The Scope of Reparations: Challenges in Defining their Scope and Guaranteeing their Enforcement - Opening Remarks+Comments on Panel 2+Closing Remarks

Claudio M. Grossman
OPENING REMARKS

A. Claudio Grossman

Dear friends, on behalf of the American University Washington College of Law, good morning and welcome to the MacArthur International Justice Lecture Series Conference on “Advocacy Before Regional Human Rights Bodies: A Cross-Regional Agenda.” We are honored to host this important conference, which will examine a vital subject. I am sure this joint initiative will contribute significantly to the strengthening of human dignity.

We receive you today in an institution deeply committed to human rights and advocacy. Our law school was the first law school in this country to be founded by women in a moment when women were not admitted into law schools or into the practice of the profession. Our founding mothers believed that in order to achieve gender equality, it was essential that we educate men and women alike within the legal profession. Their imagination and commitment transformed the profession and opened possibilities to achieve justice without discrimination.

1. Claudio Grossman is a Professor of Law and, since 1995, Dean of the American University Washington College of Law, where he is also the Raymond Geraldson Scholar for International and Humanitarian Law. Dean Grossman serves as the Chair of the United Nations Committee against Torture, and as a member of the Commission for the Control of Interpol’s Files. Additionally, he is a member of the Governing Board of the International Association of Law Schools and Chair of the Association of American Law Schools Committee on International Cooperation. Dean Grossman is currently a member of the Board of the College of the Americas, where he served as President from 2003-2007. He was a member of the Inter-American Commission on Human Rights from 1993-2001, where he served in numerous capacities including two terms as President, two terms as First Vice President, Second Vice President, Special Rapporteur on the Rights of Women, Special Rapporteur on the Rights of Indigenous Populations, and Observer of the AMIA Trial. Dean Grossman has authored numerous publications regarding international law and human rights and has received numerous awards for his work in those fields.
Following their example, our students, faculty, and administrators have developed numerous initiatives to promote and protect human rights. As one example, our Academy on Human Rights and Humanitarian Law attracts leading scholars and activists in the universal and regional systems as well as hundreds of students interested in international law every year.

Another example includes our Center for Human Rights and Humanitarian Law, which has spearheaded major human rights initiatives to fight injustice. The Center recently launched a new institute in collaboration with the International Committee of the Red Cross to train law school professors on the substance and importance of international humanitarian law and, in particular, the teaching of the Geneva Conventions.

Our renowned clinical program includes nine in-house clinics in areas such as international human rights, disability rights, domestic violence, intellectual property, and community economic development. Our clinics took the first case in the United States involving female genital mutilation; by changing the jurisprudence on this matter to allow such mutilation to be grounds for asylum, the clinics broadened the scope of the law with respect to this issue. Our clinics also represent clients in the United States, Africa, and Latin America, offering pro bono assistance to incorporate international law into the domestic realm. The Washington College of Law has also created the United Nations Committee Against Torture Project, which works to reinforce and strengthen the notion that there is no justification for torture whatsoever, and that it is essential to comply with the provisions of the Convention Against Torture in all its dimensions.

Our Impact Litigation Project, another initiative in the law school, stresses accountability, freedom of expression, rights of women, and rights of indigenous populations. Our school also founded the first war crimes research institution in the United States to support research and fight impunity for international crimes. Since it was founded, the institution has understood that accountability is an essential requirement for the rule of law.

As we develop our numerous programs and activities, we have seen that we learn as much, or even more than what we contribute. In the past, law schools would do research, store the products of such research in libraries, train people, and thereafter claim certain exclusivity over the particular substantive areas. Now we see numerous institutions, non-governmental organizations (NGOs), international bodies, and think tanks that engage in similar pursuits,
thereby diversifying knowledge and its sources. In our strategic vision, partnering with different actors provides ways to learn from each other and to multiply our outreach.

In that spirit, we have envisioned this conference as a space for the exchange of experiences and cross-culture communication between regional organizations that supervise compliance with human rights treaties. During this conference, we seek to discuss approaches and experiences in combating impunity, the scope of reparations, difficulties and accomplishments in guaranteeing the enforcement of reparations, and the overall challenges facing regional systems for the protection of human rights. Although we will be referring to different treaty-based regional supervisory organs, the fact that a similar language is used by all three constituent treaties opens up space for comparisons and identification of good practices. After all, the narrative of human rights is that of human dignity—that unites us all.

Before we begin, I would like to take this opportunity to welcome our distinguished participants, especially those who have come from afar, and to thank them in advance for sharing their unique insights. We are joined by participants from Africa, Europe, and the Americas, each representing different international organizations, law courts, civil societies, and academic institutions.

