

HUMAN RIGHTS REPARATIONS
CHR 30701-01; KSGA 30404-01; LAW 70414-01; MGA 60310-01; IIPS 30421-01

Prof. Dr. Diane A. Desierto

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De Bartolo Hall 224, MW 3.30 pm – 4.45 pm

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COURSE DESCRIPTION:

This course explores the current state of reparations for State and non-State responsibility human rights violations, as *adjudicated or prescribed* by international courts, tribunals, commissions, and specialized bodies and examines their sufficiency and adequacy in light of primary norms (treaty, custom, and general principles) of international human rights law and the general law of international responsibility. After exploring current limitations in the existing frameworks for adjudicated or prescribed human rights reparations, the course proceeds to examine, scrutinize, critique, and analyze five complex cases of hitherto-unmet reparations of egregious human rights violations: 1) slavery and the trans-Atlantic slave trade; 2) colonialism, intergenerational harms, and indigenous peoples' rights; 3) climate change-driven or related environmental harms; 4) cross-border migration and the treatment of refugees; and 5) State aggression towards other States resulting in serious human rights violations.

COURSE OBJECTIVES:

At the end of this course, students are expected to:

1. Develop a foundational understanding of the international legal frameworks governing the adjudication or prescription of reparations for serious human rights violations, engaging its legal, policy, and interdisciplinary moorings reflected in international, regional, and national judicial and arbitral decisions;
2. Situate the limitations of current international legal frameworks for adjudicated or prescribed reparations for serious human rights violations, within the broader contexts of law, policy, and interdisciplinary considerations of decision-makers in the international system;
3. Identify possible legal pathways for reforms that ensure meaningful, just, adequate, and effective reparations for human rights violations; and
4. Strengthen analytical, collaborative, and deliberative skills alongside ethical decision-making in the evaluation and dissection of problems and pathologies in the international legal frameworks currently regulating the adjudication and prescription of reparations for serious human rights violations.

COURSE ASSESSMENT:

70% Individual seminar paper on topic approved by the professor, due Tuesday, May 5, 2020, no later than 5 pm EST.

For Law students: Maximum 30 pages, double space, 8.5 x 11 inch paper

For MGA students: Maximum 20 page policy memorandum, double space, 8.5 x 11 inch paper

For Undergraduate students: Maximum 10 page essay, double space, 8.5 x 11 inch paper

30% In-campus project work with the Notre Dame Reparations Design and Compliance Lab
(co-directed and supervised by Professors Diane Desierto and Anibal Perez-Linan)

COURSE MATERIALS AND CLASSROOM POLICIES:

There is no prescribed textbook for this class. This course outline contains hyperlinks to all the Required Readings for each week. **Readings are differentiated according to the students (e.g. there are specific readings designated for all students, and further readings only required for law students and MGA students).** Hyperlinked materials will often require access to <https://inside.nd.edu>. Class discussions will assume students have read the Required Readings pertaining to them.

This is an interdisciplinary, multi-level seminar class. While I aim to draw insights from the diverse student constituencies that comprise our class, students will only be able to maximize their learning if they respectfully participate, inquire, challenge, critique, and scrutinize each other's insights from the course materials and ongoing project work. As you will discover from this course, there are serious structural, institutional, system, and normative deficits in the international legal frameworks regulating the adjudication and prescription of reparations for serious human rights violations. Our task is to expose those deficits, as well as to examine pathways to redress them.

PART I: CURRENT INTERNATIONAL LEGAL FRAMEWORKS REGULATING THE ADJUDICATION AND PRESCRIPTION OF REPARATIONS FOR SERIOUS HUMAN RIGHTS VIOLATIONS

WEEK ONE: 13 January and 15 January

*Professor's Lectures (students not expected to have read assigned readings yet):

For Whom and What Exactly Does International Law 'Repair'?

Required readings:

1. Fiona McKay, *What Outcomes for Victims?*, in DINAH SHELTON (ED.), THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW (OUP, 2013).
2. Dinah Shelton, *Remedies and Reparation*, in MALCOLM LANGFORD, WOUTER VANDENHOLE, MARTIN SCHEININ, AND WILLEM VAN GENUGTEN (EDS.), GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW (CUP, 2012).
3. [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), UN General Assembly Resolution 60/147, 16 December 2005
4. *Case Concerning the Factory at Chorzów (Germany v. Poland)*, 1928 P.C.I.J. (Series A) No. 17, Judgment on the Merits, 13 September 1928, at 47.
5. [International Convention for the Protection of All Persons from Enforced Disappearance](#), Article 24(1) to 24(6).

