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Closing the gap: symbolic reparations and armed groups

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Abstract

The question of whether non-state armed groups could and should provide reparations to their victims has been largely overlooked. This article explores this gap, with a particular focus on symbolic reparations, such as acknowledgement of the truth and apologies. It argues that, while the question is fraught with legal, conceptual, and practical difficulties, there are some circumstances in which armed groups are capable of providing measures of reparations to their victims. The article identifies the issue of attacks on informers as one potential area for armed groups to provide such measures, and demonstrates that in a few cases armed groups have already engaged in actions that could be seen as analogous to symbolic reparations. The article's main case study is provided by recent actions by the Irish Republican Army (IRA) in relation to its past attacks against suspected informers.

While non-state actors have been involved in violence throughout history, the influence of armed groups has been rising exponentially in the last two decades. Armed groups are present in virtually all major areas of violence: for example, Iraq, Afghanistan, Somalia, Pakistan, Lebanon, Gaza, Colombia, Côte d'Ivoire, Nigeria, the Democratic Republic of Congo (DRC), Chechnya, the fragmented set of

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conflicts with Al Qaeda and its affiliates, and the recent conflict in Libya. Armed groups have also participated in the recent conflicts in Nepal, Sri Lanka, Algeria, Sierra Leone, Kosovo, and Northern Ireland. Non-international armed conflicts involving non-state armed groups are now the dominant form of conflict in world affairs, with inter-state wars becoming the exception.[1] At the beginning of 2008 there were twenty-six active armed conflicts worldwide, all of them involving armed groups.[2] Thus, 'by definition, at least half the belligerents in the most widespread and most victimizing of armed conflicts around the world, i.e. non-international armed conflicts, are non-state armed groups'.[3] In addition, many armed groups have operated and committed abuses in situations of political violence that do not cross the threshold for being considered as an armed conflict under international humanitarian law (IHL) (for example, the Maoist armed groups in north-east India, or ETA in Spain).

The rise in importance of armed groups has led to several developments. First, the legal norms applying to the conduct of armed groups, in particular IHL, have been gradually articulated and clarified, and indeed have become the subject of a growing body of literature.[4] Perhaps the most important step has been the clarification of customary rules of IHL: the majority (though not all) of the 161 rules governing armed conflicts that were authoritatively identified by the International Committee of the Red Cross (ICRC) apply in non-international armed conflict and are thus binding on armed groups.[5] The general principle of applying at least some of the norms of IHL to armed groups is now beyond dispute; the Special Court for Sierra Leone (SCSL), for example, was able to simply assert that: '. . . it is well settled

1 Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 2nd edition, Polity Press, Cambridge, 2006; Richard Schultz and Andrea Dew, *Insurgents, Terrorists, and Militias: The Warriors of Contemporary Combat*, Columbia University Press, New York, 2006; UN High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibilities*, United Nations, 2004, p. 17.

2 Joseph J. Hewitt, Jonathan Wilkenfeld, and Ted Robert Gurr, *Peace and Conflict 2010*, Paradigm Publishers, Boulder, CO, 2010, p. 27.

3 Marco Sassòli, 'Taking armed groups seriously: ways to improve their compliance with international humanitarian law', in *International Humanitarian Legal Studies*, Vol. 1, 2010, p. 6.

4 Marco Sassòli, *Transnational Armed Groups and International Humanitarian Law*, Harvard University Program on Humanitarian Law and Policy, Occasional Paper 6, 2006, available at: http://www.hpcrresearch.org/sites/default/files/publications/OccasionalPaper6.pdf (last visited 20 January 2012); Sandesh Sivakumaran, 'Binding armed opposition groups', in *International and Comparative Law Quarterly*, Vol. 55, No. 2, 2006, pp. 369–394; Anne-Marie La Rosa and Caroline Wuerzner, 'Armed groups, sanctions and the implementation of international humanitarian law', in *International Review of the Red Cross*, Vol. 90, No. 870, 2008, pp. 327–341; Cherif Bassiouni, 'The new wars and the crisis of compliance with the law of armed conflict by non-state actors', in *Journal of Criminal Law and Criminology*, Vol. 98, No. 3, 2008, pp. 711–810; Liesbeth Zegveld, *The Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, Cambridge, 2002; Andrew Clapham, 'Human rights obligations of non-state actors in conflict situation', in *International Review of the Red Cross*, Vol. 88, No. 863, 2006, pp. 491–523; Noelle Higgins, 'The regulation of armed non-state actors: promoting the application of the laws of war to conflicts involving national liberation movements', in *Human Rights Brief*, Vol. 17, No. 1, 2009, pp. 12–17; M. Sassòli above note 3.

5 See the ICRC database of customary IHL, available at: http://www.icrc.org/customary-ihl/eng/docs/home (last visited 8 August 2011). See also International Commission of Inquiry on Darfur, 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004', Geneva, 25 January 2005, para. 166, available at: http://www.un.org/news/dh/sudan/com_inq_darfur.pdf (last visited 20 January 2012).

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that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties'.[6] While the question of the application of human rights norms to armed groups is not as settled, there have been several sources claiming such application, at least in some circumstances.[7] In terms of accountability, international criminal law applies to members of armed groups almost without distinction from state agents, and the Rome Statute of the International Criminal Court (ICC) has confirmed that members of armed groups can be held criminally responsible for war crimes, crimes against humanity (which are defined there as attacks that take place pursuant to or in furtherance of 'a State *or organizational* policy'),[8] and genocide.[9] The International Criminal Tribunal for the former Yugoslavia (ICTY)[10] and the SCSL[11] have prosecuted members and leaders of armed groups. The ICC's first indictment was against a member of an armed group, not against a state leader or official, and as of April 2011 members of armed groups remain a majority (fourteen out of twenty-two) of the individuals indicted by the ICC.[12]

While the increasing ability to hold individual perpetrators to account is important, in general there is an agreement that international criminal law and individual prosecutions do not address the full range of the needs of victims.[13] Indeed, as will be detailed below, the issue of reparations – including symbolic reparations – has emerged as a central theme in response to state abuses. However, the rising attention of scholars and advocates to armed groups has not yet involved sustained attention to the issue of reparations from armed groups. As Zegveld wrote, 'while international bodies have given due consideration to the accountability of individual leaders of armed opposition groups, they have so far largely ignored the accountability of the groups in favour of the accountability of individual members'.[14] Overlooking of the question of reparations from armed groups is a major omission, which could leave victims of abuses by armed groups unable to achieve the redress that they seek.

It is important to emphasize early on that the main reason why the question of reparations from armed groups has not garnered adequate attention is likely to be that in most cases it is not feasible to require any type of reparations from armed

6 SCSL, *Prosecutor* v. *Sam Hinga Norman*, Case No. SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) (Appeals Chamber), 31 May 2004, para. 22.

7 Jan Arno Hessbruegge, 'Human rights violations arising from conduct of non-state actors', in *Buffalo Human Rights Law Review*, Vol. 11, 2005, pp. 21–88; A. Clapham, above note 4; Annyssa Bellal, Gilles Giacca, and Stuart Casey-Maslen, 'International law and armed non-state actors in Afghanistan', in *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 47–79.

8 ICC Rome Statute, Art. 7(2)(a), emphasis added.

9 *Ibid.*, Art. 6, which does not specify that perpetrators must be state officials or agents.

10 See e.g. ICTY, *The Prosecutor* v. *Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj*, Case No. IT-04-84-T, Judgment (Trial Chamber), 3 April 2008.

11 See e.g. SCSL, *The Prosecutor* v. *Issa Hassan Sesay, Morris Kallon and Augustine Gbao (RUF Case)*, Case No. SCSL-04-15-T, 2 March 2009.

12 See ICC, 'Situations and cases', available at: http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/ (last visited 8 August 2011).

13 See e.g. Laurel E. Fletcher and Harvey M. Weinstein, 'Violence and social repair: rethinking the contribution of justice to reconciliation', in *Human Rights Quarterly*, Vol. 24, No. 3, 2002, pp. 573–639.

14 L. Zegveld, above note 4, p. 223.

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groups. Armed groups often lack the capacity to provide reparations, and frequently do also not have the political will to do so. In some cases, armed groups also disintegrate and cease to exist in the aftermath of conflicts. In addition, there is a dearth of formal mechanisms through which victims can claim such reparations from armed groups. While a variety of international, regional, and national mechanisms are available to victims of state abuses who seek to bring a reparation claim against a state, there are no equivalent mechanisms in relation to armed groups. For example, victims of armed groups cannot address an armed group directly through mechanisms such as the European Court of Human Rights or the United Nations Human Rights Committee, as they can do in relation to states.

However, while it is certainly true that reparations from armed groups will not be feasible in *all* cases, it is wrong to assume that they will simply *never* be feasible. As will be elaborated below, this article presents the argument that, at least in some cases, and in relation to at least some forms of reparations, it would indeed be feasible to discuss the question of reparations from armed groups. This potential should be explored, analysed, and cultivated, even while accepting the feasibility hurdles.

