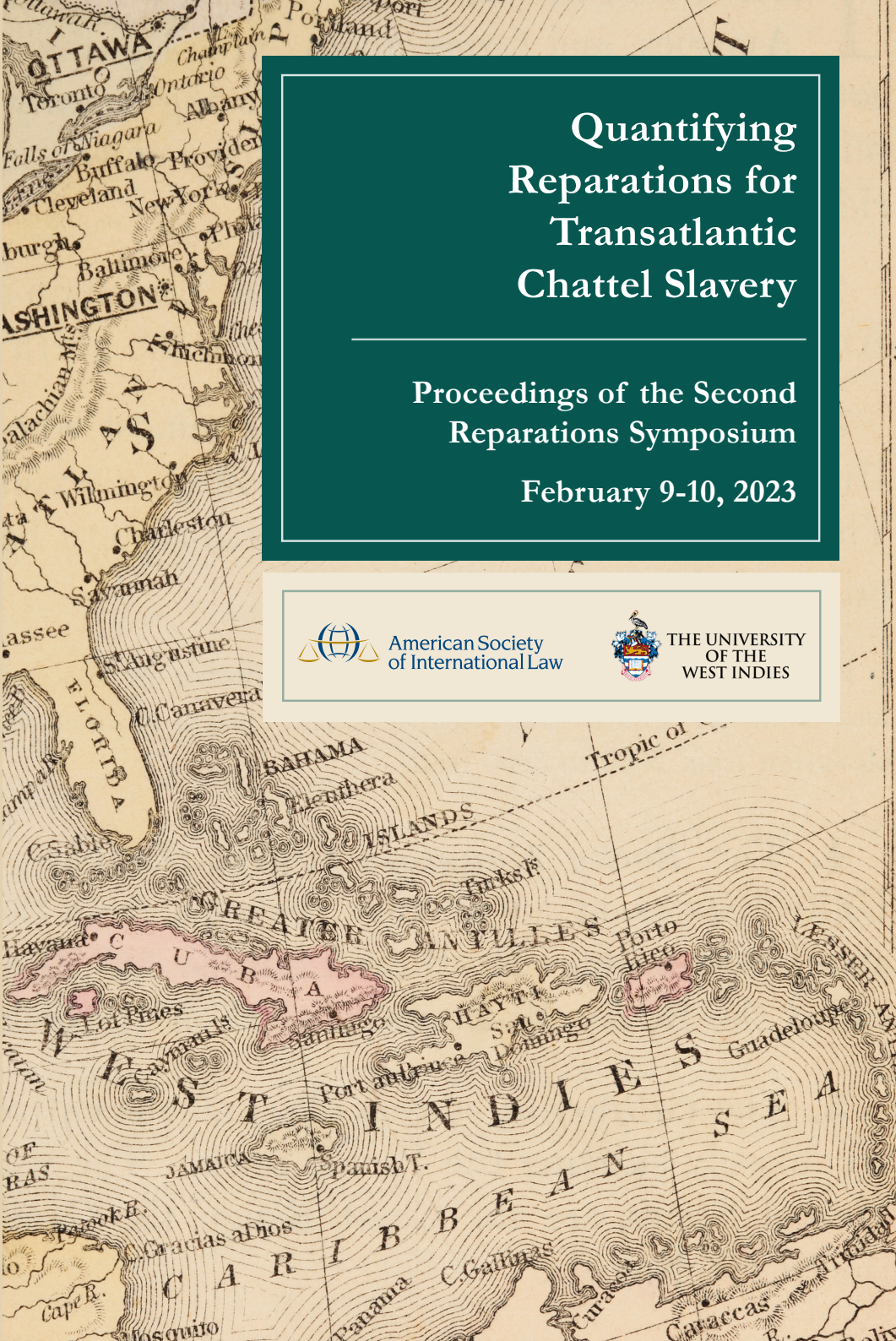

Quantifying Reparations for Transatlantic Chattel Slavery

Proceedings of the Second Reparations Symposium

February 9-10, 2023

American Society of International Law

THE UNIVERSITY OF THE WEST INDIES

Quantifying Reparations for Transatlantic Chattel Slavery

ASIL

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Proceedings of the Second Reparations Symposium
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The American Society of International Law

The American Society of International Law (ASIL) is a nonprofit, nonpartisan, educational membership organization founded in 1906 and chartered by Congress in 1950. Headquartered in Washington, D.C., its mission is "to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice." ASIL holds Special Consultative Status with the Economic and Social Council of the United Nations and is a constituent society of the American Council of Learned Societies.

ASIL's 3,500 members come from more than one hundred nations with nearly 40 percent residing outside the United States. Its members include scholars, jurists, practitioners, government officials, leaders in international and nongovernmental organizations, students, and others interested in international law. Through its many publications, conferences, briefings, and educational events, ASIL seeks to serve the needs of its diverse membership and to advance understanding of international law among policymakers and the public.

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Foreword

Following the success of the first Symposium on Reparations under International Law for the Enslavement of African Persons in the Americas and the Caribbean held in May 2021, the Society and its partners at The University of the West Indies convened a second symposium specifically focused on the matter of quantifying reparations.

The second symposium, which took place online from February 9–10, 2023, featured keynote addresses and panel discussions with experts from around the world, some of whom took part in the 2021 symposium and were eager to participate again. Discussions focused on the legal framework for reparations and highlighted a report by The Brattle Group whose groundbreaking research created an economic framework to quantify reparations for transatlantic chattel slavery.

This issue of reparations, and specifically, compensation, demands rigorous and thoughtful attention from local to international communities. Indeed, New York State Senator James Sanders and Assembly Member Michaelle C. Solages sponsored a bill establishing the "New York State Community Commission on Reparations Remedies." New York Governor Kathy Hochul signed the bill in December 2023 and appointed the commissioners in February 2024. In 2021, Evanston, Illinois, became the first U.S. city to create a reparations plan for its Black residents, and California set up a state-level reparations task force—the first of its kind in the United States. This is just the beginning of the discussion, and the Society will keep this subject at the forefront of its programming.

We would like to express our gratitude to the convener of the symposium Judge Patrick Robinson, a member of the International

Court of Justice and Honorary President of the Society from 2020–22; Sir Hilary Beckles, Vice-Chancellor of the University of the West Indies; the members of the organizing committee—co-chairs Natalie Reid and Chantal Thomas, Claudio Grossman, Michael Peay, Patricia Viseur Sellers, and Verene Shepherd; the UWI Centre for Reparation Research; and the staff of the Society. We also wish to thank the Cornell Center for Global Economic Justice once again for supporting the publication of these Proceedings. These Proceedings and the Proceedings of the 2021 symposium were recorded and are available at asil.org/2021Reparations.

Gregory Shaffer
President 2022–2024

Michael D. Cooper
Executive Director

Quantifying Reparations for Transatlantic Chattel Slavery

February 9–10, 2023

Day One:
Thursday, February 9, 2023

Welcome and Opening Remarks

Remarks by Gregory Shaffer

Welcome, everyone. Wherever you may be, as this is a global event. I am thrilled to introduce this Second Symposium on Reparations Under International Law for Enslavement of Africans in the Americas and the Caribbean. This Symposium is a partnership of the American Society of International Law (ASIL or Society) with The University of West Indies Centre for Reparation Research.

Let me first thank our Symposium Chair, the Honorable Judge Patrick L. Robinson, esteemed member of the International Court of Justice and immediate past Honorary President of our Society. I also would like to thank the brilliant scholars and colleagues who worked on the advisory committee for the Symposium, consisting of Professor Verene Shepherd of The University of West Indies; David Eltis, Woodruff Professor Emeritus of History at Emory University; Professor Robert Beckford of the University of Winchester; and Ms. Priscellia Robinson of Queens Court Chambers in London; together with my wonderful colleagues in the Society, Natalie Reid, co-chair of Debevoise & Plimpton's Public International Law Group, and Chantal Thomas of Cornell University Law School, in their role as organizers of this Symposium.

The impressive first Symposium held last May addressed such critical issues as the historical and social context of transatlantic chattel slavery, its legality or illegality under international law at the time that it took place, and the economic basis for the assessment of reparations. Through it, participants built the case for the illegality of transatlantic chattel slavery under international law. This second Symposium builds from the first by bringing together international law scholars and jurists, historians, and economists to address the issue of reparations. As we will see, such reparations can take the form of monetary compensation or satisfaction.

The first Symposium's *Proceedings* are freely available on our website and can be downloaded as an eBook. One can also freely view the video of the Symposium from the website. This Symposium is generative, dynamic, and intellectually rigorous. It builds on a legacy of robust scholarship on legal questions related to accountability, repair, and moral commitment relating to post-colonialism and slavery.

These matters touch my family's life and are personal to me. The legacy of American slavery etched through Mississippi is a legacy that my formidable wife, renowned author, activist, and public intellectual, Michele Goodwin, inherited. We know much too well the cruelties that Mississippi, the most notorious state in the United States for brutality against Black Americans, inflicted on them, both before and after slavery formally ended. Such horrors were made legal by way of sundown laws, Black codes, racial covenants, "separate but equal restrictions," and coercive contracts on their labor. We bear witness to this.

Yet regardless of one's birth or immediate family connections, the legacy of slavery touches all of us. Its reach extends today in racial discrimination across areas of social life, from our health care systems to the carceral state, from movements to suppress democracy, to resistance to teaching about our racial history, and thus, any reckoning with our past. As William Faulkner wrote, "The past is never dead. It is not even past."

At ASIL, our governing mission is to convene people to study and assess international law, to examine our past, and to build a better present and future in which international relations are established and maintained on the basis of law and justice. "We cannot and we do not segregate our moral concerns," to quote the civil rights leader, Dr. Martin Luther King Jr.

Let me now introduce our partner in this project, Dr. Verene Shepherd, Director of The University of the West Indies Centre for Reparation Research. Dr. Shepherd is a world-renowned historian and one of the Caribbean's pre-eminent scholars and advocates

for gender justice, racial equality and non-discrimination, and reparation for the impact of European colonization on Indigenous peoples, Africans, and people of African and Asian descent. Dr. Shepherd received her Master's and her B.A. at The University of West Indies and her Doctorate at the University of Cambridge in the United Kingdom. She is a pathbreaking individual. Among her many firsts, she is the first Jamaican and CARICOM citizen to be elected to the United Nations Committee on the Elimination of Racial Discrimination, of which she now serves as Vice Chair. She is currently one of the three Vice Chairs of the CARICOM Reparations Commission, and she has served as Chair and Co-chair of the Jamaican National Commission on Reparations.

Professor Shepherd, it is my honor to turn this second Symposium over to you.

Remarks by Verene Shepherd

Thank you very much. Let me greet His Excellency, Patrick Robinson, Judge of the International Court of Justice and, of course, as you have heard, Honorary President of the American Society of International Law. I greet Professor Sir Hilary Beckles, Vice-Chancellor of The University of the West Indies, which turned seventy-five this year; ASIL President, Professor Gregory Shaffer; Ms. Natalie Reid; Ms. Chantal Thomas, and other ASIL members, members of The Brattle Group; other presenters and the discussants; and our distinguished audience. Good morning to everyone.

On behalf of the Centre for Reparation Research (CRR), let me say how pleased I am to be involved yet again in a collaborative Symposium between ASIL and The University of the West Indies, a collaboration initiated by Judge Robinson, who in 2020 as the honorary president of ASIL proposed that the Society should convene an international Symposium to debate the question of the lawfulness or illegality of transatlantic chattel slavery and collaborate with The University of the West Indies (UWI).

This second international Symposium on the quantification of reparations for transatlantic chattel slavery (TCS) is timely, reflective as it is of the current state of scholarly and general public interest and research on the transatlantic trafficking of captured Africans, their chattelization in the West, and the need for acknowledging and repairing the resultant harms whose legacies are everywhere still to be seen.

The UWI is a fitting partner in the second Symposium, as with the first, of course, because it has a long tradition of researching the history of the transatlantic trafficking in Africans and the chattel enslavement of Africans through its history departments, its internationally known historians, and other scholars working on decolonization and decolonial justice. Educational institutions, especially universities, that believe in decolonial justice are so important, and the UWI has a social justice agenda in its teaching and learning processes and in the production of students and staff who would be scholar activists, even in the late historian Walter Rodney's formulation, as guerrilla, or, some would say, "maroon intellectuals." It was that strategic imperative demonstrated in teaching and learning at The UWI, after its establishment in 1948, which identified it as a university engaged in education for transformation of a people grappling with the diseases of colonialism and its continuing legacies. Historians, in particular, used their scholarship to critique narratives that needed to be critiqued, created new knowledge, and addressed myths and stereotypes that fed discrimination.

In the final analysis, only a history that reverses centuries of myths and stereotypes can restore pride and dignity to Africans and people of African descent. Not surprisingly, the Vice-Chancellor detailed the CRR to be the implementing arm of this collaboration, and we are very happy to be doing so again and, in my case, especially honored to have been asked to serve on Judge Robinson's advisory committee providing guidance to his student researchers and content for him and The Brattle Group.

No calculation or quantification of the reparations for this crime against humanity can be done with only lawyers and financial scientists. Economic, social, demographic, and quantitative historians are key to that process, and we have been honored to have made our contribution, suggesting experts and sources.

I look forward to hearing the outcome of the work done so far and, of course, looking forward to how we will together bring reparation to people who are demanding it; and this work will contribute to removing any lingering misgivings that the transatlantic trafficking in Africans and the chattelization of our people were not crimes against humanity. For how can the genocide perpetrated over centuries, as shown by so many of our historians locally and internationally, not be a crime against humanity? The findings today will contribute to the global reparation movement and to the body of knowledge already generated by scholars, which will arm us for the battle ahead in which The Brattle Group will continue to be key.

So welcome to everyone on behalf of the CRR and The University of the West Indies, and we look forward to the revelations and discussions that will emanate from these two days that will build on the work already done by others; for the debt has not yet been paid, the account has not been settled, as that reparation warrior Dudley Thompson famously said. Thank you very much.

Opening Address

Introductory Remarks by Natalie Reid

Thank you very much, Professor Shepherd, and good morning, good afternoon, and good evening, everyone. My name is Natalie Reid. I have the pleasure and privilege of serving as one of the organizers for both the first and the second Symposia on Reparations Under International Law. I also have the honor of providing a very brief introduction to a gentleman who needs very little introduction at all, Judge Patrick Lipton Robinson, who is a member of the International Court of Justice, and I believe we shall now give you the title, sir, of Honorary President Emeritus of the American Society of International Law.

As you have heard from our colleagues and previous speakers, Judge Robinson has been the driving force, both as a matter of personal and academic passion but also, of course, as a thought leader in this project. Judge Robinson has dedicated literally decades of his life to public service, first on behalf of the people of Jamaica and now as a leading member of the international community, with decades of judicial service at the highest level. We will begin hearing from Judge Robinson this morning with opening remarks, and then he will again grace us with a discussion later on this morning in laying out the legal framework that has given the shape for the project undertaken for purposes of this second Symposium.

Judge Robinson, you have the floor.

Remarks by Judge Patrick Robinson

Thank you very much, Natalie. I would like to reiterate the warm welcome extended to all of you by Professor Verene Shepherd. The international Symposium is streamed to all parts of the world, and wherever you are, please accept my gratitude for your interest.

Ladies and gentlemen, it is right that the eyes of the world should be focused on this Symposium because the question of

reparations for transatlantic chattel slavery, which I will call TCS hereafter, affects not only the descendants of enslaved Africans and the European countries, which engaged in this sordid and grotesque practice for well over 450 years, the chattelization of Africans impacts our common humanity and obliges us to put in place a system for the payment of reparations to the descendants of the enslaved in accordance with international law.

As you know, the international Symposium that was held in 2021 concluded that on the basis of the law at that time, TCS was unlawful. As a result of this finding, international law now requires the payment of full reparations for the wrongful conduct involved in carrying out TCS. Consequently, there is an international obligation on the United Kingdom, France, Portugal, Spain, the Netherlands, Sweden, Denmark, and the United States of America to make full reparations to the descendants of those Africans whom they enslaved.

But, ladies and gentlemen, it cannot be left to those former slaveholding states to determine the reparations that are to be paid. To do so would be to allow the wrongdoing state to determine the sum due for reparations and, thus, in a real sense, to perpetuate the mistreatment of the enslaved Africans and their descendants.

In my own country, Jamaica, there are situations in which a worker may do a small job for a person that does not call for the payment of a large sum of money. When the person asks the worker the cost of the job, the worker will say, "Give me our money," meaning that since the sum is small, it is left to the discretion of that person to determine how much is to be paid to the worker.

Ladies and gentlemen, I make it plain that reparations are not about former slaveholding countries giving out money to the descendants of the enslaved Africans. There must be a system whereby full reparations are determined in accordance with international law. This Symposium on the quantification of reparations will provide such a system. It will produce a table which names all the countries in which TCS was carried out, and it will settle

the reparations that are to be paid by a particular former slaveholding state to the descendants of the enslaved in those countries.

This Symposium is fortunate to have the services of a highly recognized and distinguished group of valuators, The Brattle Group. They have placed a value on the several injuries or harms caused by TCS. This table is global in that it covers transatlantic chattel slavery in all the countries in which it was carried out, whether in the Caribbean, Central America, South America, or North America. It is global and not parochial because we who are descendants of the enslaved all came to these parts on the same boat.

Ladies and gentlemen, since the damage caused by TCS will not be made good by restitution and compensation, the law requires that what it calls satisfaction must be given. The International Law Commission tells us that satisfaction may take the form of an expression of regret, a formal apology, or some other appropriate modality.

In my view, in the case of TCS, satisfaction is as important as or even more important than compensation. Much of the harm resulting from TCS cannot be remedied by cash payments. Perhaps the greatest harm caused by TCS is the psychological damage that it visited on enslaved Africans and their descendants.

I now wish to say a few words about two important developments that have taken place since the first Symposium. On December 19, 2022, the Dutch prime minister gave what can only be described as a full apology for his country's involvement in TCS. He described it as a crime against humanity and characterized his country's role in TCS as downright shameful. He commented on the administrative system that was set up by the Dutch to conduct TCS and noted that when practice was abolished in 1863, it was not the enslaved Africans who received compensation but the slave owners. But for me, perhaps, his most consequential statement was that he had for long been of the view that his country could not take responsibility for something that had happened so long ago. But he now acknowledged that his country does have

responsibility for the suffering inflicted upon the enslaved and their descendants. Consequently, for him, he said: "The Dutch cannot ignore the effects of the past and the present." Acknowledging that the Dutch state profited from TCS, he promised that his apology was not a full stop but a comma.

Ladies and gentlemen, in describing slavery as a crime against humanity, the Dutch prime minister echoed a similar assertion contained in the 2001 Durban Declaration at the World Conference Against Racism. That declaration stated that slavery and the slave trade are a crime against humanity and should always have been so. The concept of crimes against humanity, as you know, emerged out of the Second World War in relation to Germany's treatment of its Jewish citizens. TCS lasted from the mid-fifteenth century on to the latter part of the nineteenth century.

Norm-creating principles of humanity have existed from time immemorial. Indeed, the International Court of Justice itself spoke of what it called the "elementary considerations of humanity," even more exacting in peace than in war. This was in its *Corfu Channel* judgment and the 1815 Vienna Declaration on the Abolition of the Slave Trade recognized that: "The slave trade has been considered by just and enlightened men of all ages as repugnant to the principles of humanity and morality." There is, therefore, a legal foundation for the Durban Declaration statement that TCS is and should always have been a crime against humanity. For that reason, there is justification for what appears to be the Dutch prime minister's embrace of that declaration.

Ladies and gentlemen, while the Dutch apology is not opposable to other former slaveholding states, it is beyond question that every statement made by the prime minister is equally true of the United Kingdom, France, Spain, Portugal, and the other former slaveholding states. There is, indeed, a parallelism between the Dutch and the United Kingdom. In the same way that the Dutch, as acknowledged by the prime minister, set up slave-trading bodies, so did Britain. In the same way that the Dutch, as acknowledged by the prime minister,

compensated slave owners but did not compensate the enslaved, so did Britain. For years, the traditional response of the United Kingdom to claims of reparations has been that TCS happened a long time ago and the descendants should not look back but forward, and in any event, TCS was lawful conduct. But, in light of the Dutch apology, how can the United Kingdom and other former slaveholding states ignore what the Dutch prime minister calls the "effects of the past on the present" and continue to argue that TCS was lawful?

It may be observed that there is a difference between the International Law Commission's Articles on State Responsibility and the Dutch in the treatment of an apology. In the former, an apology is a form of satisfaction that is required when restitution and compensation do not make good the damage or harm resulting from wrongful conduct. In that sequence, the apology, which post-dates the wrongful conduct, is an acknowledgement of that conduct. However, in the prime minister's statement, the apology has come first, to be followed by compensation, if the comma, not-full-stop imagery used by the prime minister means anything.

