Legal Commentary on the Draft Guiding Principles for Reconstruction in Conflict-Affected Countries and Territories

Preamble

The Draft Guiding Principles articulate a framework for reconstruction in conflict-affected countries and territories grounded in existing obligations under general international law including international humanitarian law (IHL) and international human rights law (IHRL). The Principles do not purport to create new legal obligations but seek to consolidate and operationalize norms that have been repeatedly affirmed in United Nations resolutions, international jurisprudence, and State practice.

Reconstruction following armed conflict, prolonged occupation, or large-scale destruction increasingly engages questions of reparation, accountability, participation, and sustainability. United Nations organs and mechanisms have emphasized that post-conflict rebuilding must address both immediate humanitarian needs and the underlying structural conditions that gave rise to conflict and mass harm.[1]

I. Foundational Requirements

A. Cessation of Hostilities and Termination of Occupation (Principle 1)

The cessation of hostilities constitutes a necessary enabling condition for large-scale reconstruction. Under IHL, parties to a conflict are obliged to respect and protect civilians at all times; however, sustained reconstruction presupposes conditions of relative security and stability.[2]

In situations of belligerent occupation, international law establishes that occupation is a temporary factual situation that does not confer sovereignty upon the occupying power.[3] The occupying power is required to administer the territory for the benefit of the protected population and may not obstruct reconstruction processes that are necessary for the realization of fundamental rights.[4] International law further affirms that occupation cannot lawfully override the right of peoples to self-determination or development and that prolonged occupation is fundamentally contrary to international law [5].

B. Humanitarian Assistance at Scale (Principle 2)

The obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief is firmly established under treaty and customary IHL.[6] Denial or obstruction of such assistance may constitute a serious violation of international law and, in certain circumstances, an international crime.[7]

Humanitarian access obligations apply to States and, where relevant, to non-State actors exercising effective control over territory or populations.[8]

C. Damage Assessment and Documentation (Principle 3)

The establishment of independent mechanisms for assessing damage, loss, and harm reflects the international obligation to ensure effective remedies and reparation.[9] Registers of damages have been employed in multiple post-conflict contexts to document claims and support restitution and compensation processes.[10]

Access for investigators and assessment missions is consistent with States' duties to cooperate with international courts, commissions of inquiry, and fact-finding bodies established under UN mandates.[11]

II. Normative Framework

A. Reconstruction as a Rights-Based Process (Principle 4)

While international law does not yet recognize an explicit standalone "right to reconstruction," the concept derives from the cumulative application of established rights, including under general international law of state responsibility, IHL norms, and IHRL norms including the rights to housing, health, education, work, political participation, self-determination, and development.[12]

United Nations treaty bodies and special procedures have consistently emphasized that post-conflict recovery entails positive obligations to restore the conditions necessary for the effective enjoyment of human rights.[13]

B. Reparation and Responsibility (Principle 5)

Customary international law requires that a State responsible for an internationally wrongful act make full reparation for the injury caused, encompassing restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[14]

International human rights jurisprudence confirms that reparation must address not only material damage but also non-material harm, including psychological, cultural, and collective dimensions of injury.[15]

C. Self-Determination and Development (Principles 6–7)

The right of peoples to self-determination, recognized as a fundamental principle of international law, applies throughout and after armed conflict.[16] Reconstruction processes that disregard the will and participation of the affected population risk undermining this right.

The right to development further situates reconstruction within a framework aimed at the realization of all human rights and fundamental freedoms, while affirming permanent sovereignty over natural resources.[17]

D. Participation and Inclusion (Principle 8)

Meaningful participation constitutes a cross-cutting principle of international human rights law and is integral to the legitimacy and sustainability of reconstruction processes.[18] United Nations instruments emphasize the inclusion of women, marginalized groups, displaced persons, and civil society in decision-making affecting their rights.[19]

III. Substantive Rights in Reconstruction

A. Self-Determination, Reparation, and Implementation (Principles 9–12)

Community-level participation in decisions concerning what is rebuilt, how, and by whom reflects the operational dimension of self-determination.[20] Transparent and accountable implementation systems, including access to administrative and judicial review, are required to ensure compliance with the right to an effective remedy and procedural fairness.[21]

B. Return, Information, and Participation (Principles 13–16)

International law recognizes the right of refugees and internally displaced persons to voluntary, safe, and dignified return, or to resettlement where return is not possible.[22] These rights are closely linked to access to information, adequate notice, and meaningful participation in reconstruction and resettlement decisions.[23]

C. Environment, Land, Housing, and Livelihoods as part of standard of living (Principles 17–20)

Post-conflict reconstruction engages obligations relating to environmental protection, land rights, housing, food security, and livelihoods as part of restoring an adequate standard of living.[24] United Nations bodies have increasingly emphasized that failure to address environmental contamination, land dispossession, or housing inadequacy may perpetuate displacement and instability.[25]

D. Remedy and Accountability (Principle 21)

The right to a remedy constitutes a cornerstone of international human rights law. Victims of violations of IHL or IHRL are entitled to prompt, accessible, and effective remedies, including judicial and non-judicial mechanisms.[26] Accountability processes are recognized as integral to sustainable peace and rights-based reconstruction.