The argument should also be viewed in the context of the extraordinary developments over the last fifteen years or so of international norms and practice in relation to armed groups. As was mentioned above, during this period the ICRC customary law study clarified the IHL norms applicable to armed groups; the ICC has made dramatic steps in terms of individual criminal responsibility of armed groups' leaders and members; and innovative mechanisms have emerged in relation to international monitoring of the conduct of armed groups,[15] as well as voluntary commitments by armed groups on issues such as anti-personnel landmines and the treatment of children.[16] This landscape would probably have seemed unfeasible to observers in the early 1990s. The question of reparations from armed groups could become the next frontier in this development curve, and should be assessed accordingly. Finally, it is important to note that the articulation of norms and the advocacy for their realization could have important meaning even when the feasibility of the advocacy can be questioned. Organizations advocating for respect for human rights and IHL often make recommendations to states in the full knowledge that the chances of all these recommendations being acted upon are slim, and it could be that a similar approach might at times be useful in relation to armed groups.

The remainder of the article will be structured as follows: the next section explores in greater detail the question of reparations from armed groups, and will argue that this topic has been thus far overlooked, which could result in a gap in relation to the right to redress of victims. The following section then identifies attacks against alleged informers by armed groups as a potentially suitable 'entry

15 For example, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

16 See for example the work of the non-governmental organization *Geneva Call*, available at: http://www.genevacall.org/Themes/themes.htm (last visited 8 August 2011).

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point' to the issue of symbolic reparations from armed groups, and describes an early precedent of an armed group providing measures of symbolic reparations in this context: the African National Congress (ANC) in 1992–1993. Next, the article turns to focus on actions taken by the Irish Republican Army (IRA) in the years after the peace agreement in Northern Ireland in relation to its past attacks on alleged informers. This section demonstrates that these actions are consistent with many of the principles regarding symbolic reparations, though neither the IRA nor the ANC self-described them as 'symbolic reparations' or made explicit references to the duty to provide reparations under international human rights or humanitarian law. Finally, the implications of the discussion, in particular the potential view of armed groups as post-conflict actors, are explored in the conclusion.

Armed groups and the duty to provide reparations: a blind spot?

Advocacy for the right to reparations of victims of serious human rights abuses and violations of IHL has become one of the central tenets of transitional justice and the struggle for accountability for abuses.[17] This trend is premised on moving beyond a narrow focus on attempting to bring perpetrators to justice, and instead is focused on the victims of abuses, acknowledging their suffering and their needs and attempting to address the damage done.[18]

The central source detailing these rights is 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 ('Basic Principles'), which were adopted by the United Nations General Assembly in 2006.[19] The Basic Principles were described as 'an international bill of rights of victims'.[20]

A crucial feature of the modern understanding and practice of reparation is that it involves more than just financial compensation to victims. The concept of reparations refers to a wide range of measures that can be taken in response to violations and abuses, with the exact appropriate forms depending on context and circumstances.[21] In addition to compensation, the Basic Principles detail other modalities of reparations: restitution, rehabilitation, guarantees of non-repetition, and satisfaction. Especially with regard to satisfaction, there have been

17 Pablo De Greiff (ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, 2006; International Center for Transitional Justice, *Reparations in Theory and Practice*, New York, 2007.

18 Jemima Garcia-Godos, 'Victim reparations in the Peruvian truth commission and the challenge of historical interpretation', in *International Journal of Transitional Justice*, Vol. 2, 2008, p. 65.

19 Adopted by UNGA Res. 60/147, 21 March 2006.

20 Cherif Bassiouni, 'International recognition of victims' rights', in *Human Rights Law Review*, Vol. 6, No. 2, pp. 203–279. Victims' rights were also formulated in an overlapping UN instrument, 'The updated set of principles for the protection and promotion of human rights through action to combat impunity', Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

21 Naomi Roht-Arriaza, 'Reparations decisions and dilemmas', in *Hastings International and Comparative Law Review*, Vol. 27, 2004, pp. 157–200; Max Du Plessis and Stephen Pete, Repairing the Past? International Perspectives *on Reparations for Gross Human Rights Abuses*, Intersentia, Oxford, 2007.

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developments in theory and practice in relation to what are often referred to as 'moral reparations' or 'symbolic reparations': various forms of truth-recovery (including the concept of a right to truth),[22] acknowledgment of responsibility, apologies, and responding to the non-material needs of victims.

The term 'symbolic' does not necessarily mean forms of reparations that are less significant – only that they involve a greater intangible element.[23] Symbolic reparations can range from disclosing the truth about past events (for example, in relation to enforced disappearances), offering official apologies, or restoring the good name of victims, to commemoration measures such as changing of names of public spaces or the creation of museums and parks dedicated to the memory of victims.[24] The Basic Principles dedicate significant space to elaborating modalities of symbolic reparations and they have featured in recommendations from truth commissions and international bodies, most notably the Inter-American Court of Human Rights.[25] In comparison to financial compensation, symbolic reparations 'cater to a broader range of victim concerns, and take seriously their need for recognition, respect, dignity and hope for a safe future'.[26] Measures such as apologies, commemorations, and tributes, are often seen as more important to the victim than material ones.[27] As one commentator suggests, '[c]ommemorations can fill the vacuum with creative responses and may help heal the rupture not only internally but also the rupture the victimisation created between the survivors and their society'.[28] The Office of the High Commissioner for Human Rights has further observed that

> symbolic measures derive their great potential from the fact that they are carriers of meaning, and therefore can help victims in particular and society in general to make sense of the painful events of the past [and] allow [victims] to move on.[29]

In all its manifestations, reparation has emerged as a key feature of accountability and transitional justice. It was defined as a way to make "elusive ideas of truth, justice and reconciliation into something more concrete' and to ensure that

22 See United Nations Human Rights Council, *Study on the Right to the Truth*, UN Doc. E/CN.4/2006/91, 8 February 2006.

23 Frédéric Mégret, 'The International Criminal Court and the failure to mention symbolic reparations', in *Social Science Research Network*, 2008, p. 3, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1275087 (last visited 8 August 2011).

24 For an overview see Office of the United Nations High Commissioner for Human Rights (OHCHR), *Rule of Law Tools for Post-conflict States: Reparation Programmes*, United Nations, New York and Geneva, 2008, pp. 22–23.

25 James L. Cavalaro and Stephanie Erin Brewer, 'Reevaluating regional human rights litigation in the twenty-first century: the case of the Inter-American Court', in *American Journal of International Law*, Vol. 102, No. 4, pp. 768–827.

26 F. Mégret, above note 23, p. 6.

27 C. Bassiouni, above note 20, p. 272.

28 Yael Danieli, 'The right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms: preliminary reflections from a psychological perspective', in Eduardo Vetere and Pedro David (eds), *Victims of Crime and Abuse of Power*, United Nations, New York, 2005, p. 261.

29 OHCHR, above note 24, p. 23.

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the physical, psychological and social damage in societies emerging from a violent past is acknowledged and addressed".[30]

Although the question of the potential application of international norms to armed groups has been a subject of much attention recently, there seems to be a major gap or blind spot in relation to the question of reparations and truth-recovery. On the whole, there has been little attention to practical ways in which the principles of reparations should and could apply to armed groups. While it is possible to detect a growing appreciation that extending the applicability of reparation standards to armed groups would be a logical consequence of treating their actions as violations of international norms, most analysis and advocacy has remained tentative. There are currently only modest efforts to search for concrete precedents of reparation-like measures by armed groups or to explore practical modalities in which armed groups could provide such measures. A survey and analysis of scholarly writing, United Nations (UN) standard-making and practice, NGO advocacy, and other sources, reveal an ambivalent and ambiguous state of affairs, where approaches to the rights of victims of armed groups vis-à-vis the armed groups as collective entities remain underdeveloped.

Gillard, for example, accepts that 'a responsibility to make reparation would be a natural consequence of the fact that organized armed groups are bound by international humanitarian law', but then merely asserts that 'to date such responsibility has taken the form of individual criminal responsibility of violators'.[31] According to Kleffner, 'the possibility of claiming reparations for the injury caused [by organized armed groups] has thus far remained, in the main, a theoretical one'.[32] For Kleffner this remains the case notwithstanding a 'growing recognition that organized armed groups can be subjected to claims of reparations'.[33] Sassòli similarly finds that, while 'logically' a violation of norms by an armed group should result in an obligation to provide reparations, 'until now, such reparations were only rarely asked from armed groups and even more rarely awarded to their victims'.[34]

The question of whether non-state armed groups have obligations to provide reparations is not addressed explicitly in the Basic Principles. On the one hand, the fact that the Basic Principles apply not only to victims of human rights violations but also to those of violations of IHL (a framework where armed groups have in some contexts duties analogous to states) could be seen as an indication that armed groups could have obligations under this framework. The Basic Principles are mostly formulated around the rights of victims – rather than in relation to the duty-bearers – thus potentially leaving the question open. At the same time, General Assembly Resolution 60/147, which adopted the Principles, referred explicitly only

30 J. Garcia-Godos, above note 18, pp. 64–65.

31 Emanuela-Chiara Gillard, 'Reparation for violations of international humanitarian law', in *International Review of the Red Cross*, Vol. 85, No. 851, 2003, p. 535.