In this sequence, there is also the implication that TCS was unlawful conduct, particularly in light of the chronicling by the prime minister of a myriad of acts, branding the faces of the enslaved with hot irons, hacking off their limbs, and torturing, that he clearly viewed as unlawful.

Ladies and gentlemen, I now invite the Dutch to write a full stop by making reparations on the basis set out in the table produced by the Symposium.

I turn now to the second development, and that was the decision of the Church of England to commit 100 million pounds to a fund to compensate for its historical benefit from TCS. Part of the origins of the Church of England's Perpetual Endowment Fund is the Queen Anne's Bounty, founded in 1704. The bounty invested in assets linked to the South Sea Company, itself founded in 1711, to trade in transatlantic chattel slavery.

Ladies and gentlemen, although this Church of England initiative may be well intentioned, in my view, it presents all the problems of a reparation scheme that is crafted entirely by the wrongdoers or those representing them. The report shows that the Church of England, through the Queen Anne's Bounty, had annuities and investments in the South Sea Company in the excess of 1.5 million pounds, which is equivalent to 1.4 billion pounds in today's money. It is, therefore, clear that when the Anglican Church sets aside 100 million pounds for the benefit of the descendants of the enslaved, a figure that is less than 1 percent of the income it derived from TCS, it was merely, in Jamaican parlance, "giving them our money," which is not how a scheme for reparations should operate.

I trust that in avoiding the term "reparations" to describe the projects it is undertaking, the church is not shying away from this term because it would suggest that TCS was wrongful conduct. The report does show the church to be highly critical of TCS, describing it as a "shameful and horrific sin." I would hope that there is no doubt in the mind of the Church of England that TCS was an unlawful practice and that the work that it is now undertaking constitutes reparations for that practice.

Ladies and gentlemen, I will now tell you briefly about the program for the Symposium. Today we will hear from Sir Hilary Beckles, Vice-Chancellor of The University of the West Indies, which, as you have heard, in collaboration with the American Society of International Law has convened the Symposium. Sir Hilary will give the keynote address I will make a presentation on the legal framework for reparations for TCS. Thereafter, The Brattle Group evaluators will present their report on the quantification of reparations, and this will be followed by a group of discussants who will comment on the Brattle report. On Friday, the Symposium will continue with another group of discussants reacting to the report.

I thank you. Those are my opening remarks.

The next speaker, as I just indicated, is Sir Hilary Beckles. Professor Sir Hilary Beckles is the eighth Vice-Chancellor of The

University of the West Indies. He is a distinguished academic, international thought leader, United Nations Committee official, and global public activist in the field of social justice. He received his higher education in the United Kingdom and is a professor of Economic History. He has published well over one hundred peer-reviewed essays and scholarly journals and over thirteen books on subjects ranging from Atlantic and Caribbean history, gender relations in the Caribbean sport development, and popular culture. Sir Hilary is President of Universities Caribbean, Chairman of the Caribbean Examinations Council, and Chairman of the CARICOM Reparations Commission.

Sir Hilary, you now have the floor. Thank you.

Keynote Address

Remarks by Sir Hilary Beckles

Thank you all for this invitation to participate in your conference proceedings. I will make a broad-based contribution. I note that your primary interest is in the legal framework and also financial calculations surrounding what reparatory justice models can look like, and that is all fine. This is very important work, indeed. It is a broad-based conversation and negotiation, as you are aware.

My focus in the last year or two has been in the diplomacy end of the movement seeking to broaden the participatory engagements of around the world, because we are, in effect, building out a global movement. I will speak for a short while about that process, and then I will comment on the CARICOM development model which has, at its center, the reparatory justice process.

CARICOM and the Reparations Commission made a decision that the engagement of African governments and the movement joining forces with diaspora governments and NGOs and other organizations will be a game changer in terms of generating global attention. The argument was made that as long as diaspora communities in CARICOM, primarily, and in the United States, and civil society movements remain the core of the advocacy, it would not be a fundamental challenge for those states that committed these crimes against humanity to set aside the representations from the diaspora. In CARICOM, for example, letters were written, government to government, across the European Union to invite them to a summit to discuss this matter. Their position was that they acknowledged that the Caribbean and the diaspora Black community had suffered, but they were not prepared to come to a reparations summit, that their preference would be to allocate financial resources by way of foreign aid. Many people believe that this was an embarrassing response.

We have been focusing on building a bridge between CARICOM and the African states, and a tremendous amount of

effort went into having negotiations with African governments. We felt that we have made some very significant progress, because in August of 2022, a summit was held in Accra, Ghana, and the keynote was presented by the President of Ghana, President Addo, who announced that this is now the policy of the African Union to support the CARICOM diaspora reparations movement, and that going forward, CARICOM and the African Union will be speaking with one voice on the matter of reparations. This was a major breakthrough. The prime minister of Barbados has been in deep advocacy with President Addo and other African leaders. It is a significant triumph that the African Union is now joining the Caribbean Union to speak as one voice. In May of this year, there is going to be a major summit in Kenya, because the Kenyan government has declared an interest in hosting an African Union meeting on the issue of repatriate justice, and there are going to be some other meetings as well around that time in Africa.

This is very significant, especially post-Durban, where African governments were not sure about their position, but the significance of this largely has to do with African governments finally lifting themselves out from under the propaganda machinery of the Western academia that built a historiography and a pedagogy upon an argument that was made in the emancipation discourses in the British parliament and other European parliaments in the early nineteenth century.

The slave traders were told by the abolitionists that their business of slave trading and slavery were crimes. There was a movement from declaring that slavery was un-Christian, to declaring slavery was a sin, to declaring that slavery was a crime. This was the argument that pushed the legislation through the parliament. The slave traders responded by saying, "If it is a crime, it is a global crime because the African governments, by and large, are our partners, and therefore, slavery and slave trading is a partnership between two commercial elites." That was an absolute dishonest and immoral argument, because, on the one hand, they were speaking

about the kidnapping. They were speaking about the terrorism that they had unleashed in Africa, the destruction of nations and of communities, the specific targeting of African elites to be destroyed if they stood in the way of slave trading and if they stood in the way of the business. Instructions were sent out from the capitals of Europe to destroy governments and leaders and monarchies that stood in the way. It was a focused political act of terror that enabled the slave trade to continue.

Then, the exportation of weaponry—as it is today with narcotics and guns, a deeply bonded relationship between narcotics and guns—it was the same in West Africa, with slave trading and gun trading, with Europeans dumping guns in West Africa. Indeed, guns were the main export to most West African nations in the eighteenth century.

We finally were able to persuade the African academic community—and to some extent the political leaders know—that you must not fall victim to this. These Europeans arrived highly militarized, highly armed, and unleashed a reign of terror. That reign of terror enabled the first phase of the trade to take place, the mayhem and the violence unleashed in West Africa by these corporations that were owned by the royal families of Europe with the full military back end of the state. That phase one, which lasted for over a hundred years until the middle of the eighteenth century, was mayhem as these corporations extracted Africans for enslavement.

Phase two meant that having broken the West African political resolves at the level of the state system, the struggle thereafter took place in communities. Many communities that had lost their political leadership resorted to a ground resistance guerrilla warfare against the slave traders, and this was the period in which that ground war consumed hundreds of thousands of lives, militarized gangs running through West Africa avoiding the resistance struggle and kidnapping people.

The African voice is now emerging to speak about what actually happened in West Africa, and many of the royal families

that survived were driven to exile. Many of them developed a survivalist approach to the balance of power that has shifted in the favor of slave traders. These voices are now beginning to speak up, and we here at The University of the West Indies have invited fifteen of these most articulate royal members, kings and queens, to come out here to The University of the West Indies. They will be arriving in about two weeks' time. We are going to have a symposium here at The University of the West Indies, which would be enabling these kings and queens of West Africa, those who have survived the Holocaust, to speak about their royal families as the leaders of these communities and how they were able to survive the slave trade.

These monarchs are going to be our guests here, and we are going to be in a position to compare and contrast the royal families of West Africa and their experience of the slave trade and the royal families of Europe who owned the corporations, who used state support to enforce compliance in West Africa, and who were the financial beneficiaries of slave trading because they own the companies, they own the stock.

We are going to have a symposium that looks at the royal families of Western Europe and the royal families of West Africa, the divergence of experience, and how the slave trade enriched those European monarchs but, by and large, destroyed the capacity of West African monarchs to rule and to administer their nations. All of these developments have been building out a broad base of political support for this movement but critically bringing African states to the table.

Another aspect of this that we have been broadening the base of the analysis of slavery and slave trading to include it not only as crime against humanity and specific relation to enslavement and chattelization, but we have also been building the bridge with genocide as a critical feature of slavery in the Caribbean.

Six years ago, I presented a lecture at Harvard Law on slavery as genocide. That lecture is on YouTube, and many people have been making reference to it. Last week, here again at the university, Professor Orlando Patterson of Harvard also presented a lecture on

slavery as genocide and presented some interesting demographic data to show the deliberate genocidal nature of enslavement in the Caribbean by European states and European slave investors. The interesting conclusion raised by Professor Patterson in the case of Jamaica is that just over a million Africans were brought into Jamaica in chains. At the end of 200 years, the emancipation, only 300,000 had survived, and the question was asked, how do you reduce 1.3 million people to 300,000 after 200 years? What Professor Patterson did was to compare the U.S. situation to the Caribbean situation, where a much smaller amount of Africans were taken to the United States—maybe 10 to 15 percent of all the Africans brought across the Atlantic went to the United States and approximately 60 percent came to the Caribbean. He compared the normal growth rate of the enslaved population in the United States, which grew considerably over the slavery period, with the Caribbean. He said that if the African population had grown in the Caribbean, in Jamaica specifically, at the same rate in which it grew in the United States, that at the end of slavery, Jamaica would have 6 million Africans.

Basically, what he argued is that the number of Jews who were massacred by the Nazi state in the Holocaust, that 6 million figure, was exactly the same figure that should be applied to Jamaica. Normal growth rate in Jamaica would have resulted in 6 million people at the time of emancipation, not 300,000. That margin he explained in terms of genocide.

The data is even more striking for the case of Barbados, where 600,000 Africans were brought into Barbados. At emancipation, there were only 83,000. We are speaking across the Caribbean of less than 20 percent survival. The population of Barbados today is just under 300,000, just under half the number of Africans who were brought into the island during slavery.

The genocidal assessment is clear. It is crystal-clear. In the Caribbean, in terms of legal frameworks, we are speaking not only about commodification. We are speaking about chattelization, the denial of human identity, the reduction of people to property status

and law, but we are also speaking of genocide, deliberate systemic genocide, because the fundamental economic principle was that it was cheaper to consume the life of an African in seven to ten years of hard, death-destructing life and work. It was cheaper and more profitable to consume the lives of these people in seven to ten years of extreme labor extraction and replace them, buy them, use them up, replace them, go to the auction in the various ports, and buy their replacement. That cycle of seven to ten years of extraction and then replacement was more profitable than developing a work regime and the nutrition regime that allowed these enslaved populations to grow. There was no growth concern, certainly for 80 percent of the slavery period. There was no growth concern. The discussion around growth only began when slave owners realized that the slave trade was going to be abolished, and therefore, they needed to find a way to maintain slavery without a slave trade. The genocide dimension is now also on the agenda for the reparatory justice movement in the Caribbean context.

In terms of the calculations, the current composition is that this region is in desperate need of an economic development program that the systemic decline of Caribbean economies and competitiveness and profitability, the absence of capital in this region to modernize economies, to revitalize economic sectors, traditional sectors, agricultural tourism, and so on, and to have investments and technology and research to create innovation in order to produce new economic sectors, but that capital investments is not available in capital markets. This region is in need of a development paradigm that invites investment on a win-win basis to promote modernization.

The conversation is being built around a Marshall-style plan that the Caribbean never really had, because when these countries fought for their independence, the European governments, by and large said—the British government especially—"Okay. You want independence? You can have it. Now go. Sign here and go." No development support. No financial compensation. These countries went off into nation-building in a horrendous economic

situation, massive illiteracy, urban and rural decline and decay, and inadequate infrastructure for school and public health. It was what you call a "colonial mess," and these aspiring nation builders were told, "Okay. Go and develop."

We believe that given the bad hand that was available to the first generation of nation builders, they did well to convert that colonial mess into viable democratic nations. But all they have been doing was cleaning up the mess that they have inherited, hoping to lay the foundation for sustainable development.

The British and European governments walked away from their mess and are of the opinion that they got away scot-free. We have correspondence to show this, and my recent book, *How Britain Underdeveloped the Caribbean*, is based on the correspondence and the records of the British government saying to the Caribbean, "You are on your own. Go off, and we owe you nothing." Despite all of the presentations from Caribbean prime ministers in the 1950s and 1960s, the political leaders from the trade union movement calling for an investment in the region to lay the foundation for independence, the British government made it perfectly clear that they owe the Caribbean nothing. They were going to give the minimum and send these islands off on their merry way.

The argument is now that the time has come for this conversation to happen in earnest, because it could not have happened before, because the colonial situation that persisted after independence was very strong. The Caribbean governments had a great deal to sort out and build in institutions to allow a nation to evolve. But now that process is relatively secure. This is the time now for that development conversation, and this is where CARICOM is pushing the analysis. There has to be a development plan, a Marshall-style plan for the Caribbean, and this is where the calculations are being made for an investment strategy to build out the development infrastructural needs of this region.

The conversation around reparatory justice, the legal frameworks, and financial calculations are taking place with

intensity, but with respect to the latter, there is a growing agenda to invite the governments and private sectors of Europe to frame an investment strategy for this region that can promote economic development in this region. The conversation is not around creating calculations for individual cash endowments. The conversation in the Caribbean has not really gained traction around that principle. It has gained traction around infrastructure development, schools, hospitals, community institutions, reform, investment in agriculture, food security, investment in urban renewal and education, and so on. That is where the conversation has gone, investments in the public good as a strategy for reparations.

I will leave it there, colleagues, and I am open to any questions that you might have. Thank you.

Natalie Reid

Thank you.

Judge Patrick Robinson

Thank you very much. Thank you, indeed. There is a lot for thought in what you said. I found of particular interest your comment that the African voice is now emerging. There is so much misinformation and just sheer ignorance about what happened in Africa that led to our ancestors being transported to the Caribbean and the Americas, and so to have an African voice now involved is very welcome.

I followed last week online, the fantastic lecture by H. Orlando Patterson, a Jamaican scholar and intellectual. He was two years ahead of me at the university. I did not get to know Orlando, but his work certainly distinguishes him. I am very interested in your thesis as well as his that by the reduction in the Jamaican slave population from 1.3 million to about 320,000 at emancipation, there

was effected a genocide in Jamaica. That is a bold statement, but I believe it can be substantiated.

H. Orlando is a very distinguished sociologist, and he declared that he did not have a lot of patience with the "intent" requirement of genocide. The intent that is required to establish genocide is the most significant element of the Genocide 1948 Convention and it is very difficult to establish it.

The way that you have put forward the case, I would love to be an advocate in a court arguing that that reduction in the slave population in Jamaica meets the standard, meets the required intent, and that intent is an intent to destroy in whole or in part a group. As I said, it is notoriously difficult to establish. I presided over the *Milošević* trial. You recall that Mr. Milošević died some three weeks before the verdict, and I can say now for the first time that although he was charged with crimes against humanity, war crimes, and genocide, I am not at all certain that on the basis of the evidence that was presented that the court would have been able to find genocide. In the result, we did not have to because, regrettably, he passed away. That is a challenge, and the comparison with the Holocaust is very apt.

I want to let you know that I found all of what you said exceedingly interesting and challenging, and I hope others listening would also have found it equally interesting and challenging.

I am not sure whether you wanted to say anything about the intent and how you think the intent could be established. In law, intent is usually an inference that is drawn from all the circumstances. It is drawn from facts, and you are allowed to draw inferences.

Sir Hilary Beckles

Where I would begin would be by establishing that when it became clear in the capitals of Europe and in the Caribbean that the British Parliament was going to end the supply of Africans to the colonies, that in every major colony—Jamaica and Barbados

especially—the slave owners went through a reversal in their economic policy. From the 1780s and 1790s in all of these colonies, the slave owners were getting together to talk about reversing their policy, that they will now have to grow a local supply. All of them developed incentives now to encourage the enslaved population to breed. They were all given new incentives. There are so many pamphlets written by them on the encouragement of slaves to breed, instructions to managers of plantations advising them how to turn the history around and get the slaves to reproduce. There was an eruption of literature written by slave owners on the eve of the abolition of the slave trade on how to turn around 200 years of decline, and they acknowledge that their practice was genocidal. Let me define genocide as we historians have tended to do so. If you put a specific group of people in a situation and you practice economic policies and social policies around that people and you enforce those policies in a way that that group of people could not possibly increase but would significantly decrease generation by generation so that you can see and witness the palpable decline generation by generation over time, but yet you enforce those policies even more aggressively, and the population rapidly collapses in the context of that environment and those policies, that is intent. That is intent because the slave owners themselves in their various parliaments and elsewhere and their correspondence made it clear that it was cheaper for them to import, use up, and replace Africans than to support them with nutrition, support them with domestic infrastructure, and to allow them to grow naturally.

We have the comparison because in the United States that is what happened. They gave them a regime of better nutrition. They tried to balance the male-female ratios on the estates, and while they were enslaved, nonetheless, an environment was created with policies because in the U.S. situation, they wanted the slaves to grow. They were more comfortable growing their slave population than having this annual infusion of Africans. The Caribbean policy rejected the strategy of natural growth. They rejected it. They

only embraced natural growth, as I said, when the supply was going to be cut off, and then they produce a body of literature to explain why they were doing this.

The intent was always there, because the intent was associated with an economic policy and a model that it was cheaper and more effective to buy and consume than to support natural growth. I do not believe that the intent argument is foreign to the Caribbean situation. It was deliberate, it was articulated, it was expressed. They knew it. They practiced it.

We also know when they tried to reverse it. When you read letters, one of the great pieces of material published was a small book published in 1786 on the eve of the slave trade abolitionist discourses, and this book was written by some of the six of the largest slave owners in Barbados. The book is entitled *Instructions to Managers of Estates on the Growing of the Slave Population* and it sets out all of the incentives that should be given to slaves, especially to women. You give them some cash for the second and third child. You increase their nutrition. You give them a pint of milk every morning. You give them more meat. When the woman became pregnant, as soon as the pregnancy is declared and is evident, you pull them out of the cane fields and give them lighter domestic work. Then you give them more financial incentives, and if they are able to give you six or seven babies that are healthy, you can give them freedom for that. You can free the woman for that.

Importantly, when the relationship was established between a male and a female, you would allow them to live in the same house. You could put together a nuclear family in the slave cabin. The man and the woman can now live together as husband and wife with their babies. As an incentive to that little household, you will not sell their children. You will not sell their babies off the plantation. They will stay on the plantation with their mothers and fathers. All of these pre-natal and post-natal strategies were highly sophisticated and designed to produce growth, and they did produce growth. But for 200 years, the management strategy and the policies produced genocide.

Establishing intent in the case of Jamaica and Barbados is very clear. The evidentiary basis of genocide, and if you want to use intent as a criterion, is perfectly clear as well, what the intent was, and driven by profitability on both sides of the equation.

Judge Patrick Robinson

As I said before, I am willing to change my hat and to take on the case as an advocate. I did work in the Attorney General's department, and I was an advocate in many cases and enjoyed the role immensely. Of course, I am talking about the Jamaican genocide.

It is ironical that the Jamaican slave owners, who were 35 times more wealthy than their American counterparts, did not see fit to treat their enslaved better, because they were financially more capable of doing that. I think all of that would be part of the evidence that would be relevant to the establishment of intent.

I think the sociological and historical truth that you and Orlando Patterson have shown in relation to Jamaica is, for me, also a legal truth. I think the case could be made. For my own part, I want to thank you very much for the presentation.

Sir Hilary Beckles

I thank you for this invitation, and I wish the conference all the very best. Thank you, Judge. I appreciate it. Thank you.

Judge Patrick Robinson

Thank you very much, Professor, and we, of course, as usual, profited tremendously from your presentation.

Sir Hilary Beckles

Thank you.

Discussion of the Legal Framework for Reparations

Judge Patrick Robinson

Next on the program is a presentation that I will make on some legal issues that are relevant to the quantification of reparations, and the first one that I would like to deal with is the legal basis for reparations. What is the legal basis for reparations? The legal basis is the obligation imposed on the wrongdoing responsible state to restore the injured party to the situation that would have existed if the unlawful act had not taken place, and we find that principle reflected in Article 31 of the International Law Commission's Articles on State Responsibility. It says that the responsible state is under an obligation to make full reparation for the damage caused by the internationally wrongful conduct.