IV. Legal Foundations

A. Primacy of International Law (Principle 22)

Reconstruction processes derive from binding obligations under international law rather than discretionary policy choices. United Nations jurisprudence affirms that neither occupation nor political arrangements may negate the application of international humanitarian and human rights law, including the right to self-determination.[27]

B. Guarantees of Non-Repetition (Principle 23)

Guarantees of non-repetition form an established component of reparation and require institutional, legal, and structural reforms aimed at preventing the recurrence of large-scale violations.[28]

V. Implementation and Monitoring

A. International Monitoring Mechanisms (Principle 24)

United Nations practice demonstrates the role of international monitoring mechanisms in ceasefire verification, humanitarian access, damage assessment, and support for reconstruction and peacebuilding.[29] Civil society participation is increasingly recognized as a necessary element of effective monitoring.

B. Accountability and Transparency (Principle 25)

Transparency, independent oversight, and access to remedies during reconstruction are necessary to prevent corruption, discrimination, and politicization. International instruments increasingly recognize that failures in these areas may themselves constitute violations of human rights.[30]

Concluding Observations

The Draft Guiding Principles reflect a consolidation of existing international legal norms applicable to reconstruction in conflict-affected and occupied contexts. By articulating these norms in an integrated framework, the Principles provide guidance to States, international organizations, and other actors seeking to ensure that reconstruction processes contribute to the realization of rights, accountability, and sustainable peace.

Endnotes

1. U.N. Secretary-General, Report on Peacebuilding and Sustaining Peace, pp.8–15, U.N. Doc. A/72/707–S/2018/43 (Jan. 18, 2018).
2. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 27, Aug. 12, 1949, 75 U.N.T.S. 287.
3. Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 42, Oct. 18, 1907, 36 Stat. 2277.
4. Geneva Convention IV, supra note 2, arts. 55–56.
5. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, pp.87–122 (July 9); Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, 2024 I.C.J. available at https://www.icj-cij.org/node/204176
6. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 70, June 8, 1977, 1125 U.N.T.S. 3.

7. Rome Statute of the International Criminal Court art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 90.
8. Int'l Comm. of the Red Cross, Customary International Humanitarian Law, r. 55 (2005).
9. International Covenant on Civil and Political Rights art. 2(3), Dec. 16, 1966, 999 U.N.T.S. 171.
10. U.N. Comp. Comm'n, Governing Council Decision No. 7, U.N. Doc. S/AC.26/1991/7 (1991).
11. Rome Statute, supra note 7, arts. 86–89.
12. International Covenant on Economic, Social and Cultural Rights arts. 6–15, Dec. 16, 1966, 993 U.N.T.S. 3.
13. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 3, p.9, U.N. Doc. E/1991/23 (1990).
14. Int'l Law Comm'n, Articles on Responsibility of States for Internationally Wrongful Acts, art. 31, U.N. Doc. A/56/10 (2001).
15. Velásquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, pp.25–27 (July 29, 1988).
16. ICCPR, supra note 9, art. 1; ICESCR, supra note 12, art. 1.
17. Declaration on the Right to Development, G.A. Res. 41/128, arts. 1–2 (Dec. 4, 1986).
18. CESCR, General Comment No. 4, p.9, U.N. Doc. E/1992/23 (1991).
19. Convention on the Elimination of All Forms of Discrimination Against Women arts. 7–14, Dec. 18, 1979, 1249 U.N.T.S. 13.
20. G.A. Res. 2625 (XXV), annex (Oct. 24, 1970).
21. Human Rights Comm., General Comment No. 31, p.15, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).
22. Guiding Principles on Internal Displacement, Principles 28–30, U.N. Doc. E/CN.4/1998/53/Add.2 (1998).
23. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 7, pp.13–15, U.N. Doc. E/1998/22 (1997).
24. Protocol I, supra note 6, art. 55.
25. U.N. Env't Programme, Protecting the Environment During Armed Conflict (2009).
26. G.A. Res. 60/147, annex, pp.11–24 (Dec. 16, 2005).
27. Legal Consequences for States of the Continued Presence of South Africa in Namibia, Advisory Opinion, 1971 I.C.J. 16, ¶ 52 (June 21).
28. G.A. Res. 60/147, supra note 26, p.23.
29. U.N. Peacebuilding Comm'n, Terms of Reference (2005).
30. United Nations Convention Against Corruption arts. 5–13, Oct. 31, 2003, 2349 U.N.T.S. 41.