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BRIDGING THE GAPS: REPARATIONS FOR CONFLICT AND CLIMATE CHANGE

This panel was convened at 3:30 p.m. on Wednesday, April 16, 2025, by its moderator, Vladyslav Lanovoy, Assistant Professor of Public International Law at Université Laval, who introduced the speakers: Kristine Beckerle, Deputy Director for the Middle East and North Africa at Amnesty International; Chiara Giorgetti, Professor of International Law at the University of Richmond Law School and Vice-Chair of the Board of the Register of Damage for Ukraine; and Nikki Reisch, Director of Climate and Energy Program at the Center for International Environmental Law.

Introductory Remarks by Vladyslav Lanovoy

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Good afternoon and welcome to this panel. Having introduced our distinguished speakers, I would like to briefly situate our discussion, and I shall do so in two parts.

Facts

According to the International Red Cross (ICRC), "more than 120 armed conflicts rage across the globe today. While only a few capture global attention, millions of people around the world endure suffering in wars that rarely make headlines, often in blatant disregard of the rules of international humanitarian law. These violations strip individuals of their dignity and their most basic rights."[1] For its part, the World Economic Forum (WEF) estimates that the economic cost of loss and damage in developing countries due to climate change could be easily over one trillion USD by 2050.[2] The exact estimates range widely, depending on the scope of the analysis and the calculations used. Be that as it may, the current annual funding of less than 500 million USD is significantly lower than the lowest predictions of what would be otherwise required to address loss and damage caused by climate change.

Law

Under customary international law, as codified by the International Law Commission (ILC) in its 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the state is under an obligation to provide *full* reparation for the injury caused by its internationally wrongful act, i.e., an action or omission attributable to it.[3] Reparation shall wipe all the consequences of the wrongful act, and may ordinarily take the form of restitution,

[1] ICRC, *ICRC in 2024 : Upholding Humanity in Conflict* (Dec. 16, 2024), *at* https://www.icrc.org/en/article/icrc-2024-upholding-humanity-conflict#:~:text=More%20than%20120%20armed%20conflicts,international%20humanitarian%20law%20(IHL).

[2] WEF, *Loss and Damage: Why Climate Reparations are Top of the Agenda at COP27* (Oct. 27, 2022), *at* https://www.weforum.org/stories/2022/10/cop27-why-climate-reparations-are-one-of-the-biggest-issues.

[3] ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, With Commentaries, UN Doc. A/56/10, reproduced in (2001) II (Part Two) ILC Y.B., Art. 31.

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compensation, satisfaction, either independently or in combination. Yet the content, form, and implementation of reparation may be affected by both legal and practical considerations. Legal considerations include the availability of sufficient evidence, causation, the potential contribution of the victim, and the failure to mitigate damages. Practical considerations include the capacity of the wrongdoing state to pay, the obstacles in channeling reparation to the victims, and the absence of a jurisdictional or any other mechanism to determine reparation in the first place.

In the context of an armed conflict, on the one hand, the *Armed Activities* (Compensation) judgment delivered by the International Court of Justice (ICJ) in 2022 is a concrete and recent example of many of these complex challenges that international courts and tribunals face when determining and quantifying reparations for wide-scale atrocities as a result of protracted armed conflicts.[4] The Register for Damage of Ukraine (R4DU) is an example of how non-jurisdictional mechanisms, established while the conflict is still ongoing, may pre-empt some of the abovementioned difficulties, by providing a forum for processing different categories of claims and preserving evidence.

In the context of climate change, as of March 2025, twenty-seven contributors have pledged a total of 765 million USD to the Fund for Responding to Loss and Damage, established to assist vulnerable developing countries in addressing the adverse effects of climate change.[5] Claims seeking redress for climate change have proliferated before domestic courts and international jurisdictional and non-jurisdictional mechanisms. In fact, as we speak, the ICJ is likely deliberating on, if not already by the end of its first reading of the draft advisory opinion on the *Obligations of States in respect of Climate Change*, which is expected by many to constitute the beacon of clarity, including on the issue of reparations for climate change as per question (b) presented to the Court by the UN General Assembly.

