

University of Notre Dame

Reparations Design and Compliance Lab

SUMMARY OF THE EXPERT WORKSHOP

“Rethinking Compliance and Reparations in International Law”*

Summary

As part of the Policy and Practice Research Labs of the Kellogg Institute for International Studies, the Notre Dame Reparation Design and Compliance Lab hosted an expert workshop on the topic “Rethinking Compliance and Reparations in International Law.” The workshop addressed contemporary challenges facing international tribunals and other adjudicative bodies in designing reparative measures and promoting compliance. Experts discussed the general approach followed by their institutions to improve compliance with reparative measures in cases involving human rights. Experts identified effective strategies that can help monitor and promote compliance. This Report reflects the information exchanged among the experts at the workshop held on May 25, 2020.

I. Background

The Notre Dame Reparations Design and Compliance Lab (NDRL) is one of four Policy and Practice Research Labs created by the Kellogg Institute for International Studies in 2019. NDRL is supported by the Klau Center for Civil and Human Rights at the Keough School for Global Affairs. The purpose of NDRL is to conduct legal and data analysis to help improve the design and effectiveness of reparative measures issued by various international adjudicative bodies. NDRL seeks to promote compliance by examining patterns of compliance by States or international organizations with reparative orders, decisions, or recommendations issued by international courts, or other adjudicative bodies in cases involving human rights issues.

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II. Introduction

1. On May 25, 2020, the Notre Dame Reparations Design and Compliance Lab of the Kellogg Institute for International Studies, at the University of Notre Dame hosted a virtual workshop on the topic “Rethinking Compliance and Reparations in International Law.” The workshop's goal was to help develop a shared analytical framework for designing effective reparative measures and analyzing compliance with international adjudicative bodies in cases involving human rights issues.
2. Representatives from the Inter-American Court of Human Rights, Inter-American Commission on Human Rights, the World Bank Inspection Panel, and academics attended the expert workshop. A list of participants is included in the appendix.

III. Opening Statement

3. In his opening remarks, the director of the Kellogg Institute for International Studies Paolo Carozza highlighted the momentous role of the Lab in producing high-level academic research and generating new knowledge that is actionable among practitioners and policymakers. Carozza further stressed the vital role the Lab can play in addressing serious contemporary challenges in the field of human rights. In this regard, Carozza emphasized what he views as one of the urgent challenges facing the human rights enterprise: the rise of new forms of authoritarian governments in the world that claim a certain kind of legitimacy to their models that “bypass human rights and liberal constitutionalism and limited government.”
4. Carozza discussed the difference that human rights institutions make in practice and the cynicism that has come from the multiplication of instruments and institutions over many decades. He said that among the range of questions the NDRL is trying to answer with its collaborators is how and when these institutions succeed and make a difference in the protection of human dignity, and the realization of human rights. NDRL aims to arrive at a “better design of reparations measures and strategies, over time, in human rights institutions, and international law, more generally.”
5. Finally, Carozza stressed the vital role the experts can play through their experience, knowledge, and expertise in disseminating new knowledge that can bring more coherence and unity to compliance with the implementation of international legal norms.

IV. Overview of the Work of the Notre Dame Reparation Design and Compliance Lab

6. Diane Desierto, associate professor of human rights law and global affairs at the Keough School for Global Affairs, proceeded to outline the three broad questions that define the trajectory of research for the Lab. She explained that the three following questions constitute the core themes on reparations and compliance within the international system:
 - a. How do tribunals conceptualize and implement reparations for international injury? Do they rely on pre-designed formulations such as in the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (Restitution, compensation, satisfaction, or non-repetition)? Do these tribunals design bespoke reparations *motu proprio* or upon the petition of parties to a dispute?
 - b. What factors determine the effectiveness of repetitive judgments, decisions, or orders vis-à-vis the efficiency of their delivery for injured parties?
 - c. Given current paths for institutional reform at various tribunals, what possible reforms could also be considered?
7. Aníbal Pérez-Liñán, professor of political science and global affairs at the University of Notre Dame, proceeded to speak about the methodology of NDRL. Pérez-Liñán discussed the two general principles that guide the empirical approach to compliance: Specificity and Temporality.
8. In explaining the principle of Specificity, Pérez-Liñán proposed that rather than measuring compliance at the level of targets, measurement should be done at the level of specific policies, orders, or recommendations issued by the tribunal. When it comes to the principle of Temporality, he suggested gathering data to measure not only whether compliance happens but also when it happens.
9. Pérez-Liñán emphasized that the type of information captured by the two principles allows us to model time to compliance. He noted that when measuring compliance, the NDRL researcher assigns a score of zero to every year when a measure remains open and a score of one when compliance occurs. He further added that the average of those values of compliance provides an estimate of the annual probability of compliance for any set of reparation measures. Another advantage of this method is that we can calculate the rate of compliance over time, across cases and reparation measures; hence, we can map the life cycle of reparation measures.
10. Pérez-Liñán illustrated his point by giving some practical examples. Based on the Lab analysis of 257 cases from the Inter-American Court of Human Rights, NDRL research was able to capture the life cycle for reparation measures ordered by the Inter-American