The first form of reparations is restitution, but since it is not possible to restore the descendants of enslaved Africans to the situation that would have existed if TCS had not taken place, international law then requires that compensation be paid, but compensation alone cannot make good the damage caused by TCS. In that case, the law requires that satisfaction be given, and as I said, that may take the form of an expression of regret, a formal apology, or any other appropriate modality.

In my view, satisfaction will form an important component of reparations for TCS because monetary compensation will never be sufficient. There will be a need to ensure that programs are implemented to educate the descendants of the slave owners about the ills of TCS.

Not long ago, a committee established by a government of the Conservative Party in the United Kingdom suggested that Black Britons benefited from TCS and that there should be a focus on what it called the positive aspects of that practice. This kind of revisionist approach has to be countered by specific policies, and there will be also a need for programs designed to reverse injuries resulting from

TCS. Reparation should also include programs that memorialize the struggle of the enslaved for freedom.

Since reparations are a legal response to wrongful conduct, it is appropriate to provide a few examples of such conduct. In the first Symposium, we concluded that chattelization, which was characterized by the discriminatory treatment of Africa, was the essence of TCS, and it had seven phases: capture and sale of Africans in Africa; the trek to the dungeons on the coast or to ships; internment in those dungeons or ships; the middle passage or the passage from Africa to Brazil; sale on the auction block in the Americas and the Caribbean; work on the plantations or elsewhere; and the concomitant trade in enslavement. Every single phase was unlawful conduct.

The first example of wrongful conduct I wanted to present to you has just been presented by Professor Beckles, and that is the genocide effected by TCS on the enslaved population in Jamaica. In sum, TCS was little more than a machinery that created killing fields, which regrettably remain in modern-day Jamaica. This is an example of the wrongful conduct that must be addressed by reparations. Another example is the well-known case of Thomas Thistlewood. If you recall, his favorite punishment for a runaway from his plantation in Jamaica was to coerce another enslaved to defecate in the runaway's mouth, who was then gagged for about three hours.

With those two examples—and, of course, there are hundreds more, but that was the work of the first Symposium, not this one—I want to turn now to reparations for the consequences of TCS in the period when it was carried out and to highlight some of the legal issues that are raised, and the first one is causation. In order for reparations to be paid, it must be established that the alleged injury or harm is the consequence of the wrongful conduct of those states that carried out TCS. That is, in the language of the International Court of Justice (ICJ), whether there was a sufficient and certain causal nexus between particular acts carried out in the practices of transatlantic chattel slavery and the injury suffered. That is causation.

What about the standard of proof or the degree of proof that is required to establish the causal nexus between the wrongful conduct of TCS and a particular injury or have suffered? For example, loss of life. Ladies and gentlemen, TCS should be seen as a mass atrocity, as millions of Africans were subjected to this wrongful conduct, but there is no need to establish that a particular injury suffered by an enslaved person was caused by a particular act, at a particular time, and at a particular place. That requirement does not exist for mass casualties.

In relation to such details in the *Democratic Republic of Congo v. Uganda*, a war between the two states, the ICJ held: "In cases of mass injuries like the present one, the Court may form an appreciation of the extent of damage on which compensation should be based." The particular standard of proof is fact-dependent, and consequently, a flexible approach is required. In light of the particular circumstances in which a claim for reparations for TCS arises, I would submit that proof on the balance of probabilities is the most appropriate standard. That is, it must be established that it is more probable than not that the required causal nexus exists.

I turn next to valuation. It is certain that in cases where it is certain that injury or harm resulted from a wrongful act, but there is uncertainty as to the extent of that injury or harm, there is a principle called the "Principle of Equitable Considerations," which may be used to determine the extent of the harm or injury on the basis of a reasonable estimation. You will hear from The Brattle Group. They do not make any explicit reference to this Principle of Equitable Considerations, but you will hear them speak of assumptions. When hard evidence is not available, they work on the basis of assumptions, which are a kind of estimation.

Now, what are the heads of damages, irrespective of which reparations will be due? I list them. They would include the following: loss of life; loss of income or earnings; personal injuries; non-material damage; a total disregard for the humanity and dignity of Africans; trampling over their identity; destruction

of their culture, language, religion, and families; loss of personal autonomy; and self-hatred.

Psychological damage may be presumed from the nature of the violations inflicted on the enslaved. Notwithstanding this presumption, the Symposium has found it very difficult to place a value on psychological damage, both in respect of the enslaved as well as their descendants.

I would like to take this opportunity, as I know we are streaming far and wide, to invite anyone listening to assist the Symposium by providing a basis for placing a value on the psychological harm caused by transatlantic chattel slavery, and I do hope someone will take up that invitation.

There is also deprivation of liberty and deprivation of access to the courts, but of course, deprivation of liberty is the essence of chattelization, the loss of their freedom, and deprivation of access to a number of services, including those relating to health, housing, and education—sexual exploitation is another—and trading in enslavement.

The Brattle Group, you will see they have their "heads of damages." They do not employ the same nomenclature that I have used, but I am entirely satisfied that they correspond substantially with those that I have set out. In light of the foregoing, it would be reasonable to conclude that on the basis of proof on a balance of probabilities, there is a sufficiently direct and certain causal nexus between each "head of damage" and the wrongful conduct as described above. That is, it is more probable than not that the required nexus exists. Consequently, reparations are required under international law.

I now turn to reparations for the consequences of TCS in the period following its formal termination. Why do I call it formal termination? Because, as you will see, although there are acts of the legislature in many countries abolishing chattel slavery, it continued. The essence of chattel slavery continued.

Let us look at causation. The principal concern in this path is to establish there is a sufficiently direct and certain causal nexus between the wrongful conduct of TCS and the injury of or harm suffered after its formal termination. The discriminatory treatment suffered by the enslaved did not stop after the formal termination of TCS, and it is for this reason that there is a direct relationship between the original act of enslavement and the discriminatory treatment of the former enslaved and their descendants in, for example, the Jim Crow period of 100 years after 1865 in the United States of America and also the 1921 Tulsa Massacre in the same country. In other words, just as discrimination through chattelization was at the root of the evil treatment of the enslaved in the United States, discrimination through chattelization is also at the root of the treatment of the former enslaved and their descendants after the formal termination of transatlantic charter slavery.

Let me turn next to the question of a continuing breach. This concept addresses the extension in time of the breach of an international obligation, and Article 14-2 of the International Law Commission's Articles on State Responsibility provides that "the breach of an international obligation by an act of a state of a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation." In our context, there is a continuing breach because the discriminatory practices that characterize chattelization continued after the formal termination of TCS and in a context where the obligation on the international law not to carry out such practices remained.

Professor Tendayi Achiume, a former UN Special Rapporteur on Racism, cited this article in her report to the United Nations to show that discriminatory post-emancipation treatment of Black persons constitutes wrongful conduct for which reparations are required. Professor Achiume's report is notable for the stress that it places on structural and systemic racism after the formal termination of transatlantic chattel slavery. That is the continuing breach.

We cannot overlook an important qualification that is in paragraph 6 of the International Law Commission's Draft Articles on State Responsibility. The commentary on Article 14-2 cautions that: "An act does not have a continuing character merely because its effects or consequences continue in time. It must be the wrongful act as such, which continues."

But, in relation to TCS, the Symposium's position is that what has continued is the wrongful act of discriminatory treatment against Black people and not merely the effects or consequences of such an act. The discriminatory treatment of Black people post-emancipation is not the effect or consequence of TCS. Rather, it is the continuation of the act itself because discrimination is at the root of TCS.

The head of damages would look something like this: loss of human lives, for example, the killing and lynching of Black people in the Jim Crow period in the United States; personal injuries; non-material injury such as I have set out in the first part; discrimination in the justice system; and deprivation of the right to vote and deprivation of access to a number of social services including employment, health, housing, and education. Again, The Brattle Group's heads of damages are not exactly the same as those that I have set up, but they are substantially the same. In particular, wealth disparity is an appropriate tool to assess the deprivation of access suffered by Black persons after the formal termination of TCS to a variety of services, including health, housing, and education.

In light of the foregoing, it may be concluded that on the basis of proof on a balance of probabilities, there is a sufficiently direct and certain causal nexus between the wrongful conduct of TCS, on the one hand, and the injury or harm identified in each head of damage suffered by the former enslaved and their descendants after the formal termination of TCS, on the other. Therefore, it is more probable than not that the required causal nexus exists, and therefore, reparations are required under international law.

Those are the matters I wanted to address in identifying some of the legal issues that are relevant to the quantification of reparations

by the experts. The next item in the program is what we are here to hear. It is the Brattle report.

Ladies and gentlemen, The Brattle Group is one of the world's leading economic consulting firms. We have with us today two leaders of the team, Dr. Alberto Vargas and Dr. Coleman Bazelon, and they will present a summary of their work. Dr. Vargas is a principal at The Brattle Group, where he leads the broker-dealers and financial services practice. He was born in Mexico City, where he received a B.S. in Applied Mathematics from ITAM and where he lectured at the National Autonomous University of Mexico. He holds a Ph.D. in Economics from MIT, and has over ten years' experience in economic consulting. As a consultant, he has led teams quantifying damages in forums, including civil courts and international arbitrations in Europe, the Americas, and Oceania. Most recently, he testified in front of a Royal Commission of Inquiry in Papua New Guinea on the overcharging by an international bank on debt issuances by that country's government.

Dr. Coleman Bazelon is the principal at The Brattle Group. Outside of his leadership in Brattle's telecommunications, intellectual property, and sports practices, he has a long involvement in pro bono economic analysis. For more than a decade, he has served as the economist for the Martha Wright Petitioners who advocate lower-cost phone calls with the incarcerated in U.S. jails and prisons. He has also served as an expert witness for the NAACP Legal Defense Fund in their litigation against the state of Texas's voter ID requirements. Dr. Bazelon also serves on the Maryland and National Boards of the American Civil Liberties Union.

Ladies and gentlemen, may I ask the two gentlemen to take the floor. Gentlemen, you have the floor.

Calculation of Compensation for Transatlantic Chattel Slavery

Remarks by Coleman Bazelon

Thank you very much. We are presenting on a paper we have written—it will be available through the conference website—on the quantification of reparations for transatlantic chattel slavery.*

As noted, The Brattle Group is an economic consulting firm. Our day job is quantification of damages in litigations and arbitrations, and I believe we were asked to do this because of that expertise, not because of our knowledge of the topic.

I want to briefly acknowledge that although Alberto and I are presenting today, this research was done collaboratively with many people at Brattle. There were dozens of folks who contributed to this. The collaborators listed are folks who all gave more than a day of effort. But I especially want to acknowledge Mary and Rohan, who are really the backbone of the work and put in hundreds and hundreds of hours each, making sure that this this work was done.

I also want to thank Judge Robinson for the invitation to present this. We are really thankful and quite grateful for the opportunity.

In developing our analysis, we rested heavily on feedback and comments in addition to Judge Robinson, Professor Shepherd, and Natalie Reid, and also, we wanted to specifically acknowledge Samantha Campbell and Mikel Hylton for their assistance in helping us navigate through the extensive research and data that is out there and compiling that and making it useful for our analyses.

The assignment we were given was to follow up on the first Symposium that established a cause for harm, and for this second Symposium, Judge Robinson asked us to estimate the quantum.

In doing this, we looked for guidance from a number of sources, including the framework provided by Judge Robinson for reparations. The work of Professor Beckles and Professor Shepherd

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* The speakers at the Symposium based their remarks on an early version of the report, which is available at: https://perma.cc/VFD8-UWT5.

was an incredibly important foundation, and we also drew on broader academic literature on the various harms as well as reparation.

We were asked to estimate—and I think this is the first time—the harms for all of transatlantic chattel slavery. We were asked to identify those harms by country, both the harm country in the Americas and the Caribbean but also the enslaved income countries. But, as noted earlier and just to be clear about it, we were not asked to apportion the reparations beyond the country level to individuals either downstream or upstream of those.

Reparations, as noted, is really about the project of repair, and it encompasses much more than just monetary harm or compensation, but that is the portion of the project that we have been asked to focus on, so wanted to be clear that we are just looking at the compensation aspect of this, and as a reality check also wanted to acknowledge that even with the limited scope of the economic harm, the assignment of estimating the complete amount of quantum is really quite challenging. We have not completed that, as Professor Robinson noted a minute ago. There are certain heads of damages, especially related to psychological damage, that we do not provide estimates for, and we will leave to further work. We do appreciate the ideas that will come in on how to estimate those.

What we have done is we have taken some of the larger buckets of harm and estimated damages for them, but they are not complete. We wanted to put our work in context. There are others who have provided estimates of reparations. They are broadly consistent with the work we have done but somewhat different in scope of the numbers. For example, in "The Empire Pays Back," there is an estimate provided of $4 trillion dollars in unpaid wages. That focuses on British colonies, whereas our analysis is across all of the Americas and Caribbean. That analysis is broadly consistent with the work we are doing, and it is based on about a million pounds per enslaved person as a level of damages for unpaid wages. Our estimates are a little bit higher than that, but in the same area, but just applied to a much larger area. We do not include an estimate

directly of the unjust enrichment, although aspects of that do feed into some of our analyses.

Many other analyses have been provided. For example, the more recent Darity and Mullen analysis of reparations is focused, again, just on the United States. It is based on a wealth disparity measure. That is one component of what we divide. Our number is a little different than theirs but very close to it. But our estimate is more comprehensive, and again, it goes well beyond the United States

Finally, I would like to just give a brief overview of the approach that we are going to provide. First, we divide our analysis into two large buckets of analysis or periods. We estimate the harms during the period of enslavement and then separately post-enslavement. Within each of these areas I want to re-emphasize that there are some things we measure and there are some things we were unable to measure, and we tried to be clear about that.

Anybody who spends any time with this topic will realize that when we are talking about harms that span centuries and have to be accounted for over hundreds of years, the use of the interest rate is a fundamental, key part of this analysis and we wanted to be very upfront about that. An interest rate, which is used to translate a value from one period of time to another, has three components to it. It is accounting for three different things. One is the purchasing power of money so that you are able to purchase the same set of goods with the amount of dollars. That is the inflation component. Over these long time periods, we use about a 1.5 percent estimation for inflation. The second component of an interest rate has to do with the time value of money or just simply how much I have to pay you for the delay in receiving a payment, and that is the real interest rate. We use a 1 percent real interest rate over these long time periods. It is worth noting that is a conservative number, and there is a much longer discussion about this in our paper. But together, those equal about a 2.5 percent interest rate, which we use. We also do not make any adjustment for the riskiness of the investment for all risk under the assumption that the countries that owe the money today

are able to pay it. That would be another area of risk, and we do provide some sensitivities for these in our presentation and more of them in our paper and analysis.

With that, I am going to turn it over to Alberto to start us off on the period of enslavement, and I will pick back up later in the presentation. Thank you.

Remarks by Alberto Vargas

Thank you very much, Coleman, and thank you, Judge Robinson, for the invitation. I must echo the thanks to everyone who helped us either by providing comments or helping us with the data availability for this particular project.

We will begin by discussing the calculation of damages during the period of enslavement, and as Coleman already noted, we will divide these into two broad categories, the categories where we can provide an actual estimate of the quantum of damage and others. Then the second category is heads of damages where we are unable to provide an estimate.

For the categories where we are able to provide the estimate, you will note that the order in which we present them may be somewhat counterintuitive. The more intuitive approach would be to begin with loss of liberty, which is the origin of all the rest of the damages. However, the way in which we will present them is what we have been referring to as a "building-blocks approach." Unpaid wages and loss of life will provide a very concrete methodology that allows us to anchor the values of the rest of the damages. Therefore, we discuss, first, loss of life and unpaid wages. We will treat them as a single combined head of damages, and then we will anchor the value of the rest of the heads of damages to that combined loss of life and unpaid wages head.

That does not mean that we do not recognize the importance of other damages that happened during the period of enslavement, everything from psychological mistreatment, family separation,

political disenfranchisement, and social isolation, and I am sure we are missing many more from this list, where part of the horrible damages and harms that were experienced by the enslaved. We want to recognize that we are aware of them. We also want to recognize that the tools that we have at hand at this moment do not allow us to calculate damages associated with these heads of damages.

With that, let us set the stage for the calculations that we will be presenting. Much of this data—or at least part of it—is probably well known to a good portion of the audience present here today. We begin by looking at the number of embarked enslaved people that left Africa and sometimes European shores but mostly Africa headed to the Americas and the Caribbean. As we know, not all of those survived the Middle Passage. We disentangled those who were actually disembarked, which was roughly 8 million people, and those that died in the Middle Passage, which was roughly 1.2 million people. Here, it is important to note that we will be calculating damages associated for both, and I will go into further detail on how we do not make an important methodological distinction between those who actually disembarked and those who died in the middle passage for the purpose of calculating the damages.

In regards to those born into slavery, here I must make an important caveat in that there is a big estimation component to this number. Whereas for the embarked and the disembarked, we actually have access to the records of the people who were enslaved and transported, we do not have sufficiently rich data to affirm that we have a precise number for those born into slavery.

For the case of the United States, we do have records that allow us to present the roughly 7 million number that we see for the United States as data based. For the rest of the countries, we adopt a methodology that was that was first presented the documentary that Coleman already made reference to, "The Empire Pays Back," where they assume one birth into slavery for every three enslaved person that was transported to the Americas. Adding all of these numbers

together gives us the staggering amount of almost 20 million people who were enslaved and on whom we will be calculating damages.

The table as we presented in this slide is a little bit overwhelming. There is far too much to take in. Perhaps an easier way to see who were the nations involved in enslaving these 19 million people, we can see this graphical representation. Portugal and the United Kingdom or its predecessor states share the greatest portion of the number of enslaved people. Between the two of them, they are roughly half of the 20 million that we saw in the previous page. Note that this chart talks only about the embarkments. That is why it will not add up to the 20 million that we saw. We are not taking into account those born into slavery.

Behind Portugal and Britain, Spain and France follow closely, and Brazil shows up as it continued having enslaved people, even after independence.

Now that we have a sense of the number of people on whom we will be measuring the damages, let us go into the actual methodology. As I mentioned earlier, we will be combining uncompensated labor and loss of life into an estimate that we refer to as "foregone earnings." Let me unpack that a little bit. Loss of life is a head of damages that has been measured in many ways in the economic and the actuarial literature. One of the most frequent ways in which this has been measured in recent years is the loss-of-productive-life approach. The idea behind the loss-of-productive-life approach is that the harm or at least the economic harm experienced through untimely death is equivalent to the foregone earnings that that person has foregone because of their premature death.

This translates into a simple calculation of what would have been a person's expected life expectancy at the time of death, were it not because of the harm or because of the accident for which we are measuring the damages. Meanwhile, uncompensated labor is simply the number of years that the enslaved worked and was not paid for. In both situations, we have that a number of years is multiplied by the wage that should have been paid to that person. If we add

up the number of years in both situations, we have, first of all, for uncompensated labor, that the number of years is the number of years that the enslaved person actually worked. For loss of life, it is the of additional years that the enslaved person would have lived had they not been enslaved. If we add up those two numbers together, it is actually the life expectancy at the age that the person was enslaved for a free person. It is the amount of time that, in our base example, say, at age twenty, a non-enslaved person would have been expected to live, and then we multiply that number of years times the wage that a free person would have lived. Again, all of this is presenting a number that is what would have been this person's lifetime earnings were it not because of their enslavement. They would have lived or they would have been expected to live as much as a free person, and they would have been expected to earn per year or per hour the amount that a free person would have been expected to earn.

This simplifies our calculation to multiplying two numbers—the life expectancy of a free person times the wage, times every single one of the 19 or 20 million people that we are looking for.

Because of time limitations, I cannot go into all the assumptions that we had to use in calculating this, but I will mention a few since they are important, and we will talk about how important those assumptions are or are not to the final number later in the presentation.

The richer data that we found available for life expectancy going back the centuries that we care about was for the United States, and the same for the wage of a free person. What we do—and I will discuss this in a little bit more detail in a second—is take the case of the United States as a base case. We have data from the Massachusetts Bureau of Statistics that allows us to have wage data from a single place, from single geography, ranging from the 1700s to the 1800s. We anchor our calculations to this wage level, and we also anchor our life expectancy to the life expectancy in the United States for the relevant periods.

Other assumptions that we make are that the enslaved were captured at an age of twenty. Whenever we calculate the damages associated with someone who was captured into slavery, we take their life expectancy at twenty. Again, that would be the life expectancy of a non-enslaved person at twenty.