The task of this panel is to address the law and practice of reparations in connection with armed conflicts and climate change. The speakers are invited to address a range of questions relating to the existing legal framework in order to tease out similarities, differences, gaps and challenges in these two contexts, and to share any stories of success to use as a model going forward to render reparations a more effective tool both in terms of providing redress to victims and dissuading States from future violations. We will first turn to armed conflict, followed by climate change, before bridging the gaps between the two.

Discussion

I. Armed conflict

Question: What does the existing legal framework under International Humanitarian Law (IHL) and International Human Rights Law (IHRL) have to say about reparations specifically? Based on your experience, do you think that framework is robust enough?

Remarks by Kristine Beckerle

I approach this conversation as a practicing international human rights lawyer. My remarks are informed by my experience working with activists, victim groups, and civil society organizations

[4] Armed Activities on the Territory of the Congo (DRC v. Uganda), Reparations, 2022 ICJ Rep. 13 (Feb. 9).

[5] UN Climate Change, Pledges to the Fund for Responding to Loss and Damage (Apr. 7, 2025).

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demanding justice, including reparations, for international wrongs committed during armed conflicts in the Middle East, from Yemen, to Lebanon, Gaza, and back again.

The hard truth is that the vast majority of people in the Middle East have received nothing close to reparation for the harms to which they have been subjected. Instead, new conflicts, more destruction and the cut of betrayed hope have piled up.

I will focus my remarks on what international law offered those demanding reparations from warring states, including intervening states like Saudi Arabia, the United Arab Emirates and the United States, during the ongoing conflict in Yemen. It is a telling case study, demonstrating not only that our current legal framework is inadequate, but helping unpack how so. This, I hope, will draw out areas on which we might focus if we seek to make that framework work better for the people we claim it protects.

The Dangling State Reparation Obligation

We must start with IHL, the body of law specifically applicable to armed conflict. You would expect it to provide clear guidance on reparations. It does not. The obligation exists—tucked into Additional Protocol I to the Geneva Conventions and the Hague Regulations, and with ICRC interpretations finding a home for it, despite no explicit reference, in the Geneva Conventions—but it dangles there, incomplete and frustrating.

IHL leaves fundamental questions unanswered: To whom is reparation owed? When is it owed—at the moment of an international wrong, at the end of conflict, or whenever circumstances permit? What legal processes must precede reparation? Compare this vagueness to the detailed obligations states have for prosecuting individuals who commit grave breaches of the Geneva Conventions. There, treaties spell out specific subsidiary obligations, creating a roadmap for states to follow even before they suspect someone has committed a crime. No such roadmap exists for reparations.

The problem grows worse when you consider non-international armed conflicts. The vast majority of conflicts in today's world are non-international armed conflicts fought in the Global South. Most conflicts today resemble that ongoing in Yemen more than that ongoing in Ukraine. International armed conflicts tend to take up a lot of space in conferences like this, in headlines, in scholarship. But non-international armed conflicts dominate our current reality, and IHL provides almost no guidance on reparation in that context.

The Imperfect Hope of International Human Rights Law (IHRL)

Fortunately, IHRL fills some gaps. While IHL provides the specific rules for war, other bodies of law, including IHRL, operate simultaneously. IHRL offers three crucial improvements to the reparations framework available to people seeking redress for harms done by warring states.

First, IHRL connects the state's obligation to provide reparations directly to the individual's right to receive them. This connection proves especially important in non-international armed conflicts, where the traditional state-to-state reparation model breaks down. In international armed conflicts, the classic model is that state A and state B will represent the wrongs done to their nationals. In Yemen's non-international armed conflict, is the Yemen government going to accept a similar model with the Ansar Allah (Houthi) armed group? Obviously not; that would entail accepting a non-state armed group represent their people's claims. The individual right to reparation, grounded in IHRL, provides an alternative.

Second, IHRL attaches reparation to specific legal processes that must precede it. Human rights law treaties include the individual right to remedy and unpack what a state must do to fulfill

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that right, including carrying out reparation-specific investigations. This subsidiary investigative obligation creates a foundation for practitioners advocating for reparations.