Let me thank, above all, the MacArthur Foundation whose support and commitment made this conference possible. We give special thanks to Mary Page, Director of the Human Rights and International Justice Area within the Program on Global Security and Sustainability.

I would also like to thank the Inter-American Commission on Human Rights ("Inter-American Commission") and the Inter-American Court of Human Rights ("Inter-American Court") for their co-sponsorship. In spite of their limited resources, both supervisory organs reach out to civil society through the personal commitment of their members.

Our special thanks also go to the Inter-American Commission and Inter-American Court’s secretariat and to Mr. Jose Miguel Insulza, Secretary General of the Organization of American States (OAS).

I also want to thank the American University Law Review and its editors-in-chief, Karen Williams (Volume 58) and David Courchaine (Volume 59). The Law Review will be publishing the proceedings of this conference. It bodes well for the legal profession to have students like those on our Law Review attracted to the legal field. In
spite of their regular pressures as law students, they have volunteered
to do this important job.

Let me also thank my colleague, Professor Diane Orentlicher,
renowned international law expert. Diane came up with the idea of
this conference and put the law school in touch with the MacArthur
Foundation.

Our gratitude also goes to Agustina Del Campo, the coordinator of
our Impact litigation Project, who helped organize and shape this
event.

It is my pleasure now to introduce Mr. Jonathan Fanton who has
served as the President of the John D. and Catherine T. MacArthur
Foundation since 1999. Mr. Fanton oversees one of the nation’s
largest foundations—a foundation which makes grants and runs
programs related to the investment of more than one quarter of a
billion dollars annually and works in more than sixty countries.
Domestically, the Foundation’s programs encompass community
development, housing, juvenile justice, and education with a focus on
digital media and learning. Internationally, the Foundation works in
the fields of human rights and international justice, biodiversity
conservation, population and reproductive health, international
peace and security, as well as migration and human mobility. The
Foundation is also well known for its support of exceptionally creative
individuals through the MacArthur Fellows Program.

In addition to outstanding leadership and management of the
MacArthur Foundation, Mr. Fanton is a board member and former
board chairperson of Human Rights Watch, the largest U.S.-based
human rights organization, which operates in seventy countries. He
is also an advisory trustee of the Rockefeller Brothers Fund, a
member of the Board of Trustees of the Chicago History Museum,
the founding Board Chair of the Security Council Report, and Co-
Chair of Chicago’s Partnership for New Communities. Mr. Fanton is
also a distinguished author and editor, having written The University
and Civil Society, Volumes I and II, and being co-editor of John Brown:
Great Lives Observed and The Manhattan Project: A Documentary
Introduction to the Atomic Age.

2. JONATHAN F. FANTON, THE UNIVERSITY AND CIVIL SOCIETY (New School for
Social Research 1995).
3. JOHN BROWN: GREAT LIVES OBSERVED (Richard Warch & Jonathan Fanton
4. THE MANHATTAN PROJECT: A DOCUMENTARY INTRODUCTION TO THE ATOMIC
AGE (Michael B. Stoff, Jonathan F. Fanton & R. Hal Williams eds., Temple University
We are fortunate to have him at the helm of the MacArthur Foundation, contributing greatly to the promotion of important values. Thank you very much.

B. Jonathan Fanton

Thank you, Dean Grossman, for those kind words and for sponsoring this important colloquium. It has been a great pleasure working with your faculty and staff. They have done a superb job, and we are really privileged to be here.

There is a little known part of my biography not mentioned, which is that in the 1990s, I chaired the Middle States Accreditation Review for American University. So this is a university that I know extremely well. And I have great respect for all parts of it, but particularly for the law school that stood out in that accreditation in the 1990s.

This is one of four convocations MacArthur is sponsoring to mark its 30th anniversary and to remind us that human rights and international justice have been at the core of MacArthur's work since its founding. We began with the first conference at DePaul to assess the progress and prospects of the International Criminal Court (ICC). Early next year there will be a symposium at the Yale Law School on building political will to advance the system of international justice followed by an event at University of California, Berkeley that will explore how witnesses and victims participate in international courts and tribunals.

The Washington College of Law, distinguished by its long commitment to human rights and international law, is an appropriate venue for the second convocation in our series. MacArthur is deeply impressed with the work of this institution, your Center for Human Rights and Humanitarian Law, the International Human Rights Law Clinic, and the War Crimes Research Office are among many programs here that advance human rights and international law. Monitoring and reporting on the international Inter-American Court, analyzing defense procedures for those indicted by the ICC, training both scholars and activists in human rights law, and more—the Washington College of Law has established American University as a leading venue for research, debate, and action in our quest for an effective system of international justice.