32 Jann Kleffner, 'The collective accountability of organized armed groups for system crimes', in André Nollkaemper (ed.), *System Criminality in International Law*, Cambridge University Press, Cambridge, 2009, p. 255.

33 *Ibid.*, p. 256.

34 M. Sassòli, above note 3, p. 47.

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to states, its preamble text reading as follows: '. . . recommends that *States* take the Basic Principles and Guidelines into account'. There are also several explicit references to states in the texts of Principles 4 and 5, for instance.

The ICRC study on customary IHL is also cautious and ambiguous on the question of the existence of a duty by armed groups to provide reparations. On the one hand, the study states that: 'There is some practice to the effect that armed opposition groups are required to provide appropriate reparation for the damage resulting from violations of international humanitarian law'. However, the ICRC also includes the hesitant statement that:

> Even if it can be argued that armed opposition groups incur responsibility for acts committed by persons forming part of such groups . . . the consequences of such responsibility are not clear. In particular, it is unclear to what extent armed opposition groups are under an obligation to make full reparation . . .[35]

At the same time, it is interesting to note that the ICRC considered symbolic reparation as part of the potential obligation of armed groups to provide reparations, as it cites a public apology by an armed group in Colombia (for the killing of three children in one of its armed attacks) as an indication of practice.[36] Thus, there is enough in the ICRC study to inspire interpretations calling for reparations from armed groups,[37] though it is not asserted as a fully binding international customary norm, in sharp distinction to most other rules enumerated in the study. At the same time, it must be recalled that the threshold for establishing a practice as a customary norm is very high, and civil society advocacy organizations routinely rely on standards – and progressive interpretations of standards – that have not yet reached the status of customary law, or indeed call for the development of new standards where there appears to be a gap in international norms.[38]

Turning to UN bodies, we discover a similarly ambivalent state of affairs. Though UN treaty bodies such as the Human Rights Committee do not normally address abuses by armed groups, in recent years there have been two high-profile, ad hoc United Nations bodies whose mandate extended to cover armed groups.

35 See rule 150 in the ICRC customary law study, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Cambridge University Press, Cambridge, 2009, available at: http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule150 (last visited 8 August 2011).

36 *Ibid*., Vol. II, Ch. 42, Rule 150, Section C, XII.

37 For example, in an analysis of the ICRC study, Fleck argues that non-state actors have obligations 'to make reparations to victims of war for acts committed under their responsibility', apparently with no distinctions between them and states. See Dieter Fleck, 'International accountability for violations of the *ius in bello*: the impact of the ICRC study on customary international humanitarian law', in *Journal of Conflict and Security Law*, Vol. 11, No. 2, 2006, pp. 179–199.

38 It is interesting to note that the ICRC has recently identified the issue of reparation for victims of violations as an area in which legal development is urgently required, and presumably this could include the question of reparations by armed groups. See 'Strengthening legal protection for victims of armed conflicts: the ICRC study on the current state of international humanitarian law', Address by Dr Jakob Kellenberger, President of the International Committee of the Red Cross, 21 September 2010, available at: http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/ihl-development-statement-210910 (last visited 8 August 2011).

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As with much else on the issue, their practice was uneven and did not result in a clear doctrine. On the one hand, The UN Commission of Inquiry on Darfur suggested that non-state armed groups should provide reparations. That commission, which documented abuses by both the government of Sudan and several rebel armed groups, proposed the establishment of a compensation mechanism (Compensation Commission) as a component toward redressing the rights of the victims of the conflict. Crucially, the commission noted, alongside the obligation of the Sudanese government to pay compensation for crimes perpetrated in Darfur by its agents, that: '[a] similar obligation is incumbent upon rebels for all crimes they may have committed'.[39] This is a clear and relatively authoritative statement on the application of reparation duties to armed groups. However, there has been a different approach by a similarly prominent UN commission of inquiry: the Goldstone Commission, which examined the conflict in Gaza between the state of Israel and Palestinian armed groups. Though the Goldstone Commission (which operated after the Darfur Commission) documented and condemned abuses by Hamas and other Palestinian armed groups (against both Israeli civilians and Palestinian residents of Gaza), it did not include a recommendation to provide reparations to victims in its recommendations to Palestinian armed groups.[40] This omission is also important because Hamas has had overall control of the territory and population of Gaza, and enjoys, on some levels, a quasi-state status and a degree of *de facto* international recognition, all attributes that make it a particularly fitting addressee for a recommendation on reparations.

Outside the UN, the work of several truth commissions involved forms of collective accountability for armed groups. Many truth commissions documented, analysed, and condemned actions by armed groups. Indeed, while UN human rights bodies remain ambivalent in relation to armed groups, truth commissions have become perhaps the main type of official body to offer a broad analysis of armed groups' conduct. Truth commissions that have addressed armed groups' abuses include, among others, those in El Salvador, Guatemala, South Africa, Peru, Sierra Leone, and Liberia. On some occasions it has led to engagements by the armed groups as such, or their leaders, with these bodies. The South African ANC's engagement with the Truth and Reconciliation Commission included forms of symbolic reparations such as truth-recovery and acknowledgment, though the fact that by that time the ANC had become the ruling party has complicated the conceptual and legal significance of its acts.[41] In Sierra Leone several former high-ranking Revolutionary United Front (RUF) commanders offered (limited) apologies as part of reconciliation ceremonies performed during the truth commission's

39 International Commission of Inquiry on Darfur, above note 5, para. 590 onwards, esp. para. 600.

40 See Report of the United Nations Fact Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48, 15 September 2009, paras. 1770–1771. It is interesting to note, however, that the commission recommended that the Palestinian Authority should ensure prompt and independent investigations of all allegations of serious human rights violations.

41 Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond*, Routledge, London, 2010, p. 41.

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public hearings.[42] The Guatemalan guerrillas offered a public apology to victims of their actions in the aftermath of the publication of the truth commission report.[43] However, not all cases where a truth commission dealt with armed groups' abuses involved engagement with members of the armed groups: in Peru, for example, members of the main rebel group, *Sendero Luminoso*, were denied the opportunity to testify before the commission.[44] While several truth commissions recommended providing reparations to victims of armed groups (including commissions in Peru, Sierra Leone, and South Africa), the reparations were to be provided by the state, rather than by the armed groups themselves.[45] Thus, while accepting that victims of armed groups have rights to reparations, these commissions have not addressed the duty of such groups to provide those reparations. In at least two other cases, individual members of armed groups were required to provide forms of reparations as part of their reintegration: this involved returning looted property in Colombia,[46] and engagement with 'traditional' reconciliation mechanisms in Northern Uganda.[47] While these are important precedents, here as well the focus has been on engaging individuals rather than the groups as collective entities.

In addition to these sources, it is also significant that some leading international human rights organizations, such as Human Rights Watch and Amnesty International, have called on armed groups to provide reparations to victims.[48] At the same time, this practice has not been systematic, and rarely involves public campaigning. It is further noteworthy that the influential International Center for Transitional Justice, the leading international organization working on transitional justice and reparations, appears not to have explored in any depth the issue of claiming reparations and truth from armed groups.

What can be the reasons for this relative neglect of the question of reparations from armed groups? Several potential explanations will be offered here. The first reason, as was detailed above, is the lack of an unequivocal international

42 Rosalind Shaw, 'Linking justice with reintegration? Ex-combatants and the Sierra Leone experiment', in Rosalind Shaw and Lars Waldorf (eds), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, Stanford University Press, Stanford, CA, 2010, pp. 127–129.

43 See 'Guatemala rebels apologize for abuses during civil war', in *Miami Herald*, 14 March 1999.

44 Theidon Kimberly, 'Histories of innocence: postwar stories in Peru', in R. Shaw and L. Waldorf, above note 42, pp. 92–109.

45 Cecily Rose, 'An emerging norm: the duty of states to provide reparations for human rights violations by non-state actors', in *Hastings International and Comparative Law Review*, Vol. 33, 2010, pp. 307–344.

46 Catalina Diaz, 'Challenging impunity from below: the contested ownership of transitional justice in Colombia', in Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Hart, Oxford, 2008, pp. 189–216.

47 Erin Baines, 'The haunting of Alice: local approaches to justice and reconciliation in northern Uganda', in *International Journal of Transitional Justice*, Vol. 1, 2007, pp. 91–114.

48 See Human Rights Watch, *Turning a Blind Eye: Impunity for Laws-of-War Violations during the Gaza War*, 2010, p. 47 (in relation to Hamas); Human Rights Watch, *All Quiet on the Northern Front? Uninvestigated Laws of War Violations in Yemen's War with Huthi Rebels*, 2010, p. 6 (in relation to Huthis rebels); Amnesty International, Israel/Lebanon: Out of All Proportion: Civilians Bear the Brunt of the War, 2006, p. 68 (in relation to Hezbollah).