Third, IHRL provides fora for these conversations. Some lawyers tend to fixate on courts and devalue the role of non- or quasi-judicial fora for enabling conversations that can affect behavior. The UN Human Rights Council cannot order any state to provide reparations, but it has proven invaluable as a site for dialogue between victims, activists, warring states, and bystander states. In Yemen, activists used the UN Human Rights Council to influence warring state behavior, achieving not full reparations, but provoking them to provide condolence payments to individuals they harmed as the war continued was not reparations, but it was not nothing.

The Trouble of the Dueling Rights-Holders

IHRL does not solve everything. A fundamental tension remains—while human rights law gives individuals the right to reparation, it does not eliminate their state's ability to claim reparations for the same harm.

Consider Yemen again. If Saudi Arabia commits an international wrong against a Yemeni national, that person has an individual right to reparation under human rights law. But Yemen—despite being Saudi Arabia's ally, despite depending on Saudi support, despite being completely unwilling to challenge Saudi Arabia—also has the right to represent that claim internationally.

You have dueling rights holders: an individual and a state, both with claims to reparation for the same wrong. When the interests of the harmed individual and the state representing that individual's claims are opposed or misaligned—such as in the significantly internationalized non-international armed conflict in Yemen—individuals are unable to achieve meaningful reparation.

In sum, is the international legal framework, as it exists today, robust enough? If we are grounding our answer in the perspective of the people harmed during war, the answer is absolutely not.

* * * *

Question: Having been involved in several cases, both as counsel and decisionmaker, what do you see as the greatest strengths and weaknesses of past experiences of international courts and tribunals awarding reparations in the context of large-scale atrocities? How does that compare with other more bespoke mechanisms such as mass claims commissions? Does the R4DU set a useful precedent for the future of reparations in the context of armed conflict?

Remarks by Chiara Giorgetti

Let me begin by discussing the strengths of claims commissions, especially when compared with other international dispute resolution mechanisms, namely international courts and tribunals. One of the most significant advantages—and unique characteristic—of claims commissions is their flexibility. These are typically *ad hoc* mechanisms that can be tailored to the specific needs of a post-conflict situation.

What Are Claims Commissions and What Do They Do?

Claims commissions are established to provide redress and compensation, chiefly after international conflicts. They are flexible in many ways: in terms of who can bring claims, what kinds of claims can be submitted, and how the process is structured and carried out. Two

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important examples of past claims commissions are the United Nations Compensation Commission (UNCC)—created by a UN Security Council resolution after Iraq's invasion of Kuwait in August 1990—and the Eritrea-Ethiopia Claims Commission (EECC)—created by a bilateral treaty between Eritrea and Ethiopia to end the 1998–2000 war between the two countries. Both commissions were created after conflicts, though using very different international legal instruments.

Flexibility in Personal Jurisdiction

One of the key differences between claims commissions and most international courts or tribunals is the identity of those who can submit a claim. At the ICJ and in most international courts and tribunals, personal jurisdiction is limited to states, and in limited cases may include individuals. Differently, claims commissions can generally hear claims from diverse kinds of claimants, including those brought by individuals, by states, private companies and international organizations. For example, the UNCC had jurisdiction to hear claims from all the states in the affected region—not only Kuwait, but also Iran, Syria, Jordan, Saudi Arabia, and others. The UNCC could also hear cases from individuals, with a variety of nationalities, who had to leave Kuwait because of the conflict. Similarly, the EECC, heard claims from Eritrea, Ethiopia, and claims filed by Eritrea on behalf of Eritrean nationals.

Flexibility in Subject-Matter Jurisdiction

This flexibility also extends to what kind of claims can be brought. Each instrument has its own specific jurisdiction not only in terms of who the claimants are, but also, very importantly, what the claims are for. For example, the EECC had jurisdiction to hear claims arising from the violation of IHL, as well as other breaches of international law. Similarly, the UNCC also heard claims arising from different kinds of breaches, including, interestingly, violation of international environmental law—and thus for damages caused to the environment.

