations were money (48%), housing (37%), and food (34%), suggesting that housing and food insecurity in the community may play a significant role in why cash benefits were the most desired. Similarly, survivors before the ECCC suggested that individualized reparations were preferred because everything was collective under the Khmer Rouge. Such situational factors should not be ignored when extrapolating Sperfeldt's research for potential institutional reform.

II. LAYING THE GROUNDWORK FOR FUTURE DEVELOPMENT

Sperfeldt refrains from making recommendations or suggestions as to improving reparations practices but frequently returns to themes of inevitable trade-offs and tensions between general objectives. In doing so, he lays the groundwork for improvement of future reparations frameworks. While these tensions could have been engaged with more directly, Sperfeldt notes that he intends only to examine practice, not to venture into making recommendations. Three examples of these tensions are NGO support and accountability, expectation management and victim empowerment, and institutionalization.

A. *NGO Assistance and Accountability*

One example of such tension is the degree to which NGO involvement as intermediaries helps or hurts the cause of criminal justice and reparations specifically. In describing the pre-trial procedures of victim identification and submission to the court, Sperfeldt explains the crucial role of NGOs in supporting under-resourced judicial bodies, providing local expertise, and engaging with individual victims. As in many areas of international law, NGOs in the context of reparations can fill the gap between diplomatic or judicial goals and the realities of implementation. On the other hand, Sperfeldt examines the problems of intermediaries between victims and the court: representatives necessarily select which victims' preferences to highlight, they may distort the actual views of victims when relaying them, and they impede a sense of connection between the individual and the court. He also cites instances of NGOs directly opposing the wishes of victim-led organizations in favor of their own proposals. The tension between the necessity of NGO assistance and the risk of these organizations drowning out the voices of survivors is likely to become a recurring trend in future reparations practices, as international(-ized) courts are simply not equipped to manage cases involving thousands of victims at a time without NGO support.

Drawing on Sperfeldt's analysis, greater regulation of NGOs as intermediaries and accountability for harm caused to victims is necessary. While this should be a vital concern of the tribunal, NGOs themselves must also take greater measures to ensure victims' preferences are respected and accurately portrayed to the court.

Accurately representing victims' heterogeneous wishes ties into the issue of judicialization in reparations. In a judicial framework, a victim's advocate argues for a single outcome, but if such a framework were set aside for the purposes of reparations, institutional professionals with psychological and sociological training could work collaboratively in seeking a solution which meets the desires of different groups. Even if it is impossible to satisfy all victims at once, such a model would transfer the responsibility of choosing between victims' preferred outcomes from NGOs to professionals who are entrusted and trained to make such determinations.

B. *Expectation Management and Victim Empowerment*

Sperfeldt's analysis highlights, but does not resolve, the tension between managing victim expectations with respect to reparations and allowing victims the agency to express their wishes even if they cannot ultimately be fulfilled. He notes the need to manage victim expectations and highlights examples where that was not sufficiently done, to the court's detriment—for example, application forms which allowed open-ended responses on the question of what reparations were desired, rather than limiting options to those available. The result was that most responses were unusable by the court and thus ignored. However, Sperfeldt also considers the flip side of this argument. That is, when NGOs meet with victims and try to shape their genuine desires into requests that align with the court's guidelines, they arguably strip victims of their agency. In the case of the ECCC, the court's internal procedures barred individual monetary payments as a form of reparations. Still, many applicants wanted to request individual monetary payments simply to voice their opinion, even if those requests could not ultimately be fulfilled. From this angle, "managing expectations" resembles silencing or distorting the views of victims in favor of views more palatable to the court. There is a fine line between telling victims what they are likely to receive and telling them what they want.

The considerations influencing the balance between expectation management and victim empowerment are dependent on both institutional frameworks which determine eventual outcomes and situational factors which shape victims' preferences. Striking this balance in the future may be best accomplished by taking greater account of victims' preferences when constructing the institutions meant to serve them; managing expectations would be easier if the gap between preferred and permitted reparations were smaller. How different such an institution would be from the current judicial framework is unknown, but within the current framework, the involvement of NGOs necessitates considering their role as well. As NGOs tend to be the actors engaging with victims and relaying their wishes, the balance of managing victim expectations without stripping them of agency may be supported by greater oversight of those actors and greater communication of vic-

tims' actual preferences, even when such preferences fall outside the scope of permissible reparations.

