

Contents

<i>Foreword</i>	<i>page xv</i>
<i>Acknowledgements</i>	<i>xviii</i>
<i>Table of cases</i>	<i>xxi</i>
<i>Table of treaties</i>	<i>xxxvii</i>
<i>Select list of abbreviations</i>	<i>xli</i>
1 Introduction	1
A Introduction	1
B The book in outline	4
2 The wider legal framework of victim redress	9
A Introduction	9
B The invocation of responsibility	10
C The law relating to the treatment of aliens	11
D International human rights law	13
E International humanitarian law	18
1 International armed conflicts	18
2 Non-international armed conflicts	25
F National law and procedures	27
G Conclusion	31
3 Victim redress and international criminal justice: an overview	34
A Introduction	34
B Individual punishment and the traditional conception of international criminal justice	36
1 The position of victims within the classical framework of international law	37
2 Victims and the genesis of international criminal law	41

3	The conventional position of victims in international criminal law	43
C	The development of the Rome Statute's scheme of victim redress	48
D	A principled role for victim redress as part of the system of international criminal justice?	54
1	The conceptual role of victim redress in international criminal law as a form of criminal justice	55
(a)	The irrelevance of retributivism	55
(b)	The insufficiency of restorative justice as a principled justification	56
(c)	An expressivist account of victim redress: the role of vindicative satisfaction and moral denunciation	60
2	Victim redress and the prosecution and punishment of individuals: competing or compatible paradigms?	64
E	Between ideals and reality: the potential disjuncture between the theory and practice of victim redress	67
F	Conclusion	72
4	The concepts of reparations and victim support under the Rome Statute	75
A	Introduction	75
B	The concept of reparations under the Rome Statute	76
C	The concept of victim support under the Rome Statute	84
1	The distinction between 'reparations' awarded under Article 75 and victim support provided pursuant to Rule 98(5)	85
2	The key features of the concept of victim support under the Statute	88
D	Conclusion	92
5	The concept of harm under the Rome Statute	94
A	Introduction	94
B	Prefatory clarification	95
C	An Autonomous Concept of Harm under the Rome Statute	98
D	The forms of recoverable harm under the Rome Statute	100
1	Pecuniary loss	100
(a)	Actualised pecuniary loss	101

(i) Damage to, or loss of, property	101
(b) Consequential pecuniary loss	104
(i) Loss of future earnings	105
(ii) Lost profit	106
(iii) Loss of support	106
(iv) Loss of pecuniary opportunity	108
(v) Medical, funeral and miscellaneous expenses	109
2 Non-pecuniary loss	110
(a) Death	110
(b) Personal injury	111
(i) Pain and suffering	113
(ii) Loss of amenities of life	119
(c) Loss of liberty	123
3 Communal harm	124
E Conclusion	127
6 Reparations principles	129
A Introduction	129
B The scope and parameters of the Court's power to establish reparations principles	130
C The task of the Court in establishing reparations principles	132
D Determining the scope and extent of damage, loss and injury to victims	134
1 Causation	135
(a) Factual causation	137
(i) Determining the appropriate standard of factual causation	138
(ii) Determining the extent of a perpetrator's contribution to the harm caused by a crime	145
(b) Legal causation	148
(i) Legal causation and Rule 85(a)	150
(ii) Legal causation and Rule 85(b)	153
(c) Conclusion	155
2 Determining the extent of a perpetrator's liability where a state is concurrently responsible	156
3 Reparations awards where a perpetrator lacks the resources necessary to redress the harm he or she is found to have caused	157

E	Modalities of reparations under the Rome Statute	158
1	Restitution	159
(a)	The goal of <i>restitutio in integrum</i>	160
2	Compensation	162
(a)	Compensable harm	163
(b)	Quantum	163
3	Satisfaction	169
(a)	Rehabilitation	170
(b)	Declaration of wrongfulness	174
(c)	Factual disclosure	177
(d)	Contrition and acts of atonement	180
(e)	Commemorations and memorials	181
F	Conclusion	182
7	Proceedings and Court orders relevant to reparations	184
A	Introduction	184
B	The relationship between reparations and trial proceedings before the ICC	184
C	Proceedings relating to reparations	190
1	The role of reparations hearings	190
2	The procedure for conducting reparations hearings	192
D	Punitive orders	192
1	Fines under Article 77(2)(a)	193
2	Forfeiture of proceeds, property and assets pursuant to Article 77(2)(b)	194
(a)	‘forfeiture of proceeds, property and assets’	195
(b)	‘derived directly or indirectly from that crime’	199
(c)	‘without prejudice to the rights of bona fide third parties’	202
E	Reparations orders	209
1	Restitution	213
2	Compensation	214
3	Rehabilitation	215
4	Other forms of order	216
F	Powers of the Court in cases of contumacy	216
G	Protective measures	217
H	The burden and standard of proof in reparations and sentencing proceedings	219
1	Burden of proof	220

