

REPARATIONS OWED TO THE SURVIVORS OF THE GLOBAL WAR ON TERROR

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ABSTRACT

This article explores the obligations of the United States under international law to provide reparations—specifically in the form of reconstruction, refuge, and monetary damages—to the survivors of the Global War on Terror. Part I will set out the scope of the war on terror and who its survivors are for the purposes of reparations under international law. Part II describes the right to reparation under international law as presented in the UN International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (“ILC Draft Articles”) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law (“UN Reparation Principles”). Part III explains that the U.S owes reparations because of the international violations committed in the Global War on Terror and provides examples of potential reparations. Part IV concludes with a call to action, building upon the critical resistance of movement lawyers, Third World Approaches to International Law scholars, and grassroots groups fighting against the imperialism and white supremacist violence underlying the Global War on Terror.

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[∞] This article is a project for an independent study with Professor Frank Deale, at CUNY School of Law, who previously served as the Legal Director at the Center for Constitutional Rights. The idea originated during Divya’s legal externship at Project South: Institute for the Elimination of Poverty and Genocide, under the supervision of the Legal & Advocacy Director Azadeh Shahshahani. This article also builds on Azadeh’s contributions to the NYU Review of Law and Social Change’s 2022 Colloquium on Resisting Settler Colonialism.

I. INTRODUCTION

“Empire means never having to say you’re sorry.” – Azeezah Kanji¹

The Global War on Terror² continues the U.S. legacy of war-making.³ As used in this article, the Global War on Terror describes the ongoing aggression, dehumanization of Muslim communities, expansion of carceral powers, and additional tactics of state repression deployed by the U.S. and other governments in the two decades following the September 11 attacks. Rendition, torture, and unlawful and indefinite imprisonment of individuals at the Guantánamo Bay prison,⁴ increased surveillance at home and abroad,⁵ and other human rights abuses⁶ have been and continue to be committed by the U.S. in the name of fighting “terror” – an

¹ Azeezah Kanji, *War of Terror: Legal Colonialism Reincarnated*, AL-JAZEERA OPINION (Sep. 18, 2021), <https://www.aljazeera.com/opinions/2021/9/18/war-of-terror-legal-colonialism> [https://perma.cc/7A6E-FJPU].

² Former President George W. Bush first used the term to tell the public “This crusade, this war on terrorism is going to take a while.” The White House, *Remarks by the President Upon Arrival*, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html> [https://perma.cc/QW3U-H673] (Sept. 16, 2001); <https://edition.cnn.com/2001/US/09/20/gen.bush.transcript/> [https://perma.cc/4GGF-2SCN] (Sept. 21, 2001) (“Our war on terror begins with al Qaeda, but it does not end there.”).

³ Azadeh Shahshahani, *Afghanistan and Beyond: End U.S. War-Making Everywhere*, IN THESE TIMES (Sept. 21, 2021), <https://inthesetimes.com/article/afghanistan-war-withdrawal-biden-somalia-yemen-war-on-terror> [https://perma.cc/Q3JQ-WNPY]; see generally David Vine, *The United States of War: A Global History of America’s Endless Conflicts, from Columbus to the Islamic State* (Naomi Schneider ed., 2020).

⁴ On human rights violations in Guantánamo Bay, see Letta Tayler and Elisa Epstein, *The Symbol of US Abuse in the Global War on Terror*, HUMAN RIGHTS WATCH (Jan. 19, 2022, 9:30 AM), <https://www.hrw.org/news/2022/01/19/symbol-us-abuse-global-war-terror> [https://perma.cc/X7VX-RP6K]; AMNESTY INTERNATIONAL, USA: RIGHT THE WRONG: DECISION TIME ON GUANTÁNAMO (Jan. 11, 2021), <https://www.amnesty.org/en/documents/amr51/3474/2021/en/> [https://perma.cc/A2XC-PFME]; Samantha Pearlman, *Human Rights Violations at Guantánamo Bay; How the United States Has Avoided Enforcement of International Norms*, 38 SEATTLE U. L. REV. 1109 (2015), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2279&context=sulr> [https://perma.cc/A856-MEBK].