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legal basis for such obligations. A related challenge is that there are few adequate forums to pursue these claims:

> Even when rules apply to non-state actors . . . in most cases no international forum exists in which the individual victim, the injured state, an international intergovernmental or non-governmental organization, or a third State could invoke the responsibility of a non-State actor and obtain relief.[49]

Another problem is the general reluctance of states to recognize armed groups as addressees of international norms – since this could confer a measure of legitimacy on them.[50] Such reluctance may be even more pronounced when it comes to providing reparations, especially symbolic reparations, which could be seen as a measure reserved for states. A third problem, mentioned above, is that it may seem unfeasible to demand reparations from armed groups: for example, the International Center for Transitional Justice argued that 'it is usually not feasible to hold armed groups, whether pro or anti-government, directly accountable for reparations';[51] and Rose argued that 'victims of atrocities committed by rebel groups are typically unable to obtain reparations directly from their perpetrators', one of the reasons being that 'members of rebel groups are generally not capable of providing their victims with reparations for the harm they have caused'.[52] Finally, there appears to be a perception that symbolic reparation is simply not relevant to armed groups. For example, Kleffner asserts that 'satisfaction' as a form of reparation would not be transposed to armed groups;[53] Guembe and Olea reject the notion that 'non-economic reparations' could be a responsibility of an armed group, and argue that '[i]t is difficult to imagine that victims' dignity depends on perpetrators' actions'.[54]

Of these, it is likely that the last two have been the most important factors in hampering an exploration of the issue of symbolic reparations from armed groups: such reparations appear both unfeasible and unnecessary. However, as is argued below, there are contexts in which such measures would both be feasible and would serve an important function for their victims. Indeed, it is demonstrated below that precedents of armed groups providing measures analogous to symbolic reparations already exist, but they have remained 'below the radar' of the relevant literature and regrettably have not been recognized as such. A careful analysis of these cases will reveal the potential of symbolic reparations from armed groups and will hopefully lead to more sustained engagement with this issue by both scholars and practitioners.

49 M. Sassòli, above note 3, p. 7.

50 'States do not wish to attribute government-like qualities to these groups. Conferring international legal personality on armed groups would involve recognizing the existence of another authority within the state', L. Zegveld, above note 4, pp. 162–163.

51 ICTJ, *Providing Meaningful Reparations to Victims*, Briefing, December 2009, available at: http://www.iccnow.org/documents/ICTJ_SDN_briefing_AUPD-Reparatns.pdf (last visited 20 January 2012).

52 C. Rose, above note 45, pp. 309–310.

53 J. Kleffner, above note 32, p. 265.

54 Maria José Guembe and Helena Olea, 'No justice, no peace: discussion of a legal framework regarding the demobilization of non-state armed groups in Colombia', in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-first Century: Beyond Truth versus Justice*, Cambridge University Press, Cambridge, 2006, p. 136.

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Armed groups' attacks against their 'own side': the potential for truth and reparations

Having identified the general gap in relation to armed groups, the next step should be beginning to identify suitable thematic 'entry points' that could allow exploration of the potential for armed groups to provide symbolic reparations. As explained below, I argue that attacks against alleged informers is an issue that could be particularly fitting for such measures. Although attention by governments and the media normally tends to focus on armed groups' attacks against government forces and the civilian population associated with the government side, punishment of alleged informers from within the organization's own ranks, or from the community it seeks to represent,[55] are common to virtually all armed groups. Armed groups, such as FARC (Revolutionary Armed Forces of Colombia),[56] the Taliban,[57] GAM (the Free Aceh Movement),[58] Palestinian armed groups,[59] the PKK (Kurdistan Workers' Party),[60] and ETA,[61] as well as Hezbollah, the LTTE (*Liberation Tigers of Tamil Eelam*) and the Shining Path (*Sendero Luminoso*),[62] have all killed informers or suspected informers. In a typology of political violence, such attacks are considered as 'horizontal violence', directed at an armed group's own ostensible constituency, as opposed to the more common 'vertical violence' directed at government targets.[63] Almost invariably, such attacks by armed groups also involve killings and other abuses against individuals who were not in fact informers, either because of intelligence or operational mistakes, or because of malicious false denunciations.[64] Depending on the context, such attacks can be considered as human rights abuses or violations of IHL, and they will virtually always constitute crimes under domestic law.

I argue that the potential for measures of dealing with the past – self-critique and reaching out to victims during transitions out of conflict – by armed groups could be relatively significant in relation to such attacks on

55 Anti-state armed groups that seek independence, autonomy, the end of perceived foreign or hostile domination, or a radical transformation of the political order, tend to operate within a broader community, usually with similar national, ethnic, religious, cultural, or linguistic attributes, in which there is usually wide passive support for the goals (if not always the means) of the group, from which active members are recruited, and which the group can claim as a constituency.

56 Eric Fichtl, 'The ambiguous nature of collaboration in Colombia', in *Colombia Journal*, 29 March 2004.

57 Amnesty International, *'As if Hell Fell on Me': The Human Rights Crisis in Northwest Pakistan*, 2010, pp. 45–46.

58 Human Rights Watch, *Indonesia: The War in Aceh*, 2001, p. 23.

59 Hillel Cohen and Ron Dudai, 'Human rights dilemmas in using informers to combat terrorism', in *Terrorism and Political Violence*, Vol. 17, No. 1, 2005, pp. 229–243.

60 Aliza Marcus, *Blood and Belief: The PKK and the Kurdish Fight for Independence*, New York University Press, New York, 2007, p. 135.

61 Joseba Zulaika, *Basque Violence: Metaphor and Sacrament*, University of Nevada Press, Reno, NV, 1988, p. 85.

62 Brendan O'Leary and Andrew Silke, 'Understanding and ending persistent conflicts', in Marianne Heiberg, Brendan O'Leary, and John Tirman (eds), Terror, Insurgency, and the State: *Ending Protracted Conflicts*, University of Pennsylvania Press, Philadelphia, PA, 2007, p. 398.

63 Don Foster, Paul Haupt, and Marésa de Beer, *The Theatre of Violence: Narratives of Protagonists in the South African Conflict*, Human Sciences Research Council Press, Cape Town, 2005, pp. 60–62.

64 Stathis Kalyvas, *The Logic of Violence in Civil Wars*, Cambridge University Press, Cambridge, 2006, p. 342.

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individuals from the groups' 'own side'. One main reason is that this is an issue where an armed group could face pressure from its own constituency to account for its conduct, rather than from the state's or 'enemy' side, or from outsiders from the international community. Informers and others who are considered 'traitors' are often hate figures in their communities and members of the community would often not disapprove of abuses of informers.[65] But community members would be critical if the status of informers was applied unfairly to some individuals, and may demand a higher level of 'procedural' legitimacy when dealing with suspected informers than when dealing with other targets. As, almost by definition, the suspected traitors come from the heart of the organization and the community, if they or their relatives demand truth and accountability, such a campaign comes from within the armed group's areas of support and could be more difficult to ignore. 'Internal' critique of armed group actions toward members of the community can also be seen as more legitimate and safer than criticizing the armed group for methods of attack against the perceived enemy.[66] This could make it harder for the armed group to resist pressure to confront such abuses, in comparison to pressure coming from the 'enemy' side or from outsiders. As the status of being labelled as informer typically leads to ostracism and harassment of the individuals and often also of their families, they may be keen to use a general atmosphere of transition out of violence to attempt to clear their or their relatives' names.

A second facilitating factor is that armed groups' attacks on suspected informers tend to be more regulated than attacks on the government side, and sometimes involve a quasi-judicial process by the armed group. While armed groups usually attack government personnel or supporters based on their general affiliation (according to the group's definition of 'legitimate target'), in the case of punishing their own members or supporters armed groups will often engage in some process of determining individual 'guilt'. Thus, for example, the *Frente Farabundo Martí para la Liberación Nacional* (FMLN) in El Salvador,[67] the South African ANC in its camps in exile,[68] the Unified Communist Party of Nepal (CPN-M),[69] the National Democratic Front of the Philippines (NDFP),[70] and Maoist

65 Ron Dudai and Hillel Cohen, 'Triangle of betrayal: collaborators and transitional justice in the Israeli–Palestinian Conflict', in *Journal of Human Rights*, Vol. 6, No. 1, pp. 37–58.

66 For example, Palestinian civil society organizations have normally been reluctant to criticize publicly abuses of Palestinian armed groups against Israeli civilians (most notably suicide bombings), but have done so in relation to armed groups' killings of suspected Palestinian informers. See e.g. Palestinian Human Rights Monitoring Group, *The 'Intra'fada: The Chaos of the Weapons*, 2004; Palestinian Centre for Human Rights, '2 Palestinians killed by Palestinian armed groups in the West Bank: extra-judicial assassination of citizens for suspected treason', Field Update, 21 March 2006, available at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=3094:2-palestinians-killed-by-palestinian-armed-groups-in-the-west-bank-&catid=61:field-update-security-chaos-&Itemid=211 (last visited 20 January 2012).

67 Americas Watch, *Violations of Fair Trial Guarantees by the FMLN*, 1990.

68 Stephen Ellis, 'Mbokodo: security in ANC camps, 1961–1990', in *African Affairs*, Vol. 93, 1994, pp. 279–298.

69 Jonathan Somer, 'Jungle justice: passing sentence on the equality of belligerents in non-international armed conflict', in *International Review of the Red Cross*, Vol. 89, No. 867, 2007, pp. 681–682.