Court of Human Rights. The analysis revealed that the probability of compliance with reparation measures ordered by the Inter-American Court of Human Rights increases consistently in the first three years following the ruling, then declines progressively. Another interesting finding is the minor increase in compliance after 15 years of the ruling. Pérez-Liñán indicated that the same interesting pattern was observed for the Inter-American Commission on Human Rights. In his view, the data for this life cycle might suggest that there is a window of opportunity to promote compliance for the Inter-American Court of Human Rights in the first five years following the ruling. Statistical models can be used to predict when compliance is more likely to occur.

11. Pérez-Liñán said that the Reparation and Compliance Lab anticipate three lines of analysis based on that approach:
 - a. Factors that facilitate compliance, but over which tribunals have little control (for example, government change).
 - b. Strategies to promote compliance (for example, supervision hearings).
 - c. Design of reparation measures to assess the effectiveness of different designs.
12. Finally, Pérez-Liñán stressed the importance of collaboration with the experts from the various adjudication bodies and the need to work in an interdisciplinary approach to achieve the Lab's goals.
13. In response to a question from Frédéric Sourgens, professor of law at the Washburn University School of Law, regarding how to deal with partial compliance and contested compliance, Pérez-Liñán explained that these types of compliance depend a lot on the specific tribunal or adjudication body and how they assess compliance in each case. For example, in the case of the Inter-American Court of Human Rights, the Court in the supervision process identifies full compliance and partial compliance with reparation measures. This allows us to model not only the timing to full compliance but also the timing to partial compliance.
14. Francesca Parente, Princeton University, asked about the aspect of Temporality and the methodology the Lab uses to capture compliance. She emphasized that observations are not independent and questioned the method of aggregation across observations. In response, Parente, Pérez-Liñán said that they observed compliance conditional on the fact that compliance has not taken place before, and that is the reason as in every discrete-time survival model, the observations drop after compliance takes place. He further added that researchers observe, at any point in time, "the sample of observations for which compliance hasn't taken place yet." Pérez-Liñán said that, in his presentation, the example averaged events of compliance across all observations for an "imaginary target." "In practice, when we model this statistically, we need to consider frailties. That is, random effects by case or by State or by reparation measure, to account for non-independent variation."
15. Silvia Steininger, Max-Planck-Institute for Comparative Public Law and International Law raised the issue of the different interpretations by States when it comes to the

implementation of reparative measures and how to comply with them. She also asked whether there are some factors, such as political factors, that the Lab takes into account when dealing with different bodies, and that might jeopardize compliance. Pérez-Liñán acknowledged the importance of the issue raised by Steininger and noted that there would be a lot of heterogeneity across different adjudication bodies and sometimes within the same adjudication body. He further added that heterogeneity exists for different types of cases, reparation measures, or different types of targets. When it comes to factors, the State's nature is likely to be one of the "factors that are crucial to control for."