For those born into slavery, we follow academic literature that conducted similar calculations, and we assume that slave work began at the age of five for those born into slavery.

What is the end result of this? By applying this methodology to all the countries in the Caribbean and the Americas, we end up coming up with a calculation of $54 trillion in total in reparations for loss of life and loss of wages. Even though Coleman presented some of the results from prior literature, this is the first time we are presenting a calculation of our own, and I recognize that these are staggeringly large numbers.

At the end of our presentation, we will aim to put these staggeringly large numbers into context. I think that all of us have a very strong gut reaction whenever we see a number that begins with trillions instead of millions or even billions that we are used to seeing.

One thing I would highlight about this is that the damages are split almost evenly across three geographies, three broad regions, the Caribbean, South America, and the United States, with Central America and other territories having much smaller damages.

Another point that Coleman highlighted at the beginning of his presentation was the importance of the interest rate. What we want to highlight at this point is the importance of two of the assumptions that we are making. As I said, a lot of our analysis is anchored on data available for the United States. We want to show two things with this chart: the huge importance of the interest rate when conducting these calculations; and the relative importance of other assumptions.

If we go across the columns, what we show in each of the different columns is what happens if our assumption that wages were the same everywhere in the Americas as they were in the United States—what happens if that assumption is not accurate? We look

at a fairly broad set of assumptions ranging for what if we assume that everywhere else, wages were 75 percent of what they were in the United States, or in the other extreme, what if they were actually 125 percent? Here, it is important to note that either of those assumptions could be a reasonable outcome.

Most of the work that was performed by the enslaved happened in pre-industrial societies. The wage disparity between the United States and other territories was not necessarily in one direction or the other, as it was likely driven by what economists refer to as the "marginal productivity of labor"; that is, given the characteristics of, for example, the land or other geographic characteristics of the place where the enslaved worked. An enslaved person could actually be much more productive in places where the land allowed the production of very valuable crops.

The key observation that that comes out from doing this sensitivity analysis is that there is certainly variation when we move this particular assumption, but that variation is relatively or absolutely small once we see what the possible variation is when we move the interest rate.

Each row in this table represents the values under different interest rate assumptions. The very first row assumes that no interest rate is paid. If we assume that interest should not be paid for these reparations, which we would never take as a reasonable assumption, we would end up with $190 billion in reparations. That is the middle number in the first row. If we assume that only 1 percent interest should be paid, that number becomes $1.5 trillion. By going from 0 percent to 1 percent, we almost multiplied ten times the magnitude of the reparations.

As Coleman mentioned at the beginning, our base estimate is based on a 2.5 percent interest, which is roughly inflation plus 1 percent real interest. That yields a $54 trillion estimate in our base scenario. If we reduced this interest rate by 0.2 percent, we lose almost a third of the value of the calculation. If we reduce it by 0.4 percent—so we make it 2.1 percent—we are losing almost half of

the calculation. It is a point that I think we cannot stress enough the importance of the interest rate and how all of these interest rates that we are showing, even the 5 percent which produces numbers that are so staggeringly high that we would not even know how to put them in proportion within the magnitude of the world's economy, yet 5 percent is an interest rate that has been observed over the past 500 years. A case could be made that some investments have reasonably grown without great risk at those levels. We will come back to the discussion of interest rates once we have investigated the rest of the heads of damages. This is the first introduction that we make to them.

Then we go to the second or third head of damage, loss of liberty. Here, our analysis is based on the academic literature on manumissions. We found some empirical work where through the analysis of manumissions, the authors managed to separate the value of the labor as understood by the slave owners and the value at which the manumissions actually occurred, and they conclude that there is roughly a 20 percent discrepancy between the two. The interpretation is that that 20 percent is the actual value of giving the freedom to the enslaved, the value at which the enslaved values the freedom beyond the economic benefit that he or she will receive from being paid by its labor.

The calculation that we do to come for a quantification of damages associated with loss of liberty is apply that 20 percent to our foregone earnings calculation, and we arrive at a base value of almost $11 trillion.

To check how reasonable this approach to calculating loss of liberty was, we looked at two other approaches. The first one was looking at, in the case of the United States, what is the compensation for false imprisonment paid across multiple states? We end up seeing that a reasonable calculation of the average is roughly $38,000 per person, and then we multiply that times the number of enslaved life years. Here we come across another staggering number that we have to keep in mind when we consider the total numbers that we present for reparations: 801 million life years of enslavement. This

is, at least to me, an even more staggering number than thinking of 20 million enslaved people. 801 million years of enslaved life is an overwhelming number for me. But we must go back to the calculations. By doing this approach, we arrive at an estimate of $30.1 trillion in loss of liberty.

The third approach that we looked at was to calculate the compensation that was paid in the United States to those interred, to the Japanese and Japanese Americans who were interred during the Second World War. This gives us a smaller number of $10.7 trillion when we apportion it to what the equivalent would have been for the enslaved. This gives us two additional measures, one with a larger and one with a smaller final outcome than our base calculation, which gives us comfort in that our base calculation is of the right order of magnitude.

The next head of damage that that we look at is personal injury. Personal injury will also be anchored on our foregone earnings calculation, in particular, as it refers to loss of life. Here, we have the benefit of a very detailed methodology presented by the 9/11 Compensation Fund, where the fund compensated simultaneously for loss of life and for personal injury, and we take a relatively simplistic approach where we find the ratio of the average award for personal injury to the average award for loss of life and find that on average, personal injury was compensated by an amount of 11 percent of the average loss of life compensation. We apply that same ratio, and we assume that everyone who was enslaved suffered personal injury, an assumption that I hope will not be controversial, and this leads us to a calculation of $6 trillion in damages for personal injury.

For the next head of damages, I will hand over the presentation to Coleman once more, and he will talk about the fourth head of damages that we can calculate, which is compensation for gender-based violence.

Coleman Bazelon

Thank you, Alberto. Picking up on this last area that we estimate harm during the period of enslavement is for gender-based violence. As noted earlier, this is rape, forced pregnancy, and other types of sexual abuse. Here, we are trying to estimate compensation for this harm that is above and beyond compensation that has already been paid. Conceptually at least, this is not about the loss of liberty, forced confinement, or loss of wages. It is intended more to focus on the psychological harm from this head of damage.

The first assumption we make is although we recognize that there was gender-based violence and sexual assaults against men and children, we are going to focus on what we understand to be the majority of the harm, which was against enslaved women. The first step is to estimate the number of enslaved women, and looking at research both during the period of transport and subsequently, we come up with an estimate that about 35 percent of all enslaved people who came to the Americas plus were born here were women, and that other research has shown that more than half, about 58 percent, of adult women who were enslaved experienced sexual assault. Combining those two numbers of the amount of women and adult women, the share of them that this research suggests suffered this harm, gives us the number of individuals and the number of years of their lives that we want to use in our estimation.

Here, we turn toward other judicial determinations of harm for the amount that we are going to apply, and we look across a broad variety. They are largely applicable but not exactly the same as what we are trying to estimate, and there is also a methodological issue about what these amounts of compensation are for distinct periods of time. Whereas we are trying to estimate lifetime levels of harm. We take as a base, using our judgment as a base from these judicial determinations, an average of about $50,000 U.S. per year of adult harm for this, and that together then ends up with an estimation of harm, which on the next page brings these all together.

When you multiply them out for both folks that came to the Americas and were born here, we end up with an almost $7 trillion estimate of harm, this last head of damages.

Taking these, it is really five heads of damages recognizing the foregone earnings encompasses two distinct things, the lost wages plus the loss of life. If we add them all up, the wrongful conduct during the period of enslavement is approaching $80 trillion.

We are now going to turn toward the period of post-enslavement, and then these staggering numbers will put in context.

It is worth noting we have also unpacked these by this estimate, by the enslaving countries and the harmed regions. We have the details by country, the full matrix, and we will present that for the total set of harms of both periods at the end of the presentation.

Moving to the period of post-enslavement, the first thing we want to recognize is that there are many continuing harms that happened after emancipation.

We use as our summary measure, as I think others who have done research in this area have done, the harm from this period of wealth disparities. We are also going to provide a recognition beyond what is captured by the wealth disparities, there are many other continuing harms, and we are going to give some indication of those. But, again, it is really important for us to acknowledge that we are not capturing the full scope of harms from this measure or this analysis.

The wealth disparity that is at the heart of what we are estimating here is intended to capture the economic harm post-enslavement. In essence, what it is trying to get at is that if after a person is freed from slavery, if their ability to get a job, the type of job that they get, the amount they are paid for the job is all diminished because of their status, they will earn less income than they would have as a continuing legacy of slavery, and that this lower income is going to have two effects on them. One is their consumption, the quality of their life, what they are able to consume, and the utility they get will be lowered during their lifetimes. But it will also mean that they will have less wealth to leave to the next

generation, and when that generation then sets out and experiences those same harms, they start at a disadvantage because they have less wealth. This process accumulates over time and ends up with our measure of the wealth disparity experienced today.

We estimate this in sort of two buckets. For the United States, we are able to look at the difference between white and Black people in the United States and the average wealth held there. Our estimate of disparity is the difference in value, the difference in these average amounts of wealth times the number of Black people in the United States. In essence, it is the amount of money that will eliminate the wealth gap within the United States.

For the rest of the Americas and Caribbean, what we do is estimate the difference in average individual wealth between the countries, the slave-trading countries, and the countries in the Americas. This measure is a little different and is a little less precise for what we are trying to get at. I want to take a moment to give the reasons why we still think it is a useful measure.

I first want to recognize that what we are trying to get a measure of is the economic harm caused by slavery. Some of the wealth differentials that we are measuring could be caused by non-slave-related colonial practices and there could be other reasons for this wealth differential. I suspect that could go in a couple of directions, but to the extent that there are wealth differentials associated with something other than transatlantic chattel slavery, then our estimate on that dimension will be overestimating the wealth differential.

On the other hand, because we are using average wealth in a country, we are not taking into account wealth differentials within the countries in the Americas, which is very stark in the United States. For some countries there are color-based wealth differentials and we are not capturing those. In that sense, we are probably underestimating the quantum of wealth.

The exercise we are trying to do here is answer the question of what would the wealth differential be had there never been transatlantic chattel slavery, and our assumption is that there would

be no wealth differential. We do not know that this is necessarily true, but given that this measure of economic harm for the period that it is applied is conservative in nature, it does not capture some of the consumption effects along the way. Plus, it does not capture some of the other effects that I am going to talk about in a second. Given the conservativeness of it, even if this particular measure slightly over-measures the wealth differential, we still think it is a good measure of reparations, and there is more of a discussion of this in our paper.

Moving on to the estimates, in the United States, as I noted, we could look at the differential in individual wealth by race and see that the wealth gap, the difference in wealth between Black and white citizens of the United States is over $250,000. And applying this number to the more than 41 million Black people in the United States gives us a wealth gap of about $11.5 trillion. This is on par with other measures of the wealth gap, slightly lower than the Darity and Mullen.

For the rest of the Americas, as I noted, we look at the gap in wealth between the enslaving country and the destination country, and again, it comes up to just over $11 trillion in total.

Taking these two together is almost a $23 trillion estimate, and this is the number that we put forward for the harms from the post-enslavement period. We have, again, calculated it by country so that we have the full matrix. This is just a summary of it. And when this is combined with the period of enslavement harm for our total estimate, we have a chart at the end that will talk about that.

I did want to acknowledge that one of the issues around the wealth gap analysis is that even if the wealth was equalized today, that does not mean it would stay equalized going forward because all the same mechanisms of harm that have caused a wealth gap would continue without a fuller set of reparations or restorative justice here. We go through a number of those additional harms in the paper. I have a few of them here, but it is just to say that the ongoing harms and legacy of slavery in the Americas is much more than

just the economic harms, and that without addressing the full set of disparities, solving the economic problems would not be sufficient.

With that, I will turn it back to Alberto to try to put some of these staggering numbers together for you.

Alberto Vargas

Thank you, Coleman. Let us begin by summarizing. We have been throwing a lot of numbers around. It is probably a good idea to begin by looking at how everything adds up.

Coleman just presented the summary numbers for the post-enslavement period that come in at around $23 trillion. We have talked about a roughly $78 trillion split between gender-based violence, personal injury, loss of liberty, and foregone earnings that make up the harm during the period of slavery. If we add up everything together, we end up with a staggering number of just over $100 trillion.

We can apportion those $101 trillion across the destination countries for the enslaved and across the enslaving countries. Not surprisingly, if we look across the enslaving countries, we find that Great Britain, Portugal, and Spain carry the largest total harms with close to $20 trillion each.

The United States carries an even larger number, even though, as it has been mentioned earlier today, the United States was not as large a destination country for shipments of enslaved people. However, the number of people born into slavery in the United States was staggeringly larger than in other regions, and therefore, the number of enslaved people in the United States ends up being substantial.

What does this all mean? $100 trillion is an astonishingly large number, and depending on the interest rate assumption, like most of our analysis, it will vary with this assumption. If we were to take 1.7 percent, which is a reasonable approximation for inflation over the past four centuries, we still have close to $40 trillion in damages. If

we take a really minimum amount of interest, 1 percent, we still have $30 trillion, especially driven by the post-enslavement harm, which, as you can see in the table, does not depend on the interest rate.

I want to make a quick comment on that. The post-enslavement harm, because of our methodological approach, is measured in current dollars, and therefore, it does not need to be brought to the present using an interest rate. That is why you will see that across our different interest rate assumptions, it does not vary.

But what does this all mean? Whether we are talking about $30 trillion or $100 trillion, we need to put those numbers in context. Some previous analysis has gone down the route of comparing similar exercises to the magnitude of the GDP of a particular country. We could be looking at damages for U.S. slavery and compare it to GDP, and we come to the conclusion that the numbers are comparable, or for some calculations sometimes even the calculation of reparations is larger than the GDP of that country.

While that is a very good first approach when trying to grasp a sense of the magnitude of these numbers, there are a few things that need to be taken into account. These numbers measure damages that occurred to millions of people over hundreds of years. GDP is a measure of output for one year. Using the GDP of a country to grasp the scale of these numbers is hardly the appropriate measure. We would be comparing hundreds of years of damage to one year of output, to put it bluntly.

What we do is, instead of looking at a single year of output for the enslaving countries, we look at the cumulative GDP, in this particular case, from 1950 to 2020. And here, we see that the total reparations are relatively small to that total output. In particular, in the United States and in the United Kingdom, we can see that he green which represents our calculation of reparations are relatively small, and even here we are calculating seventy years of output to hundreds of years of damage over millions of people.

Another way of comparing these numbers is against the share of wealth, how they would stagger next to the total wealth of these

countries, and here we see a lot of variation. For countries like Argentina, whose actual number in terms of dollars is not that large, we see that they would represent a significant proportion of that country's wealth, while for the United States, which has the largest number in terms of the reparation calculations in dollars, has a relatively small portion as a portion of their wealth.

It is with these comparisons that we want to finish this presentation. We have shown you calculations that bring together an approach to assess the harm across the entirety of the Americas using methodologies that had been used for separate parts of the Americas or for certain heads of damages. But here, we have combined everything together. The result is a very large number that remains very large even if we run robustness checks on our assumptions, but a large number that when we see it in the context of the depth of the harm, the breadth in terms of the number of people who were harmed, and the duration of the harm in the hundreds of years over which it was inflicted begins to make sense. A number that large begins to make sense once you take into account the breadth, the depth, and the duration of the harm that was inflicted.

Judge Patrick Robinson

Are there any questions for the two presenters? If not, I would like to thank you both very much. It is a very technical matter, but I believe you made the difficult issues very understandable, and I congratulate you for that. Thank you both very much, and I look forward to keeping in touch with you because I am sure there will be matters that we want to address as we move forward. Once again, we are very grateful to you.

Coleman Bazelon

Thank you. There is much more work to be done here.

Alberto Vargas

Thank you.

First Discussant's Panel

Introductory Remarks by Chantal Thomas

Greetings, everyone. It gives me great pleasure to convene the first discussant panel for this, the second Symposium on Reparations Under International Law for Enslavement of African Persons in the Americas and the Caribbean, following the first Symposium that was held in 2021. Welcome.

We have already had a very rich series of discussions today. We heard powerful opening remarks from Greg Shaffer, president of the American Society of International Law, and from Verene Shepherd, Director of the Centre for Reparation Research at The University of the West Indies. We then heard insightful and illuminating presentations from Judge Patrick Robinson of the International Court of Justice and from Sir Hilary Beckles, Vice-Chancellor of The University of the West Indies. Judge Robinson and Sir Hilary Beckles provided an overview of the legal and economic aspects of the case for reparations. Finally, we were able to hear the report from Coleman Bazelon and Alberto Vargas of The Brattle Group consultancy presenting findings from a larger team of researchers who devoted their considerable expertise to providing and substantiating estimates for damages, both during and after the period of formal transatlantic chattel slavery. That report, with the rest of today's earlier discussions, sets the stage for the current panel in which we will have the opportunity to hear from three distinguished speakers: Professors Mamadou Hébié, Adrien Wing, and Don Marshall.

We will hear from the speakers in that order. I will briefly introduce them now, and then I will turn the floor to Dr. Hébié. Thank you again for joining this discussion.

First we will hear from Dr. Mamadou Hébié, who is Associate Professor of International Law at the Grotius Centre for International Legal Studies at Leiden University. He holds a Ph.D. from the

Graduate Institute of International and Development Studies and is also a graduate of Harvard Law School, the Geneva Academy of International Humanitarian Law and Human Rights, and The Hague Academy of International Law. His thesis on agreements concluded between colonial powers and local political entities as a means of acquiring territorial sovereignty was awarded the Paul Guggenheim Prize in International Law in 2016. He has also served as lecturer at the Graduate Institute of International Development Studies and a special assistant to the president of the International Court of Justice.

Next, we will hear from Professor Adrien Wing, who is the Associate Dean for International and Comparative Law Programs and the Bessie Dutton Murray Professor at the University of Iowa College of Law. She serves in a number of other leadership roles as well at the University of Iowa, including as the director of the Center for Human Rights. She is an author of more than 140 publications and is the editor of the groundbreaking volumes, *Critical Race Feminism: A Reader* and *Global Critical Race Feminism: An International Reader*. Her U.S.-oriented scholarship has focused on race and gender discrimination, and her international scholarship has emphasized Africa and the Middle East, international law and feminism, international law and race, and the Arab world and women's rights, among other topics.

Last but certainly not least, we will hear from Professor Don Marshall, who is university Director of the renowned Sir Arthur Lewis Institute of Social and Economic Studies at The University of the West Indies. He sits on the boards of a number of key scholarly journals and has authored the volume, *Caribbean Political Economy at the Crossroads: NAFTA and Regional Developmentalism*, published by Palgrave Macmillan, and he is the editor and co-author of a number of other volumes and articles. His research has centered on addressing the Caribbean international political economy complex over time, with the express aim of highlighting where development transformation is possible via the structural opportunities on offer at specific conjunctures, and he is also

focused on industrial policy issues and democracy and governance in the eastern and wider Caribbean.

We truly have an eminent panel of commentators, and it is my great privilege to be able to convene this panel and begin this discussion. Dr. Hébié, I now turn the floor to you.

Remarks by Mamadou Hébié

Thank you very much for this kind introduction. I would like to thank the organizers for the opportunity to engage for a second time with this interesting question of reparation for slavery. It is also the opportunity to commend Judge Robinson for carrying this project to the end and for bringing all of us together for the discussion.

My third note of thanks goes to The Brattle Group for the excellent report that it has produced. The report is very clear and easy to read. I was particularly impressed by the clarity of the different parameters taken into account in the valuation of the damage for slavery.

My goal is to make sure that we look not only at the report itself but also that we consider possible areas of improvement. Although I do not have answers to all the comments or issues that I will highlight, I think that they deserve further consideration.

I would make three methodological comments before making a substantive one, which relates to the place of Africa in the Report. With respect to the first methodological comment, at different junctures, the report selects the lowest number of their estimates. For instance, when they assess the number of people born into slavery, the report decided to look at the lowest number that they could find.

This methodological choice can be explained by caution, by the fact that we want to remain on the safest side. But the question is whether this is a legal issue that should, therefore, be assessed as a matter of law or whether it is just a matter of assessing the damages or calculation, which could be left to economists. It seems to me that this issue arose before an international court or tribunal, the court

would decide what is the degree of certainty that it has with respect to the different numbers and would not systematically go for the lowest number of the estimates.

But Judge Robinson is with us, and I would like to hear his views on this point. Perhaps it might be useful for the report to indicate the lowest bound, what could be the average and the maximum estimates and then leave it to lawyers to find the most accurate criteria to determine what is, as a matter of law, the number that can be considered as judicially proven.