⁵ Azadeh Shahshahani and Amith Gupta, *Broader U.S. Surveillance Powers Won’t Make Us Safer*, AL-JAZEERA OPINION (April 28, 2021), <https://www.aljazeera.com/opinions/2021/4/28/broader-u-s-government-surveillance-powers-wont-make-us-safer> [https://perma.cc/664C-UXYC] (“The surveillance state was further strengthened following the 9/11 attacks and the consequent “war on terror.” The exposure of the state’s myriad rights abuses under the guise of combatting “terror”, from mass surveillance and profiling of Muslims to torture of people detained at Guantanamo and CIA black sites, resulted in a series of cosmetic reforms. Nevertheless, most of the statutory authorities invoked to surveil, criminalise, and brutalise Muslims and others in the aftermath of 9/11 remains on the books to this day.”); *Surveillance*, WATSON INST. INT’L & PUB. AFFS., BROWN U. (June 2021), <https://watson.brown.edu/costsofwar/costs/social/rights/surveillance> [https://perma.cc/4YJ6-7XAL].

⁶ *Human Rights and Civil Liberties*, WATSON INST. INT’L & PUB. AFFS., BROWN U. (June 2021), <https://watson.brown.edu/costsofwar/costs/social/rights> [https://perma.cc/L7VM-QH8W].

ever-elusive target.⁷ The military invasion and occupation of Afghanistan in 2001 and Iraq in 2003 are only two of several military operations that the U.S. initiated or engaged in over the last two decades. In 2007, the U.S. established African Command (“AFRICOM”) to expand military presence and “western colonial control over the region, its people, and their resources” under the guise of fighting “terror.”⁸ Each subsequent administration has expanded the reach of the Global War on Terror such that the U.S. maintains counter-terrorism operations in 85 countries today.⁹ Over the last two decades, the U.S. has spent more than \$8 trillion on the Global War on Terror, which includes \$5.8 trillion spent or requested by the military as well as future medical expenses and disability payments to veterans.¹⁰ The costs of war

⁷ Nick Turse, *What if the U.S. Hadn't Gone to War After 9/11?*, *The Intercept* (Feb. 8, 2022), <https://theintercept.com/2022/02/08/war-terror-costs-alternatives/> [<https://perma.cc/Y2KT-L9AH>] (“Over the next 20-plus years, the tab on that conflict, which began in Afghanistan but spread across the globe to Burkina Faso, Iraq, Libya, Mali, Niger, Pakistan, Somalia, Syria, Tunisia, and Yemen, has ballooned to more than \$6 trillion. The payoff has been dismal: To date, the war has killed around 900,000 people, including more than 350,000 civilians; displaced as many as 60 million; and led to humanitarian catastrophes and the worst U.S. military defeat since the Vietnam War.”).

⁸ U.S. AFR. COMMAND, <https://www.africom.mil/about-the-command> [<https://perma.cc/QMR8-5R8E>] (“A full-spectrum combatant command . . . responsible for all U.S. Department of Defense operations, exercises, and security cooperation on the African continent, its island nations, and surrounding waters. The area of responsibility consists of 53 African states, more than 800 ethnic groups, over 1,000 languages, vast natural resources, a land mass of 11.2 million square miles (three-and-a-half times the size of the U.S.), and nearly 19,000 miles of coastland.”). Ben Ndugga-Kabuye & Rachel Gilmer, *A Vision for Black Lives: Policy Demands for Black Power, Freedom, & Justice: A Cut in US Military Expenditures and a Reallocation of Those Funds to Invest in Domestic Infrastructure and Community Wellbeing*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/invest-divest/> [<https://perma.cc/7Y9G-HT5H>] (Cut Military Expenditures demand under the Invest-Divest policy platform) (last visited Nov. 16, 2022); José de Arimatéia da Cruz & Laura K. Stephens, *The U.S. Africa Command (AFRICOM): Building Partnership or Neo-Colonialism of U.S.-Africa Relations?*, 27 *J. OF THIRD WORLD STUD.* 193, 193 (2010), <https://www.jstor.org/stable/45194717> [<https://perma.cc/WQK7-3JDH>] (“Africa . . . is now increasingly becoming of national security interest for the United States.”).