70 See Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: Mission to the Philippines, UN Doc. A/HRC/8/3/Add.2, 16 April 2008, paras. 31–33, available

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groups in India[71] all punished their own members or members of their community suspected as being informers using a relatively formalized 'court' system. This factor is important for several reasons. First, it could allow the group to admit 'procedural' mistakes, without necessarily disavowing their entire ideology and practice. Second, the process of deliberations over individual guilt of a group's member could leave some form of material evidence (by way of records of confessions, court procedure, and so on), which could be used in a truth-recovery process. These features could contribute to making abuses of alleged informers a suitable topic for an armed group to begin confronting its past conduct.

The precedent of the African National Congress inquiries

Indeed, I argue that it is not a coincidence that perhaps the most notable example thus far of an armed group confronting its past abuses was in relation to attacks on suspected informers. I refer to public inquiries established by the South African ANC in the early 1990s to examine allegations of abuses against suspected informers in its ranks. In Hayner's oft-cited survey of truth commissions, these inquiries are noted as the only example of a truth commission established by a non-state armed group.[72] It is important to note that these inquiries took place when the ANC was still an opposition group, and was not yet elected to power.

Although rumours and allegations of abuses against suspected informers in the ANC camps in exile had been circulating for a long time, it was only after the ban on the ANC was lifted in 1990 that the accusations were made public. Pressure came from individual ANC members who were detained and tortured by the ANC, and from the relatives of ANC members who did not return from exile and whose fate remained unknown. Some of the ANC members formed a Returned Exiles Committee to take the ANC to task. In 1992 Nelson Mandela established a 'Commission for Enquiry into Complaints by Former African National Congress Prisoners and Detainees', known as the Skweyiya Commission, and a follow-up commission, the Motsuenyane Commission, was established the following year. The Motsuenyane Commission was directed by three commissioners, two of them from outside South Africa; it held public hearings and its proceedings were close to formal court hearings. Both commissions found evidence for abuses by ANC cadres against suspected informers in its ranks. Nelson Mandela accepted collective responsibility on the part of the leadership of the ANC, and issued an apology.[73] These steps can be seen as akin to symbolic reparations. The ANC experience in confronting its past

at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/130/01/PDF/G0813001.pdf?OpenElement (last visited 20 January 2012).

71 Human Rights Watch, *'Being Neutral is Our Biggest Crime': Government, Vigilante, and Naxalite Abuses in India's Chhattisgarh State*, 2008, p. 11.

72 Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, Routledge, New York, 2002, p. 60.

73 See Kenneth Christie, *The South African Truth Commission*, Palgrave, New York, 2000, pp. 79–80; Priscilla Hayner, 'Fifteen truth commissions 1974 to 1994: a comparative study', in *Human Rights Quarterly*, Vol. 16, 1994, pp. 632–633.

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abuses was certainly not fully successful.[74] However, it does serve as an important precedent, demonstrating that in the right conditions an armed group is capable of engaging in such endeavours. The ANC inquiries brought at least some measure of redress to victims, and exposed the ANC to public embarrassment and shaming.

Several factors made this undertaking by the ANC feasible. First, the pressure to account, emanating from the heart of the movement, made it difficult for the ANC to avoid the topic. The abuses against alleged informers in the ANC camps were not necessarily the most severe or widespread abuses that the ANC had been involved in, but – as was explained above – the fact that the targets were from the very centre of the organization and the community meant that the ANC was more likely to engage with them. Second, the organizational nature of the ANC was an important factor. The ANC's internal cohesion and disciplined organizational culture,[75] and the authority and respect that the leadership (especially Mandela) enjoyed among the organization's members, meant that the leadership could successfully hold these inquiries. Its capacity to do so was also helped by the nature of the abuses, which involved court-martials and hearings, and which left evidentiary tracks that assisted the work of the commissions.

Over time, however, the prominence of the subsequent South African Truth and Reconciliation Commission may have ended up almost completely overshadowing the ANC's earlier inquiries, which tend to be omitted from general narratives of the development of transitional justice. Rather than becoming a model for innovative mechanisms to hold armed groups to account and provide some measure of redress to their victims, the ANC inquiries have by and large been ignored or even actively excluded by scholars of truth commissions and symbolic reparations. In an important study of truth commissions, Freeman has criticized the notion that the ANC inquiries should be seen as a truth commission. Rather than gauging the potential of such undertakings to contribute to symbolic reparations for victims, his only reference to the ANC effort was to point out that, since it was not set up and authorized by a state, it cannot be considered as a truth commission.[76] The recent second edition of Hayner's survey of truth commission has omitted the earlier edition's reference to the ANC commissions.[77] Nevertheless, the ANC's exercise remains a powerful demonstration of the potential of non-state armed groups voluntarily to adopt collective measures of confronting their own past abuses.

74 For a critical view on these commissions, arguing that they did not result in concrete alleviation of the victims' suffering, see Todd Cleveland, '"We still want the truth": the ANC's Angolan detention camps and post-apartheid memory', in *Comparative Studies of South Asia, Africa and the Middle East*, Vol. 25, No. 1, 2005, pp. 63–78.

75 Stephen Ellis and Tsepo Sechaba, *Comrades against Apartheid: The ANC and the South African Communist Party in Exile*, James Currey, London, 1992.

76 Mark Freeman, *Truth Commissions and Procedural Fairness*, Cambridge University Press, Cambridge, 2006, p. 18.

77 Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edition, Routledge, New York, 2010.

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Symbolic reparations from armed groups in practice: the IRA case

The remainder of this article takes the discussion forward by focusing on one concrete example of an armed group providing at least some measures of truth-recovery and symbolic reparation in the aftermath of a conflict: the IRA in Northern Ireland after the 1998 Belfast Agreement. As will be shown below, over this period the IRA has engaged in a series of acts that closely resemble actions that states are required to take as part of their obligations to provide redress to victims of abuses. This has been especially marked in relation to IRA abuses against suspected informers: the IRA leadership has disclosed truth about disappearances of alleged informers, admitted false accusations against suspected informers, and offered acknowledgment and apologies. As will be detailed below, these acts clearly correspond to measures of symbolic reparations as provided in the Basic Principles.

It is a curious fact that these measures by the IRA have generally not yet been explored in the transitional justice literature and the literature on engaging with armed groups. This is a glaring omission, especially given that the conflict in Northern Ireland – and the IRA's role in it – has been one of the most extensively studied cases of political violence in modern times. This omission may be symptomatic of a tendency in the literature to focus on legal and conceptual debates, often at the expense of attention to developments on the ground.

It is crucial to note the importance of the group's organizational structure for the feasibility of pursuing such measures of dealing with the past. The IRA, though it never maintained long-term control over territory (as armed groups such as FARC or LTTE did), has been a relatively organized, centralized, and disciplined armed group.[78] As with the example of the ANC, such organizational features are vital for the feasibility of efforts to uncover details about past actions and offer authoritative acknowledgment and apology.

In the remainder of this section, I will begin by identifying and analysing two areas in which the IRA addressed aspects of its past treatment of alleged informers.[79] The first of these is in relation to 'disappearances' of alleged informers, where the organization passed on details of the location of their bodies and apologized for the suffering caused to their families owing to the withholding of information. The second is in relation to the killing of wrongly accused informers, where the organization 'exonerated' individuals formerly labelled as informers. Subsequently, I will briefly show that the IRA also engaged in symbolic reparations beyond the issue of informers. Finally, I will explore the implication of the IRA's reliance on its own code of conduct – rather than international norms – in addressing its past actions.

78 See Kieran McEvoy, *Paramilitary Imprisonment in Northern Ireland*, Clarendon, Oxford, 2001, p. 11.

79 On the issue of IRA informers and the treatment of real and alleged informers more generally, see Ron Dudai, 'Informers and the transition in Northern Ireland', in *British Journal of Criminology*, Vol. 52, No. 1, 2012, pp. 32–54.

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The IRA and 'the disappeared': verification of the facts and public disclosure of the truth

The issue of disappearances has been central to the development of the notion of symbolic reparations and more specifically the concept of a right to truth.[80] Although never reaching anything remotely resembling the scale of the abuse in Latin America, the Northern Ireland conflict also featured the phenomenon of disappearances: in the 1970s and 1980s, the IRA abducted, killed, and secretly buried several alleged informers, as well as a few of its members suspected of stealing weapons or of other violations of discipline.[81] They have come to be known as 'the disappeared' in local parlance. The suffering of the families of the disappeared reached public prominence only after the peace process had begun: 'most of the families suffered in silence over the years, speaking out only after the IRA's 1994 ceasefire'.[82] This is similar to the way in which accusations regarding the ANC's treatment of alleged informers in exile have surfaced and reached public prominence only after the South African peace process has begun. The most compelling pressure levelled at the IRA came from the families themselves.[83] At least some of the families came from within republican communities, as most of the disappeared were IRA members and many of their family members and friends remain aligned with the republican movement. This type of pressure, from within its own constituency, was difficult for the IRA to defy, or to portray as mere state-led propaganda. It perhaps also legitimized and eased the process from the IRA's perspective, since it could maintain that it is bowing to internal pressure rather than to demands from the British state.