Flexibility in Structure and Procedure

Claims commissions also differ in how they are organized and how they operate. In terms of structure, for example, the UNCC was a subsidiary organ of the UN Security Council and had numerous commissioners. The EECC, conversely, was much smaller—and only had five commissioners. At the UNCC priority was given to claims by individuals, which were numerous but of smaller value. Claims by individuals were often decided via a mass claims process and reparation was given in the form of set amounts. For example, compensation for somebody who had to flee Kuwait because of Iraq's invasion was attributed a set amount of USD 2,500 or USD 10,000 for a family. Differently, large and complex claims, such as environmental claims, were addressed later and in a process that resembled an arbitration.

How Are Claims Commissions Created?

Claims commissions are typically based on an agreement by the parties. The EECC and the Iran-U.S. Claims Tribunal (IUSCT), for example, were created by a bilateral treaty. In the case of the IUSCT, it was negotiated via Algeria. The UNCC is an exception, as it was created by the UN Security Council with a binding resolution.

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The Register of Damage for Ukraine (RD4U): A New Model

The creation of the Register of Damage for Ukraine is a particularly interesting and unique development. The UN General Assembly Resolution ES-11/5 of November 14, 2022 called for the creation of a reparation mechanism and clearly established a syllogism saying that Russia's aggression of Ukraine violated international law, and that, because of its breach of international law, Russia had the responsibility to provide reparation. The idea of creating a reparation mechanism was then picked up by the Council of Europe (CoE). The CoE decided to act and through an Enlarged Partial Agreement (EPA) created the Register of Damages for Ukraine (RD4U)—which is open to all the members of the CoE (but not all need to be part to it) and it is also open to non-CoE members—at present the United States, Canada, and Japan are members. RD4U was created to register and record claims for injury, loss and damages caused by Russia's invasion of Ukraine, and it is part of a compensation mechanism that is planned to include a compensation commission and a compensation fund.

RD4U for the first time creates a kind of staggered reparation process. In the UNCC, the IUSCT and the EECC, the same legal mechanism recorded, adjudicated and awarded compensation. Differently, in the Register for Ukraine, these three functions—registration, adjudication, and compensation—are separated. RD4U is the first part of a compensation mechanism, and the Register has the function of recording claims based on three elements of eligibility: when the event occurred (on or after February 24, 2022), where it occurred (in the Ukrainian territory recognized internationally) and because it occurred as a consequence of the Russian Federation internationally wrongful acts in or against Ukraine. If the RD4U Board—of which I have the honor to be the Vice-Chair—decides that these three elements are present, then the claims are registered. The Board approved forty-two categories of claims, which can be filed by individuals, the state, and private companies. Claims can be made for injuries to the person, death of a family member, internal and external displacement, damages to private property, critical state infrastructures, environmental claims, cultural claims, and many others. The Register has received over 30,000 claims so far, and the Board has decided to record about 5,000 so far. The next step, which is being negotiated at the moment, is the creation of a claims commission capable of adjudicating the claims, to be followed by the creation of a compensation fund.

Will RD4U Set the Example? The United Nations Register of Damages for Palestine

Interestingly, the Register of Damage for Ukraine initially followed the blueprint from another recent Register—the UN Register of Damages for Palestine (UNRoD). UNRoD was created in accordance with UN General Assembly Resolution ES-10/17 of December 15, 2006 following the delivery by the ICJ of its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.[6] UNRoD's mandate is to serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem. A more recent UN General Assembly Resolution ES-1-/24 of September 19, 2024, using the language of RD4U, calls for the creation of "an international mechanism for reparation for all damage, loss or injury arising from the internationally wrongful acts of Israel in

[6] *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ Rep. 136 (July 9).

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the Occupied Palestinian Territory" and called for the creation of an international register of damage. It will be interesting to see how things evolve in that respect.

II. Climate Change

Question: Turning to climate change, does the existing legal regime on the obligations of states in respect of climate change, including under the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement offer any concrete guidance on reparations? What is the nature and role of the fund for loss and damage; is that a form of reparation or financial/technical assistance?