My second methodological concern relates to a statement at page 36 of the report, which relates again to of the allocation of tasks between lawyers and economists when assessing damages. At page 36, the Report states that sexual violence against slave women was legal at that time. This statement is supported by a footnote referring to a judgment of the United States Supreme Court.

Having studied colonial history, I have learnt to be skeptical about this kind of statement, and I am not making a firm claim as to whether it is correct or not. It is just that I believe that the issue should be investigated further before taking it for granted.

Just as a matter of legal reasoning, the reason why this kind of statement tends to be false is the fact that the law prohibits rape and many other conduct that occurred during colonialism and slavery. The problem that arose concerned the applicability and application of the existing rules to Africans and Caribbean. Now, you consider that a slave is not a human being, and therefore, you use "it" as property, including by committing sexual violence against her. If later it is proven that you were wrong in your characterization of a human being as a property, I do not think that your mistake makes your act lawful. It is from this background that I come from, and that is the reason why I look at the statement above with some reservation. I was therefore wondering whether in areas such as this one, it would not better for the report to rely more on legal input instead of taking certain views for granted.

Now I come to my third and last methodological concern. I noticed that the report relied extensively on U.S. practice, and to give you an example, I remember that when trying to ascertain the percentage of physical injury that occurred during slave trade, the Report used as a base rate, the percentage of physical injuries that occurred during the 9/11 terrorist attacks. It is difficult, and I do not have an alternative solution to propose. There is no way of knowing exactly, in the different places where slavery took place, what was the percentage of physical injuries compared to deaths. But it seems to me that, to the extent possible—and I understand that it can be just practically impossible to do it—it will be good to try to diversify the sources of base rates. I should point out that the Report does so in some areas but there are more areas where U.S. practice is the only one taken into account.

Now, I turn to my substantive comment, and it relates to the fact that the quantum of the damage that the Report calculates does not take into account the damage that could be owed to African countries and peoples themselves. I agree with Sir Beckles that if we want the slavery reparations project to be successful, we will need the combined effort of African countries and the Caribbean and all people of African descent will need to push in the same direction.

I was, therefore, wondering whether it will not be good to take into account the compensation that should be paid to African countries and people in Africa for slavery. In addition, when it comes to calculating this exact quantum, I was wondering whether our focus on the damage caused by the breaches of international law during slave trade is the only or best approach possible. I feel that we could also perhaps draw from the Marxist concept of original accumulation of capital. We live in a capitalist society, and in such a society, it is very difficult to be a player when you do not have the original capital that is needed in order to transform natural resources into wealth and into more capital. I believe that one of the obstacles to the economic development of African, Caribbean, and Pacific countries is the lack of access to this original capital. However,

when Europe launched its development, it was able to get partially free access to original capital by commodifying and chattelizing Africans during slave trade and then by exploiting their lands and natural resources during colonialism. Instead of calculating the amount of compensation to be paid based on the breaches of international law between the fifteenth and nineteenth centuries, the question becomes: how can we make sure that the descendants of people who were formerly enslaved get access to original capital in the contemporary system of international law and economy. How do we make sure that they get access to original capital to develop, but not only the capital, because it is not just about paying a sum of money and disappearing. It is also about taking a critical look at the current system of international relations to remove all of the hidden and structural obstacles in the global monetary, trade, investment, and financial rules that are making it more difficult for those countries that have been under slavery and then colonization and then neo-colonialism to successfully develop.

This approach would be forward looking. The fact that it gives a result to be attained in terms of development is much better than just paying money and believing that it absolves all the breaches of international order that occurred during slavery and colonialism. This is a new line of thoughts that I am increasingly considering. I look forward to hearing your views, and I thank again The Brattle Group and the organizers for this stimulating Report and the discussion. Thank you very much.

Remarks by Don Marshall

Thank you very much. My intervention is intended to do two things. One, I want to acknowledge the very difficult tasks of the premise of this report in including those who are not presenting but listed as contributors to the report. In trying to come up with, virtually, a very difficult task of trying to estimate the cost of damage and cost of loss and arising from enslavement, arising from

genocide, as indicated, that was also part of that experience, and certainly from the Caribbean region's vantage point, this story also includes attempts at native genocide of the Indigenous people. We do have that element also to consider when we are looking to estimate the extent to which there has been a near-impossible calculus around the kind of harms done to Caribbean people and their descendants, including, of course, as I indicated earlier, descendants of Indigenous peoples. They also want to include in that group, maroon communities in Jamaica, especially.

I want to applaud the effort to come up with a quantification where some of us may be philosophically wrestling with the idea that some things cannot really be reduced to monetary values. I am one who is wrestling with that but not in a way that suggests that this closure around efforts and scholarship to bring about a quantification match with an idea that the reparatory justice process really ought to be understood as one that goes beyond current models of intervention that speaks of aid, donor assistance, and other forms of providing capital materials and technical assistance to countries, regions, families that have been affected by this historical wrong.

I should say that, philosophically, I want to indicate that from the way I see it, the challenge we have is the kind of grammar we will employ for the claims making that is part and parcel of the reparatory justice struggle, indeed, the reparations endeavor, that an appeal that goes beyond that which the Caribbean people have been engaging. It connects up with what the brother who just spoke about when he speaks of Global Africa's appeal for reparations.

My intervention is about the grammar we employ, the way in which we speak about cost, damage, loss, et cetera, and I want to say that there are dangers inherent in trying to reduce this to—and I am not accusing the premise of the report of doing so—a quandary in epistemology or a quandary that develops when you try to produce a source of information and knowledge rooted in trying to come up with a positivist calculus of measurable objective damages, while seeking to acknowledge that it really is difficult because a lot of the

damage is incalculable. The moderator of this morning's session would have indicated that throughout the challenge, you want to know how we would quantify psychological loss and psychological damage, because that is really difficult to quantify.

The premise of the reports is doing brilliant work and is governed by an intention that we must really calculate the weight of the loss, as I prefer to frame it, the weight of the damages, the weight of this historical realm. If we had to steer or lever the discussion away from just talking about monetary values and to talk about building and bridging a process of reparatory justice of which an estimation of the harms is a part and parcel of what we talk about when we are talking about reparatory justice, if we talk about trying to come up with an estimate of the harms, then it paves the way morally, ethically, epistemologically to speak about ways in which we undertake repair or renewal. Once you have established that there were harms from the best efforts at quantifying such, we come up with X figure or Y figure as brilliantly postulated by the premise of the report and those that spoke to that report today, I think it paves the way for us to then say, look, building a bridge in a process of reparatory justice means we come to grips with the costs associated, we come to grips with the need for justice and accountability for the unremedied and unprecedented wrongs against humanity and every relation for sustainable being and becoming in life. Justice cannot be secured, we would argue, if the moral and spiritual debt is elided and redress overlooked.

When I look at the report, I see an estimate of the harms and a scope or optics for addressing the need for redress. I would say that repair ought to be seen as an ethical project, entailing the healing of relations and the status of the parties, and we want to also add and suggest that even as we come up with a quantum of what these harms have cost the regions and peoples affected, we start off with a philosophical position that the evaluators cannot redress the weight of the loss, and that the estimation of harms provides only a moral reckoning toward needs produced in the context of injustice.

Because of the injustice accumulated, sedimented, carried forward, the harms will produce needs in the context of injustice, and it is the descendants that continue to bear the brunt of the injustice. Reparations then in that sense are about addressing or redressing the needs of the descendants of these people for whom crimes were committed, for whom genocide and attempts at near genocide were committed, and for whom their humanity was denied through enslavement, et cetera.

We are talking about a reckoning that ought to be addressed in tangible ways, and it is those that suffered the harm that have to estimate what that costs will entail. I think it is important that we make the point that we need to listen to those who carry and live the legacies of race and harm, the legacies of racialized wealth and exchange, and that if we are talking renewal, if we are talking socioecological and economic renewal of Caribbean countries, for example, in light of the harms that were caused to the people, the biodiversity, the ecological harm, if you start to do an estimate of all the harms caused, say, to the Caribbean as a region within the Americas, then we are beginning to talk about the need for redress and repair. These figures then become very relevant when we have shifted the grammar of claims making a way from one that says you owe me X based on a calculus of damage and loss, you owe me X, to one which says you are ethically driven and bounded by the need to address reparatory justice as an urgent need.

Reparatory justice would include looking at the estimate of the harms associated with human degradation and suffering, the socioecological and economic degradation of these regions. Indeed, all this has to be steered along a plane that says repair and renewal is what reparatory justice should look like in public. I thought reparatory justice would take the form of the apologies, would take the form of building bridges, people-to-people bridges, but with African countries, West Africa particularly, there is also psychological repair that Rastafari, Indigenous people, and others make that speaks to what reparatory justice should look like for

every person, and it should involve reengagement with lands, reengagement with Mother Africa, et cetera.

But what reparatory justice should look like in public should take the form of recompense in the direction of repair and renewal of these economies and these societies and descendants who find themselves structurally poor, structurally suffering from the loss of not having intergenerational wealth, et cetera.

The watchwords for me are about "repair" and "renewal," and especially exciting is the quantum leap made in attempts to cost estimate what those harms entailed while humbly suggesting these figures, no matter how many trillions, cannot really be seen as representative of the kinds of psychological damages that continue to be inflicted on people of color and on the fact that they find it so structurally locked out because their life chances are overdetermined by race and color and how that works in a world order dominated by super white supremacist objects. I will yield at this point.

Remarks by Adrien Wing

First of all, I am very delighted to thank all of the organizers for this event, especially His Excellency Judge Robinson and his incredible leadership. Thanks also to ASIL President Gregory Shaffer who addressed us this morning, and staffer Wes Rist. I would also like to thank The University of West Indies and Professor Verene Shepherd. I actually wish this event was live there. In Iowa right now, it is below freezing and I have enjoyed my visits to your campus. And, of course, we have the very hardworking organizers, Natalie Reed and Professor Chantal Thomas. I am delighted to be joined by my co-panelists Professor Mamadou Hébié and Professor Don Marshall. I am also speaking today as the co-founder and former co-chair of BASIL, Blacks of ASIL. As I hope many of you know, BASIL was started in 2014, and it has had a rich history of involvement in ASIL activities, and my fellow BASIL co-founder, the Honorable Gabrielle Kirk McDonald, who was also an honorary

president of ASIL and also, as I am sure everyone knows, a former president of the ICTY. BASIL is very pleased to be involved with this event. I enjoyed being involved in the 2021 conference, where I had the pleasure of introducing Sir Hilary, who this morning gave us some very profound comments.

I relate very personally to this topic of reparations as the descendant of slaves in the United States. On the other hand, I realize my own privilege, as I am a tenured chaired professor at the University of Iowa, and I have been here for thirty-six years, and I am a third-generation college graduate. Yet as the statistics have presented my group, African Americans disproportionately lack wealth, in large part, due not only to what happened during the slavery period but, of course, the subsequent subjugation that the report definitely highlights.

My seven children and my nineteen grandchildren face racism every day in the United States. It has not stopped my partner, James Somerville, who is 65 years old and a dark-skinned African American, and who has faced even more discrimination than I have as a light-skinned African American, and we face this every day. I also have family from the Caribbean, and Africa. I have Indigenous roots, and also, I have white ancestry. The nearest white relative to our knowledge is my great-great-grandfather. I represent a bunch of people, which is very typical of many African Americans.

Also, I was formerly involved with the National Conference of Black Lawyers for many years, and we were deeply involved in issues of reparations, working with groups like NCOBRA and others, and it is a shame that forty years after my own personal involvement that we are still discussing these issues. On the other hand, we know we are discussing issues that have occurred for over 400 years. We are actually making progress that we are at this point where Brattle has produced an incredible draft trying to quantify the unquantifiable.

What I am going to focus on is intersectionality. As Chantal Thomas said when she introduced me, I am the editor of two readers, one called "Critical Race Feminism," and the other is "Global

Critical Race Feminism." Both of them involve the status of women of color, whether they be in the United States or in other countries. The report does not mention this, but Professor Kimberlé Crenshaw of UCLA and Columbia Law Schools is well known globally for bringing this intersectional commentary into the legal academy and the writing therein. I was delighted to see the report actually had several references to intersectionality as you often do not get reports at all that even comment on it.

But I am always pushing for more. For instance, I was glad to see a subsection that has to do with gender-based violence, and I appreciated the presentation where there was an attempt to quantify the gender-based violence, but there is a way that we can try to push it in further, and it is not an additive process. In my writing, I call it a "multiplicative process." You have to look at a few things happening to those females, but the multiplier effect of having to look at not only race, not only gender, but also color, pregnancy status, parent status, marital status, age, class, and other health statuses, all which will be intersecting and affecting the women that we are concerned with in particular. We know that in many cases they were not permitted to keep their children, and the families were separated.

I was interested to hear that in the Caribbean when they needed to increase the population and could not get fresh slaves, that some places offered some incentives to try to increase the population. In the United States, we all know examples of the slave owners raping many of their female slaves as a means of increasing the population along with them forcing sex between the slaves.

I am not sure of the answers, but somehow this needs to be fleshed out because when I looked at the number of the amount listed for sexual violence, I thought it was actually a bit low in these large numbers. I think somewhere it says that maybe 58 percent of the women may have been sexually assaulted, and I do not know where that number would have come from. But why would we not presume 100 percent of the people were sexually assaulted? And I said, "the people" because we cannot forget the other side of the gender issue

that there are countless incidents where men were also sexually assaulted, and yet a lot of that gets suppressed. Then there also could be examples of homosexuality among the slave owners and whatever they might have felt they could get away with, with respect to their male slaves. We need to have something that the sexual violence can also be directed, as it can be now, to men.

There is also something about children over fifteen and assaults. We know children under fifteen can be assaulted as well. In earlier eras, even in a society where there is any of this violence, you might have sexual activity or marriages occurring with children much younger than fifteen, and so there would be a need to deal with younger ages than had been considered here.

My second concept I wanted to focus on briefly, is the non-quantifiable, which I have called in my own work "spirit injury," that emotional and spiritual side of injury, which although it is hard to quantify, there are occasions where it can be. In U.S. law, for instance, you have the concept of intentional infliction of emotional distress, and they will quantify that, maybe not enough, but perhaps there is some way to work out numbers for this kind of an era. When you imagine the multiplicity of loss, when you have lost your family participation in your community, in your clan or your ethnic group, in your religion, being ripped out of their religions, their customs, the languages, food, the music, the education, the wealth, the status, all of that, in one sense, could be looked at as unquantifiable. Perhaps we need to think about ways where we could quantify at least part of that. We have to at least try, even if we come up with a number of $100 trillion or $200 trillion. Our next step is who could we get, what entities, what governments can we get to pay even fractions of this amount? Even more, who do they pay it to? Do you pay it to the whole government of a country, to non-governmental organizations, or some other type of entity to try to figure out what to do with that sum of money and what do we do about the blowback there will no doubt be in many countries? People will say, "Well, the person was not a slave and this fancy law professor, will she or people like her

get any money?" If it goes to a group, is it misused? All of those critiques of reparations that are out there, we would have to do.

Say that a government should owe it—I was involved with South Africa and the constitution-making process there. They had the Truth and Reconciliation Commission, part of which was reparations. The post-apartheid government of South Africa did not have the money to pay all of the Black people who had land stripped from them and their ancestors by the prior white government. Holding a government liable, if it is a poor country, is not going to work. But all of us enjoy going to London and Paris and experiencing all the riches that those countries have had, a lot of it based on the backs of our ancestors.

In closing, I want to say this is a wonderful start, and I look forward to seeing the later drafts and also to participating in the rest of this Symposium tomorrow. So thank you.

Chantal Thomas

Thank you so much, Adrien, and thanks to all of the speakers. Thank you all for truly insightful remarks and for continuing this dialogue.

We do have a few moments that remain, and I would like to ask each of the speakers whether you would like to expand on any of your earlier remarks or, in particular, if you would like to pose any questions to the other speakers based on the other presentations. I would like to open the floor now.

Adrien Wing

I agree with what Professor Hébié said, that looking in depth at the situation in Africa today is quite critical, and I do not know if that can be added to this project or a totally separate project. The African Union (AU) and others may need to be more involved, but I would love to see this kind of quantification begin to be attempted.

Maybe that is already out there, and I have not seen it yet. If any of you know or anybody listening, I would like to know if there is something like that out there.

Chantal Thomas

Mamadou, would you want to speak to that? I was also very interested in that element of your remarks. Today we speak about human capital, and one could think about the loss of human capital in terms of the depopulation of African territories as one potential element of quantification of damage. I also think about possible objections that might be raised in terms of shared responsibility. We sometimes hear as a politicized distraction from conversations around reparations, claims of shared responsibility for transatlantic chattel slave trade across European and African territories. But I think, in general, that is such a fascinating question. I would love to hear as well any other remarks you might have.

I can turn the floor for the moment back to Mamadou, if you wanted to respond to the previous line of questioning.

Mamadou Hébié

I think that the African part of the report would be interesting. It would be definitely fascinating. I also agree with Adrien that the AU should take leadership in that respect.

I do not believe the claims that African countries or African people were complicit in enslaving their brothers and sisters. If you look at the beginning of slavery and the slave trade, African polities, kingdoms fought against it, but the slave traders managed to disrupt the traditional structures and to impose a new dynamics that allowed the trade to last for centuries. I do not think that the idea of African complicity will be a major obstacle to reparations.

I agree that we could think about the loss of human capital, but we have to go further. We have to realize that slave trade by

extinguishing all the entities that were trying to constitute themselves as states and empires created a gap in political organization, which facilitated later colonialism in the eighteenth and nineteenth centuries. Even today, when you look, for instance, at areas such as Mali, Burkina Faso, Niger, which were the areas where people ran from the coasts and slave traders in order to go in the hinterland, these are again the same areas where strong political organizations are lacking and where jihadi groups are wreaking havoc at will.

Slavery is a phenomenon that had long-lasting and disrupting consequences in the entire region. Even now, in Burkina Faso, we have an expression in the Dyula language, which is a language that is spoken in Burkina Faso, Mali, Niger, Senegal, Guinea, Côte d'Ivoire, and in almost all West Africa. It is the most spoken language in West Africa, and it still has an expression, and I will say it in Dyula, [speaking Dyula language], which is to say, "If you provoke me, I will sell you." You see? The idea of capturing and selling human beings is still there. The lack of trust, the lack of confidence does not allow for strong political organizations or a strong economy. All of this has some of its roots in the slavery experience.

How will you be able to erase all this traumatic past? How will you be able to find ways to provide reparations for it? I do not believe that we have to try to identify each and every breach of international law to establish a duty to compensate. What I proposed here is to say to former slave traders and colonial powers that they found their original capital to develop in Africa and the Caribbean. Now they are developed, and, as Africans, we are happy about it. It is good. However, it is their turn to return the original capital so that Africans and Caribbeans could also pursue their economic development. Destinies have been disrupted for three, four, five centuries, but now we have the opportunity to write a different story, and colonial powers and slave traders can contribute to this new storyline because they benefited from it. Even if they resist paying compensation, at least they should show goodwill, and commit to removing all the hidden shackles in the international economy,

which are keeping African and Caribbean countries poor and at the margins of the globalized society.

Chantal Thomas

We could continue this conversation, I think, for many hours, if not days, but luckily, the conversation will continue. We will reconvene tomorrow. I believe that we must close the session in order to keep to time, and perhaps I will just give an opportunity for any closing remarks or final observations from the speakers.

Don Marshall

Yes. Thank you very much. I do believe that there is the possibility of several kinds of emancipatory projects, reparations projects that could be undertaken simultaneously. I do think that the work to bring West Africa squarely into the picture is urgent work. It is urgent epistemologically speaking because the basis upon which we can understand each other and shape and control narratives is a critical first step to winning hearts and minds. There is a prevailing perception of collusion, culpability, and so on that has been established not by anecdotes or fables, but that has been established through the venerable ratings within your centric circles and universities. There is a way in which that has to be addressed head on.

We must have the engagement. We must have a confrontation with those kinds of narratives deliberately so that we can truly identify where there may have been complicit leaders and regimes, but that does not speak for the continent. It does not speak for whole countries. It does not speak for the resistance from below, civil society across West Africa, abject outrage against being traumatized and retraumatized with the threat of being sent away, as the brother just spoke. We need to know more if we are to understand ourselves and how racialized systems of wealth and advantage become consecrated as a commonsense force in our lives

Chantal Thomas

Well said. We have heard about so many different aspects from epistemological to moral, the philosophical, as well as the institutional, the legal, the economic, the empirical. It really has been a very rich set of interventions in this session, and we encourage everyone to join us tomorrow for the continuation of this Symposium.

Thank you again to the speakers. Thank you to Judge Robinson, to Sir Hilary Beckles, to Greg Shaffer, to Dr. Verene Shepherd. Thanks to all of you, and I will bid you goodbye for today.