The contributions of your faculty members are far-reaching: your Dean, as past president of the Inter-American Commission and now Chair of the United Nations Committee Against Torture; my friend,
about that insofar as the work of the Court is concerned. In terms of symbolic reparations or guarantees of non-repetition, the kinds of recommendations and actions we see through Commission cases would include recognition of responsibility, dedication of streets, parks, or monuments, and the passage of measures such as increased training for officials.

There are a number of other things that we could discuss about reparations and compliance in the Inter-American system, but there are two points on which I want to close. One is to follow up on the point that the engagement of member states in the process is clearly crucial, not only individually vis-à-vis their own cases, but also collectively through their participation in the political organs of the OAS. The idea is raised every once in a while that there should be some kind of mechanism through the political organs to supervise compliance, but up until now that has not assumed a concrete form.

The final theme would be that we have seen a number of really important advances in the systems: the sending of more cases to the Inter-American Court and the further incorporation of the voice of the victim in the process. I really think that the next thing we need to see for a major advance in the system is a legal aid system. If you look at who has access to reparations, you are looking at who has access to the system. And until the Inter-American system has a functioning legal aid system and a fully funded set of organs—Commission and Court—it will be difficult to advance further with the question of access to the system and the resolution of past human rights violations. Thank you.

D. Claudio Grossman

As we move into the African system, different issues become relevant for comparison—for example, the concept of victim. In addition, the issue of reparations—their scope and elements—is crucial for human rights law. The Inter-American system offers a very broad system of reparations that include material and moral damages, measures of non-repetition, changes in legislation, and symbolic reparations. Because of the scope of these measures, the Inter-American system has developed the most comprehensive system of reparations currently in force in international human rights law. Needless to say, it would be interesting to hear about the African experience in this area and to see whether there is a different emphasis as a result of the specific regional conditions—for example, group rights as well as economic, social, and cultural rights, etc.
As Elizabeth was mentioning, it is important to note that there is a high degree of participation by both victims and states in the Inter-American system. However, there is a higher level of compliance with friendly settlements than with Inter-American Court decisions. This is not surprising given the high involvement of the parties in the negotiations that lead to a settlement. Court decisions are mostly complied with in matters of payment. It becomes important to study the Inter-American experience when ensuring compliance with other components of integral reparation, particularly investigation and punishment of those responsible for human rights violations. Again, the African experience would be extremely relevant for comparative purposes.

In recent years, the Inter-American system—the Commission and the Court—has developed a system to follow up on its past decisions, commitments, and friendly settlements. Pursuant to this new system, past decisions now remain on the docket of the Commission and the Court until they are fully complied with. The Commission and Court schedule hearings on compliance allowing both the petitioners and the states to express their views. Then, the supervisory organs report on the status of compliance to the OAS. Unfortunately, the political organs have not fully exercised their role as guarantors of the system. In fact, the General Assembly does little more than acknowledge the Reports from the Commission and Court. Further development of the system would require these organs to stop standing idle in the face of non-compliance. In order to move in that direction, steps we should consider include, for example, individualized discussions concerning states that fail to comply with Commission and Court decisions. Sharing experiences with other regional systems enriches our analysis of the political and legal issues involved.

With these brief remarks, let us now hear from the African system. I give the floor to Commissioner Nyanduga from the African Commission on Human and Peoples’ Rights (“African Commission”).
system faces. I think in some ways this conference was a victim of its own success. We had so many fabulous speakers that it was hard to do justice to all of the issues that they raised. So I do hope that this will inspire further exchanges of this sort, perhaps on an institutional basis.

I know that I have come away from this with many ideas about ways that the organizations I am affiliated with might be able to bolster the work. We have talked, in passing, about the importance of civil society in making these institutions work. Any of us who have seen these institutions work over a long period have seen how important it is to have effective civil society demand that these institutions operate better than they already do and take them seriously. And I think we have seen today some new agenda items that we need to pay attention to ourselves. I found quite sobering—in the last panel in particular—the degree to which states are not embarrassed by their non-compliance. That is another agenda item among many that came to my mind.

I want to end by thanking the MacArthur Foundation, the Inter-American Court and Commission, Agustina Del Campo, the MacArthur Foundation, and Claudio Grossman for providing the opportunity for us to have this dialogue. I think a lot of really valuable ideas have come out of it. So thank you.

B. Claudio Grossman

Allow me to join Diane in thanking the MacArthur Foundation, the Inter-American Court and Commission, and Agustina Del Campo as well as all of you who participated as panelists and attendees. Finally, I want to extend our gratitude to Diane for creating this opportunity for us. As you may already know, no good deed goes unpunished in this institution. Because of the success of this program and the nature of the problems that we confront in the human rights field, I am sure that we will have further opportunities to exchange our views in the future.