Remarks by Nikki Reisch

The Legal Bases for Climate Reparations in the Law of Human Rights and State Responsibility

The question of reparation for the evident and escalating harm caused by climate change, both environmental and human rights harm, is fundamentally a matter of justice and survival for those living on the frontlines of the climate crisis. It is foremost on the minds of the victims of climate harm, the adjudicators who are increasingly seized of claims for reparation, and the negotiators at the Conference of the Parties (COP) under the auspices of the UNFCCC. The two principal objectives that the legal instruments on climate change seek to achieve are to stop causing the harm, on the one hand, and to remediate and repair the harm that has already occurred and continues to escalate, on the other hand. Inaction on remediation or reparation is a choice—a choice to distribute the cost of climate harm to those on whom it falls.

Duties of Remedy and Reparation Neither Start Nor End with the UN Climate Treaties

To understand climate change-related reparation, it is important to take a holistic approach and interpret the multiple relevant sources of international law harmoniously, ensuring that obligations and principles from human rights law and from the general secondary rules on state responsibility find application. The conversation should not be limited to the four corners of the UNFCCC or the Paris Agreement. Those agreements were negotiated and concluded against the backdrop of longstanding international environmental and human rights law, both treaty-based and customary international law, including the law of state responsibility. Those bodies of rules continue to apply with equal force, including issues of reparations in connection with climate change; the climate treaties did not displace or supplant them. Indeed, one of the main sources of debate in the context of the advisory proceedings before the ICJ on obligations of states in respect of climate change was precisely about whether the general rules regarding legal consequences under international law, as enshrined in the law of state responsibility, apply in respect of harm caused by climate change. Some states argued, in effect, that climate change and its impacts should be exempt from the fundamental tenet of state responsibility—namely, that the breach of an international obligation carries legal consequences including the duty to cease the wrongful conduct and to remedy or repair the resulting harm, not just through monetary compensation but also through other forms of restitution, satisfaction, and guarantees of non-recurrence, to provide full reparation. But there is no support for such view.

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No Carveout for Climate: Paris Does Not Bar Legal Responsibility for Climate Harm

The primary rules that form the UN legal regime on climate change do not address squarely the issue of climate change-related reparations. Neither the UNFCCC nor the Paris Agreement defines the remediation duties of states that, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, and by extension, to the most exposed countries, communities, and individuals, for present and future generations.

Article 8 of the Paris Agreement acknowledges the need to address loss and damage, which comprises any material and non-material harm due to climate change, but does not discuss the status or source of that harm, as injury caused by the breach of obligations, or who bears responsibility for it. Many major emitters, including the United States, have sought to make the question of legal responsibility a third rail, and reparations a taboo subject in the negotiations. They pressed for an understanding, enshrined in paragraph 51 of the COP Decision (1/CP21) adopting the Paris Agreement, that Article 8 "does not involve or provide a basis for any liability or compensation."[7] While they continue to point to that text as a bar to legal responsibility for climate harm, that paragraph does not address the responsibility of states for breaches of other international treaties and customary international law that impose obligations in respect of climate change. So, while it may preclude claims for compensation under Article 8 itself, it does not preclude claims on other grounds or foreclose the continued application of the fundamental background rules and principles of state responsibility and the right to remedy.

That is important because we are currently seeing developments in international litigation that recognize that international human rights law imposes specific obligations in connection with climate change. As a result, any failure to comply with such obligations triggers the duty under human rights law to provide remedy to affected individuals and peoples, and state responsibility to other states and the international community for violations of international human rights law in connection with climate change.

The Limitations of the Loss and Damage Fund

The recent establishment of a loss and damage fund under the UN climate change regime is an important component of the response to the injustice of mounting climate harm but does not uphold the right to remedy or exhaust the duty of reparation. First, the fund is not premised on a legal obligation to contribute to remedy and reparation, through compensation and other means. It is based on voluntary contributions. Moreover, the fund does not ensure that the victims of climate change are at the forefront of defining the loss and damage to be remedied. Their involvement is critical to ensure that different forms of harm, including cultural losses and other non-economic damages, are considered, and that reparations include not just money but structural redress and reforms that guarantee nonrecurrence. In sum, well-established principles of international human rights law, international environmental law, and the law of state responsibility, which pre-date and undergird the climate change regime, do not cease to apply because of the entry into force of the specific legal instruments on climate change. They underlie the fundamental legal bases for climate reparations and inform how they should be assessed and provided.