V. Overview of the workshop discussions

A. International Challenges to Assess Compliance

16. The first session focused on the challenges facing the various international institutions and adjudicative bodies when assessing the level of compliance with their reparative measures. Fernanda Dos Anjos, chief of staff at the Inter-American Commission on Human Rights, started her presentation with a general overview of the Commission's process to monitor its recommendations. She noted that the Commission makes recommendations to the Member States of the Organization of American States (OEA) in order to promote respect for human rights.
17. Dos Anjos then proceeded to explain the different types of recommendations issued by the Commission. She said that within the framework of the petition and case system, the Commission adopts and follows up on the recommendations in its "published merits reports; the decisions in friendly settlement agreements, and the decisions in the resolutions that grant or extend precautionary measures." When it comes to the Commission monitoring system, the Commission adopts and follows up on the recommendations published in thematic reports, country reports, and its annual report.
18. Dos Anjos added that the Commission adopted and is currently implementing as part of its new strategic plan, a Special Program to Monitor IACHR Recommendations. This program aims to strengthen the capacity of the Commission to promote efficient follow-up mechanisms on its recommendations and to verify the level of compliance and domestic incorporation of States' international human rights obligations.
19. Dos Anjos further stated that the Commission's plan is centered around the following five components:
 - a. The creation and arrangement of work procedures and methodologies regarding follow-up of recommendations.
 - b. The creation and implementation of special mechanisms to follow up the Commission's recommendations.

- c. The creation and launch of the Inter-American System for Monitoring Recommendations, the Inter-American System (IASMR).
 - d. Coordination with the technical and political bodies of the Organization of American States (“OAS”).
 - e. Strengthening the capacity of the OAS Member States to monitor and implement the Commission’s recommendations.
20. Dos Anjos proceeded to discuss the methodology the Commission uses in issuing its recommendations and the steps taken to make it more effective. She noted that the Commission has taken significant steps to improve its methodology for monitoring its recommendations, and to verify the degree of compliance and internalization of the commitments adopted by Member States. In this regard, Dos Anjos mentioned that the Commission embraced new categories of analysis to identify challenges related to the follow up of recommendations and to evaluate the level of compliance with its mechanisms. The Commission expanded the range of criteria to cover categories not included before, such as non-compliance.
21. She also noted that the Commission is seeking to improve the method it uses to recommend reparative measures to make it more “precise, objective and measurable.” She added that this process is based on the concept of integral reparation, including individual reparation measures such as restitution, compensation, and rehabilitation, as well as general measures of satisfaction and non-repetition. Dos Anjos mentioned that the actions taken by the Commission since the adoption of its new strategic plan have resulted in an “increase of more than 200% in the level of response of the parties.”
22. Compliance with the reparative measures issued by the Commission faces multiple challenges, including the difficulty of reaching the required level of compliance and the effectiveness of the system in general. For instance, the longer it takes a State to comply with reparative measures, the longer the case remains in the follow-up stage. Additionally, States’ low willingness to comply with the measures, and lack of response from States that have not yet ratified the American Convention pose ongoing obstacles to the work of the Commission.
23. However, Dos Anjos acknowledged that there is a window of opportunity for enhancing the level of compliance with the Commission’s recommendations. This include, for instance, the possibility of referring cases to the Inter-American Court. Additionally, one of the lessons that the Commission learned is that higher compliance rates require a more robust monitoring process.
24. Gabriela Pacheco, from the Supervision Unit of the Inter-American Court of Human Rights, spoke about compliance with the Inter-American Courts’ judgments and reparative measures. She emphasized that numerous reparation measures are ordered in each judgment. Hence, it is vital to assess the level of compliance for every reparative measure instead of evaluating compliance with the judgment as a whole. In addition to the number of reparative measures, the nature and complexity of those measures also

have an impact on the time the case may remain at the monitoring stage. For instance, complying with the guarantee of non-repetition is not the same as complying with the payment of compensations.

