



**British Institute of
International and
Comparative Law**

Individual Reparations for Human Rights Violations in Ukraine

Event Report





**British Institute of
International and
Comparative Law**

Mission Statement

The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

Table of Contents

Summary.....	1
Professor Roman Petrov, BIICL.....	2
Dr Kateryna Busol, BIICL.....	4
Dr Felix E Torres, Birmingham Law School	6
Mariana Goetz, Global Survivors Fund	8
Question and answer session	9

Summary

Russia's annexation of Ukraine's Crimean peninsula and aggression in Ukraine's eastern Donbas provinces that led to the establishment of non-recognised entities (the so-called "Donetsk/Luhansk People's Republics") in 2014 resulted in a significant deterioration in the human rights situation within these territories. The armed conflict has had wider human rights, economy and security repercussions for Ukraine and the region. Russia has also labelled the treatment of ethnic Russians and Russian-speaking Ukrainians by Kyiv as "genocide". Russia used this allegation as a formal pretext for the all-out invasion of Ukraine on 24 February 2022.

In light of the large-scale damage that has since been incurred by Ukraine's civilian structures, energy sector and the environment, much of the reparations discussion to date, unsurprisingly, has been focused on the infrastructural recovery of Ukraine. However, victims of serious violations of international human rights law and international humanitarian law also have an inherent right to remedy and reparation. While Russia's invasion of Ukraine has perpetuated general destruction across Ukraine, it has also led to atrocities on an individual level. To explore these issues further, on 15 June 2023, the British Institute of International and Comparative Law (BIICL) convened a hybrid event on '[Individual Reparations for Human Rights Violations in Ukraine](#)'.

The panellists first provided important historical and political context for understanding the war in Ukraine and the formation of the so-called "Donetsk/Luhansk People's Republics". The panellists further analysed how this background has facilitated human rights abuses within these non-recognised entities.

The conversation then turned to transitional justice and reparations. Specifically, the panellists addressed Ukraine's transitional justice efforts prior to the full-scale invasion. They also discussed domestic and international undertakings to secure reparations for victims of atrocity crimes in Ukraine, and how efforts to achieve criminal accountability and end impunity have so far fallen short for survivors.

This report summarises the conversation and consolidates the key themes and ideas explored in the event. The panel discussion was chaired by Dr Jean-Pierre Gauci, Arthur Watts Senior Fellow in Public International Law and Director of Teaching and Training at BIICL. The panellists were [Professor Roman Petrov](#), British Academy Research Fellow at BIICL; [Dr Kateryna Busol](#), British Academy Research Fellow at BIICL; [Dr Felix E Torres](#), Assistant Professor at Birmingham Law School; and Mariana Goetz, Head of Guide at the Global Survivors Fund.

BIICL extends its gratitude to all the panellists for their outstanding contribution to the discussion and to all attendees for their support of the event. This report was prepared by Daniella Apodaca, research intern in international law, and Dr Jean-Pierre Gauci.

This report is issued on the understanding that if any extract is used, BIICL should be credited, preferably with the date of the event.

Suggested Citation:

British Institute of International and Comparative Law, 'Individual Reparations for Human Rights Violations in Ukraine' (15 June 2023).

Professor Roman Petrov, BIICL

Professor Roman Petrov's presentation focused on the historical, political and legal context of the war in Ukraine. While the invasion of Ukraine by Russia on 24 February 2022 marks the start of the war for most international audiences, Professor Petrov noted that the war must in fact be understood from its earlier background and its various preceding stages of warfare. The first stage occurred in March 2014, when the Russian Federation annexed the Republic of Crimea, which until then had been an autonomous region within Ukraine. Russia captured the territory swiftly by staging Russian army troops in no insignia local militia formations (so-called "green men"). The Parliament of the Autonomous Republic of Crimea announced its independence in the course of this annexation after all governmental buildings and critical infrastructure were captured by "green men". However, a referendum (not recognised by the international community) soon followed and resulted in integrating the Autonomous Republic of Crimea into the Russian Federation on 18 March 2014. Russia's integration of Crimea is not recognised internationally and is viewed as a violation of international law, even while Russia continues to assert that the annexation occurred through a lawful referendum.