[7] COP, Decision 1/CP.21, FCCC/CP/2015/10/Add.1, para. 51.

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Litigation and the Right to Remedy and Reparation for Climate Harm

We need to move away from the concept that remedies for the adverse effects of climate change are voluntary, and ground responses to the climate crisis in legal obligation. Climate litigation is playing a part in that shift. In the context of corporate accountability, we are seeing the growth of litigation against producers of fossil fuels, which are the primary drivers of climate change, to hold them responsible for their contributions to the crisis. Important transboundary cases such as *Luciano Lliuya v. RWE AG*[8] or *Asmania et al v. Holcim*[9] come to mind, as do the many cases underway here in the United States that seek to hold the fossil fuel industry liable and make polluters pay for the costs of climate adaptation and harm.

Finally, given experience with remediating mass atrocity, there is no principled reason why we cannot devise similar mechanisms for remedying the effects of climate change. The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have developed an extensive jurisprudence in this area on which to draw. The obstacle to climate accountability and reparations is more of an administrative or methodological challenge than a legal one. Numerous courts have rejected the notion that because many people are injured by climate change, none can seek justice, or because multiple actors have contributed to climate harm, none can be held to account.

The legal basis for climate reparations and the obligation to remedy loss and damage is a very live issue both in courts and in the context of negotiations. There are principles that we can draw upon from the law of state responsibility and international human rights law to respond to climate change-related harm and to avoid any gaps in the accountability framework. We know the conduct that has caused climate change, over many decades, and we can see its undeniable and escalating consequences. In the face of that reality, it is both necessary and possible to ensure that those who have contributed to and are continuing to exacerbate climate change bear responsibility for the harm caused, and do not simply leave the damage to lie where it's been done. Climate justice demands no less.

III. Bridging the Gaps

Question: What forms of reparation are best suited for the types of breaches and injuries that flow from an armed conflict and climate change? In practice, what are the most common forms of reparation awarded in these specific contexts? Do they provide sufficient redress to victims?

Kristine Beckerle

First, I want to thank my co-panelist for pushing back on the all-too-common line of argument that the difficulty in practice of providing adequate reparation is somehow a compelling justification for not attempting to provide reparation at all. The harms do not disappear because we wish them away. They sit where they landed, waiting for acknowledgment, accountability, and repair.

To answer your question, what forms of reparation are best suited to victims of mass atrocity, I cannot really tell you because the people harmed should be the ones who answer that. That answer

[8] *See* https://climatecasechart.com/non-us-case/lliuya-v-rwe-ag.

[9] *See* https://climatecasechart.com/non-us-case/four-islanders-of-pari-v-holcim.

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will be different depending on the harm, the international law violation, the person harmed or the actor—a community, a state—to whom reparation is being provided.

To be more concrete: For some climate harms, reparation may need to be at communal or state level, for example if major infrastructure projects are needed to mitigate or adapt. In other cases, people might need money. Take all those whose homes have been bombed, blown up, or flattened in the Middle East over the last few years and now cannot afford rent.

The UN Basic Principles clearly and expressly bake in flexibility, noting that different forms of reparation might be needed for different harms and different victims.

The Promise and Peril of One-Off Approaches

The creation of a registrar for damages for Ukraine initially seemed promising. Before the Ukraine war began, advocates working on Yemen received two standard responses in response to their reparation demands: reparations would never happen, and reparations were not really a "thing" anyway. Diplomats and veteran advocates tended to wonder why efforts were not laser-focused on international criminal accountability, as was so often the case in international human rights advocacy in response to conflict.

When the UN General Assembly resolution on Ukraine emerged, it seemed like a breakthrough. Together with partners and friends, we read the resolution with excitement, hopeful both that people impacted by the war in Ukraine would receive redress and that we could use the precedent to more successfully push reparation for people in Yemen.

