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STALS / PANOPTICA BOOK REVIEW

Francesca Capone,  
**Reparations for Child Victims of Armed Conflicts,**  
Intersentia, Antwerp- Cambridge (2017)

*reviewed by Giulia Ciliberto*

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Since the mid-twentieth century to the present, the number of civilian victims of armed conflicts – of international or internal nature – have increasingly raised. Among them, children are the most affected category: this large group – defined as “children affected by armed conflict” – is not merely bystander, but target and victim of the atrocity committed in war-torn contexts.

In the present book, Francesca Capone – Research Fellow in public international law, Coordinator of the Masters Programme in Human Rights and Conflict Management, as well as lecturer at the Scuola Superiore Sant’Anna – provides her critical point of view on the current international law framework concerning reparations for child victims of armed conflict.

This scholarly work ensues “from the need to fill the gap in the literature on transitional justice, in particular on the right of reparation”. The study analyses whether child victims of armed conflicts are entitled to reparative measures that are adequate, prompt and effective. The first chapter of the book provides a general overview of the issue and clarifies *rationale*, aim and structure of the monography.

The main body of the work, divided into two parts, follows this introduction. The first part assesses the theoretical and normative framework, composed by international human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL). The second part focuses on the functioning of the international mechanisms and on the reparations awarded and implemented. The last chapter outlines brief conclusions.

As for the first part, among several topics dealt with, three are worthy of particular attention, namely: the specific characteristics of the child victims of armed conflicts, non-State armed groups’ secondary obligations and the transformative potential of reparations.

The first aspect is addressed in the second chapter. The first paragraphs of this chapter underline the lack of a homogenous definition of the concept of “victim” in the international law regimes covered by the study and describe the historic and normative evolution of the establishment of children’s rights – with a focus on the rules enshrined in the Convention on the Rights of the Child which are relevant to children’s right to reparation. As for the specific characteristics of child victims of armed conflicts, the author highlights the need to take into account both the particular vulnerability – stemmed from the risk of “polyvictimization” – and the resilience of this group of individuals,

which only recently has caught scholars' attention (para. 2.4). These two features – particular vulnerability and resilience – contribute to the uniqueness of both the category of child victims as a whole and of each subject belonging to the group. From the author's point of view, both these two traits “play a crucial role in the determination of the forms of reparation that can better serve the purpose of redress children” (pp. 45-46). Furthermore, resilience shows its value in the discourse concerning the advisability for post-conflict countries to implement juvenile justice systems: this solution, embraced by the author, is suggested at the end of an accurate analysis of the different opinions related to the victim-perpetrator dichotomy with regard to child soldiers (para. 2.6.3).

The second intricated issue concerns the subjects which are under the obligation to make reparations for the injury caused. Specifically, the author addresses the possibility for non-State armed groups (NSAGs) to be held accountable for the violations of IHRL and IHL against children in armed conflict (para. 3.3.2.1). The book shows that even if *in abstracto* NSAGs bears the responsibility for these violations and, thus, are under the duty to redress the victims, *in concreto* “the practice supporting this statement is, at very least, scant” (p. 98). Notably, there are two aspects to point out. Firstly, the specific characteristics of the “organisational” responsibility – as defined by Moffet – requires efforts *de lege ferenda* in order to set up complaint mechanisms for victims of NSAGs' violations (pp. 100-101). Secondly, the work outlines the NSAGs' lack of capability and resources to provide reparations. Assuming that economic constraints do not justify the failure to comply with the obligation of reparation, the author suggests an innovative solution which implies the subsidiary intervention of States. More in details, “NSAGs should in principle be held responsible for providing and implementing all forms of reparation [...], but, whether such groups are not able to comply with this obligation State should intervene to ensure that victims receive redress” (pp. 102-103).