The second stage of the Russian invasion occurred in the Ukrainian regions of Donetsk and Luhansk. There, pro-Russian separatists and disguised Russian nationals declared the regions' independence from Ukraine in April 2014. Fuelled by anti-Ukrainian propaganda and misinformation, referenda proclaimed the states as independent sovereign republics in May 2014. In September 2022, following the full-scale invasion of Ukraine, Russia's President Vladimir Putin annexed the regions but declared their special status, effectively preserving Donetsk and Luhansk's status as republics within the Russian Federation. Similar events occurred with regard to parts of the Kherson and Zaporizhzhia regions of Ukraine occupied by the Russian Army. As Professor Petrov noted, this situation is complicated from an international law perspective. According to public international law, Donetsk and Luhansk are non-recognised entities. The Russian Federation, on the other hand, has declared the annexation of the Kherson and Zaporizhzhia regions of Ukraine, which it does not actually control militarily.

People residing in Donetsk and Luhansk face complications with respect to their legal status and their right to reparations. While originally possessing Ukrainian citizenship, these residents acquired local citizenship of the Donetsk and Luhansk People's Republics. They were also actively encouraged to obtain Russian citizenship. The Donetsk/Luhansk citizenship has now lapsed given the integration of the regions into the Russian Federation, but former Ukrainian residents of Donetsk and Luhansk who have acquired Russian citizenship face additional complexities.

As Professor Petrov described, Putin used a legal basis, albeit an absurd one, to justify the Russian invasion of Ukraine. Citing Articles 1(2) and 51 of the Charter of the United Nations to invoke the right of self-determination and of national self-defence, Putin characterised the invasion as a special military operation to defend and protect the rights of Russian nationals in the Donetsk and Luhansk territories.

Professor Petrov observed that this is only one of the ways in which Russia has engaged in "passport war". The EU-Ukraine Association Agreement, an important part of Ukraine's legal framework of cooperation with the European Union that entered into force in 2017, creates a visa-free regime for Ukraine and EU passport holders, making a Ukrainian passport appealing to Ukrainian nationals living in the non-recognised entities. In response, to dissuade these persons from retaining Ukrainian citizenship, Russian authorities have issued an edict in 2023 proclaiming that Ukrainian nationals not willing to cede their Ukrainian citizenship and apply for Russian citizenship could be selectively deported on national security grounds.

Professor Petrov further discussed the findings from his research on the constitutions of the Donetsk and Luhansk People's Republics of 2014. Their text was directly copied from the Russian constitution of 1993 but omitted some provisions recognising principles of international law. The purpose for this was later revealed to be the creation of a legal basis for potential show trials of Ukrainian and international prisoners of war.

Dr Kateryna Busol, BIICL

Dr Kateryna Busol's talk focused on Ukraine's transitional justice policies before and after the full-scale invasion, as well as the role of reparations in these efforts. She also discussed how the circumstances of the all-out war with Russia should influence Ukraine's approach to reparations. Finally, she analysed the UN Commission of Inquiry's recommendations issued in March 2023 and the developments arising from the Council of Europe's Registry for Damage and their potential as viable avenues for individual reparations for victims of atrocity crimes.

In response to the 2014 armed conflict in Crimea and Donbas, Ukraine has developed various domestic and international efforts to achieve justice for victims of human rights abuses. Both then and following the full-scale invasion of Ukraine in 2022, these efforts have focused on criminal accountability through documentation, investigation, prosecution and adjudication of war crimes. These efforts have prioritised the "naming and shaming" of Russia and Russian direct perpetrators and their commanders.