WEEK TWO: 20 January and 22 January

Architecture of Reparations in the Law of State Responsibility

Required readings:

For all:

1. International Law Commission, [Draft Articles on the Responsibility of States for Internationally Wrongful Acts](#), 2001, Part II, [Articles 29 to 41](#).

2. *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, [Verbatim Record of the 10 December 2019 hearing](#), CR 2019/18, International Court of Justice, the Hague.
3. Gerald L. Neuman, [Subsidiarity](#), in DINAH SHELTON (ED.), THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW (OUP, 2013).

Additional for Law Students:

1. Richard Falk, [Reparations, International Law, and Global Justice](#), in PABLO DE GRIEFF (ED.), THE HANDBOOK OF REPARATIONS (OUP, 2006).
2. Dinah Shelton, [Righting Wrongs: Reparations in the Articles of State Responsibility](#), 96 American Journal of International Law 4 (2002), pp. 833-856.
3. Jorge Contesse, [Settling Human Rights Violations](#), 60 Harvard International Law Journal 2 (Summer 2019), pp. 317-376.

Additional for MGAs:

1. J. Angelo Corlett, [Reparations](#), in WILLIAM EDELGLASS AND JAY L. GARFIELD (EDS.), THE OXFORD HANDBOOK OF WORLD PHILOSOPHY (OUP, 2011).

WEEK THREE: 27 January and 29 January

Substantive and Procedural Considerations in Framing Reparations Claims

Required readings:

For all:

1. Rhoda E. Howard-Hansmann and Anthony P. Lombardo, [Framing Reparations Claims: Differences between the African and Jewish Social Movements for Reparations](#), 50 African Studies Review 1 (April 2007), pp. 27-48.
2. Eric A. Posner and Adrian Vermeule, [Reparations for Slavery and Other Historical Injustices](#), 103 Columbia Law Review 3 (April 2003), pp. 689-748.

Additional for Law Students:

1. [Reparation for Injuries Suffered in the Service of the United Nations](#), Advisory Opinion of 11 April 1949, International Court of Justice.
2. [Case Concerning Ahmadou Sadio Diallo \(Republic of Guinea v. Democratic Republic of the Congo\)](#), Judgment of 19 June 2012 (Compensation Owed by the Democratic Republic of the Congo to the Republic of Guinea), International Court of Justice.

Additional for MGAs:

1. [Report of the Working Group of Experts on People of African Descent on its mission to the United States of America](#), A/HRC/33/61/Add.2, 18 August 2016.

WEEKS FOUR and FIVE: 3 February and 5 February, 10 February and 12 February

The Problem of Jurisdiction and Reparations

Required readings:

For all:

1. Richard M. Buxbaum, [A Legal History of International Reparations](#), 23 Berkeley Journal of International Law 2 (2005), pp. 314-346.
2. Jo M. Pasqualucci, [Victim Reparations in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure](#), 18 Michigan Journal of International Law 1 (1996), pp. 1-58.

3. Naomi Roht-Arriaza, [Reparations Decisions and Dilemmas](#), 27 Hastings International and Comparative Law Review 2 (Winter 2004), pp. 157-220.
4. Liesbeth Zegveld, [Victims' Reparations Claims and International Criminal Courts: Incompatible Values?](#), 8 Journal of International Criminal Justice 1 (March 2010), pp. 79-112.

Additional for Law Students:

1. [Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, with Amended Order for Reparations](#), International Criminal Court Case No. ICC-01/04-01/06 A A 2 A 3, 3 March 2015.
2. Extraordinary Chambers in the Courts of Cambodia, [Case 002/01 Judgment](#), 7 August 2014, at pp. 597-622.

Additional for MGAs:

1. Ruben Carranza, Cristian Correa, and Elena Naughton, [Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations](#), International Center for Transitional Justice, December 2017.
2. International Commission of Jurists, [The Right to a Remedy and Reparation for Gross Human Rights Violations: Practitioners Guide No. 2](#), Revised Edition 2018.

WEEKS SIX, SEVEN, and EIGHT: Readings sequentially assigned for 17 February and 19 February; 24 February and 26 February; 2 March and 4 March (cf. each set of readings in subheadings to be differentiated according to undergraduates, law students, MGAs).

Paradigms for Reparations in International Courts and other Tribunals

For all: DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW (3rd ed., 2015), at Chapter 6 ([The Functions and Competence of Human Rights Tribunals](#)).