C. *Institutionalization and Adaptability*

On the larger scale of institutional design, Sperfeldt's analysis demonstrates a trade-off between institutionalization and adaptability. The first chapter of the book depicts a chain of institutions 'kicking the can down the road' by creating vague frameworks in order to reach consensus and leaving it to the next body down the chain to fill in the (sizable) gaps. In this framing, the choice to defer decisions to bodies closer to the conflict—eventually the tribunal itself—seems irresponsible at best. Faced with the difficulty of reaching a common understanding of something as controversial as reparations, institutional actors find the lowest common denominator, generally a vague restatement of what reparations are, and hope that the next institution in the chain will make the hard decisions. The reluctance of judges to innovate was likely a driving cause of the ICC in the Congo following the model of domestic criminal law so closely—when judicial actors are charged with building the reparations framework, judicialization of reparations is unsurprising. However, Sperfeldt also underscores the value of individualizing tribunals to fit the cultural and logistical nuances of the individual situation, perhaps even each case. This idea suggests that leaving some decisions to the trial chambers may not be so problematic, particularly when the voices of victims are absent at higher levels of institutional design. Institutional clarity and individualization of tribunals are not mutually exclusive. A more comprehensive framework could certainly include provisions for courts to adjust based on local context. The complexity of considerations when designing reparation mechanisms must begin with acknowledging the trade-offs demonstrated through practice and incorporating them into the development of future reparations administration.

The trade-offs Sperfeldt considers are open-ended debates with which future institutions will need to grapple. Sperfeldt stops short of offering concrete proposals, which are difficult to make in the abstract, given the immense variation between different situations. Indeed, refraining from abstract speculation on best practices for reparations generally is in

line with his emphasis on examining practice over theory in this book. In providing such a thorough analysis of the impact of certain practices, however, Sperfeldt provides an invaluable resource for future institutions to make more informed decisions in designing their frameworks and practices.

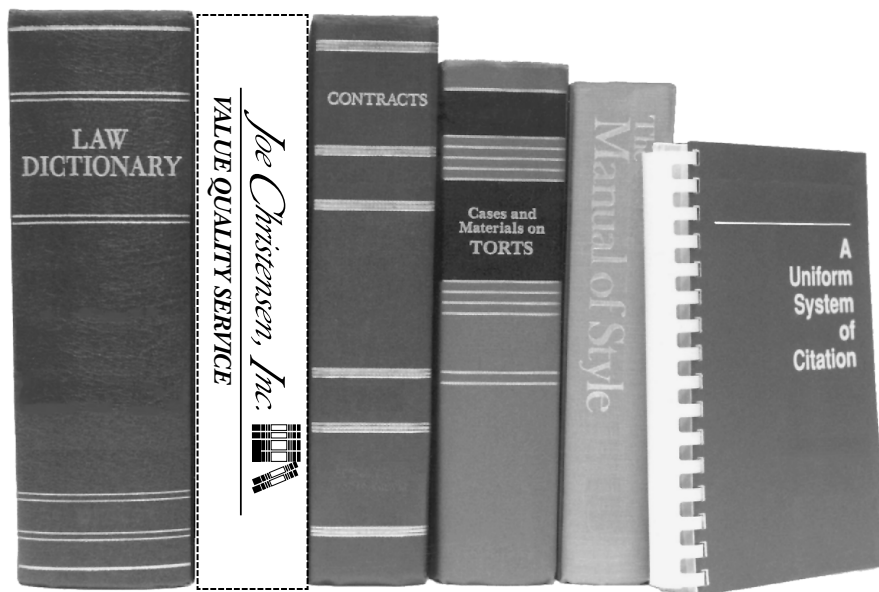
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