25. When the Court assesses the degree of compliance with each reparative measure, it assesses whether it is full compliance, partial compliance, or pending compliance. In serious cases, the Court can also issue an order, stating that the State did not comply, or that the State is disregarding the reparative order.
26. In recent years, the Court has identified the need to acknowledge progress in complying with reparative measures, even if it is not partial compliance. Pacheco noted that the Court recognizes the difficulty in assessing the degree of compliance and whether it is pending compliance or partial compliance.
27. Pacheco also spoke about the mechanisms and the strategies the Court uses to monitor compliance with its orders. In this regard, she noted that the Court does not work on a permanent basis, making it difficult to utilize all of the mechanisms. These mechanisms include issuing orders, holding private or public hearings, monitoring through notes issued by the Court's Secretariat, and just recently, the Court started to conduct site visits to the responsible States.
28. Pacheco identified some of the challenges facing the Court when it comes to compliance with its reparative measures. These challenges include restitution of indigenous peoples' right to land as well as guarantees of non-repetition. Pacheco stressed the importance of researching the conditions that favor compliance on a national level and the mechanisms responsible for monitoring compliance. Identifying these key factors and mechanisms allows the Court to act at certain key moments that would ultimately promote compliance.
29. Pacheco referred to some areas of possible research about factors that could favor compliance with the Court's reparative measures and recommendations. These areas include mechanisms and institutional bodies in charge of coordinating compliance with judgments at the national level, change in the government, the role that academia and civil society play in demanding compliance, interests of other international institutions in the same reparative measures, and requests made by the Court to obtain direct information from a specific State's organ and institutions that have competence or function that is relevant for the implementation of the reparation at a domestic level (e.g., requests to National Human Rights institutions). Another way that might promote compliance is the direct communication between the people affected and senior State officials tasked with implementing the Court's order.

30. Finally, Pacheco stressed the vital role of site visits as one of the main avenues to promote compliance with the Court's orders. Site visits provide a strong advantage by enabling the Court to monitor the State's implementation of its reparative orders directly.
31. Imrana Jalal, chair of the World Bank Inspection Panel, started her presentation by showing a short video about a complaint filed by residents of a village in Western Uganda in 2015 dealing with Gender-Based Violence (GBV). In that case, the Inspection Panel (IP) dealt for the first time with allegations of Gender-Based Violence in a World Bank-financed project. The case led to a significant institutional change at the World Bank. The World Bank suspended funding for the project in October 2015 and canceled it two months later. In this case, the Panel's investigation and actions by the Bank and Uganda brought some redress to the community and led to the launch of the Global Task Force to tackle Gender-Based Violence at the Bank.
32. Jalal noted that the IP is not a traditional tribunal or even a quasi-judicial tribunal. She underscored that reparations occur when there is a mutual willingness from the side of the borrower and the Bank's side in terms of supporting the borrower in the implementation of such measures.
33. Jalal identified some of the challenges facing compliance with reparative measures at the Bank. These challenges include access to the Panel and lack of information about the Panel. Further, until recently, IP included a time eligibility restriction, where claimants needed to file their complaint before 95% of the funds of the Bank were disbursed. Finally, the Panel was not, until recently, able to monitor the remedies provided by the Bank. Jalal noted that the Panel does not issue any reparative recommendations in its investigation reports but rather findings of non-compliance with the Bank's environmental and social safeguards. The Bank's management then develops a Management Action Plan that responds to the Panel's findings, providing remedies and reparation for the complainants.
34. Another restriction on the IP work was its lack of authority to monitor management's compliance with its Action Plan. Jalal mentioned that in the last three months, the Bank's Board approved new tools which will allow the IP, in few circumstances, to conduct country visits and verify if the remedies provided were implemented. In that sense, the IP is now authorized, in some cases, to verify the management's compliance with its Action Plan. Before that, the IP was unable to monitor the management's work because once the Bank's Board approved the Management Action Plan, the IP had no further relationship with the requesters.
35. Jalal also talked about an additional major challenge, which is that the Bank's system requires the borrower to pay for remedial actions. Although the borrower can apply for additional financing, that is not always the case. And until now, the Bank has not set up a remedial fund.