Our excitement was misplaced. The message from diplomats and prominent lawyers was as follows: not only is pushing to do something similar elsewhere unrealistic, but it will jeopardize our efforts on Ukraine.

For Yemen, advocates could not even get the word "reparation" into a non-binding UN Human Rights Council resolution—not once, from the beginning of the conflict until now.

The differences between these efforts are many. The state of Ukraine, in an international armed conflict, supported the reparation effort against Russia. In this effort, Ukraine had powerful friends. In Yemen, a non-international armed conflict in which the state and its allies are deeply implicated in wrongs, the state opposed reparation efforts. Add to that geopolitics and money, and it is no wonder results varied so much.

When evaluating the strength of the international legal system in achieving reparation, we must look not only at what has happened, but also at what has not. Before Ukraine, people often pointed to the UN Compensation Commission as proof that international institutions could further the right to reparation for conflict-related harms. But, since the UN Security Council created the UN Compensation Commission, there have been many subsequent conflicts in the Middle East, including in Iraq itself, for which there has been no mechanism created, no reparation resolution adopted, no demand. One-off approaches can create precedent, act as watersheds, have genuine rights dividends, and re-emphasize the role of politics and power in whose rights get defended and whose do not all at once.

Broken Is Better Than Abandoned

The international legal framework for reparations in armed conflict needs significant strengthening. But even in its current imperfect state, it provides tools for meaningful advocacy and incremental progress. The key lies in understanding both the limitations and possibilities within existing structures, and in choosing strategies that match the specific political and legal contexts where harm has occurred.

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Even though activists could not get "reparation" into a UN resolution on Yemen, their efforts at the Human Rights Council achieved concrete results. That success occurred not by virtue of a court order or the creation of a reparation mechanism by the UN Security Council, but through diffuse advocacy efforts—the push and pull, over a period of years, between activists, bystander states, and warring states. That advocacy eventually pushed warring states to create two investigative mechanisms into civilian harm and to provide small monetary payments to some of their victims. When the war began, none of this existed.

The work continues, one conversation at a time, one small payment at a time, one recognition of harm at a time. Having an international human rights law framework that explicitly recognizes a person's right to remedy, links that right to the need to conduct investigations, and provides fora where demands for redress can be brought in front of bystander states has had noticeable and material impacts on people seeking some response to the harms they have suffered.

Perfect justice may remain elusive, but partial justice—achieved through persistent advocacy within imperfect systems—still matters to those who have suffered in war. It is inadequate, it is imperfect, but it is better than nothing at all.

In this moment, with international legal institutions and human rights defenders are under significant attack, the question is whether we will allow our legal frameworks to collapse, fight to keep them as they are, or work to shore them up so they function better for all. These frameworks need defending, but they also need improving. You can do both at once.

Chiara Giorgetti

Let me add something to what Nikki Reisch has mentioned earlier concerning the relationship between different sets of rules and their capacity to address multiple causes of injury and multiple injured parties in the context of climate change.

I had the honor of representing the African Union in the advisory proceedings on climate change before the ICJ in December 2024. As we are discussing reparations, I believe it is worth considering whether the model of claims commissions and register could be applicable in the context of climate change.

Of course, climate change is a uniquely complex problem. Much will depend on what the ICJ opines on the applicable law, existence of breaches of international law and matters of reparations.

In this regard, it is significant to note that Articles 46 and 47 of the ARSIWA provide for situations involving harms caused by many actors and that affecting multiple parties.

A register or claims commission model, using a mass claims process that allows for broad subject matter and personal jurisdiction as well as procedural flexibility, may offer a useful framework for addressing climate change – related injuries and reparations. The African Union argued in favor of such approach.

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Question: What do you see as the biggest gaps in the law governing reparations for harm arising in the context of an armed conflict and climate change?

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Chiara Giorgetti

In my view, the biggest gap lies in the application of the law, which is generally well-developed and fit for purpose. A second important obstacle is securing the availability of funds necessary to ensure that awarded compensation is paid.

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A period of questions and answers with the audience followed.

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