A. The International Court of Justice

1. [Statute of the International Court of Justice](#), Articles 56 to 60; [Rules of Court](#), Articles 65-70;
2. [Case Concerning Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v. Uganda\)](#), [Judgment of 19 December 2005](#), at paras. 344-345.
3. [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), Advisory Opinion of 9 July 2004, International Court of Justice.
4. [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965](#), Advisory Opinion of 25 February 2019, International Court of Justice.
5. Gentian Zyberi, [The International Court of Justice and applied forms of reparations for international human rights and humanitarian law violations](#), 7 Utrecht Law Review (2011), pp. 204-215.

B. African Court of Justice and Human Rights

1. African Union, [Protocol on the Statute of the African Court of Justice and Human Rights](#), 1 July 2008.
2. Rachel Murray, [The Human Rights Jurisdiction of the African Court of Justice and Human and Peoples' Rights \(ACHPR\)](#), in CHARLES C. JALLOH, KAMARI M. CLARKE, AND VINCENT O. NMEHIELLE (EDS.), THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES (CUP, May 2019).

3. *Zongo and others v. Burkina Faso*, African Court on Human and Peoples' Rights, Application No. 013/2011, [Judgment on Reparations](#), 5 June 2015.
 4. Gino J. Naldi, [Reparations in the Practice of the African Commission on Human and Peoples' Rights](#), 14 *Leiden Journal of International Law* 3 (September 2001), pp. 681-694.
 5. REDRESS, [Reaching for Justice: The Right to Reparation in the African Human Rights System](#), October 2013.
- C. Inter-American Court of Human Rights
1. Organization of American States, [American Convention on Human Rights](#) and [Protocol of San Salvador](#)
 2. [Statute of the Inter-American Court of Human Rights](#)
 3. Gina Donoso, [Inter-American Court of Human Rights' reparation judgments: Strengths and challenges for a comprehensive approach](#), 49 *Revista IIDH* (2009), pp. 29-68.
 4. Douglass Cassel, [The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights](#)
 5. Juan Pablo Perez Leon Acevedo, [The Situation of Reparations in the Inter-American Human Rights System: Analysis and Comparative Considerations](#), 20 *ASIL Insights* 15 (28 September 2016).
- D. European Court of Human Rights
1. [European Convention on Human Rights](#)
 2. [Rules of Court of the European Court of Human Rights](#), 1 January 2020
 3. Egbert Myjer and Peter Kempees, [Notes on Reparations under the European Human Rights System](#), 2 *Inter-American and European Human Rights Journal* 1-2 (2009) pp. 81-98.
 4. Tom Allen, [Restitution and Transitional Justice in the European Court of Human Rights](#), 13 *Columbia Journal of European Law* 1 (Winter 2006/2007).
 5. Joelle Milquet, Special Adviser to the President of the European Commission, [Strengthening Victims' Rights: From Compensation to Reparation](#), March 2019.
- E. United Nations Compensation Commission and Claims before National Courts and Commissions
1. Timothy J. Feighery, [The Jurisprudential Legacy of the UNCC](#), in TIMOTHY J. FEIGHERY, CHRISTOPHER S. GIBSON, AND TREVOR M. RAJAH (EDS.), *WAR REPARATIONS AND THE UN COMPENSATION COMMISSION: DESIGNING COMPENSATION AFTER CONFLICT* (OUP, 2015).
 2. Christian Tomuschat, [State Responsibility and the Individual Right to Compensation before National Courts](#), in ANDREW CLAPHAM AND PAOLA GAETA (EDS.), *OXFORD HANDBOOK OF INTERNATIONAL LAW IN ARMED CONFLICT* (OUP, 2014).
 3. PAUL CHRISTOPH BORNKAMM, *RWANDA'S GACACA COURTS: BETWEEN RETRIBUTION AND REPARATION* (OUP, 2012), at Chapter 4 ([Transitional Justice Through Reparation](#))
 4. David D. Caron, [International Claims and Compensation Bodies](#), in CESARE P.R. ROMANO, KAREN J. ALTER, AND YUVAL SHANY (EDS.), *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* (OUP, 2013).