⁹ Stephanie Savell, *U.S. Counterterrorism Operations, 2018-2020*, WATSON INST. INT’L & PUB. AFFS., BROWN UNIVERSITY (Feb. 2021), <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/US%20Counterterrorism%20Operations%202018-2020%2C%20Costs%20of%20War.pdf> [<https://perma.cc/2TGV-QARL>]; Brianna Rosen, *The Longest War is Over the Horizon*, JUST SEC. (Nov. 1, 2021), <https://www.justsecurity.org/78818/the-longest-war-is-over-the-horizon/> [<https://perma.cc/8AK8-W5QX>] (“Despite pledging to end the ‘forever wars’ . . . the United States last year was engaged in counterterrorism operations in at least 85 countries, with combat troops or a combat role in 12 countries.”).

¹⁰ Neta Crawford, *The Costs of 20 Years of War*, *THE NATION* (September 2, 2021), <https://www.thenation.com/article/society/costs-war-deaths/> [<https://perma.cc/MS79-AG9B>]; Neta C. Crawford, *The U.S. Budgetary Costs of the Post-9/11 Wars*, WATSON INST. INT’L & PUB. AFFS., BROWN UNIVERSITY (Sept. 1, 2021), https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War_U.S.%20Budgetary%20Costs%20of%20Post-9%2011%20Wars_9.1.21.pdf [<https://perma.cc/WP8T-X25Y>]; CONG. RSCH. SERV., *THE COST OF IRAQ, AFGHANISTAN, AND OTHER GLOBAL WAR ON TERROR*

in Iraq and Syria alone amount to \$1.79 trillion between 2003 and 2023.¹¹ Overall, the Global War on Terror has caused lasting harm to individuals, communities, natural resources, infrastructure, and the economies of targeted countries. This article focuses on the United States but claims for reparations should also be brought against other governments that facilitated and fostered violence and continue to do so. Holding countries accountable for the harms caused would help to overturn decades of impunity for white supremacist violence.¹²

Scholars and journalists have urged that the U.S. can and should take actions to support justice for people of countries it has invaded, occupied, and exploited.¹³ However, prior legal scholarship has focused on reparations owed to specific groups, such as people formerly detained at Guantánamo.¹⁴ This article expands on such existing scholarship by arguing that potential beneficiaries for reparations should also include all those who have endured various human rights abuses at home and abroad, military occupations and the resulting humanitarian crises, or forced displacement, as well as the descendants of those killed by direct violence. Reparations for a broader recipient group would help acknowledge and

OPERATIONS SINCE 9/11 (December 8, 2014), <https://sgp.fas.org/crs/natsec/RL33110.pdf> [<https://perma.cc/2P8W-CEN6>].

¹¹ NETA C. CRAWFORD, BLOOD AND TREASURE: UNITED STATES BUDGETARY COSTS AND HUMAN COSTS OF 20 YEARS OF WAR IN IRAQ AND SYRIA, 2003-2023 1 (2023), <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2023/Costs%20of%2020%20Years%20of%20Iraq%20War%20Crawford%2015%20March%202023%20final%203.21.2023.pdf> [<https://perma.cc/J39T-Y3FX>].

¹² Kaleem Hawa, *Reparations for Iraq*, N.Y. MAG. INTELLIGENCER (Sept. 1, 2021), <https://nymag.com/intelligencer/2021/09/iraq-war-reparations.html> [<https://perma.cc/H4LM-ZLUY>]; Timothy Kudo, *The Case for Reparations for Afghanistan*, THE NEW REPUBLIC (Dec. 23, 2021), <https://newrepublic.com/article/164863/case-reparations-afghanistan/> [<https://perma.cc/8AAB-KUW7>].