Day Two:
Friday, February 10, 2023

Welcome and Day One Summary

Introductory Remarks by Natalie Reid

Good morning, good afternoon, and good evening to everyone joining us for this, the second day of the Second Symposium on Reparations Under International Law for Transatlantic Chattel Slavery in the Americas and the Caribbean. This is the final day of the second of two symposia, and we are delighted that you could join us again. For those who are just joining us and were not able to tune in yesterday or to view the video yesterday, we will begin with a short summary of what happened yesterday during the first day of the Symposium.

First, allow me to introduce myself. My name is Natalie Reid, and I have the pleasure and privilege of being one of the organizers of the Symposium. Yesterday, during the first day of the Symposium, Judge Robinson reminded us of the conclusions of the last Symposium, which established that transatlantic chattel slavery was unlawful at the time it was committed, and that as a result, former slaveholding countries have an obligation to make full reparation under international law to the descendants of Africans they enslave, but that neither that determination nor the calculation of the amounts due can be left up to the perpetrators.

Beyond monetary payment, international law also requires that satisfaction be given, including if compensation would not be sufficient to fully remedy the wrongs. That satisfaction could include a formal apology and depends upon the nature of the wrongs in question. It may include consideration of whether, for example, the psychological harms that were suffered by those who were enslaved may be appropriately addressed by monetary compensation or by some other form of remedial steps.

Judge Robinson also discussed recent developments in between the first Symposium and this Symposium, such as acknowledgments from governmental and major institutions of European countries, and noted that these have been a positive step,

for example, the apology offered by the Prime Minister of the Netherlands, but that the steps that had been discussed publicly in recent times may well be insufficient to fully address the harms committed during transatlantic chattel slavery and the consequences the enduring legacy of transatlantic chattel slavery that we continue to see and feel today.

We then heard a powerful keynote address from Sir Hilary Beckles, Vice Chancellor of The University of the West Indies, who explained the impacts and the consequences again of transatlantic chattel slavery, not solely from a legal perspective, but also from a historical one, and from that perspective, discussed whether and how transatlantic chattel slavery at different times would be considered to have been a form of genocide against the populations involved. Sir Hilary elaborated on the situation that enslaved peoples were left with after slavery formally ended, and in response to questions and observations from Judge Robinson, offered insightful comments on whether and how, those who are seeking now to grapple with the consequences of transatlantic chattel slavery, including the legal qualification as genocide or other breaches of international law, could infer intent behind slave owners' conduct and policies throughout the relevant period in the Caribbean and throughout the Americas.

We then heard from the economists of The Brattle Group, who presented in a briefer form than the report, which is also available from the webpage for the Symposium, the estimate, the calculations, and the quantification that they had prepared of reparations due first for the period during transatlantic chattel slavery and second for the period after transatlantic chattel slavery. The colleagues from The Brattle Group, Dr. Vargas and Dr. Bazelon, in addition to presenting those figures, grappled with the idea of the scale of those figures and provided some context and perspective on how the sheer mind-boggling sums involved, which reflected the number of those who were the initial victims of transatlantic chattel slavery, the period over which the breaches of international law were committed,

and the important consequence of the passage of time since those initial breaches were committed.

Among the heads of damage that the Brattle team considered, as guided by Judge Robinson's legal framework, were damages for loss of life, uncompensated labor, loss of liberty, gender-based violence, and, for the period after transatlantic chattel slavery, using wealth disparity as a method of capturing a number of different harms that we continue to see today.

We then had our first panel of discussants with Dr. Mamadou Hébié, Professor Don Marshall, and Professor Adrien Wing, who discussed the analysis that had been presented by The Brattle Group but also took a broader perspective and highlighted the differences between, for example, the economic approach and legal approach to damages, reminding us we could also consider whether and how reparations are owed to the African states, and emphasizing that reparative justice must be ethically driven and not solely economically driven, as well as pushing us to take significant considerations, such as really building on gender-based violence assessments and intersectionality in those considerations, whether and how to take those further into account in the calculation.

Today we are delighted to welcome additional esteemed discussants to continue this discussion, and we will hear from Judge Abdulqawi Ahmed Yusuf, Member and former President of the International Court of Justice, and Dr. Mojtaba Kazazi, former Executive Head of the United Nations Compensation Commission. We will then hear some additional comments from Professor Verene Shepherd, the Director of the Center for Reparations Research at The University of the West Indies, who has been a key participant in both symposia and is a member of the advisory committee convened by Judge Robinson for this Symposium. Finally, we will hear some concluding remarks from Judge Robinson himself to wrap up the day and this Symposium.

To introduce our discussants—again, their biographical summaries are available from the webpage for the Symposium—I

will very briefly introduce them, and then we will move directly to hearing from each of them.

Judge Yusuf is very well known to many of us in the international community as former President and remaining a Member of the International Court of Justice, where he has served on the court since 2009. Judge Yusuf has spent many decades of service to Somalia and to the international community. From 1975 to 1980, he served as Somalia's Delegate to the Third UN Conference on the Law of the Sea. He has taught and written extensively, including from the 1970s onward. From 1987 to 1992, Judge Yusuf was Chief of the Legal Policy Service at the United Nations Conference on Trade and Development (UNCTAD) before becoming its representative and head of its New York office from 1992 to 1994. From 1994 to 2001, he served as Legal Adviser up to 1998 and then Assistant Director for African Affairs for the United Nations Industrial Development Organization in Vienna. From March 2001 to January 2009, Judge Yusuf was Legal Adviser and Director of the Office of International Standards and Legal Affairs, the United Nations Educational, Scientific, and Cultural Organization (UNESCO). In 2011, Judge Yusuf joined the Advisory Council of The Hague Institute for Global Justice. As part of his distinguished academic career, he has been founder and general editor of the *African Yearbook of International Law* and is a member of the Institut de Droit International. He is also one of the founders of the African Foundation for International Law and Chairman of its executive committee.

Judge Yusuf, we are delighted and honored that you will join us this morning and this afternoon.

Dr. Mojtaba Kazazi is former Executive Head of the United Nations Compensation Commission (UNCC) and was instrumental in setting up the UNCC and in resolving 2.7 million claims from over one hundred countries. He has also recently served as the Executive Commissioner of two international mass claims programs for payment of compensation to workers. Dr. Kazazi has had a

long and distinguished career in national and international service, having been a former judge in the courts of Tehran and worked extensively on the arbitration and settlement of claims before the Iran-U.S. Claims Tribunal. He has also served as a Vice President of the Institut de Droit International and is a visiting scholar at the Graduate Institute in Geneva. Dr. Kazazi currently sits as an independent arbitrator in different disputes and serves as a board member of the Tehran Regional Arbitration Center.

Dr. Kazazi, we are delighted and honored that you are able to join us today.

Judge Yusuf, if I may turn to you first, we welcome your comments and observations on the points made in the Brattle report and more broadly on the question of reparations for transatlantic chattel slavery under international law.

Remarks by Judge Abdulqawi Ahmed Yusuf

Thank you very much, and I will not take much time because I do not have a lot to say about the report. I think it is a groundbreaking report, and I believe that that groundbreaking possibility was also offered and facilitated by the first Symposium and the legal guidance and legal framework paper that was prepared by Judge Robinson, because I think Judge Robinson's paper gives us the legal basis on which discussion and debate on reparations can actually be engaged and pursued, because it clarifies the legal issues arising from the chattel slavery of Africa several centuries ago and its continued effect and impact on the descendants of the slaves and on the people who live in many parts of the world who were unwillingly and forcefully uprooted, transported, and used as uncompensated labor in plantations to produce for the benefit of economies in the Northern Hemisphere.

You just mentioned that one of the speakers mentioned yesterday that slavery could also be considered as a genocide. I think we should stay away from that. I say we should stay away from that

because slavery was undertaken because the slaves or the enslaved persons were needed as uncompensated labor. There was no intent to get rid of them, and those who died were actually a loss to the slave owners because these people were treated as goods that could actually provide services, not only commodities, because they were dehumanizing, but they were commodities that could offer services, which can be monetized. Therefore, they were useful for those who engaged in slavery, and the intention of the slave owners could not be and was actually far away from an intention to get rid of them or to destroy them as human beings. They were very useful for them, and therefore, they wanted to keep them alive. That was also part of the trade because they were being used as tradable commodities, and you do not want your tradable commodities to be destroyed or lost.

My attention was drawn to the fact that on page seventy of the report, there was a placeholder on proportional and a location needed to be revised. And there was also a reference to the countries that owe the $100 trillion in reparations. The reference reads more than $100 trillion in reparation owed are not owed by a single country. I think we have to revisit these kinds of remarks, and I will place them in the context of the entire discussion, because I think it is very important to address not only by whom the reparations are owed, but to whom they are owed. Maybe it is much more difficult. It is not that easy to establish to whom they are owed. That is also not very clear, either in the original papers or in The Brattle Group papers.

If we take, for example, loss of life, we will have to see where those lives were lost. Were they lost immediately after the capture of the enslaved persons? Were they lost in the dungeons in which the slaves were kept before embarkation and shipment? Were they lost in the Middle Passage? Or were they lost in the plantations or in the slave labor camps where many of these people were used as slaves? I think it is very important that these issues be addressed because then those to whom the reparations are owed will be different, whether the reparations are owed to African communities that are still in

Africa or whether the reparations are owed to communities who are in the African diaspora, who are the descendants of the slaves.

The other important question with respect to whom the reparations are owed: are the reparations owed to a country or to a state, or are the reparations owed to a community or a collectivity? Or are the reparations owed to individuals? That is very important also because I think that this needs to be discussed and to be clarified, because it will be different in each of these instances, what kind of reparations will have to be considered for different categories, for different entities to which the reparations may be owed.

Then I come to the reparations categories. There were three categories: reparations for consequences of the wrongful conduct of transatlantic chattel slavery in the period following its formal termination and two categories of reparations for the continuing breach of the obligations with respect to transatlantic chattel slavery; one for the period in which persons were kept as slaves or were actually still being treated as slaves, although there was legislation that terminated slavery, and therefore they were not being traded, but they were still being treated as slaves; and one continuation, which is, as I understand it, discrimination against the former enslaved persons and their descendants.

In The Brattle Group report, there are two major categories: reparations for the enslaved and the persons who were subjected to slavery and to uncompensated labor and who were deprived of their liberty, et cetera, and who were subjected also to sexual violence and assaults and reparations for continuing breach of the obligation through the discriminatory treatment meted out to the descendants.

For the first one, The Brattle Group made a quantification of about $78.7 trillion, while for the second, they made a quantum of $22.6 trillion. These are huge amounts of money. But before actually dealing with these amounts of money, one has to deal with the purpose and objective of the reparation; for example, in the case of the reparations for loss of life, for uncompensated labor, et cetera.

What would be the purpose? Would the purpose be to compensate those who are alive today and who are the descendants of the slaves and to pay them for the treatment that was meted out to their ancestors, or is the purpose to compensate the communities from which these persons were taken and which were deprived of these people as a community and which suffered because of the fact that part of their population was taken away by force and shipped to far-off lands. That is one issue.

The second issue is, to whom would this compensation be paid? As I said before, it is not easy to determine that and whether it is the states' collectivities, and for what purpose would it be used, in any case? Therefore, the focus should not be on this first type of reparation in the form of compensation. In my view, the focus should be on the second type of reparation, which would not be only in the form of compensation but which would also be in the form of satisfaction that could also be applied to the first form of reparation.

Why do I say that we should focus on the second? Because I think that there are hundreds of millions of people who are still suffering from the effects of slavery. It is not only Article 14.2 of the International Law Commission (ILC) articles to which Judge Robinson referred in his paper, but I think it is very important to keep in mind Article 30 of the ILC Articles on State Responsibility, which says that the state responsible for the internationally wrongful act is under an obligation to cease that act if it is continuing. And since I agree with Judge Robinson that there is a continuing breach of an obligation and that the actions of slavery are continuing in the form of discriminatory treatment of the descendants of the slaves, it would be very important today to ensure the cessation of those acts, and the cessation of those acts will not only come through compensation. It will come mainly through satisfaction, and I am talking here about satisfaction in the form of, for example, an accurate account of the violations and the inclusion of that accurate account of the violations in educational material at all levels

throughout the world and throughout those countries where slavery was practiced. This is extremely important.

It is also important to have as another form of satisfaction a public disclosure of the truth about the slavery, because I do not think that many of the societies are aware and know the truth about slavery. For example, now in the Netherlands, there was a report about slavery, and as a result of that report, the Prime Minister offered apologies. But it is the conclusions and the facts that have been established through that report. Are they going to be part of the curriculum that is taught in schools in the Netherlands? Is there going to be an accurate account of what the Dutch slave owners did and how the Dutch East Indies Company behaved and conducted itself in the acquisition and in the trade, in the slave trade?

Those are, to me, extremely important considerations to be kept in mind, and I think those considerations will have to relate to the post-enslavement period and the continuing breach of the obligation, the discriminatory treatment of the descendants of the slaves, and the need for cessation, because this should finally somehow come to an end, and unless it comes to an end, no amount of compensation will be able to repair and to remedy the damage done.

I will stop there. Thank you.

Natalie Reid

Thank you very much, Judge Yusuf, for those observations, the questions raised, the points made. While you were speaking, you had referred to a table in the Brattle report, and we briefly showed that table. The report is, of course, available from the Symposium website, and the particular table that Judge Yusuf was referring to is Table 29 in the report. I would encourage anyone watching to review the full report, including this table, and, of course, the tables, the figures, and the analysis set out in full in the report to understand how the Brattle team developed the figures.

We look forward to hearing from Judge Robinson in his closing remarks in thinking about how some of the questions and considerations raised by the discussants, including those yesterday and Judge Yusuf now, will be taken into account going forward.

We now turn to Dr. Kazazi. Again, we are indeed honored to have you with us today, Dr. Kazazi, with your extensive experience in dealing with mass claims under international law. The floor is yours, sir, to provide your comments and observations.

Remarks by Mojtaba Kazazi*

Thank you very much, Ms. Reid, for the introduction but also for the excellent summary of the proceedings of yesterday and the important points that you highlighted.

Good afternoon and good day to everyone. I am very pleased and honored to participate in this Symposium and to be a member of this panel with Judge Yusuf. I very much enjoyed listening to Judge Yusuf and to his thought-provoking presentation and the important issues that he raised.

The purpose of the The Brattle Group report, which we are reviewing here, is to quantify and put monetary value on all the harms and damages caused by transatlantic chattel slavery. This is a very difficult and challenging task which the authors have referred to with expressions such as "seemingly insurmountable" and "hopeless."

Nevertheless, they have managed to harness this complicated task very well, and drawing on their own knowledge and research, and benefiting from the available academic literature and the body of work already done by many researchers and scholars on this issue in the last few decades, it seems that the authors have become confident

* This presentation should be read in conjunction with the version of The Brattle Group report available at the time of the Symposium, and the pages and tables from the report that are referred to therein. The Brattle Group report can be found at https://perma.cc/VFD8-UWT5.

enough to make a number of important and necessary assumptions on related key issues in order to arrive at reasonable and convincing results. I commend the authors for that.

The task is not finished though as there are still areas to refine and reinforce, and to add more diverse background and statistics to the report. Judge Yusuf comments have also emphasized the need for *revisiting* parts of the report and further fine-tuning.

With the time available, I would like to mainly address three or four important issues. First, I would like to look at the main methodology and model applied in the report as well as material assumptions, which have far-reaching effects on the quantum of compensation. This is the part of the report that deals with the loss of life and uncompensated labor. For the same reason, I would also like to review the interest rate and its impact on the quantification of compensation, and finally to look at what is not in the report and perhaps should be there.

I recall that the authors of the report themselves have been very open and transparent on the shortcomings and the limitations of the report. The most obvious and important unquantified element of loss in the report is the one that Judge Patrick Robinson highlighted yesterday, i.e., psychological harm. I would like to discuss this matter in light of the practice of the United Nations Compensation Commission, where compensation for mental pain and anguish was calculated and paid to thousands of victims of military operations for death of a relative, serious personal injury, being taken hostage, etc. I do not see any reason that we should not be able to do the same here.

Before starting on these items, I would like to emphasize the importance of the statement that the authors of the report have rightly made on page 11 of the report, where the report says, "There is no amount of money that would repair the harm of the enslaving millions of Africans and their descendants." The authors have also included a thoughtful quote from Professor Shepherd on that matter. I would like to associate myself fully with both statements of the authors of the report and Professor Shepherd.

For an overview of the economic framework of the report, let us go to page 13 of the report. The quote from the Human Rights Commission is fine here. However, it seems to me it will be more appropriate to add or even to start with a reference to the work of the International Law Commission on the Draft Articles on State Responsibility for Internationally Wrongful Acts. Yesterday, Judge Robinson in his systematic approach on legal issues summarized the relevant articles. Those articles could be added here. In addition, I would also add Article 38 that confirms that interest is part of compensation and should be calculated to ensure full reparation and that the rate and mode of calculation should be set to achieve that purpose. Moreover, in light of Judge Yusuf's comments, of today, It is important to mention Article 30 as well. That Article refers to the obligation of the states responsible for the internationally wrongful act to cease the wrongful act if it is continuing.

If you can go now to the next page, Table 1—this is an important table that shows the interest rates over centuries. I agree with the approach taken in the report that calculates the inflation separately from the real rate of interest. The obvious reason for this approach is that inflation, as was explained yesterday, is in fact the main component of the nominal interest rate. When we take inflation out of what we recognize generally as interest rate, what remains comprises real interest rate as well as risks. Sometimes that risk is referred to as political risk. I do not think political risk is accounted for here. Although yesterday Dr. Bazelon confirmed that it is because it has been assumed that the countries involved are able to pay and there is no risk. I think it is possible to view the situation differently because the risk is more general than that; in fact any debt that has not been paid for a long time—here it is hundreds of years—is a risky debt. I leave this as a question for the authors of the report and whether it would have any impact on the calculation or not.

The other point here regarding this table is that the shortcut the authors have found for avoiding a detailed and complicated calculation of interest is very helpful. At the same time, as explained

later in the report, the bulk of the calculated compensation is on interest because of the long period of time that has passed. It is important that the calculation be reliable for such a heavy weight that we are placing on it.

Finally, the question of the interest rate used. I see that the rates in the table are all much higher than 2.5 percent used in the report. Also, in the two paragraphs below the tables on the same page, I see a slight contradiction. The first paragraph says that the 3 percent nominal interest rate used in the literature is lower than the average rate and would be a conservative and reasonable rate, so 3 percent is okay. However, in the second paragraph, the report calculates a nominal rate of 2.5 percent. We will come back to this issue of interest at the later part of the report when we look at Table 30.

If we can go now to loss of life and uncompensated labor on page 24: loss of life and uncompensated labor accounts for the main portion of the total calculated compensation. By quantifying these two important elements of loss together and applying a common methodology on both, the authors of the report have saved lots of time and have made an amazing shortcut, which has resolved many issues. Not to mention that this imaginative way was necessary to avoid the problem of lack or shortage of data.

First of all, the authors had to make an important choice between the value of a statistical life methodology and loss of productive life methodology. I agree with their choice, i.e., the second one, which simply takes the earnings of the deceased and extrapolates that into the future expected earning period on the basis of the life expectancy of the person, and calculates the compensation on that basis. I think this is the right choice that the authors have made. I refer to ILO Employment Injury Benefit Convention No. 121, which is widely known and used in ILO, labor organizations, and others around the world for calculation of compensation for injured or deceased workers. That ILO Convention follows the same methodology. I have personal experience with applying this convention as we used it for calculation of compensation for the

thousands of victims of the 2013 Rana Plaza disaster, and also for the injured and deceased workers from the Tazreen Fashion garment factory fire, both in Dhaka, Bangladesh.

Finally, in the UN Compensation Commission where there was a need to calculate loss of life for a large number of deceased from various nationalities, this was the method that was used based on the precedents from some earlier claims commissions.

The main assumptions that have been necessary for these two elements of loss: the first one is the total number; how many enslaved persons were involved? As you see in the report, there has been a good portion of the report allocated to this matter, which it tells us that the authors were fully aware of the importance of this figure, and they have documented it very well.

Figure 4 shows a good portion of the methodology that has been applied. The life expectancy for a slave, for non-slaves, and then loss of life. This is a genius idea because it greatly facilitated the calculation. The authors did not have to calculate the amount of loss for each deceased separately. Rather, they have calculated compensation for all the 20 million estimated enslaved persons together by assuming that save for slavery everyone would be alive until the end period of the life expectancy of a non-slave person. With that, they have come up with all the necessary figures. This means that the compensation for the alive and the dead have been calculated the same. They have all been treated the same, which is a feature of mass claims processing.