36. Mary Ellen O’Connell, professor of law and research professor of international dispute resolution at the University of Notre Dame, raised a question about the political context in which the World Bank developed its strategy that led to the positive outcome stressed by Jalal in her presentation. Jalal answered that the process was challenging, taking at least two years and a half of negotiation and consensus-building. Jalal noted that considerable lobbying and advocacy were needed among the twenty-five Board members, who represent over a hundred and ninety countries. Initially, there was strong resistance among the borrower countries and from Management. Nonetheless, an agreement was reached allowing the Inspection Panel to monitor compliance and “verify” the Management Action Plan in exceptional cases based on specific complex proportionality criteria. Jalal repeatedly emphasized that – unlike other tribunals in the international accountability mechanism system which have the discretion to go back to the field and monitor compliance at their discretion– the Inspection Panel needs the Board’s approval in order to monitor the Management Action Plan.
37. Francesca Parente asked Gabriela Pacheco about the windows of opportunities to enhance compliance that Pacheco raised in her presentation. Parente questioned the capacity of the Inter-American Court to monitor domestic conditions, that might favor compliance, especially that the Court does operate on a permanent basis. Pacheco replied that the Inter-American Court tries to use all mechanisms to supervise compliance even if it is not holding sessions. Besides, Pacheco noted that the Court uses Article 69 of the Rules of Procedure to ask for direct information from national institutions or from national judges that are responsible for executing the Court’s order. She also affirmed that the Court is always looking for mechanisms that can promote compliance.
38. Pérez-Liñán highlighted the incredible work the Inter-American Commission on Human Rights has done recently to advance its supervision function. Pérez-Liñán asked Fernanda Dos Anjos to share some information about the SIMORE; the way it works, and its launching date.
39. Dos Anjos explained that the SIMORE was created as a result of a partnership between the Inter-American Commission and the State of Paraguay. She noted that the Inter-American Commission has been in dialogue with States that have different types of national systems. In this regard, she explained that the idea is to develop an electronic platform that systematizes the recommendations issued by the Inter-American Commission through its different mechanisms. That platform would also allow users to submit information related to the measures adopted by the Member States to comply with the Commission’s recommendations. The system is close to being finished and is scheduled for launch on June 10, 2020. Furthermore, Dos Anjos pointed out that the new system will be an opportunity to access and utilize data on compliance, open a process of extensive oversight and scrutiny, and facilitate the active participation of third parties to promote compliance. Dos Anjos added that the Inter-American Commission is now focusing on a resolution regarding the Coronavirus pandemic and its impact on human

rights.

40. Dos Anjos also stressed that the Inter-American Commission is focusing on receiving information regarding the monitoring of recommendations. In this regard, the Inter-American Commission is also working on the design and articulation of the Impact Observatory. Dos Anjos noted that the Inter-American Commission is looking for different strategies, inter alia, collaborating with academic networks, civil society actors, research groups, and national human rights institutions.
41. Desierto noted that she was very intrigued by the decision made by the World Bank to allow the Inspection Panel to conduct ocular inspections. She also pointed out that Notre Dame students in her Human Rights Reparations class were the first to examine the Inspection Panel's reports and findings since the Panel's inception. Desierto asked Jalal if the recent decision to allow the Inspection Panel "to go back to the field to verify the Management Action Plan includes possibilities to refer back to the requesters," and the possibility to establish a routinized process that would allow the requesters to provide information to the Panel.
42. Jalal answered that the Inspection Panel would verify the implementation of the remedies by talking directly to the requesters. With the new tool, the Panel will provide a report to the Board about the progress in implementing the Management Action Plan. Jalal highlighted that the report would serve as a tool that would allow the Board members to hear the requesters' voices about the effectiveness of the remedies. Presumably, there will be new directions given to the management afterward. Jalal considered the new tool as incentive for the management to ensure the implementation of its plan, especially because the Board takes the Inspection Panel's reports very seriously. She further stated that none of the Inspection Panel's reports has ever been rejected.
43. Steininger raised a question to the workshop organizers regarding the possibility to measure the involvement of civil society using the Lab's methodology. Pérez-Liñán noted that the Lab should work on capturing that point and finding ways to analyze civil society participation. Pérez-Liñán acknowledged a possible challenge of collecting information and measuring civil society involvement for many cases but stressed out its value. He added that even if it is not possible to collect this type of information in a systematic way for all the cases, it might be possible to collect that information for some of the cases.
44. Desierto asserted that the involvement of civil society was one of the factors identified by students in the Human Rights Reparations class but has not yet been measured. She stated that "The nature of the intensity of the advocacy and the effectiveness of backdrop political and social movements pushing forward specific reparative claims was noted in various individual cases."

45. Pérez-Liñán also added that there might be some indirect ways to measure the positions of civil society. For instance, he brought up the work of Francesca Parente, where she uses public opinion to capture civil society's general orientation.