However, these efforts have not successfully met all the needs of survivors. Dr Busol discussed a study¹ she co-conducted for the Global Survivors Fund among survivors of conflict-related sexual violence, most of whom had been placed in unlawful detention centres in eastern Ukraine during the first phase of the armed conflict in 2014-2021. Dr Busol noted that while these survivors view justice as a top priority, they have other practical needs. For example, they may require relocation assistance and new housing to address safety concerns, sustained medical and psychological support, and couples' counselling in order to be able to reconnect with partners following traumatising assaults. They may also require professional development or training to access job opportunities, as well as support for family members, especially partners and children, following the traumatic experience of the detention of their loved one.

In the years leading up to the full-scale invasion of Ukraine, then newly elected President Volodymyr Zelenskyy attempted to shift Ukraine's transitional justice policy to a more holistic approach. This involved harmonising the different accountability efforts in international courts and Ukraine's domestic criminal proceedings, expanding the notion of justice, and discussing potential truth-telling initiatives. Institutional reforms were also considered, including reforming the judiciary to oversee the transitional justice process, establishing anti-corruption bodies, and crafting transitional justice policies under a special working group of the Law Reform Commission.

Reparations were also discussed in this context, marking a shift in the post-Soviet era mindset from viewing reparations as a form of interstate compensation following war to thinking about reparations as a tool to assist *individual* survivors of atrocity crimes. Dr Busol noted that the Ukrainian Law Reform Commission's roadmap for transitional justice incorporates key principles of transitional justice, although its adoption by a presidential decree was interrupted by the full-scale invasion of Ukraine in February 2022.²

Dr Busol then noted several key points about the current status of reparations in Ukraine. First, she suggested that atrocity survivors in Ukraine are often favouring universal jurisdiction proceedings,

¹ Amal Nassar, Dr Kateryna Busol and Alexa Sydor-Czartorysky, 'Ukraine Study on the Status of and Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence' (Global Survivors Fund 2022) <https://static1.squarespace.com/static/5ff7d9f4dd4cdc650b24f9a4/t/62c3d1610bf4cc740f73fb56/1657000313991/GSFReporUkraine_ENG.pdf> accessed 4 October 2023.

² See further, Kateryna Busol, 'Mariupol and the Origins and Avenues of Ukraine's Transitional Justice Process' (*Just Security*, 1 June 2022) <<https://www.justsecurity.org/81680/mariupol-and-the-origins-and-avenues-of-ukraines-transitional-justice-process/>> accessed 28 September 2023.

particularly given the mass destruction caused by the war and the extensive support required by victims. She also explained that while the Ukrainian government has an obligation to compensate victims, Russia is under an initial obligation to do so. However, Russia has adopted legislative measures to avoid being held responsible for crimes and expressly stated that it will not provide remedies for these violations.

Dr Busol then noted that both the United Nations Independent International Commission of Inquiry on Ukraine and the Council of Europe's Register of Damage for Ukraine have also considered the use of reparations to address the needs of survivors. The UN Commission of Inquiry has issued a [report](#) that, while recognising the importance of criminal accountability efforts, also outlines two steps the Ukrainian government should take to feasibly help survivors in Ukraine without delay. First, it proposes introducing criteria for a registry of victims of atrocity crimes to provide individuals with an unimpeded effective procedure for declaring themselves survivors. It then recommends providing more holistic and sustainable medical and psychological support for victims.

Dr Busol shared her concerns about the Register of Damage established by the Council of Europe. First, she noted that the register is seemingly directed towards the consequences of Russia's responsibility as a state, rather than the individual responsibility of perpetrators of alleged war crimes, crimes against humanity and genocide. At the very least, the register is unclear about the particularities of its application to interstate and individual reparations. Second, and most alarmingly, Dr Busol noted that the register applies only to acts that have occurred since February 2022, rendering the first eight destructive years of the armed conflict — and its survivors — outside of the register's scope. Finally, she explained that the registry does not appear to provide for interim urgent reparations, such as critically needed medical and psychological support for victims.

Dr Busol ended her presentation by discussing how reparations might arise in the context of prosecuting Russia for the crime of aggression. Scholars like Shane Darcy³ have recently conceptualised individual victims, rather than states, as victims of the crime of aggression, and under the international criminal law framework utilised by the International Criminal Court, individual persons may potentially be recognised as victims of the crime of aggression. Dr Busol argued that this remains an important question that will have implications for individuals' rights to reparations for Russia's aggression.