- F. Treaty-based UN human rights bodies
1. Valeska David, [Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges](#), 32 Netherlands Quarterly of Human Rights 1 (March 2014), pp. 8-43.
 2. [Decision adopted by the Committee against Torture under Article 22 of the Convention, concerning Communication No. 854/2017](#), CAT/C/67.D/854/2017, 2 August 2019 (first reparations awarded by the Committee against Torture for wartime rape).
- G. International criminal courts and tribunals
1. CHRISTINE EVANS, THE RIGHT TO REPARATION IN INTERNATIONAL LAW FOR VICTIMS OF ARMED CONFLICT (CUP, 2012), Chapter 4 ([Reparations in International Criminal Law](#)).
 2. George Mugwanya, [Reparations](#), pp. 374-398 in FABRICIO GUARIGLIA, BEN BATROS, REINHOLD GALLMETZER, AND GEORGE MUGWANYA, THE APPEALS CHAMBER OF THE INTERNATIONAL CRIMINAL COURT: COMMENTARY AND DIGEST OF JURISPRUDENCE (CUP, 2018).
 3. CONOR MCCARTHY, REPARATIONS AND VICTIM SUPPORT IN THE INTERNATIONAL CRIMINAL COURT (CUP, 2012), at Chapter 6 ([Reparations Principles](#)).
 4. *The Prosecutor v. Germain Katanga*, Trial Chamber II, Case No. ICC-01/04-01/07, [Order for Reparations pursuant to Article 75 of the Statute](#), 24 March 2017.
 5. Extraordinary Chambers in the Courts of Cambodia, [Appeal Judgment of 3 February 2012](#), Case No. 001/18-07-2007-ECCC/SC, pp. 281-322.
 6. Lejla Hadzimesic, [Consequences of Conflict-Related Sexual Violence on Post-Conflict Societies: Case Study of Reparations in Bosnia and Herzegovina](#), in FIONNUALA NI AOLAIN, NAOMI CAHN, DINA FRANCESCA HAYNES, AND NAHLA VALJI (EDS.), THE OXFORD HANDBOOK OF GENDER AND CONFLICT (OUP, 2018).

SPRING BREAK: 7 March 2020 to 15 March 2020

PART II: COMPLEX CASES OF UNMET OR UNRESOLVED REPARATIONS CLAIMS

WEEKS NINE AND TEN: 16 March and 18 March; 23 March and 25 March

Slavery and the Global Slave Trade

For all:

1. Stephen D. Behrendt, [The Trans-Atlantic Slave Trade](#), in MARK M. SMITH AND ROBERT L. PAQUETTE (EDS.), THE OXFORD HANDBOOK OF SLAVERY IN THE AMERICAS (OUP, 2010).
2. Patricia M. Muhammad, [The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations](#), 3 Columbia Journal of Race and Law (2013), pp. 147-202.
3. Rhoda E. Howard-Hassman, [Reparations for the Slave Trade: Rhetoric, Law, History and Political Realities](#), 41 Canadian Journal of African Studies 3 (2007), pp. 427-454.
4. CARICOM Reparations Commission, [10-Point Reparation Plan](#).
5. Ta-Nehisi Coates, [“The Case for Reparations”](#), The Atlantic, June 2014.

Additional for Law Students:

1. Doug Criss, [“People are again talking about slavery reparations. But it’s a complex and thorny issue.”](#), CNN, 15 April 2019.
2. W. Caleb McDaniel, [“The Former Slave Who Sued for Reparations, and Won”](#), [New York Times](#), 4 September 2019.

- Eric K. Yamamoto, Susan K. Serrano, and Michelle Natividad Rodriguez, [*American Racial Justice on Trial – Again: African American Reparations, Human Rights, and the War on Terror*](#), 101 Michigan Law Review (March 2003), pp. 1269-1337.

Additional for MGAs:

- Jesus A. Rodriguez, [“This Could Be the First Slavery Reparations Policy in America”](#), POLITICO, 9 April 2019.

WEEK ELEVEN: 30 March, 1 April, and 6 April

Colonialism, Intergenerational Harms, Indigenous Peoples

For all:

- Robert Aldrich, [*Apologies, Restitutions, and Compensation: Making Reparations for Colonialism*](#), in MARTIN THOMAS AND ANDREW S. THOMPSON (EDS.), THE OXFORD HANDBOOK OF THE ENDS OF EMPIRE (OUP, 2018).
- Duncan Ivison, [*Historical Injustice*](#), in JOHN S. DRYZEK, BONNIE HONIG, AND ANNE PHILLIPS (EDS.), THE OXFORD HANDBOOK OF POLITICAL THEORY (OUP, 2008).
- Gregory S. Alexander, [*The Complexities of Land Reparations*](#), 39 Law and Social Inquiry 4 (Fall 2014), pp. 874-901.
- Francesco Francioni, [*Reparation for Indigenous Peoples: Is International Law Ready to Ensure Redress for Historical Injustices?*](#), in FEDERICO LENZERINI (ED.), REPARATIONS FOR INDIGENOUS PEOPLES: INTERNATIONAL AND COMPARATIVE PERSPECTIVES (OUP, 2008).
- Jeremie Gilbert, [*Historical Indigenous Peoples’ Land Claims: a Comparative and International Approach to the Common Law Doctrine on Indigenous Title*](#), 56 The International and Comparative Law Quarterly 3 (2007), pp. 583-611.