In 1998 the IRA announced that it had set up a special investigating unit, headed by a person the IRA defined as one of its most senior officers, in order to investigate the disappearances and attempt to locate the whereabouts of the bodies of those killed and secretly buried.[84] Subsequently, the IRA formally admitted for the first time that it was responsible for the killing and disappearances of several individuals. In addition to the acknowledgment the IRA also issued an apology. It called the disappearances an 'injustice for which we accept full responsibility' and added 'we are sorry that this has taken so long to resolve and for prolonged anguish caused to the families'.[85] Shortly after, information received from the IRA led to the discovery of the bodies of several of the

80 United Nations Human Rights Council, above note 22, para. 8.

81 See e.g. Ed Moloney, *Voices from The Grave: Two Men's War in Ireland*, Public Affairs, New York, 2010, pp. 111–132.

82 David McKittrick, 'The bloodstained soil of Ireland yields first of the "disappeared"', in *The Independent*, 29 May 1999.

83 See e.g. Kim Sengupta, 'Families appeal to IRA over graves', in *The Independent*, 8 September 1998.

84 See 'Help us find bodies – IRA', in *BBC News*, 8 December 1998, available at: http://news.bbc.co.uk/1/hi/events/northern_ireland/latest_news/230227.stm (last visited 20 January 2012); 'IRA continues search for missing bodies', in *An Phoblacht*, 10 December 1998, available at: http://www.anphoblacht.com/news/detail/31650 (last visited 20 January 2012).

85 'IRA investigation locates grave sites', in *An Phoblacht*, 1 April 1999, available at: http://www.anphoblacht.com/news/detail/32141 (last visited 20 January 2012). The IRA later admitted responsibility for the disappearances of two other people.

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disappeared,[86] and others have been discovered in the succeeding years.[87] In 2003, following the discovery of one body, the IRA issued a statement reiterating its apology:

> . . . we would like to take this opportunity to state our position in relation to those killed and buried by the IRA. We are sorry that the suffering of those families has continued for so long. We wish to apologise for the grief caused.[88]

Republican sources reported continuing efforts to locate the whereabouts of the remaining missing bodies;[89] at the time of writing, the latest recovery of a body took place in November 2010.[90]

The IRA's engagement with the issue of the disappeared demonstrates the capacity of armed groups to provide at least some measures of symbolic reparations. Throughout, this has been a collective measure, taken by, and on behalf of, the organization as such. Many of the IRA's actions closely resemble the type of symbolic reparations that would have been required from states under similar circumstances. Some of the relevant specific obligations as formulated in the Basic Principles require states responsible for human rights violations to provide: '[v]erification of the facts and full and public disclosure of the truth . . .';[91] '[t]he search for the whereabouts of the disappeared . . .';[92] and '[p]ublic apology, including acknowledgement of the facts and acceptance of responsibility . . .'.[93] The actions of the IRA in relation to the disappeared correspond to these obligations: the IRA has acknowledged the commission of wrongful acts; taken responsibility for them; recognized the consequences of these acts for victims; expressed regret; offered a formal apology; and provided factual disclosure of the truth, including the location of missing bodies. It has thus acted according to some of the international norms

86 D. McKittrick, above note 82.

87 The actual recovery was carried out by a special body, the Independent Commission for the Location of Victims Remains (ICLVR), which was established by the British and Irish governments to co-ordinate the search for the disappeared. According to the legislation setting up the ICLVR, information passed in relation to locations of disappeared will be inadmissible in courts and forensic examination of the bodies will be limited to identifying the individuals and will not be used in police investigation. This was set up in two parallel legalizations, in the UK and in the Republic of Ireland: the Northern Ireland (Location of Victims' Remains Act) 1999 (in the UK) and the Criminal Justice (Location of Victims' Remains Act) 1999 (in the Irish Republic).

88 See Sinn Féin statement, available at: http://www.sinnfein.ie/contents/15239 (last visited 8 August 2010).

89 'Republican efforts continue to retrieve missing bodies', in *An Phoblacht*, 13 July 2006, available at: http://www.anphoblacht.com/news/detail/15069 (last visited 20 January 2012); 'IRA "was wrong" over bodies issue', in *BBC News*, 11 July 2006, available at: http://news.bbc.co.uk/1/hi/northern_ireland/5170594.stm (last visited 20 January 2012).

90 See updated details on the ICLVR website, available at: http://www.iclvr.ie/en/ICLVR/Pages/TheDisappeared (last visited 1 September 2010). Many of the bodies were secretly buried in beaches, and the shifting and difficult terrain meant that the location of bodies has been difficult even when information was passed from the IRA. A former senior police officer who directs the ICLVR's investigative forensic work has confirmed that the information received has been mostly accurate and of high quality: see 'Interview with Geoff Knupfer', in BBC News, available at: http://news.bbc.co.uk/1/hi/northern_ireland/8020817.stm (last visited 1 September 2010).

91 Basic Principles, Art. 22(*b*).

92 *Ibid.*, Art. 22(*c*).

93 *Ibid.*, Art. 22(*e*).

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that usually apply to states, and showed that armed groups could and should, at least in some circumstances, be held to account using broadly the same standards as states.

To be sure, the IRA did not comply with all the relevant obligations. It did not offer monetary compensation to victims, and it did not identify individual perpetrators for prosecutions – indeed, as explained above, the passing of truth in relation to location of the disappeared was premised on *de facto* immunity from prosecutions. However, as shown above, the IRA did provide symbolic reparations, including truth. In that sense it presents one concrete example of an armed group providing state-like measures of symbolic reparations.

It is important to note also that this process, in which the IRA has been confronting some of its past abuses, seems to have been an important component in the process of conflict-transformation and confidence-building in the immediate aftermath of the 1998 Belfast Agreement. It has provided an implicit confirmation of the IRA's shift from political violence to peaceful engagement. As McEvoy and Conway wrote: 'The spectacle of diggers removing hundreds of tons of earth from remote parts of Ireland, surrounded by media and anxious families, was a powerful symbol of the attempts at a transition from a violent past.'[94]

The IRA and wrongly accused informers: restoring the reputation of victims?

One of the specific forms of symbolic reparations included in the Basic Principles is 'an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim'.[95] This is an emblematic example of symbolic reparations: a non-monetary act, designed to respond to the needs of victims in particular circumstances. Several reparations programmes established by states included specific measures 'to rehabilitate not just the health of victims but what may be called their "civic status". These include measures to restore the good name of victims by making public declarations of their innocence, expunging criminal records . . .'.[96] This form of symbolic reparation applies, for example, to individuals who were wrongly accused or convicted by past regimes, where the material and symbolic status of being convicted carries a difficult burden for them or their families.[97] One of the aims of such measures is to lead to

94 Kieran McEvoy and Heather Conway, 'The dead, the law and the politics of the past', in *Journal of Law and Society*, Vol. 31, No. 4, 2004, p. 560.

95 Basic Principles, Art. 22(*d*).

96 OHCHR, above note 24, p. 25.

97 An example of this type of reparation is the case of *Juan Manuel Contreras San Martín et al.* v. *Chile*, in the Inter-American Court of Human Rights, where, as a form of reparation for individuals wrongly convicted of crimes, the government has agreed in a friendly settlement: '[t]o publicly provide reparation to the victims before their community by means by an act of the Regional Government duly disseminated by the mass media, designed to restore their reputation and honor that had been certainly damaged by the judicial decisions that once harmed them'. Inter-American Court of Human Rights, *Juan Manuel Contreras San Martín et al.* v. *Chile*, Case 11.715, Report No. 32/02, 12 March 2002, para. 14.

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reintegration of victims (including families of those who were killed or executed) in society.[98]

At first glance this form of symbolic reparation may seem completely inapplicable to non-state armed groups. The notion that armed groups can be involved in rehabilitation, can bestow a good name on anyone or restore their civic status, may seem out of place. And yet, the IRA has been engaging in a process that can be seen to provide exactly such measure of reparation. The IRA has conducted several investigations aimed at responding to claims that individuals that it killed in the past as alleged informers were not in fact informers and were wrongly accused.[99] In these cases the IRA responded to pressure from relatives and friends of those killed, who sought precisely this form of symbolic reparation: restoring the good names and dignity of their loved ones.

As in many societies that experience political conflict, in Northern Ireland informers were and remain hate figures.[100] The term 'informer' is the deepest insult in republican vocabulary.[101] Being considered as an informer carries a very heavy stigma and social ostracism, which also affects their family members. For example, a relative of an IRA member killed by the organization as an alleged informer said that: 'It's one of the most hated things in the world that your father was an informer or your grandfather was an informer'.[102] The problem is particularly intense because republican communities tend to be small and close-knit, and is especially painful for families who maintain links to the republican movement.[103] With this background, it is easy to appreciate that an opportunity to clear the names of relatives accused of informing, restoring their good name and their 'community status' if not 'civic status', would in fact be of paramount importance to victims. For example, a woman whose brother was killed as an informer by the IRA has recently campaigned to get the IRA to 'tell me the truth, to clear my brother's name and to give us an apology', in order to help the family.[104] As an ex-IRA member explained to the author in an interview: '[t]here's no greater insult that you can call a person than to call him an informer. So families do want the names of their loved-ones cleared and have them exonerated, if possible.'[105]

98 F. Mégret, above note 23.

99 There is some overlap with the issue of the disappeared, but most individuals killed by the IRA as alleged informers were not disappeared. On the killings of informers by the IRA, see e.g. Ed Moloney, *A Secret History of the IRA*, 2nd edition, Penguin, London, 2007.