³ See, for example, Shane Darcy, 'Accident and Design: Recognising Victims of Aggression in International Law (2021) 70(1) International and Comparative Law Quarterly 103.

Dr Felix E Torres, Birmingham Law School

The next speaker, Dr Felix E Torres, discussed the extent to which a transitional justice framework in Ukraine would succeed and its potential for upholding a reparations policy. Dr Torres opined that while some form of redress is required for individual victims in Ukraine, the framework should be one of collective reparations, with individual reparations for special cases. However, he argued that the mainstream understanding of transitional justice as employed by the UN does not currently provide adequate rationale to support these reparation efforts at this time. Dr Torres explained that a key pillar of this mainstream understanding is that reparations must go hand in hand with acknowledgement of wrongdoing. This is based on a view that, without an acknowledgement of responsibility, reparations are effectively oxymoronic. Therefore, Dr Torres posited, if Ukraine will not take responsibility for the abuses that have resulted from the Russian invasion, then reparations will not work as a means to bring about accountability for these abuses.

Dr Torres then provided important context for understanding the origins and concept of transitional justice. He explained that transitional justice emerged to address violations committed by states against their own citizens during transitions from dictatorships to democracy, especially in South America countries such as in Chile and Argentina. Today, transitional justice has mainly been applied in post-conflict settings, which are characterised by large numbers of victims, widespread poverty and other socio-economic shortcomings. In such contexts, various state and non-state actors are responsible for the violations.

In each post-conflict context, it is therefore critical to consider the desired results of a transitional justice approach and the likelihood of achieving these results. Importantly, transitional justice must account for context and avoid a 'one size fits all' approach. Further, in considering the compensation that victims should receive, it is crucial not to conflate the social, economic and constitutional rights that all individuals are inherently entitled to by virtue of their citizenship with the compensation that victims are entitled to as a result of recognised wrongs.

Dr Torres stated that the ongoing conflict in Ukraine gives rise to various factors that must be accounted for in its transitional justice process. In contrast to almost all previous cases where transitional justice processes have been instituted, the conflict in Ukraine is ongoing and has no foreseeable end. However, there has been some discussion of the conflict ending in compromise. Dr Torres expressed the view that if the conflict were to end in compromise, Russia would likely not acknowledge its wrongdoing, thereby undermining any use of reparations. The war in Ukraine would also likely be the first time that transitional justice as a distinct field of study is applied to an international armed conflict. As a result, transitional justice would likely be implemented as a one-sided approach by the Ukrainian government, with support from the international community. Dr Torres noted that Russia's general hostility towards the concept of transitional justice is also another relevant factor.

The consequence of these factors, Dr Torres explained, is that reparations would likely need to be delivered without any acknowledgement of wrongdoing, which would undermine the entire conceptual structure of transitional justice. This may then only leave open a pathway for reparations owed by Ukrainian forces for violations perpetrated by them. This imbalance is likely to be politically unfavourable, considering that Russia — the invader — would not be held accountable.

Dr Torres suggested that this would further complicate identifying who is owed reparations and why. Under the [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), only victims of 'gross' or 'serious' violations are entitled to transitional justice measures. But, Dr Torres

noted, when we consider for example internally displaced persons in Ukraine, who are facing one of the most serious humanitarian concerns, their entitlement to reparations is unclear because only under certain circumstances is internal displacement the result of a gross violation of international human rights law or a serious violation of international humanitarian law. The Basic Principles and Guidelines require distinguishing between internally displaced persons and accounting for who among them has been forcibly removed because of violations that are 'gross' or 'serious'. By predicating an individual's right to reparations on whether their displacement resulted from a 'gross' or 'serious' violation, individuals — all of whom have been displaced by the war — may receive differential treatment and unequal access to reparations, seriously complicating the situation.