B. Extending the Approach to Other Tribunals

46. The second session proceeded with Marko Milanovic, professor of public international law at the University of Nottingham School of Law, who spoke from a European Court of Human Rights experience. Milanovic started his presentation by explaining that analyzing compliance in routine cases could be characterized as a technocratic issue. Whereas, analyzing compliance in “highly political cases” is more complicated. The latter subcategory of cases, referred to as highly controversial, requires an enormous amount of domestic political capital to achieve compliance. In some cases, compliance might require constitutional reform that necessitate a supermajority within a State. Milanovic referred to the last subgroup of cases as the most challenging cases for achieving compliance. To illustrate his point, Milanovic gave two examples: a) the *Sejdić and Finci v. Bosnia and Herzegovina* case where the State did not comply with the Court's order because compliance required constitutional change; and b) the constitutional amendment in Turkey twenty years ago. In the case of Turkey, the State complied with the European Court of Human Rights judgments regarding military tribunals. Milanovic reasserted that the political dynamics present in these types of cases need to be captured and analyzed by the Lab.
47. Francesca Parente, Princeton University, began her presentation by stating that the Inter-American Commission on Human Rights, from a political science perspective, has been understudied. Parente focused on how the Inter-American Commission is designed, and why some cases get funneled to the Inter-American Court while others stay in the merits report stage. Particularly noteworthy is the change made to the Rules of Procedure, which clarified how cases might move to the Inter-American Court in instances of non-compliance. Parente said that her research focuses on analyzing merits reports to compare the level of compliance among States, under the Court's jurisdiction, with recommendations before the change of the Rules of Procedures in 2001 and after the Rules were changed.
48. Parente also noted that the next step is to figure out how much compliance was achieved each year after the merits report was published. Even though the Inter-American Commission has been issuing follow-up fact sheets since 2018, the earliest one refers to a case from 1999. The analysis of cases prior to 1999 would entail a detailed work going through all of the annual reports that the Commission publishes.
49. Nicole De Silva, political science professor at Concordia University, started her presentation with a background on the work and the structure of the African Court on Human and Peoples' Rights. De Silva mentioned that the African Court has been in

operation since 2006, but it only rendered judicial decisions in the past ten years. The Court has thirty Member States, but the vast majority of its cases come through “direct individual and NGO access.” De Silva added that only nine States, soon to be six, granted this access to the African Court. Thus, this body is quite limited, especially because the African Commission has not referred many cases to it.

50. Concerning reparations, De Silva explained that given the small number of cases (272 applications in total; 90 have been finalized), it is easy to analyze all reparation orders. Based on a preliminary analysis of annual activity reports and judgments published by the Court, she counted twelve reparation orders against four States within the finalized cases. The focus has been in Tanzania, which is the host State. Burkina Faso has two orders, and other reparations orders were against Rwanda, Benin, and Côte d’Ivoire.
51. In terms of compliance, De Silva pointed out that there has been full and partial compliance with the first three reparation orders. While Tanzania complied partially, Burkina Faso fully complied with both reparation orders. On the one hand, De Silva stated that the first reparation order issued by the Court was with Tanzania’s case where the tribunal requested non-monetary measures, including, for instance, publishing the judgment and adopting guarantees of non-repetition. In that case, Tanzania partially complied with the Court’s orders. On the other hand, Burkina Faso has fully complied with the reparation orders issued by the African Court, which were both monetary and non-monetary.
52. However, although these cases achieved a certain level of compliance, De Silva noted the need to highlight the temporal dimension when analyzing compliance, as there has been no compliance ever since. Hence, as a general matter, there has been an active resistance to comply with the Court’s orders. She further stated that the African Court’s primary mean to promote compliance with its decisions is through submitting reports before the African Union Assembly, where the Court explains the current status of compliance on each decision that it has issued.
53. De Silva mentioned that four States that have received reparations’ orders against them had announced their withdrawals of declarations allowing individuals and NGOs to directly access the Court. The first State to withdraw its declaration was Rwanda in 2016. Last November Tanzania declared its withdrawal, and in April of 2020, two more States announced their withdrawals: Benin and Côte d’Ivoire. Hence, De Silva said that there is a mounting resistance against the African Court, and looking at reparations is one dimension of that, but it is impossible to ignore the broader political context.
54. Mary Ellen O’Connell first discussed the importance of working on reparation and compliance design and noted that this subject has generally been under-theorized and under-appreciated. She emphasized that a better design of laws attracts better compliance. One controversial part of the design work is the risk of an over-focus on the design and

an under-focus on the fidelity to the law. In O'Connell's view, if the remedy is shaped in a way to attract compliance, it could undermine the obligation to comply. Thus, she stressed this issue as the central theoretical danger in reparations design.