The third topic is included in the wider aspect concerning form and scope of reparations for child victims of armed conflicts. Primarily, the study highlights that the re-establishment of the *status quo ante* is not a suitable option if related to situations in which victimization is eased by the conditions existed prior to the occurrence of the wrongful act (para. 4.1.1). Another remark concerns the significant distinction between reparations and other assistance measures (para. 4.3). The main point of the chapter is the discourse concerning the need to re-evaluate reparations as both redress and preventive measures. After having clarified that it is not correct to speak about transformative reparations *per se*, the author underlines the transformative potential of every form of reparations (p.135). The capability of each measure to avoid the recreation of the concrete causes that led to the commission of the violations is also supported by the exam of practical examples.

The second part of the book deals with the different approaches followed by various bodies in charge of applying the principles and norms analysed in the first part. The study covers quasi-judicial and judicial mechanisms, both at international and regional level, as well as non-judicial mechanisms. Moreover, the work addresses the reparations awarded and implemented by the above-mentioned bodies. Despite the critical outlook, through which doubts are both raised and analysed carefully, the author does not miss the opportunity to praise the merits and to welcome part of the approaches developed by the bodies under investigation. In this part, three topics are worthy of special attention, namely: the examination of the *Lubanga* case before the International Criminal Court (ICC), the approach of the Inter-American Court of Human Rights (IACtHR) and Disarmament, Demobilisation and Reintegration Programmes (DDR), which sometimes add rehabilitation to their goal (DDRR).

As for the international setting, the examination of the *Lubanga* case before the ICC highlights the Court's growing interest in child victims (para. 5.3.3.3). Nevertheless, the author points out that, "despite the crucial efforts made, the ICC is still far from striking a balance between the best interest of child victims and the implementation of fair trial standards" (p. 168). Through the study of the Appeals Chamber judgment on reparations' principles and procedure, the book addresses the issue of whether the future potential establishment of a "specialized Reparation Chamber" could actually benefit the victims. The author does not hide her skepticism on this matter. The grounds of her doubts are represented by the nature and mandate of the ICC. As a specialized criminal court, the ICC primary aim is achieving accountability and deterrence - and not the awarding of reparations (p.181).

Concerning the regional scenario, the study includes solely the African and Inter-American human rights systems. *Inter alia*, the book addresses the IACtHR' creative strategy towards reparations (para. 6.3.2). The chapter underlines the Court's strong concern for victims and its impact on child victims, as well as the significant contribution with regard to collective and symbolic reparations – the latter realized also through the elaborations of the concepts of "life plan/project of life" and "aggravated State responsibility" (pp. 204 – 205).

Lastly, regarding non-judicial mechanisms which have dealt with the issue of reparations for child victims of armed conflicts, the author focuses on the DDR(R) through the analysis of the programmes carried out in Liberia and Sierra Leone (para. 7.5). One of the main point concerns the specific situation of girl victims of armed conflicts, a subgroup that is very often disproportionately affected.

There are two aspects put on the spotlight. The first one is related to the difficulty in taking part to the program: since girls are not usually involved in the fighting, the majority of them does not fit

the criteria set for entering the DDR(R) process – thus, not being able to benefit from the measures implemented under the program. The second aspect concerns the efficiency of DDR(R) in situations in which girls, who suffered sexual violence, face a strong risk of stigmatization and exclusion. On this regard, the author outlines the existence of alternative ways of reintegration, as the communities and families “rituals of welcome” (pp. 237 – 238).

In conclusion, this scholarly work analyses successfully the contradiction between the undisputed autonomy of the violations committed against children in armed conflicts and the lack of a satisfactory international regime able to provide prevention and intervention measures. The structure of the investigation proceeds from a general overview to the particular situation at stake, outlining the relation between international law framework and its application: as a result of this architecture, even the less specialized reader is in the position of fully understand the analysis offered and the *rationale* behind the evaluations of the author. Furthermore, the study underlines the failure of the current international law regime governing the right to reparation in relation to child victims of armed conflicts. The book shows the absence of a system able to provide adequate, prompt and effective measures, able to cope with the specific characteristics and needs of this group.

Ultimately, the study presents a comprehensive and detailed overview of a topic that, despite its shortcomings, had not been yet subject to studies addressing the field of inquiry in a manner proportionate to its relevance – which is intensified by the challenges raised by the new policies employed in the conduct of modern armed conflicts.