Additional for Law Students:

- Robert J. Miller, [*The International Law of Colonialism: A Comparative Analysis*](#), 15 Lewis and Clark Law Review (2011), pp. 847-922.
- Report of the Expert Mechanism on the Rights of Indigenous Peoples, [*Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Recognition, Reparation, and Reconciliation*](#), A/HRC/EMRIP/2019/3, 2 May 2019.
- Kristen A. Carpenter and Angela R. Riley, [*Indigenous Peoples and the Jurisgenerative Moment in Human Rights*](#), 102 California Law Review 1 (February 2014), pp. 173-234.

Additional for MGAs:

- Maanvi Singh, [“Native American ‘land taxes’: a step on the roadmap for reparations”](#), The Guardian, 31 December 2019.

WEEK TWELVE: 8 April and 15 April

Climate Change and Environmental Reparations

For all:

- Maxine Burkett, [*Climate Reparations*](#), 10 Melbourne Journal of International Law 2 (2009), pp. 509-542.
- Alan Boyle, [*Reparation for Environmental Damage in International Law: Some Preliminary Problems*](#), in MICHAEL BOWMAN AND ALAN BOYLE (EDS.), ENVIRONMENTAL DAMAGE IN INTERNATIONAL AND COMPARATIVE LAW: PROBLEMS OF DEFINITION AND VALUATION (OUP, 2012).

Additional for Law Students:

1. Benoit Mayer, [Climate Change Reparations and the Law and Practice of State Responsibility](#), 7 Asian Journal of International Law (2017), pp. 185-216.
2. *Urgenda v. Netherlands*, 20 December 2019 summary of Netherlands Supreme Court decision and intermediate appellate judgments [here](#); Andre Nollkaemper and Laura Burgers, [A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case](#), EJILTalk!, 6 January 2020.

Additional for MGAs:

1. Georgios Kostakos, Ting Zhang, and Wouter Veening, [Climate Security and Justice for Small Island Developing States](#), The Hague Institute for Global Justice Policy Brief No. 9 (March 2014).

EASTER BREAK: 10 April to 13 April

WEEK THIRTEEN: 20 April and 22 April

Cross-Border Migration and Treatment of Refugees

For all:

1. E. Tendayi Achiume, [Migration as Decolonization](#), 71 Stanford Law Review 6 (June 2019), pp. 1509-1574.
2. Timothy Doyle and Sanjay Chaturvedi, [Climate Refugees and Security: Conceptualizations, Categories, and Contestations](#), in JOHN S. DRYZEK, RICHARD B. NORGAARD, AND DAVID SCHLOSBERG (EDS.), THE OXFORD HANDBOOK OF CLIMATE CHANGE AND SOCIETY (OUP, 2011).
3. Megan Bradley, [Forced Migration in Central America and the Caribbean: Cooperation and Challenges](#), in ELENA FIDDIAN-QASMIYEH, GIL LOESCHER, KATY LONG, AND NANDO SIGONA (EDS.), THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES (OUP, 2014).
4. Megan Bradley, [Refugees and the Reparations Movement: Reflections on Some Recent Literature](#), 20 Journal of Refugee Studies 4 (2007), pp. 662-668.

Additional for Law Students:

1. [Report of the Independent International Commission of Inquiry on the Syrian Republic](#), 51 ILM 1381 (2012).

Additional for MGAs:

1. United Nations, [Compendium of Recommendations on International Migration and Development](#), 2006.

WEEK FOURTEEN: 27 April and 29 April

State Aggression resulting in serious human rights and humanitarian law violations

For all:

1. Pierre D'Argent, [Reparations after World War II](#), Max Planck Encyclopedia of International Law.
2. Noah Weisbord, [Judging Aggression](#), 50 Columbia Journal of Transnational Law 1 (2011), pp. 82-168.
3. Wladyslaw Czaplinski, [Concept of War Reparations in International Law and Reparations after World War II](#), 14 Polish Quarterly of International Affairs 1 (2005), pp. 69-80.
4. Christian Tomuschat, [Reparations in Cases of Genocide](#), 5 Journal of International Criminal Justice 4 (2007), pp. 905-912.

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