55. The record of Compliance with the International Court of Justice (ICJ) orders is mixed. There have been 78 cases before the ICJ. O'Connell proceeded with a comparison between the first two cases of the ICJ and the most recent two cases. The very first case before the ICJ was the *Corfu Channel* case in 1948. In that case, Albania refused to comply with the Court's order to pay reparations to the United Kingdom. O'Connell also spoke briefly about other ICJ advisory opinions and cases such as the *Reparations for Injuries in the Service of the United Nations*, the *India-Pakistan* case, and the *Chagos Islands* advisory opinion. Through these examples, O'Connell explained the level of States' Compliance with ICJ reparation orders and how ICJ addresses issues of non-compliance. She emphasized that what constitutes compliance can differ from one State to another, and this is a significant issue that can jeopardize compliance with the ICJ orders.
56. Emilia Justyna Powell, associate professor of political science and concurrent associate professor of law at the University of Notre Dame, also addressed questions related to the ICJ and the Permanent Court of Arbitration (PCA). Powell referred to the resolution of maritime and territorial disputes before the ICJ. In this regard, she explained that some empirical analyses show that 88% of the territorial cases, since the Second World War, have witnessed compliance. Nevertheless, Powell noted that the problem with this percentage is that some States renew their territorial claims after their claims have adjudicated by the tribunal, as in the case of *Qatar v. Bahrain*. That means that States can comply with the ICJ decisions for some time and renew similar claims later.
57. Regarding the PCA, Powell expressed the need for including this institution in the Lab's research. In her view, it is possible to measure compliance with PCA decisions. The Court provides a framework, not only for inter-state arbitration but also for investor-state arbitration. Further, the PCA would be a fascinating case to study because parties can shape dispute resolution. Hence, it is vital to research if arbitration's characteristics can help achieve more compliance (e.g., parties' ability to choose arbitrators).
58. Frédéric Sourgens, professor of law at the Washburn University School of Law and editor in chief of *Investment Claims* (Oxford University Press), discussed the issue of the non-permanence of some international bodies, which is not only a problem of judicial tribunals but also of arbitral tribunals. Sourgens explained that in the international arbitration context, a greater willingness to engage human rights could be found in the interim measures. The interim measures' decisions display more flexibility with the reparations ordered in comparison to the final awards. One reason for such flexibility is that interim measures often involves the participation of civil society, and sometimes political actors, that can pressure the tribunal to issue interim measures. Paradoxically,

these aspects are less present when it comes to final awards. According to Sourgens, this flexibility also responds to the fact that parties tend to be self-censored when they request reparations within the context of a final award. Indeed, parties prefer to ask for a remedy that they believe the tribunal may offer. He further added that counsels can overcome this obstacle by providing better evidence to the tribunal. Finally, Sourgens expressed that reparations design needs to be implemented in a way that maintains fidelity to the law, and broader compliance with the orders.

59. Serge Selwan, World Bank Inspection Panel, acknowledged the evolution in the policies that can be observed through the Inspection Panel's reports. Selwan offered the Panel's collaboration with the Lab.
60. Finally, both organizers, Diane Desierto, and Aníbal Pérez-Liñán thanked all the participants for their ideas and questions. The organizers invited all those who have further questions or are interested in further collaboration on different aspects of the project to reach them.

Appendix: Participants in the Workshop

Lucía Aguirre, Inter-American Court of Human Rights

Amelia Brenes, Inter-American Court of Human Rights

Paolo Carozza, University of Notre Dame

Nicole De Silva, Concordia University

Christian De Vos, Open Society Foundations

Diane Desierto, University of Notre Dame

Fernanda Dos Anjos, Inter-American Commission on Human Rights

Daniel García, Inter-American Commission on Human Rights

Imrana Jalal, World Bank Inspection Panel

Marko Milanovic, University of Nottingham

Mary Ellen O’Connell, University of Notre Dame

Gabriela Pacheco, Inter-American Court of Human Rights

Francesca Parente, Princeton University

Aníbal Pérez-Liñán, University of Notre Dame

Emilia Powell, University of Notre Dame

Serge Selwan, World Bank Inspection Panel

Frederick Sourgens, Washburn University

Silvia Steininger, Max Plank Institute for Public Law and International Law