After this, the authors have continued with the modeling assumptions, which you can see at two page later, and you will see there that they have discussed how many hours they should use, how to calculate a day, and at the end, they have settled on a twelve-hour day and seven days per week, which is quite reasonable.

Then perhaps the most important figure in the whole report appears on page 28. This is the amount of wage of a worker for one day at the time: 78 cents per day. This seems small, but this is the basis

of all the $54 trillion calculation that comes later. It is very important that this figure be justified, well established, and supported.

On page 31, Table 3 shows the total sum that, as was mentioned, amounts to $55 trillion for the loss of life and uncompensated labor.

In Table 4, on page 32, the authors have shown sensitivity to assumptions that come from the interest rate in that the $54.8 trillion goes at the middle and relates to two criteria. One is the rate of interest, 2.5%, which includes inflation and real rate of interest, and the other one is the non-U.S. wage proportion to a U.S. wage. In this situation, it has been assumed that the wages are all the same, and they are 100 percent. As I mentioned earlier, it seems that the interest rate has room to increase a bit, because of the risk element and because of the comparison, but otherwise it seems fine.

My impression from this part is that the methodology used as a whole resembles a mass claims methodology. At the same time, it probably misses some important elements that we normally see in mass claims processing. As we see below, most of these can be because of the unusual situation and characteristics of this case, lack of information and the enormous task in hand

The steps that in a standard claims processing one normally sees starts with sampling. When you have a huge population like here, you choose a sample first and study the cases in the sample. Then, with the assistance of a statistician, you make sure that you have a representative sample. Next, you would work on profiling on this sample and prepare some general profiles of individual cases that could be applied to the rest of the population. These steps make the task easy, and it seems until here, this is, in fact, what the authors of the report have done.

What is probably missing here is that, at that stage, you will have to do more work, including regression analysis, in order to find and look at the outliers. For instance, if you have taken into account in profiling the average salary of the individuals concerned , then you may see there are some persons who earn much more than the average and there are some who earn lower amounts. Then you will

look at those outliers to find out the reasons. That, we do not seem to have here, probably because it was not possible due to lack of information. Or that the population and the samples were so similar that there was no need to separate some of the population and treat them differently. In other words, there were no outliers.

Now I would like to go to pages 43 to 45, which is on non-quantified harms. This is the place where the authors explain that psychological harm has not been calculated but they also show that the lack of quantification is not an indication of the unimportance of these avenues of harm, and they address them briefly.

I like to briefly refer to the practice of the United Nations Compensation Commission (UNCC) that many of you are familiar with. In 1991, after the unlawful invasion and occupation of Kuwait by Iraq, the ensuing Security Council-authorized military operations by the allies against Iraq, and liberation of Kuwait, an unprecedented compensation commission was set up by the United Nations in Geneva. The UNCC operated as a subsidiary organ of the Security Council and had three organs: Governing Council, Secretariat, and Commissioners. The Governing Council, composed of the Security Council membership, was responsible for policy issues and approving claim awards. The Secretariat served the Governing Council and the Panels of Commissioners. There were seventeen or eighteen panels of commissioners of highly qualified jurists and other professions who decided on approximately 2.7 claims from 100 countries based on the preparation and work carried out by teams of the Secretariat.

The question of mental pain and anguish was one of the first issues that came up in setting up the Commission and its rules. It is reflected in Decisions 3 and 8 of the Governing Council. At its Third Session, the Governing Council discussed the question of mental pain and anguish on the basis of a study prepared by the Secretariat and decided to adopt ceilings rather than fixed amounts for compensation for mental pain and anguish. In Decision 8, the Governing Council reached consensus on the applicable ceiling amounts, based on another information paper from the Secretariat.

As you see here, Decision 8 provides compensation for mental pain and anguish in seven categories, including mental pain and anguish arising from death of a relative, serious personal injury, sexual assault or aggravated assault or torture, and being taken hostage or illegally detained. Practically, Decision 8 has decided on compensation for all types of situations causing psychological harm.

On the sexual assault, I use this opportunity to refer to the issue that came up yesterday in the first panel. On the number of female persons mentioned in the report. I think it will be quite justified that the number be increased 200 percent, but maybe for the men as well, a percentage could be added.

I leave you to read Decision 8 later. It is available to the organizers, and I also remind you that Decision 3 is also important. So please read these two decisions together.

I would suggest to calculate the psychological harm the same way as was done in UNCC. At that time, current resources and digital tools were not available, and now it is much easier to do research and find more precedents to add to this. The first step should be to think about what should be the heads of losses for psychological harms, and then consider what should be the amount to be allocated for each of these harms.

I would like to stop here with a short conclusion. I believe the report is an excellent report. A small point that it does not mention: what is the margin of error in this report? Normally, our authors have been very transparent, so perhaps they can mention that as well. As you know, a percentage of 4, 5, 6 percent in every report is normal. In this situation, it probably can even go higher up to around 10 percent.

I also want to mention that when I say that there is a need to prop up the report, to add more background information, statistics, etcetera, first of all, I do not mean to necessarily create additional work for the authors. Historians and researchers can undertake part of the additional work. Second, I am convinced that even with additional work, the results in the report will not be much different.

An important feature of mass claims processing is that it is not an exact science. You will not be able to compensate each person the exact amount that they are owed. You pay them an approximate amount. It is possible of course to calculate an exact amount for each person, but then they have to wait probably many years for the processing. And it will be much more costly as well. Here it is the same. If you want to quickly finalize this matter you have a report with approximate amounts, and probably a higher albeit acceptable margin of error.

Again, it is an excellent report, but there is room for some improvement and for some additions, and in particular and mainly the question of psychological harm, or MPA, as it was called in the jargon of the UNCC. Thank you all very much.

Natalie Reid

Dr. Kazazi, thank you very much for your contribution. I am sure that in addition to those of us who have been following and watching and those who are watching the YouTube stream that our colleagues from the Brattle team were indeed watching very keenly and following your observations. We may very well hear from them separately outside of the context of the Symposium.

In terms of what can be made available to the public, thank you very much for pointing us toward the decisions of the UN Compensation Commission, including in mental pain, anguish, and suffering, and how that maps on to psychological harm. We can absolutely post those to the website as well. They are publicly available, as they are UN documents. So they will be as available for consultation as the Brattle report itself is.

We will now turn to Professor Shepherd whose contribution to both symposia and in particular in her role as a historian, as an advocate in these issues for many years has been incalculable to the subject of this Symposium.

Professor Shepherd, you have the floor.

Remarks by Verene Shepherd

Thank you very much. I will try to be brief. I wanted to make a few comments on some of the issues raised yesterday and today. First of all, I really want to appreciate all the work that has gone into this by The Brattle Group and all the work that Judge Robinson and colleagues yesterday and today put into this effort. This is really marvelous. I also want to say to Judge Robinson, thank you again for having asked me to play some role into the contents already there and those that will be added.

Yesterday we were talking about genocide because of the drastic population decline in the Caribbean in the early period. I wanted to say that it is true, and I was listening keenly to Judge Yusuf. There was also an anti-natalist policy in the Caribbean up to the abolition of the transatlantic trafficking in enslaved Africans—the act anyway, because we know that the trafficking continued illegally way beyond 1807 in the case of the British-colonized Caribbean.

The motto of these planters in the Caribbean was it is cheaper to buy than to breed, and demographic historians have written about this for a long time. The treatment was deliberate. The chattelization, the dehumanization, the codification of laws to declare our ancestors non-persons, all of that was deliberate. Death was not only because of disease. It was because of mistreatment, and it was because of deliberate killing.

The Maroons, for example, waged an eighty-year war against the British, and the casualty rate was high on both sides; but there was deliberate killing of protesters over the two centuries of the British being in the Caribbean. You have to look at what happened after every war of resistance to see the deliberate hanging, the murder of people. I do not accept that we cannot use genocide because it was not really deliberate—what happened; it was almost like a casualty of the system.

Then, when we come to the post-slavery, post-trafficking period, when there was suddenly a pro-natalist policy, we have to

understand that there was resistance to that by the enslaved. The planters in the post-1807 period in the British-colonized Caribbean attempted to base the regeneration of the enslaved laboring population on women. Women's conditions would have been placed at the center of this sudden pro-natalist policy. This would require the cooperation of women, and the literature and historiography are replete with scholars on gender issues showing that women were not cooperating. They could have fed them some more!! They could have taken them out of the field some more!! The enslaved women claimed control over their bodies. And so there was a deliberate attempt by enslaved women not to cooperate. In other words, what I am saying is that we have to factor in these issues instead of talking just with figures. Figures alone cannot tell the whole story, and that is why we have the work of people like Professor Barry Higman from the 1980s. He is a quantitative and demographic historian.

When we talk about the United States, sometimes I get the impression that we talk in glowing terms about the pro-natalist policy and treatment there. We have to remember that—and historians have written about this for a long time—when we talk about demographics, we have to consider the place that we are talking about. In other words, it is well known that the death rate was highest where enslaved people worked on the sugar plantations. However, there were contexts both in the United States and in the Caribbean where enslaved people did not work on sugar plantations, and it is shown that the demographics in those contexts would have been different than on the sugar plantation. Now, it may not have affected that much the overall population increase or decrease, but we have to be careful when we are generalizing across economic enterprises in the Caribbean.

We also have to remember that part of what happened in the United States—and Fogel and Engerman have written about this for a long time—was deliberate breeding. Some of it was deliberate breeding, because as the colonization continued, as the United States tried to open up to the West, my understanding from reading U.S.

historians is that there was an attempt to use the regeneration of the enslaved population to help conquer new lands. Again, it was not because they liked enslaved people and wanted to treat them better. I think we have to be more nuanced with that kind of argument.

I was reading Anthony Gifford, and in defending reparation and looking at the legal aspects, he has said that there is no statute of limitation in talking about reparation for crimes against humanity. We have already concluded trafficking and chattelization were illegal at the time they were committed, and that reparation is justified. In terms of the descendants and those living with the legacies, he also says that there is nothing in international law that prevents ancestors who never received compensation for claiming on behalf of the ancestors. I hope that this could be debated more.

I should also say that I agree with Judge Yusuf. I am a historian. It is a painful thing for me. Judge Robinson and I talk about this all the time—the way in which the education system is not preparing our children, each generation, to know what happened and to ensure that they pass on this knowledge. Caribbean history is not compulsory beyond a certain level, the lower levels in the schools; and even when it is done at the higher levels, it is a choice. We have been pushing to change this, and Judge Yusuf is right. If the Dutch apology and what transpires this year does not filter down into the curriculum, if there is not curriculum reformation, then this will just stay, and the old people will know, and the young people will not know, and so on. This is an effort of quantification. It is just that surrounding it has to be a context, and this might not be a numbers context.

I listened carefully to Judge Yusuf about to whom will this be paid, whatever the quantity, and how will it be used. Again, since 2013, the CARICOM heads of government tasked the CARICOM Reparations Commission with drawing up or answering just that question. And for the region, there is a Ten-Point Plan that talks about why and who should be entitled and the avenues through which that repair should take place. The Ten-Point Plan is about an apology. It is about debt cancellation,

technology transfer, attention to psychological harm, to education, to health, so that is an infrastructure—social infrastructural blueprint or strategy toward repair.

I wanted to throw out those comments and again to thank everyone for this wonderful work. Thank you.

Natalie Reid

Thank you very much, Professor Shepherd, indeed, again, not just for those comments but for your contribution to the work of the Symposium and for your enduring work over the decades on these critical issues.

We now turn for the closing remarks for this Symposium to Judge Patrick Robinson, the chair of the Symposium. Judge Robinson, you have the floor.

Concluding Remarks

Judge Patrick Robinson

Thank you very much. Ladies and gentlemen, I take the opportunity to thank all of the participants in the Symposium, Sir Hilary Beckles, as well as all of those who discussed the Brattle report, Judge Yusuf, Dr. Mamadou Hébié, Professor Adrien Wing, Dr. Mojtaba Kazazi, and Dr. Don Marshall.

Of course, on behalf of the Symposium, I express my gratitude to The Brattle Group evaluators for the very significant work they have done in producing this report, and if you will allow me, ladies and gentlemen, I would like to mention that the work was done pro bono.

I must also thank Professor David Eltis. for his groundbreaking research on slave voyages, which has played a pivotal role in the Symposium work on the quantification of reparations.

Thanks are also due to Samantha Campbell and Mikel Hylton, two young Jamaicans who prepared valuable tables, which assisted The Brattle Group in its work.

I would like also to thank Ms. Priscellia Robinson, who has assisted me in my work as a member of the Symposium's advisory committee.

I have to, in the Jamaican language, prop up Ms. Natalie Reid, who made the administrative and other arrangements for the Symposium. How she was able to do that in combination with her law practice, I will never be able to understand.

We are also indebted to Professor Chantal Thomas, who introduced the discussants yesterday.

And finally my thanks to Professor Gregory Shaffer, who is the President of the American Society of International Law, for his introductory remarks.

Ladies and gentlemen, The Brattle Group have quantified the reparations due for TCS at over $101 trillion. This figure comprises

approximately $78 trillion as reparations for the harm caused during enslavement and approximately $22 trillion for the harm caused in the period after enslavement. These figures are what former slaveholding countries are required to pay by way of compensation to the descendants of the enslaved.

In respect of the period during enslavement, Table 29 sets out the sum that each country in which enslavement was carried out is entitled to receive as compensation. It also identifies the former slaveholding country to pay that compensation.

Table 18 sets out the compensation in the post-enslavement period that each country in which TCS was carried out is entitled to receive. At the same time, it identifies the former slaveholding country that is to pay that preparation.

And as I just mentioned, I am not insensitive to what Judge Yusuf said about who is to receive the compensation. What groups of people will have to attend to that?

Ladies and gentlemen, the Symposium is historic in that it has, through the draft report comprehensively, set out the sums to be paid by all former slaveholding countries to all the descendants of the enslaved. In that regard, please recall that in my opening remarks, I said that we, descendants of the enslaved, wherever we are today, we all came to these paths on the same boat.

Of course, the Symposium, as acknowledged in the report, has built on the work done by many others in the field, including Professor Hilary Beckles, Professor Verene Shepherd, and Professor Robert Beckford.

I wish to comment on one aspect of the report. It shows that reparations in the sum of about $78 trillion must be paid by a number of former slaveholding states to the descendants of the enslaved in several countries for wrongful conduct during the period of enslavement. Of that sum, to take an example, Jamaica is to receive $7.5 trillion, and the United Kingdom is required to pay as compensation to the countries in which it carried out TCS some $19 trillion.

By any measure, these are large sums. I would like to make the following comments. Brattle's report is of a very high quality, evidencing much learning and scholarship from experienced economists and evaluators. The methodology is carefully explained, and it shows an admirable rigor in its analysis. Moreover, Brattle has been conservative in its conclusions. In this work, Brattle had to make assumptions about the number of people born into slavery outside the United States. For every enslaved person embarked to the United States, twenty-two persons were born into slavery. However, this ratio was likely lower in other countries. For example, the calculation used in the documentary, "The Empire Pays Back," assumes one person born to slavery for every three that were embarked. As a conservative assumption, the Brattle Group followed this one-to-three ratio in their calculations.

Moreover, although there was more than ample evidence to support an interest rate of 3 percent, Brattle used the lower rate of 2.5 percent. Why then are the figures so high? Ladies and gentlemen, the figures are high because the period for the calculation of compensation at a particular rate of interest runs for hundreds of years from the date of enslavement to the present day. The report makes the point that a payment of interest preserves the time value of money and that one of the purposes of an interest rate is to offset inflation.

It is interesting to note that the International Law Commission's Articles on State Responsibility explicitly address the question of whether the principle of full reparation may lead to disproportionate and even crippling requirements so far as the responsible state is concerned. The commentary on Article 34 refers to the principle of proportionality as an aspect of the obligation to make full reparations. Thus, Article 35 precludes restitution if it would involve a burden out of all proportion to the benefit gained by the other injured party. Similarly, Article 36 states that satisfaction should not be out of proportion to the injury. While there is no such provision in relation to compensation, it has to be noted that under Article 36, the

obligation is to compensate for damage that has actually occurred as a result of the wrongful conduct.

The question whether compensation may be too burdensome for the responsible state was recently addressed by the International Court of Justice. In its 2022 judgment in the armed activities on the territory of the Congo, *Democratic Republic of the Congo v. Uganda*, a war that lasted five years between the two countries, the International Court of Justice considered the question whether in determining the amount of compensation, account should be taken of the financial burden imposed on the responsible state, given its economic condition, in particular, if there is any doubt about the state's capacity to pay without compromising its ability to meet its people's basic needs. After considering the total amount of compensation awarded to the Democratic Republic of Congo, as well as the terms of the payment of the compensation, the court concluded that it was "satisfied that the total sum awarded and the terms of payment remain within the capacity of Uganda to pay."

Ladies and gentlemen, I would not conclude without addressing the important issue raised by Dr. Mamadou Hébié yesterday. Dr. Hébié observed that in determining the number of persons born into enslavement, The Brattle Group had two options. It chose the lower option, following the approach taken in the documentary, "The Empire Pays Back." That documentary, as already mentioned, worked on the assumption that for every three embarkations to the Caribbean, one person was born into slavery as distinct from the situation in the United States where twenty-two persons were born into slavery for every one enslaved person and back to the United States. It appeared to Dr. Hébié that this approach was taken by Brattle because it was safer and more conservative, but Dr. Hébié, good international lawyer that he is, questions whether a determination should not have been made as a matter of law as to the number of persons born into enslavement. He has raised an important issue relating to the allocation of decision-making responsibilities concerning the work of the Symposium.

When I started examining the legal framework for reparations for transatlantic chattel slavery, I immediately realized that reparations could not be determined by experts without some other body having a role in that determination. There had to be a body that would receive the reports of the experts and ultimately come to a conclusion on the reparations that are due. And that was why I established an advisory committee, but admittedly, I was very conflicted as to the role of this committee. At times, I felt that it was for the committee and not for the experts to determine reparations on the basis of the principle of equitable considerations. In the result, the matter was never settled, but we do have an advisory committee, and one of its functions is to resolve difficult issues.

In relation to the particular matter raised by Dr. Hébié, I should say that the determination of the number of persons born into enslavement should be made as a matter of law on the basis of the principle of equitable considerations, which I explained yesterday. Essentially, it allows for a reasonable estimation. In conclusion, then, Brattle's lower assumption is consistent with the principles of equitable considerations.

But Dr. Hébié raised another matter. He raised the issue of reparations for Africa resulting from transatlantic chattel slavery. I had included population displacement as a head of damage. In one of the earlier iterations of heads of damages, I believe it was felt that we should concentrate on reparations for the descendants of those who are enslaved in the Americas and the Caribbean. However, there can be no doubt that the population displacement experienced by African countries significantly affected their growth and development. And after hearing from Dr. Hébié, I want to say that this is a matter that deserves the attention of the advisory committee, and we will look into it.

May I just briefly comment on what Judge Yusuf had to say about Article 30 and the obligation to cease a wrongful act if it is continuing? He is absolutely right, and I thank him for reminding us. We tend to take things for granted sometimes, but it is very important

that in our work, we should tell the former slaveholding countries that they must cease the wrongful act, the discrimination that continues, and he is also absolutely right about focusing on the descendants of the enslaved. It does not mean that you forget our ancestors, but what we face today is a set of people who are disadvantaged and generally impoverished on account of transatlantic chattel slavery.

Also, he was absolutely correct about stress on the Netherlands and other countries providing an account of the violations in educational materials at all levels as a form of satisfaction, and Professor Shepherd has addressed that,

I would also like to thank Dr. Mojtaba Kazazi for what he has just told us. In particular, being a practitioner in the field, he has brought his experience to bear, and he has drawn our attention to the practice of the UNCC, which we will look at in relation to psychological harm. I remember that yesterday Professor Adrien Wing pointed to a law in—not sure whether it is in her state or in the U.S. at the federal level—that has a provision in relation to compensation for psychological harm. Those are two areas that we need to look into.

Ladies and gentlemen, in closing, let me say that the advisory committee will examine the report, taking into account the indubitable claim of the descendants of the enslaved to full compensation as well as the possibility that the sums identified in the report as compensation may be burdensome, and we will also take into account the law relating to it. The committee will consider this matter and provide a report on the sums to be paid in short order.

Thank you very much. Those are my closing remarks. Thank you.

Natalie Reid

Thank you very much, Judge Robinson. In just wrapping up the proceedings of the second Symposium, taking account of the very important contributions and the dialogue and, to a certain extent, the debate that has been taking place among the participants

in this Symposium, I would be remiss if, as on behalf of those who have played a role in organizing both symposia, I did not, of course, acknowledge and again thank The University of the West Indies and the Centre for Reparations Research for their incredibly important support for the symposia, and of course, the substantive contributions of Vice Chancellor Sir Hilary Beckles and Professor Shepherd in their capacity as historians in this field as well.