¹³ Shaharazad Akbar, *Ending the Forever War, But Leaving a Legacy of Impunity in Afghanistan*, JUST SEC. (June 30, 2021), <https://www.justsecurity.org/77207/ending-the-forever-war-but-leaving-a-legacy-of-impunity-in-afghanistan/> [<https://perma.cc/J5XL-ZXTD>]. Not only is it a moral imperative, but the U.S. is also subject to international law. *See generally* LOUIS HENKIN, FOREIGN AFFAIRS AND THE U.S. CONSTITUTION 231 (2d ed. 1997); STEPHEN P. MULLIGAN, CONG. RSCH. SERV., INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON U.S. LAW 2 (2018), <https://sgp.fas.org/crs/misc/RL32528.pdf> [<https://perma.cc/U3BT-Y8JG>]. As the “sole organ” in foreign affairs, the President represents the nation’s interests and justifies its actions abroad. HENKIN, *supra*, at 233 (1997); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936). The President participates in the development and implementation of customary international law as part of the duty to “take care that the laws be faithfully executed” by the Executive. HENKIN, *supra*, at 242. Both the President and Congress are obligated and authorized to carry out the international obligations and responsibilities required of the United States. HENKIN, *supra*, at 252 (1997).

¹⁴ *See e.g.*, Cameron Bell, *Repatriate... Then Compensate: Why the United States Owes Reparation Payments to Former Guantanamo Detainees*, 48 LOY. L.A. L. REV. 867 (2015), <https://digitalcommons.lmu.edu/llr/vol48/iss3/8/> [<https://perma.cc/KS8A-DS7K>].

compensate for the full economic, human, and moral costs of the Global War on Terror, and are also mandated by the legal obligations of the U.S.

II. LEGAL FRAMEWORK

Part II of this article will explain the right to reparation under international law, specifically looking at the UN ILC's Draft Articles and UN Reparations Principles through a Third World Approach to International Law framework, as well as under the U.S. Constitution.

International law is one tool to protect individuals who experience human rights abuses. International law often creates general rights to reparations for victims.¹⁵ In the seminal *Chorzów Factory* case, the Permanent Court of International Justice explained that:

[I]t is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form...reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation that would, in all probability, have existed if that act had not been committed.¹⁶

International law also establishes that States have a duty to repair the harm caused by serious breaches of international human rights or international humanitarian law, and that the reparation must make the person whole.¹⁷ The Draft Articles and the Reparation Principles best describe when reparation is owed, who the recipients can be, and the forms it may take. They explain that the duty to provide reparation covers individuals in addition to other states¹⁸ and that the reparation must

¹⁵ Various treaties and customary international law affirm multiple rights to reparation or compensation. *See, e.g.*, International Covenant on Civil and Political Rights art. 9, Dec. 19, 1966, 999 U.N.T.S. 171 (creating an enforceable right to compensation for victims of unlawful arrest); Rome Statute of the International Criminal Court art. 75, July 1, 2002, 2187 U.N.T.S. 90 (mandating the ICC create principles to provide reparations to victims of those convicted before the Court); Convention Against Torture and Other Cruel Inhuman and Other Degrading Treatment or Punishment, art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85 (requiring that legal systems offer victims of torture means for full rehabilitation and adequate compensation); International Convention on the Elimination of All Forms of Racial Discrimination art. 6, Dec. 21, 1965, 660 U.N.T.S. 195 (requiring that signing parties provide protection and remedies to those who suffer damage from racial discrimination).

¹⁶ *Chorzów Factory* (Ger. v. Pol.), Jurisdiction, 1927 P.C.I.J. (set. A) No. 9, at 21 (July 26). *See also*, Int'l Law Comm'n, *Draft Articles on State Responsibility for Internationally Wrong Acts, with Commentaries*, 53d Sess, U.N. Doc A/56/10, at 91 (2001) [henceforth "*Draft Articles with Commentaries*"]. Likewise, the UN Reparation Principles state "the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights and international humanitarian law." G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Dec. 16, 2005), annex, at 9 (Article XII ¶ 26) [henceforth "*Reparations Principles*"].