100 Kevin Toolis, *Rebel Hearts: Journeys within the IRA's Soul*, Picador, London, 1995, p. 194; R. Dudai, above note 79.

101 Susan McKay, *Bear in Mind These Dead*, Faber and Faber, London, 2009, p. 235.

102 Ardoyne Commemoration Project, *Ardoyne*: *The Untold Truth*, Beyond the Pale Publications, Belfast, 2002, p. 367.

103 In an interview with the author, an ex-combatant and community activist said that: 'When somebody was outed as an informer, the families felt themselves distanced from the republican community, because it was the republican community that killed their loved ones – but they were supposed to be part of it. They partly withdrew, because of the shame. The civilian population, especially young adults, didn't help because they inflicted a lot of cruelty on them'. Interview in Belfast, April 2009.

104 S. McKay, above note 101, p. 235.

105 Interview with ex-combatant, Belfast, August 2010.

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A process of re-examining the veracity of accusation of informing against some of those killed as informers has begun after the IRA initiated its inquiry in relation to the locations of the disappeared. In this case, the pressure for the process came almost exclusively from families and individuals from within the republican movement. As with the ANC inquiries and the IRA inquiries in relation to the disappeared, it could only become possible once the transition out of conflict had begun. In particular, it involved pressure not just from families but even from former combatants who felt uneasy about their comrades who were killed and were willing to push for investigations.[106]

Part of the momentum for this process came following reliable claims that a senior member of the IRA's internal security unit, a unit whose task was to unearth informers in the organization's ranks, was himself an informer.[107] This revelation has led many to suspect the credibility of accusations made by this unit over the years. As a result, the IRA 'has been coming under intense pressure in Catholic areas from families of IRA men killed for informing'.[108] However, it is important to note that the process of these IRA inquiries had begun before these revelations, and while they are certainly one of the key factors facilitating it, they did not provide the exclusive factor behind the IRA inquiries.

As a result of this process of investigations, which were conducted by a panel relying on interviewing members and uncovering any remaining material evidence, the IRA has made several public declarations 'exonerating' individuals who were long accused of being informers, expunging their guilt in the eyes of the community. Such statements are usually issued in republican publications[109] and later reported by the wider media. For example, in one case, the IRA stated that its investigation found no evidence to support the claims made at the time that a member 'was responsible for passing information concerning the location of arms dumps and the movement of Volunteers'.[110] The IRA also apologized to the family of another member wrongly accused.[111] In another example, the IRA issued an apology following an 'in-depth inquiry' into the circumstances surrounding the killing of a member, stating among other points that while '[a]t the time allegations were made that he was an informer', those allegations have not been accurate.[112]

106 Interview with ex-combatant, Belfast, August 2010. In the interview, he explained further the dynamics behind such pressure from republicans: 'There's a tendency in a conflict situation that your first priority is to protect the army, and everything else is secondary. That happened and the leadership wasn't questioned. Like any other army the IRA wasn't a democratic organization. It's only when you're coming out of conflict that the possibility opens up to look at previous actions.'

107 Rosie Cowan, 'He did the IRA's dirty work for 25 years – and was paid £80,000 a year by the government', in *The Guardian*, 12 May 2003.

108 Jim Cusack, 'Terror chiefs say "Sorry" to families of slain informers', in *The Independent*, 5 October 2003.

109 Normally by way of a statement from the IRA published in the republican weekly *An Phoblacht*, usually signed by the codename P. O'Neill, the traditional code attesting to the authenticity of statements from the IRA.

110 'IRA Statement', in *An Phoblacht*, 25 September 2003, available at: http://www.anphoblacht.com/news/detail/1407 (last visited 20 January 2012).

111 J. Cusack, above note 108.

112 'IRA apology', in *An Phoblacht*, 5 April 2007, available at: http://www.anphoblacht.com/news/detail/18563 (last visited 20 January 2012).

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In 2009 the IRA issued a statement acknowledging that a person killed as an alleged informer was not in fact an informer and that '[h]opefully the stigma which surrounded Bernard's death will now be removed and this will help the Teggart family who have suffered grievously as the result of the conflict'.[113] Other similar cases, where relatives and friends of people killed as informers demand inquiries and apologies from the IRA leadership, continue to emerge.[114]

The process of making public declarations acknowledging that past accusations were wrong, and the associated removal of painful stigma, can fairly easily be seen as a form of symbolic reparation akin to what human rights advocates demand from states in analogous circumstances. It corresponds to the modality of reparation, mentioned above, of 'an official declaration . . . restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim'.[115] The important point to make here is that those seeking the 'restoration of dignity' were looking for the armed group – not the state – to make these declarations. Their demand for redress was targeted at the armed group. While the legal and conceptual implications of treating armed groups such as the IRA as able to provide symbolic reparations may be uncharted territory currently, the potential to contribute to improvement in victims' lives should perhaps be the decisive factor.[116]

Indeed, at least according to several public statements by families, it seems that the IRA inquiries led to positive results in terms of the families' wellbeing, and even rehabilitation. Although it is impossible to rule out the possibility that these statements were compelled by the circumstances in which these families live, the sentiments, and especially the sense of relief, appear genuine. For example, a brother of one IRA member who was exonerated from being an informer confirmed that, as far as the family are concerned, his good name has been restored, and added: 'We are on a journey seeking dignified closure. We believe the army [IRA] investigation has played a role in helping us reach the end of that long journey.'[117] The family of another exonerated member said that they 'welcome this latest [IRA] statement clearing our son and brother . . . of being an informer' and 'express our sincere gratitude to the Republican Movement and the present day leadership'.[118] Such responses from victims are perhaps the most powerful impetus to explore further mechanisms through which armed groups could provide this type of redress.

113 '15-year-old Bernard Teggart was not an informer', in *An Phoblacht*, 6 August 2009, available at: http://www.anphoblacht.com/news/detail/38660 (last visited 20 January 2012).

114 See e.g. 'Killed for being an informer, but it was just a lie', in *Belfast Telegraph*, 25 September 2010.

115 Basic Principles, Art. 22(d).

116 In addition, another consideration could be that campaigning for armed groups to provide symbolic reparations could also be a method of publicly 'shaming' groups that commit abuses.

117 'Volunteer cleared in IRA probe: Lenadoon man was not paid informer, family is told after in-depth inquiry', in *Irelandclick.com*, 25 September 2003, available at: http://www.nuzhound.com/articles/Irelandclick/arts2003/sep25_IRA_volunteer_cleared.php (last visited 8 August 2010).

118 'Statement from the Braniff family in Belfast', in *An Phoblacht*, 25 September 2003, available at: http://www.anphoblacht.com/news/detail/1407 (last visited 20 January 2012). See also e.g. Suzanne McGonagle, 'Murdered teen's family welcome admission he was not an informer', in *Irish News*, 7 August 2009.

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Beyond informers: symbolic reparations in relation to other victims

This article is focused on the issue of attacks on alleged informers as a topic with a relatively high potential to generate symbolic reparations from armed groups. However, it is important to note this is not the only issue that could have such a potential. Indeed, the IRA's activities in relation to its past actions have also moved beyond this issue. In 2002 the organization issued a broad apology for 'all of the deaths and injuries of non-combatants' caused by the organization.[119] Later, in several cases the organization took responsibility for specific accidental killings it had hitherto denied involvement in, provided details in relation to its actions, and offered acknowledgment and apologies.

For example, in 2005, following a request from a family to examine the circumstances surrounding the killing three decades earlier of a 14-year-old girl, the IRA took responsibility for the killing – a killing that the organization had hitherto denied its involvement in – and 'apologized unreservedly' to her family.[120] In 2006 the IRA issued a statement about an incident in which one person was killed, following a request from a family 'to investigate the circumstances surrounding' the death of their loved one. At the time of the killing the IRA did not acknowledge involvement in the incident. In its statement, the IRA revealed that the man was killed when an explosive device, intended for a British army patrol, was detonated prematurely, and confirmed that he was not an IRA member and was not involved in the operation. The statement added that 'the IRA leadership offers its sincere apologies to the . . . family for the death of Eugene and for the heartache and trauma that our actions have caused'.[121] In 2007 the IRA admitted that a 17-month-old girl was killed in Belfast in the 1970s after she was struck by a ricochet when the IRA fired shots at a British army patrol. In this case also, the IRA initially denied involvement, and in its statement the IRA leadership offered apology to the family 'for the pain and heartache that they have suffered as a result of our action'.[122] These are just few examples of a broader process, and they show that the actions in relation to alleged informers can also be transposed to other cases. They demonstrate again that there are cases in which it will be feasible for an armed group to provide at least some measure of symbolic reparation.