The virtual platform and the facilitation of this conversation over the course of the last few years and the maintenance of the webpage that makes all of this possible is due to the commitment and the support of the American Society of International Law which, of course, began under the previous President and previous Executive Director Catherine Amirfar and Mark Agrast, respectively, and continues with the current President, Greg Shaffer, the current Executive Director Michael Cooper. We remain indebted to the staff of ASIL at Tillar House with whom much is possible and to whom we remain indebted; in particular, Wes Rist and Jimmy Steiner and their colleagues as well.

The recordings of all the days of the symposia, four in total, will remain available on the site, as will the materials for the first Symposium and those that have and will be posted for the second Symposium.

Again, I think we have heard this from all of the speakers in recognition of the truly significant contribution that these symposia have made and the unprecedented work done by many of our participants. The role of ASIL in making that webpage available and continuing to be available will serve an important educational role as well. But, as Judge Robinson, Professor Shepherd and so many others have said, that is only part of what the project entails.

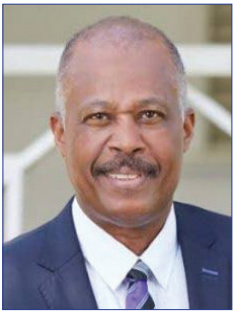
With that, we will leave you all. For those who are watching, good day, good evening, and good night, wherever you may be in the world. And for those who watch these recordings later on, thank you for your attention to these matters.

APPENDICES

Appendix I: Speaker Biographies

Coleman Bazelon

Dr. Coleman Bazelon is a Principal at The Brattle Group. Outside of his leadership in Brattle's telecommunications, intellectual property, and sports practices, he has a long involvement in pro bono economic analysis. For more than a decade, he has served as the economist for the Martha Wright Petitioners who advocate for lower cost phone calls with the incarcerated in U.S. jails and prisons. He also served as an expert witness for NAACP Legal Defense Fund in their litigation against the state of Texas's voter ID requirements. Dr. Bazelon also serves on the Maryland and National Boards of the ACLU.



Sir Hilary Beckles

Professor Sir Hilary Beckles is the eighth Vice-Chancellor of The University of the West Indies, and a leading economic and social historian. He is a distinguished academic, international thought leader, United Nations committee official, and global public activist in the field of social justice and minority empowerment.

Among other appointments and honors, Sir Hilary serves as Chairman of the Caribbean Community (CARICOM) Commission on Reparation and Social Justice, President of Universities Caribbean, an editor of the UNESCO General History of Africa series. He has also served as Vice President of the International Task Force for the UNESCO Slave Route Project, an advisor to UNESCO's Cities for Peace Global Program, an advisor to the UN World Culture Report, an advisor to the Secretary General of the United Nations

on Sustainable Development, and an Editor of the ninth volume of UNESCO's *The General History of Africa*. Under his guidance, the Centre for Reparations Research at The UWI was established to lead the implementation of CARICOM's Reparatory Justice Program.

For his outstanding academic leadership and public advocacy, in 2015 Sir Hilary was invited by the President of the UN General Assembly to deliver the feature address during the sitting in which the period 2015–2024 was declared the UN Decade for People of African Descent. Further, in his advocacy for reparatory justice, Sir Hilary has been invited to speak before the United States Congressional Black Caucus, the British House of Commons, and the European Parliament on the right to reparations. In January 2021, Sir Hilary's global advocacy for reparatory justice, equality, and economic development for people of the African diaspora was recognized with the conferral of the Martin Luther King Jr 2021 Global Award for Peace and Freedom by the US National Action Network (NAN).

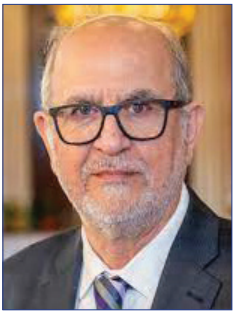
Sir Hilary has lectured extensively in Europe, Africa, Asia, and the Americas and has published over 100 peer reviewed essays in scholarly journals and more than 20 academic books. His many publications include *Britain's Black Debt: Reparations for Slavery and Native Genocide in the Caribbean* (UWI Press, 2015), *Centering Woman: Gender Discourses in Caribbean Slave Societies* (James Currey Press/Ian Randle Publishers, 1999), *Natural Rebels: A Social History of Enslaved Black Women in Barbados and the Caribbean* (Rutgers University Press/Zed Book, 1989), and *White Servitude and Black Slavery: White Indentured Servitude in the Caribbean, 1627–1715* (Tennessee University Press, 1989).

He has received numerous awards, including Honorary Doctor of Letters from Brock University,
the University of Glasgow, University of Hull, and the Kwame Nkrumah University of Science and Technology, Ghana, in recognition of his major contribution to academic research on

transatlantic slavery, popular culture, and sport. In 2017, the Town of Hartford in the state of Connecticut (USA), declared 21st March, "Sir Hilary Beckles Day" in recognition of his global contribution to social justice and human equality. He is also the recipient of the prestigious Dr. Martin Luther King Jr Award for global advocacy, academic scholarship and intellectual leadership in support of social justice, institutional equity, and economic development for marginalized and oppressed ethnicities and nations.

Mamadou Hébié

Dr. Mamadou Hébié is Associate Professor of International Law at the Grotius Centre for International Legal Studies, Leiden University. He holds a PhD (*summa cum laude, avec les félicitations du jury*), and a Diploma of Advanced Studies in International Relations - Specialization international law, from the Graduate Institute of International and Development Studies. He also graduated from Harvard Law School and the Geneva Academy of International Humanitarian Law and Human Rights, and is a recipient of the Diplomas of The Hague Academy of International Law and the International Institute of Human Rights. Dr. Hébié's PhD thesis on *Les accords conclus entre les puissances coloniales et les entités politiques locales comme moyens d'acquisition de la souveraineté territoriale* (Paris : PUF, 2015) was awarded the Paul Guggenheim Prize in International Law in 2016. From 2013 to 2016, he was Lecturer at the Graduate Institute of International and Development Studies (Geneva), in the Master's in International Dispute Settlement program (MIDS), and from 2018 to 2021, Special Assistant to the President of the International Court of Justice. He is a member of the New York Bar.



Mojtaba Kazazi

Dr. Mojtaba Kazazi is the former Executive Head of the United Nations Compensation Commission (UNCC), and the Secretary of its Governing Council, in Geneva, where he was instrumental in setting up the UNCC and in resolving 2.7 million claims from over 100 countries. He also recently served as the Executive Commissioner of two international mass claims programs for payment of compensation to injured and deceased workers. Dr. Kazazi is a former judge of the courts of Tehran,and worked extensively on the arbitration and settlement of claims before the Iran-Unites States Claims Tribunal. He has served as a vice-president of the Institut de Droit International, a visiting scholar at the Graduate Institute, in Geneva and Max Planck Institute for Comparative Public Law and International Law, in Heidelberg, and delivered a course at The Hague Academy of International Law in Summer 2017.

Dr Kazazi currently sits as an independent arbitrator in different disputes, serves as a judge at OPEC Appeals Committee and OPEC Fund Administrative Tribunal, and as a board member of the Tehran Regional Arbitration Centre.

He is a graduate of the University of Tehran (LLB, LLM) and the Université Catholique de Louvain, Belgium (Docteur *en droit* (*grand distinction*)).

Don Marshall

Professor Don D. Marshall is Director of the Sir Arthur Lewis Institute of Social and Economic Studies at the University of the West Indies. received a Bachelor of Arts with (Hons) in History and Political Science (1991) and a Master of Philosophy in Political Science (1993), from The University of the West Indies, Cave Hill Campus, Barbados. He started doctoral studies at the University of Newcastle-upon-Tyne in the United Kingdom in April 1994, achieving a Ph.D. in International Political Economy in June 1996, a period of two years, two months – for which he remains one of their outstanding international alumni and record holder in the Newcastle University's Department of Politics.

Don Marshall began his career at the Cave Hill Campus in August 1996 in the Department of Government, Sociology and Social Work as a Temporary Lecturer. One year later, he was appointed as Research Fellow at the renowned Institute of Social and Economic Research, later renamed the Sir Arthur Lewis Institute of Social and Economic Studies or SALISES. Professor Marshall sits on the editorial boards of the JECS and other key scholarly journals such as The University of Helsinki's *Globalisations* and The University of London's *Progress in Development Studies*. He has also served as reviewer of several manuscripts for several journals and academic publishers. Over the course of his career he has authored *Caribbean Political Economy at the Crossroads: NAFTA and Regional Developmentalism* – published by Palgrave Macmillan; co-authored two edited collections – "*The Empowering Impulse: The Nationalist Tradition of Barbados* (University of West Indies Press) and "*Living at the Borderlines: Issues in Caribbean*

Sovereignty and Development (Ian Randle Press); wrote over 10 book chapters, co-authored eight monographs, and authored 16 full articles in leading academic journals.

His body of work has centered on addressing the Caribbean International Political Economy complex over time with the express aim of highlighting where development transformation is possible, via the structural opportunities on offer at specific conjunctures. He critiques Anglo-American globalization, conceives of *globalization*, locates the Caribbean development problematic within such an imaginary and argues that alternative, sustainable futures are possible. Since 2007 onwards, his focus turned to industrial policy issues and democracy and governance in the Eastern and wider Caribbean. His other published works critically examines the role of Caribbean international financial centers in the global geography of financial services provision. Here he questions the authority and legitimacy of `scientific finance' as a discourse; while still probing the utility of financialization as a concept arguing that its formulations ought to take into account the role of non-Western spaces in shaping credit, financial engineering and other forms of warehousing and servicing finance.

Patrick Robinson

Hon. Patrick Lipton Robinson is Honorary President Emeritus of the American Society of International Law and a member of the International Court of Justice.

Following his call to the Bar in 1968, Judge Robinson began a long and distinguished career in public service, working for the Jamaican government for over three decades. From 1968 to 1971, he served as a Crown Counsel in the Office of the Director of the Public Prosecutions. Between 1972 and 1998, he

served briefly as Legal Adviser to the Ministry of Foreign Affairs, subsequently in the Attorney General's Department as Crown Counsel, Senior Assistant Attorney-General, Director of the Division of International Law, and as Deputy Solicitor-General.

Judge Robinson's long-standing experience in United Nations affairs dates back to 1972, when he became Jamaica's Representative to the Sixth Committee of the United Nations General Assembly, a position he held for 26 years. He played a leadership role on several issues in the Committee, including the definition of aggression and the draft statute for an international criminal court. From 1981 to 1998, he led Jamaica's delegations for the negotiation of treaties on several subjects, including extradition, mutual legal assistance, maritime delimitation and investment promotion and protection. Judge Robinson also represented Jamaica on several other United Nations bodies, including the United Nations Commission on International Trade Law and the United Nations Commission on Transnational Corporations, serving as Chairman of that Commission' s Twelfth Session in 1986. He represented Jamaica at all sessions of the Third United Nations Conference on the Law of the Sea and was accredited as an ambassador to that Conference in 1982.

As a member of the Inter-American Commission on Human Rights from 1988 to 1995, and its Chairman in 1991, Judge Robinson contributed to the development of a corpus of human rights laws for the Inter-American System. As a member of the International Law Commission from 1991 to 1996, he served on the Working Group that elaborated the draft statute for an international criminal court. Judge Robinson also served as a member of the Haiti Truth and Justice Commission from 1995 to 1996, and was a member of the International Bio-ethics Committee of UNESCO from 1996 to 2005, serving as its Vice-Chairman from 2002 to 2005. Judge Robinson was elected a Judge of the International Criminal Tribunal for the former Yugoslavia in 1998 and served as the Tribunal' s President

from 2008 to 2011. Judge Robinson has also served as an arbitrator in disputes under the ICSID Convention.

Judge Robinson is a Barrister of Law, Middle Temple, United Kingdom. He holds a B.A. in English, Latin, and Economics from the University College of the West Indies (London), an LLB with honors from London University, and an LL.M. in International Law from King' s College, University of London, in the areas of the Law of the Sea, the Law of the Air, Treaties, and Armed Conflict. He also holds a Certificate of International Law from The Hague Academy of International Law.

Gregory Shaffer

Gregory C. Shaffer is the President of the American Society of International Law, and Scott K. Ginsburg Professor of International Law at Georgetown University Law Center. His publications include eleven books and more than one hundred articles and book chapters. His book *Emerging Powers and the World Trading System: The Past and Future of International Economic Law* (Cambridge University Press) won the 2022 Chadwick F. Alger Prize of the International Studies Association. Professor Shaffer's work is wide ranging, but it focuses principally on international economic law, and law and globalization more broadly. It is cross-disciplinary, theoretical, and empirical, addressing such topics as transnational legal ordering, legal realism, hard and soft law, comparative institutional analysis, public-private networks in international trade, the rise of China and other emerging economies, and the ways international economic law implicates domestic regulation and social and distributive policies. He is currently working on a book project regarding the challenges to the rule of law from a transnational perspective, implicating both international and domestic law and institutions.

Professor Shaffer received his B.A., *magna cum laude*, from Dartmouth College and his J.D., with distinction, from Stanford Law School, where he won the Carl Mason Franklin Prize of International Law and served as Editor on the *Stanford Law Review*. From there, he practiced law in Paris for seven years for Coudert Frères and Bredin Prat, where he was a member of the Paris bar. Professor Shaffer is a recipient of multiple U.S. National Science Foundation awards, was a Shimizu Visiting Professor at London School of Economics, a Fernand Braudel Fellow at the European University Institute, a Fulbright Senior Research Scholar in Rome, a Visiting Scholar at the American Bar Foundation and at the World Trade Organization, and winner of the Inaugural John Jackson Memorial Prize awarded by the *Journal of International Economic Law*.

He served for eight years on the Board of Editors of the *American Journal of International Law*, was a founding member of the *AJIL Unbound* Committee, is on the board of multiple other journals around the world, and is a Book Series Editor for Hart-Bloomsbury. He has given invited lectures in over 25 countries.

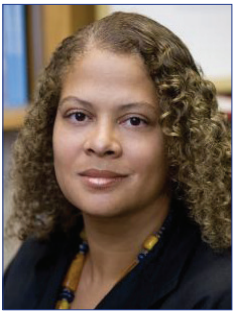
Verene Shepherd

Professor Verene A. Shepherd, graduate of the University of the West Indies (UWI) and the University of Cambridge, is Professor Emerita of History and Gender Studies at The UWI. She is Chair of the United Nations Committee on the Elimination of Racial Discrimination, Director of the Centre for Reparation Research at the UWI, a published author of 7 books, a former radio host, and a scholar activist, especially in the areas of women's rights, human rights and reparatory justice. She is the immediate past Director of the Institute for Gender & Development Studies at The UWI. As a UN expert she has played a role in helping to implement the UN International Year for People of African

descent and overseeing the drafting of the program of activities for the UN International Decade for people of African descent while she was Chair of the Working Group of Experts on People of African Descent. Among her awards are the Order of Distinction, Commander Class, from the Gov't of Jamaica; the Africana Studies distinguished Award from Florida International University and the 2017 UWI Vice Chancellor's award for excellence in Public Service. She was recently elected to an Honorary Fellowship at Jesus College, University of Cambridge. She was one of the 70+7 women honored for service to the UWI during The UW"s 70th anniversary celebrations as well as one of the 60 Women of Distinction honored by the Jamaica Gleaner in 2020. She won the President's award at the St Martin Book Fair in 2020.

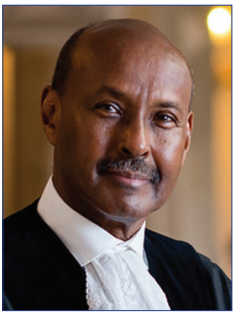
Alberto Vargas

Dr. Alberto Vargas is a Principal at the Brattle Group where he leads the Broker-Dealers & Financial Services practice. He was born in Mexico City, where he received a BS in applied mathematics from ITAM and where he lectured at the National Autonomous University of Mexico. He holds a PhD in economics from MIT and has over ten years' experience in economic consulting. As a consultant, he has led teams quantifying damages in forums including civil courts and international arbitrations in Europe, the Americas and Oceania. Most recently, he testified in front of a Royal Commission of Inquiry in Papua New Guinea on the overcharging by an international bank on debt issuances by that country's government.



Adrien Wing

Dean Adrien Wing is the Associate Dean for International and Comparative Law Programs and the Bessie Dutton Murray Professor at the University of Iowa College of Law, where she has taught since 1987. She also serves as the Director of the University of Iowa Center for Human Rights, and Director of the France Summer Abroad Program, and has previously served as the Associate Dean for Faculty Development and the on-site Director for the London Law Consortium semester abroad program. Dean Wing has also been a member of The University of Iowa's interdisciplinary African Studies faculty and North Africa/ Middle East faculty groups. Author of more than 150 publications, Professor Wing is the editor of *Critical Race Feminism: A Reader* and *Global Critical Race Feminism: An International Reader*, both from NYU Press, as well as coeditor of *Family Law and Gender in the Middle East and North Africa*. Her US-oriented scholarship has focused on race and gender discrimination, and her international scholarship has emphasized Africa and the Middle East. International law and Feminism, International law and Race, and the Arab world and women's rights are among the topics of articles.



Abdulqawi Ahmed Yusuf

Hon. Abdulqawi Ahmed Yusuf is a member and former President of the International Court of Justice, and has served on the Court since 2009.

From 1975 to 1980, Judge Yusuf served as Somalia's delegate to the Third United Nations Conference on the Law of the Sea. He was Lecturer at the Somali National University from 1974 to 1981 and at the

University of Geneva from 1981 to 1983. He has also been guest professor and lecturer at a number of universities and institutes in Switzerland, Italy, Greece and France.

From 1987 to 1992, Judge Yusuf was Chief of the Legal Policies Service of United Nations Conference on Trade and Development (UNCTAD) before becoming its Representative and Head of its New York Office from 1992 to 1994. From 1994 to 2001, he served as Legal Advisor (up to 1998), then Assistant Director for African Affairs to United Nations Industrial Development Organization (UNIDO) in Vienna. From March 2001 to January 2009, Judge Yusuf was Legal Adviser and Director of the Office of International Standards and Legal Affairs for United Nations Educational, Scientific and Cultural Organization (UNESCO). In 2011, Judge Yusuf gained a seat in the advisory council of The Hague Institute for Global Justice.

Judge Yusuf is Founder and General Editor of the *African Yearbook of International Law* and a member of the Institut de droit international. He is also one of the founders of the African Foundation for International Law and Chairman of its Executive Committee. In addition, Judge Yusuf has authored several books and numerous articles on various aspects of international law as well as articles and op-ed pieces in newspapers on current Northeast African and Somali affairs. He is a member of the editorial advisory board of the *Asian Yearbook of International Law*, and a member of the Thessaloniki Institute of Public International Law and International Relations curatorium.

Judge Yusuf holds advanced degrees from Somali National University and the Graduate Institute of International and Development Studies at the University of Geneva, and honorary degrees from Université Paris Nanterre I, University College London, and KIIT University.

Appendix II: Symposium Program

Day One: Thursday, February 9

9:00 am: Welcome & Opening Remarks

- **Prof. Gregory Shaffer**, President, American Society of International Law
- **Prof. Verence Shepherd**, Centre for Reparations Research, University of the West Indies

9:20 am: Opening Address

- **Judge Patrick Robinson**, member, International Court of Justice

9:50 am: Keynote Address

- **Sir Hilary Beckles**, Vice-Chancellor, The University of the West Indies

10:35 am: Discussion of the Legal Framework for Reparations

- **Judge Patrick Robinson**, member, International Court of Justice

11:15 am: Calculation of Compensation for Trans-Atlantic Chattel Slavery

- **Dr. Coleman Bazelon**, The Brattle Group
- **Dr. Alberto Vargas**, The Brattle Group

12:15 pm: BREAK

1:30 pm: First Discussant's Panel

- **Dr. Mamadou Hébié**, Associate Professor of International Law, Leiden University, Grotius Centre for International Legal Studies
- **Prof. Adrien Wing**, Bessie Dutton Murray Professor, University of Iowa College of Law

Day Two: Friday, February 10

10:00 am: Welcome & Day One Recap

- **Natalie Reid, Debevoise & Plimpton LLP**

10:05 am: Second Discussants Panel

- **Dr. Mojtaba Kazazi**, former Executive Head, United Nations Compensation Commission
- **Judge Abdulqawi Ahmed Yusuf**, member & former President, International Court of Justice

11:05 am: Concluding Remarks

- **Judge Patrick Robinson**, member, International Court of Justice