¹⁷ *Draft Articles with Commentaries*, *supra* note 16; *Reparations Principles*, *supra* note 16.

¹⁸ *Draft Articles with Commentaries*, *supra* note 16; *Reparations Principles*, *supra* note 16.

be proportional to the gravity of the violation, resulting harm, and unique circumstances.¹⁹

There is general acknowledgement that “all violations of human rights and international humanitarian law entail legal consequences.”²⁰ Reparations Principle 26 confirmed that: “[I]t is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of *all* violations of international human rights and international humanitarian law.”²¹ Theo van Boven, Former Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, wrote that “gross violations of human rights and fundamental freedoms” include “genocide, slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular on race or gender.”²² While other international instruments use the terms gross, grave, flagrant, massive, systematic, and serious interchangeably, the Reparations Principles specifically refer to “gross” and “serious” violations of human rights.²³ Given this lack of uniformity, legal scholar

¹⁹ *Reparations Principles*, annex, *supra* note 16, at 7 (Article IX ¶ 15). The ILC explains that the proper remedy depends on “the character and content of the international obligation and on the circumstances of the breach” to another State, several States, or “to any person or entity other than a State.” *Draft Articles with Commentaries*, at 94 (Art. 33). Victims of a gross violation of international human rights law or serious violations of international humanitarian law are entitled to “adequate, effective, prompt and appropriate” reparation for harm suffered. *Reparations Principles*, annex, *supra* note 16, at 4 (Article I ¶ (2)(c)).

²⁰ Theo van Boven, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations Audiovisual Library of International Law (2010), https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html [<https://perma.cc/6TA3-UG44>].

²¹ *Reparations Principles*, annex, *supra* note 16, at 9 (Article XII ¶ 26) (emphasis added).

²² Theo van Boven (Special Rapporteur for the Sub-Comm’n on Prevention of Discrimination & Prot. of Minorities), *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, U.N. Doc. E/CN.4/Sub.2/1993/8 (July 2, 1993), at 7-8 (final report). The ILC Commentary to Article 40 of the Draft Articles puts forth two criteria: State conduct amounts to a “gross” violation depending on the character and intensity of the obligation breached, looking back to peremptory norms of general international law. *Draft Articles with Commentaries*, *supra* note 16, at 112.

²³ Roger-Claude Liwanga, *The Meaning of Gross Violation of Human Rights: A Focus on International Tribunals’ Decisions over the DRC Conflicts*, 44 DENVER J. OF INT’L L. & POL’Y 67, 71-72 (2015), <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1028&context=djilp> [<https://perma.cc/FH36-2VKN>] (“This paper posits that the terms “gross,” “flagrant,” “massive,” “systematic,” or “serious” violations of human rights are often interchangeably or cumulatively used by both international legal instruments and quasi-judicial bodies in order to refer to a violation of the same gravity. The paper also suggests that, even though there is no unanimous definition of the concept “gross violations” of human rights, the scope of coverage of this concept concerns the violations of two categories of rights, namely civil and political rights and socio-economic rights.”)

Roger-Claude Liwanga proposed a holistic definition of gross violation of human rights, one that “includes a panoply of violations of civil and political rights as well as social, economic, and cultural rights.”²⁴ Liwanga argued that a gross violation of human rights occurs when a State (or non-State actor, or a State without effective judicial investigation and prosecution of the perpetrator(s)) commits at least one of the following acts, repetitively or not, against any individual:

- “Torture and cruel, inhuman, and degrading treatment or punishment;
- Summary or arbitrary execution;
- Forced or involuntary disappearance, or arbitrary and prolonged detention;
- Apartheid, discrimination based on gender, race, nationality, ethnicity, language, culture, or religion;
- Human trafficking, slavery, or slavery-like practice;
- Foreign occupation or alien domination;
- Terrorism;
- Lack of the rule of law;
- Denial of access to education, food, or other socio-economic rights;
- Denial of access to free expression, public affairs, and services of the country; and
- Destruction of properties or looting of a community’s natural resources.”²⁵

This proposed definition is a useful guideline because it synthesizes the various defining criteria of a “gross violation” of international law.