2	Standard of proof	221
I	Conclusion	223
8	The provision of reparations and victim support through the Trust Fund	225
A	Introduction	225
B	The organisation and management of the Trust Fund	226
1	Relationship with the Assembly of States Parties	226
2	The Board of Directors	227
3	The Secretariat	228
4	The resources of the Trust Fund	229
C	The prioritisation of resources by the Trust Fund	230
1	Prioritisation of resources by the Trust Fund in respect of Court-ordered reparations	230
2	Prioritisation of resources by the Trust Fund in respect of support to victims pursuant to Rule 98(5)	232
3	Criteria according to which resources for redress may be prioritised	234
(a)	Prioritisation according to the vulnerability of victims	234
(b)	Prioritisation according to the neediness of victims	235
(c)	Prioritisation according to the nature of the unlawful act or the nature and/or gravity of harm inflicted	236
(d)	Prioritisation in order to maximise the impact of limited resources	237
D	Court-ordered reparations provided ‘through’ the Trust Fund	239
1	The extent of the Court’s role in directing and supervising the activities of the Trust Fund	240
(a)	The apportionment of resources between Article 75 reparations and victim support pursuant to Rule 98(5)	241
(b)	Judicial supervision and control of the implementation of Court-ordered reparations by the Trust Fund	242
(i)	The design of Court-ordered reparations awards	243

	(ii) Oversight of the implementation of the reparations award	248
2	Rule 98(2): The provision of reparations awards to individuals through the Trust Fund	252
3	Rule 98(3): The provision of collective reparations awards through the Trust Fund	253
4	The determination of claims for reparations by the Trust Fund	257
	(a) Adjudication of claims by the Trust Fund	258
	(i) The adjudicative process	261
	(ii) Evidential issues	267
	(b) Verification of the implementation of individual and collective reparations awards	275
5	Rule 98(4): The implementation of reparations awards by an intergovernmental, international or national organisation	276
	(a) The procedure for engaging the assistance of an intermediary organisation	278
	(b) The role and responsibilities of the intermediary organisation	279
	(c) Monitoring and oversight of the implementation of reparations awards by intermediary organisations	281
E	Victim support provided by the Trust Fund pursuant to Rule 98(5)	285
1	The power of the Trust Fund to use ‘other resources’ for the benefit of victims	286
	(a) Determination by the Board of Directors as to the necessity of providing support pursuant to Rule 98(5)	286
	(b) Notification of, and approval by, the Court of activities undertaken pursuant to Rule 98(5)	288
2	The activities of the Trust Fund undertaken pursuant to Rule 98(5)	293
	(a) The form of activities undertaken pursuant to Rule 98(5)	293
	(b) Procedures regulating how the ‘other resources’ of the Trust Fund are used	295
F	Conclusion	296

9	Victim redress and the Rome Statute's cooperation and enforcement regimes: possibilities and limitations	297
A	Introduction	297
B	The scope of the cooperation regime	298
1	The general powers of the Court and the Office of the Prosecutor	299
2	Reparations proceedings	300
3	The work of the Trust Fund in providing victim support	300
C	States Parties and the cooperation regime	301
1	The scope of the general obligation to cooperate	303
2	Particularised forms of assistance the Court may request	303
(a)	Tracing, seizure and freezing of assets by States Parties	304
(b)	Other enumerated measures the Court may request of States Parties	306
(c)	Relationship between Security Council sanctions and ICC cooperation requests	307
3	Other forms of assistance the Court may request of States Parties	308
D	Cooperation and third states	309
1	Cooperation pursuant to the Statute	311
2	Cooperation pursuant to a Security Council resolution	311
E	Intergovernmental organisations	313
1	The United Nations	314
2	Other organisations	315
F	Cooperation in respect of individuals, armed groups and other non-state entities	317
G	The enforcement of fines, punitive forfeiture and reparations orders	318
H	Conclusion	321
10	Conclusions	324
A	Introduction	324
B	The role of victim redress as part of a system of international criminal justice	326

C	The distinct role that the Rome Statute's regime for victim redress can play alongside other international regimes	329
D	The potential role of the Rome Statute's regime of victim redress alongside national systems and processes	342
E	Opportunities provided by the Rome Statute as an institutional framework within which to deal with questions of victim redress	346
F	Between ideals and reality: challenges confronting the Rome Statute's regime of victim redress	349
1	The limited resources available for victim redress	350
2	The selectivity of prosecutions under the Rome Statute	351
3	The risk of a fragmented and inappropriately individualised response to the harm suffered by victims	352
(a)	The risk of a fragmented, uncoordinated response to the harm suffered by victims	353
(b)	The risk of an inappropriately individualised approach to victim redress	354
(c)	Ways in which the risks of fragmentation and individualisation can be offset	355
4	Difficulties associated with matters of victim redress being dealt with by an institution at the international level	356
G	Conclusion	359
	<i>Select bibliography</i>	361
	<i>Index</i>	373