119 IRA statement from 16 July 2002. The full text is available at: http://cain.ulst.ac.uk/events/peace/docs/ira160702.htm (last visited 8 August 2010).

120 The girl was killed by a stray bullet from an IRA unit shooting at a British army patrol. The IRA at the time claimed that she was killed by British Army bullets and even later claimed that it had killed a soldier in retaliation. See Eamonn MacDermott, 'IRA apologise for death of Derry schoolgirl', in *Derry Journal*, 24 June 2005. The full text of the IRA 2005 statement is available at: http://cain.ulst.ac.uk/othelem/organ/ira/ira230605.htm (last visited 8 August 2011).

121 'IRA apology', in *An Phoblacht*, 13 April 2006, available at: http://www.anphoblacht.com/news/detail/13838 (last visited 20 January 2012).

122 'IRA offers apology', in *An Phoblacht*, 6 September 2007, available at: http://www.anphoblacht.com/news/detail/20561 (last visited 20 January 2012).

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Symbolic reparations and the reliance on armed groups' 'codes of conduct'

The literature on engagement with armed groups identifies the adoption of 'codes of conducts' by armed groups as one of the effective ways of encouraging compliance with international legal norms by these groups.[123] While the literature on engagement gives a prominent place to the adoption of codes of conduct during a conflict, only scant attention has been given to their possible use as normative framework during a process of dealing with the past.

In this context, it is interesting to note that the ANC's commissions of inquiry, referred to above, used its code of conduct as the normative point of reference and characterized its relevant conduct as violations of the code (the ANC also made references to human rights norms, though these references generally remained abstract and did not refer to specific treaties or instruments).[124] In its inquiries and statements the IRA has also often referred to its own code of conduct and procedures – the 'Green Book' – as the normative point of reference.[125] For example, in one case the IRA apologized because a killing was not authorized by the organization's leadership, in violation of the IRA's internal regulations.[126] In another case, the IRA stated that when one of its members was court-martialled and sentenced to death no appeal was lodged – in violation of its code of conduct, and thus 'the IRA accepts that proper procedure was not adhered to in relation to the process of appeal'.[127] A senior ex-combatant who discussed these issues with the author said that the inquiries examine, among other things, 'what the IRA should have done in accordance with its own policies'.[128]

The reference to its own code probably allowed the IRA leadership to offer apologies more readily, as it is premised on treating the organization itself as a legitimate entity, and retaining the authority and status of its own procedures. While violation of state law is part of an armed group's *raison d'être*, and international norms – norms created by states – are also often dismissed by armed groups, it is much more difficult for an organization to justify violations of its own rules.

But a reliance on internal procedures rather than human rights norms naturally also has negative effects. In all the cases described here, the IRA has apologized only for what it has essentially deemed to be 'excesses': for the secret burial of individuals (but not for their killing), and for the accidental killings of passers-by or people wrongly accused as informers (but not for the organization's

123 See e.g. A.-M. La Rosa and C. Wuerzner, above note 4, p. 333.

124 See e.g. African National Congress National Executive Committee's Response to the Motsuenyane Commission's Report, 29 August 1993.

125 Unlike some recent codes of conduct that include explicit references to IHL or human rights, the IRA's code, often referred to as the 'Green Book', has no such references. It does contain a rudimentary procedural system of court martial for investigations and punishments of members. Though theoretically confidential, the Green Book was, for example, published in an annex in Martin Dillon, *The Dirty War*, Hutchinson, London, 1990.

126 'IRA apology', 5 April 2007, above note 112.

127 'IRA statement', 25 September 2003, above note 110.

128 Interview with ex-combatant, Belfast, 31 August 2010.

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targeting policy as such). By referring only to 'mistaken' killings of individuals who turned out to be wrongly accused of being informers, the IRA has at least implicitly reiterated the legitimacy of its 'accurate' killings of real informers. However, while the organization's authority to court-martial and execute informers was in line with its internal procedures, it has been argued that it was unlawful by international legal standards.[129] Finally, a related point is that, in the context of broader reconciliation and conflict-transformation processes, the notion that the families of those wrongly accused as being informers can now – with their loved ones 'cleared' by the IRA investigations – reconcile with their communities, leaves the families of those not cleared in a precarious position, their social ostracism at least implicitly reinforced.

Conclusions: armed groups as post-conflict actors

This article has demonstrated that, at least in some contexts, victims of abuses direct their demands for symbolic reparations and truth at armed groups, not states; and that, in some circumstances, these non-state groups have the capacity and willingness to provide some measures of remedy to those victims. It is reasonable to assume that such cases can go beyond Northern Ireland and South Africa, and the ad hoc experiences of the ANC and the IRA in setting inquiries should become more common if the needs of victims are to be met. To some degree these are uncharted waters. But the logic is clear: if armed groups can commit state-like abuses, based on their state-like characteristics, then they should be pressed to provide state-like reparations.[130] The approach suggested in this article involves 'taking armed groups seriously',[131] not just as perpetrators of abuses and passive objects of sanctions but also as active duty-holders and actors who can provide measures of redress to victims of their past abuses.

An important implication of the analysis presented above is the need to appreciate that some armed groups can remain a significant factor in a transitional or post-conflict phase, even when direct violence subsides. Indeed, this observation is a premise of the wider call to explore the question of truth and symbolic reparations from armed groups, since it is almost inevitable that the potential to achieve truth and symbolic reparations would be significantly higher during transitions out of violence than at the height of conflict.

It must be emphasized again that this observation will not be applicable to all armed groups. In many cases it will remain unfeasible to discuss any form of reparation from armed groups. The LTTE in Sri Lanka, for instance, is a case in point: in the aftermath of the conflict the group was simply eliminated as an entity, and no military or political structures with direct or indirect affiliation with

129 See contemporary condemnation of informer killings by the IRA in Human Rights Watch, *Northern Ireland: Human Rights Abuses by all Sides*, 1993, and Amnesty International, *Political Killings in Northern Ireland*, 1994.

130 A similar and perhaps even stronger case can be made in relation to *de facto* states or 'state-like entities', such as South Ossetia or Somaliland.

131 M. Sassòli, above note 3.

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it have remained. In such circumstances it makes little sense to demand reparations from the LTTE. However, this scenario of the complete military and political defeat of an armed group is not universal, and more complex scenarios, such as in Northern Ireland, in which armed groups neither take power in a country nor are completely eliminated, also exist. While it is beyond the remit of this article to recommend specific potential cases for advocacy for reparation from armed groups, it is clear that the structural circumstances that made it feasible in relation to the ANC and the IRA are not in any way unique to Northern Ireland and South Africa.

In this context, it is important to note that there appears to be a perception in the literature that the influence of armed groups simply disappears at the end of the conflict, as they either unequivocally take over power in a state or are completely eliminated.[132] However, the IRA's case is one demonstration of the inadequacy of such assumptions. It shows that the political and social authority of an armed group may remain paramount in the communities that supported it even after the end of direct violence. Though the IRA ceased its military operations while failing to achieve its stated goal of Irish unity, it did not disappear and still carries authority within republican communities in Northern Ireland. More than a decade after it announced its ceasefire, actions and statements by the IRA still have the potential to affect the lives of many individuals and families. In the aftermath of violence, the IRA was neither totally eliminated nor did it capture full power in the country, and, although its military structures seem to have become dormant, it has remained an influential non-state actor. This status meant that, although large-scale violence by the IRA has ended, victims seeking redress and those advocating on their behalf still had an address to appeal to.

These conditions can apply elsewhere as well. Many other armed groups and their political affiliates may retain significant influence on segments of the society even after a conflict ends.[133] As Beck notes, contrary to some media and other accounts, armed groups do not come out of the blue as intruders, but are embedded in pre-existing social structures and ties within communities.[134] This also means that armed groups do not simply disappear with the end of violence. As Beck writes in relation to UNITA's members and supporters in post-conflict Angola: 'Their loyalty outlived the armed group itself.'[135] This observation is also relevant to Northern Ireland and other places. An appreciation of the fact that many armed groups are not ephemeral phenomena, and that they exert influence in their communities through social control and not just direct violence, would be an important step towards developing adequate transitional justice tools to address abuses by armed groups.

132 For example, Zegveld argued that 'opposition groups which fail to achieve their goals typically disintegrate and disappear after the conflict': L. Zegveld, above note 4, p. 156; and see also J. Kleffner, above note 32, p. 265.

133 This is also a result of the fact that many transitions out of internal, identity-based conflicts can be long, complex, and non-linear. See Colm Campbell and Fionnuala Ní Aoláin, 'The paradox of transition in conflicted democracies', in *Human Rights Quarterly*, Vol. 27, 2005, pp. 172–213.

134 Teresa Beck, 'Staging society: sources of loyalty in the Angolan UNITA', in *Contemporary Security Policy*, Vol. 30, 2009, pp. 343–355.

135 *Ibid.*, p. 344.

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