The Reparations Principles state that “full and effective reparation” can be provided as restitution, compensation, satisfaction, or some combination.²⁶ Restitution is restoration to the status quo ante, such as the return of territory, persons or property or the reversal of a legal act.²⁷ Compensation is limited to “damage actually suffered as a result of the internationally wrongful act” and is provided to the extent that restitution is insufficient or otherwise inadequate to achieve full reparation for the damage caused.²⁸ Satisfaction, an additional reparation which

²⁴ *Id.* at 71.

²⁵ *Id.* at 72-73.

²⁶ *Reparations Principles*, annex, *supra* note 16, at 7 (Article IX ¶ 18) (“victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”). *See also Draft Articles with Commentaries*, at 95-107 (Articles 34-37); *see also Report of the Int’l Law Comm’n on the Work of its Fifty-third Session*, 56th Sess, Supp No. 10, U.N. Doc. A/56/10, at 95 (2001).

²⁷ *Reparations Principles*, annex, at 7 (Article IX ¶ 19).

²⁸ *Id.* (Article IX ¶ 20).

supplements restitution or compensation when those are insufficient, must be proportionate to the injury.²⁹

Likewise, the Reparations Principles describes five forms of reparation – restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.³⁰ Restitution “should, whenever possible, restore the victim to the original situation.”³¹ Compensation is payment for “any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances.”³² Damage covers physical, mental, material, and moral harms; lost opportunities; and costs of legal, medical, psychological, and other social services. Rehabilitation includes medical, psychological, legal, or social services. Satisfaction includes “the cessation of continuing violations,” searching for those who have been disappeared or killed, a public apology, and judicial and administrative sanctions, among others.³³ States must take “any or all” of several measures provided in the Reparations Principles to prevent future violations and guarantee that violations of international law will not be repeated.³⁴

Under the Draft Articles and Reparation Principles, the survivors of the Global War on Terror are eligible beneficiaries of reparations. The erosion of human rights and civil liberties under the U.S.-led War on Terror is the type of serious violation covered by the Draft Articles, Reparations Principles, and other international instruments. Impacted individuals include “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.”³⁵ Individuals are entitled

²⁹ *Id.*, annex, at 8 (Article IX ¶ 22).

³⁰ The Reparation Principles were unanimously adopted by the UN General Assembly in 2005 after 15 years of deliberation and revision. Theo van Boven, *supra* note 20. No countries voted against the Reparation Principles, but the United States was one of thirteen countries to abstain. Kelly McCracken, *Commentary on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 76 *REVUE INTERNATIONALE DE DROITE PÉNALE* 77, at n. 1 (2005), <https://www.cairn.info/revue-internationale-de-droit-penal-2005-1-page-77.htm?contenu=article> [<https://perma.cc/8JGR-FDF5>].

³¹ *Reparations Principles*, annex, *supra* note 16, at 7-9 (Articles IX ¶ 18-23).

³² *Id.*

³³ *Id.*

³⁴ “Guarantees of non-repetition” include ensuring effective civilian control of the military and security; ensuring due process, fairness, and impartiality in all civilian and military proceedings; strengthening the judiciary; protecting legal, medical, healthcare, media, and human rights workers; providing education on human rights and international humanitarian law; promoting adherence to international standards; promoting mechanisms to prevent and monitor social conflicts and their resolution; and reviewing and reforming laws that allow violations. *Reparations Principles*, annex at 8 (Article 23).

³⁵ Victims may include immediate family members, dependents, and those harmed while assisting the direct victim. *Reparations Principles*, annex, at 5 (Article V ¶ 8); *Draft Articles with Commentaries*,

to reparation “irrespective of who may ultimately be the bearer of responsibility for the violation,” and the duty to provide reparation is also “not bound territorially,” meaning it is owed regardless of where the violation occurred.³⁶

The framework of Third World Approaches to International Law³⁷ helps us to understand the challenges of using international law as an advocacy mechanism, since it “has been principally, almost unquestionably, a product of Western thought and experience.”³⁸ The scholars applying this framework seek to repurpose international law as a tool to advance the interests of the Third World – a political identity of peoples under Western colonization and imperialism. Inspired by their opposition to conventional international law and desire for an egalitarian international order, this article affirms the demand for reparations to all survivors of the war on terror domestically and abroad.