For this reason, Dr Torres opined that a collective approach to reparations for internally displaced persons could be better suited to Ukraine's particular situation. He argued that there is little sense in individually distinguishing between internally displaced persons, because the purpose of reparations at this stage would not be to bring about accountability for individual victims. However, he suggested that individual reparations would likely make more sense for some victims, such as victims of sexual violence.

Dr Torres concluded by affirming that in considering reparations, victims should be the top priority in terms of approach, but noting that sometimes it is also important to consider whether transitional justice is the best tool to address these concerns or whether a functional analysis might shed light on other avenues that can be utilized to bring about even modest reparations and an acknowledgement of wrongdoing.

Mariana Goetz, Global Survivors Fund

Mariana Goetz commenced her talk by introducing the work of the [Global Survivors Fund](#), an organisation that was established during the COVID-19 pandemic to prioritise reparations for conflict-related sexual violence. Because many conflict zones lack judicial infrastructure, have stringent barriers to access to justice like high legal fees, and perpetuate stigmatisation around sexual violence, only a small minority of survivors ever receive reparations through formal justice mechanisms. She explained that the difficulty survivors face in accessing reparations is further compounded by the reluctance and refusal of many states and other actors to provide reparations. The Global Survivors Fund attempts to bridge the gap between survivors of conflict-related sexual violence and reparations by providing a fund for reparations, while maintaining that the duty to provide redress for perpetuating or failing to prevent sexual violence lies with the responsible party.

Ms Goetz explained that the Global Survivors Fund is grounded in principles of international law because its approach is based on the recognition of the right of survivors of conflict-related sexual violence to reparations and other forms of redress. This right is recognised in the [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), adopted by the United Nations General Assembly in 2005.

Ms Goetz highlighted the urgency of the Global Survivors Fund's work in Ukraine. She explained that it is a common misconception that reparations should be considered at the end of a conflict, rather than during. Reparations are often needed more urgently, long before the end of a conflict, but states or responsible parties are frequently unwilling or unable to provide reparations for survivors. Ms Goetz noted that this delay in reparations — in the fraction of cases where survivors receive reparations at all — is particularly harmful in the context of sexual violence. Conflict-related sexual violence is often accompanied by a sensation of shame or guilt for survivors, which in turn discourages victims from seeking services and other recovery paths. As time lapses, harms for survivors compound.

Given this hardship, the Global Survivors Fund is working to establish an urgent interim reparations programme for survivors. It is currently working with international actors to draft legislation for urgent interim reparations, with the intention of presenting it to the Ukrainian parliament in September 2023. Ms Goetz also highlighted two other important instruments supporting reparations: a slightly slower-track comprehensive reparations proposal for all victims of violations, and an international register for property and damage. The interim reparations programme stipulates that it will be cancelled when a comprehensive reparation programme takes effect, with the survivors and victims registered under the interim programme incorporated into the nationwide programme.

Ms Goetz concluded by explaining that when the Ukrainian parliament considers the interim reparations programme proposal in September 2023, it will fill in the details — such as eligibility criteria for victims, institutional roles, and how victims actually apply — through bylaws.

Question and answer session

During the question and answer session, several questions were first posed by panellists to one another. Professor Petrov returned to Dr Torres' point about reparations and accountability. Professor Petrov suggested that two solutions could play a crucial role in distinguishing reparations and accountability. First would be the negotiation of a formal peace agreement, which would almost certainly address reparations. As is evidenced by the recent destruction of the Kakhovka Dam on 6 June 2023, both sides to the conflict will always blame the other for damage. Meanwhile, it is very difficult to obtain evidence to prove which side is responsible for what damage. Professor Petrov explained that a peace agreement is therefore going to be the key document for settling the factual complications of damage and defining the reparations owed by each side. The second solution is the establishment of a common international tribunal to help assess and establish accountability. Professor Petrov explained that both a peace agreement and a tribunal will be crucial for outlining reparations and accountability.

Dr Busol then addressed Ukraine's unique context for transitional justice and explained how this context is both a strength and a weakness for Ukraine. She explained that it is a weakness in that Ukraine had already suffered extensive aggression by Russia prior to the full-scale invasion, however, it is a strength in that Ukraine's transition from a repressive regime occurred prior to the full-scale invasion, whereas normally transitional justice takes place in that period of transition. Dr Busol suggested that Ukraine's civil society is particularly primed to implement transitional justice because it has already participated in documenting conflict-related crime and engaging with survivors. Thus, despite the ongoing challenges, Ukraine has the unique opportunity of having a strong unity between government, civil society and survivors, who have a strong vision of how they want to engage and implement their mission of not only accountability but reparation.

Dr Busol also opined that a strong and effective transformation in Ukraine has the potential to be a catalyst and a model for transitional justice in Russian and Belarusian societies. Ukraine's context is once again critical. Given its shared traumatic history with Russia and Belarus, Ukraine is an important model for inspiring these countries and their civic leaders to reckon with their Soviet past and their complicity in the aggression against Ukraine.

Dr Busol then went on to discuss reparations on the Ukrainian side. As recognised by the UN High Commissioner for Human Rights, the vast majority of violations have been perpetrated by Russia. Nevertheless, a small portion of crimes have allegedly been perpetrated by Ukrainian factions, and Ukrainian prosecutors have stated that there will be an audit of all crimes perpetrated by both sides.

On the point of socio-economic reparations, Dr Busol affirmed that survivors still view Russian accountability as the foremost priority, but noted that victims still urgently require medical support, housing and other forms of practical redress. However, these forms of support are currently being funded from Ukrainian and international sources rather than Russian funds, meaning that victims are not getting the full extent of accountability from Russia that they seek.

Responding to Ms Goetz's comments on the register for victims, Dr Busol reiterated her concern that the register accounts for only the damage caused subsequent to the full-scale invasion of Ukraine. She also noted that the critical challenge for reparations in Ukraine today is ensuring a strong collective interplay between the three instruments for reparations (namely, the urgent interim instrument, the comprehensive national registry, and the international registry) and expanding the scope of the interim reparations programme to cover victims of all atrocities.

Dr Torres added that he shares a critique of the European idea of reparations that emphasises solidarity expressed by Pablo de Greiff, the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. Even while solidarity is not wrong in itself, there are other ways to underpin the reparations process that give more flexibility to adapt to the needs of each unique conflict. Dr Torres reiterated that, for example, the war in Ukraine requires reparations in the interim, prior to the resolution of the war, but that the traditional approach to transitional justice does not accommodate this approach. In the current case, strictly pairing accountability and reparations is ineffective because Russia is unlikely to recognise wrongdoing, and thus reparations should be decoupled from accountability in order to allow for important interim measures of reparations.

Ms Goetz then contributed a perspective of how the individual right to reparation is viewed under international human rights law. There is precedent under international law, particularly from cases from the Inter-American Court of Human Rights, that a victim's right to reparations exists irrespective of who the perpetrator is, meaning that a perpetrator does not need to be identified as a precondition for allowing a victim to access reparations. The logical extension of this precedent, Ms Goetz argued, is that reparations can be issued prior to, rather than only after, a conflict has ended, and accountability has been established. She noted that it is critical to break down the stigma, shame and denial flowing from the perpetrated atrocities early, so as to allow victims to come forward and seek reparations. The question still remains, however, of who finances the reparations programme.

The panellists then took questions from the audience. A first question related to the Council of Europe's Registry of Damages. Specifically, it queried what the relationship between the submissions to the registry and complaints and proceedings conducted by other international bodies and courts involving the issue of reparations related to the Russian aggression should be. How can these different bodies avoid confusion and the possible duplication of complaints and awards, even if Russia has not been fulfilling judgments issued against it by the European Court of Human Rights? The Council of Europe has suggested that submissions to the registry will contain not only evidence, but also claims. What should be the legal basis for these claims, insofar as they can involve questions of the application of the European Convention on Human Rights as well as international humanitarian law?

Dr Busol replied that the Ukrainian government regards the Council of Europe's Registry of Damages as the principal registry so far. She noted that it is important to try for a holistic vision of the damage submitted to such a registry because there are challenges with international tribunal proceedings. She reiterated two concerns with the Registry: first, that it is limited to damages that have occurred since the full-scale invasion, and second, that it emphasises state responsibility over damage perpetrated by individuals. She concluded by remarking that it is still an open question how and whether the Registry will play a role for the urgent interim reparations.

Professor Petrov added that the Ukraine government has launched its own registry that allows Ukrainian nationals to submit their own evidence and claims for compensation online with a special app, thereby launching information collection that can possibly fill gaps in the Council of Europe's Registry. Estimates today show that Ukraine has about 600 billion worth of damages. This enormous sum poses large questions: who is going to cover the cost? How is Russia going to be held accountable and made to contribute to the extensive cost of the damage? Who is going to be sitting at the table negotiating a peace agreement? How will a peace agreement be negotiated, given the high probability of a change in regime in Russia?

Professor Petrov went on to say that history has provided interesting examples of how to approach reparations. Following World War II, there was no specific agreement on the scope of reparations, and ultimately Germany did not pay reparations beyond the property it lost to the Allied Forces. This is as

compared to World War I, where Germany was required to pay specific reparations. Professor Petrov noted that history shows the consequences of that arrangement. In this context, there is a big question of whether the Russian economy, despite its strength, can handle the enormous sum that will be owed in reparations. He noted that there has been some discussion of establishing long-term reparations through a sale of Russia's natural resources or a programme similar to what was done in Iraq with the Oil-for-Food Programme.

A further question related to the potential role of the European Court of Human Rights in this process, and whether it will have any role at all given that Russia has ceased to be a party to the Court. Dr Torres responded that in recent years, Ukraine has been the country with the most claims before the Court, and the Court has already dealt with claims regarding the use of force in the eastern regions of Ukraine and will continue to do so. He noted that the Court may order measures of satisfaction for abuses perpetrated by Ukraine. It is unclear how many orders it will issue, because at the same time, the Court is trying to avoid being a court that settles daily episodes of the use of force. This situation will be complicated and one-sided because between Russia and Ukraine, only Ukraine is party to the Court's principles, meaning that the initial aggressor, Russia, will not be required to provide reparations under the Court's framework.

Dr Busol added that in her view, the greatest impact of the European Court of Human Rights so far has been issuing a verdict that Russia has had effective control over eastern Ukraine. This rapid response is notable when compared to the fact that courts have generally been slow in assessing and recognising the mounting human rights violations perpetrated in eastern Ukraine since 2014.

Ms Goetz offered the important clarification that the reparations conversation involves two different areas of law. First, there is the public international law framework, which involves interstate reparation. Second is the human rights framework, which involves individual reparation as well, and which has been the focus of the discussion. With that clarification in mind, she stated that she agreed with the other panellists on their points about the European Court of Human Rights. Because that court involves the human rights framework, which does not allow for extra-territorial accountability, it will only be Ukraine that is held accountable for violations committed in the war. She expressed her optimism that the international community will step in to finance individuals' right to reparations.

In the final comments, Dr Busol returned to the relationship between reparations and accountability, highlighting that an important feature of draft interim reparations programme legislation is that it allows victims to register for reparations without forcing them to participate in criminal proceedings, which can be heavily re-traumatising for victims. Importantly, she noted that this emphasises that a victim's right to remedy and reparation is independent of their contribution to criminal prosecutions.

Professor Petrov commented that the reparations scheme today is indeed a complex amalgamation of public international law, private law, and interstate responsibility. A key issue will undoubtedly be peace deal negotiations and who will "sit at the table" and how responsibility will be allocated. Static and dynamic reparations leave room for compromise. He expressed his scepticism that the European Court of Human Rights will be an effective framework for reparations because of the Court's accumulative principle and the immense backlog of disputes before it.

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
F 020 7862 5152
E info@biicl.org

www.biicl.org

A company limited by guarantee
Registered in England No. 615025
Registered Charity No. 209425



**British Institute of
International and
Comparative Law**