The United States Constitution also creates a duty upon the President and Congress to uphold the country’s international obligations and responsibilities, which includes the international obligation to provide reparations.³⁹ As the “sole organ of the federal government” in foreign affairs,⁴⁰ the President represents the nation’s interests and justifies its actions abroad.⁴¹ The President participates in the development and implementation of customary international law as part of the duty to “take care that the laws be faithfully executed” by the Executive.⁴² Congress has the power to enact laws “necessary and proper” to carry out the powers vested in the federal government, including those required to comply with international law.⁴³

at 95 ¶ 3 (“individuals “should be regarded as the ultimate beneficiaries and in that sense as the holders of the relevant rights”).

³⁶ *Reparations Principles*, annex, *supra* note 16, at 5 (Article II ¶ 3(c)). *See also* Clara Sandoval and Miriam Puttick, Minority Rights Group International, *Reparations for the Victims of Conflict in Iraq: Lessons Learned From Comparative Practice* 7 (November 2017), <https://minorityrights.org/wp-content/uploads/2017/11/Reparations-in-Iraq-Ceasefire-November-2017.pdf> [<https://perma.cc/96J9-GH2Z>].

³⁷ Kwado Appiagyei-Atua, *Dimensions of Third-World Approaches to International Law (TWAIL): A Critical Review*, 8 AFR. J. OF LEGAL STUD. 3-4, 213 (2015), https://brill.com/view/journals/ajls/8/3-4/article-p209_2.xml [<https://perma.cc/PMV4-XZEV>] (“TWAIL thus seeks to assail the structure and framework of international law as representing the provincial ideas and economic interests of the developed world to the detriment of the so-called ‘Third World.’ In other words, that international law is overtly biased against Third World countries, for while it guarantees sovereign equality and self-determination, it carries forward the legacy of imperialism and colonial conquest. TWAIL scholarship asserts strongly that imperialism has constructed international law and that it is not a matter of past history but of present obligation.”); Makau W. Mutua, ‘*What is TWAIL?*’, 94 AM. SOC’Y OF INT’L L. PROC. 31 (2000).

³⁸ Antony Anghie, *Slavery and International Law: The Jurisprudence of Henry Richardson*, 31 TEMPLE INT’L & COMPAR. L. J. 1, 14-15 (2017), https://sites.temple.edu/ticlj/files/2017/05/31.1_Anghie_Article-2.pdf. [<https://perma.cc/8YJ5-2UAR>]

³⁹ HENKIN, *supra* note 13, at 252.

⁴⁰ Curtiss-Wright, *supra* note 13, at 320.

⁴¹ HENKIN, *supra* note 13, at 233.

⁴² *Id.* at 242; *see also* U.S. CONST. art. II, § 3.

⁴³ U.S. CONST. art. I, § 8, cl. 18.

The Executive branch and Congress could use their authority to implement the Reparations Principles and other international human rights treaties. Such action would show an acceptance of responsibility for the physical, mental, emotional, and economic harm of the Global War on Terror and its reverberating effects. However, the moral and political will to take such action is currently missing. Instead, the U.S. puts forth contested legal justifications to evade its constitutional and international duty of reparations.⁴⁴

III. ACCOUNTABILITY FOR THE GLOBAL WAR ON TERROR

This Part describes how reparations would address specific examples of violence, torture, and displacement in the Global War on Terror. Reconstruction, refuge, and monetary damages are all potential forms of reparations. These remedies together would constitute “full reparation” as defined by international law.⁴⁵

Reconstruction entails rebuilding the infrastructure, environment, and homes destroyed by the military occupation, including the removal of explosives.⁴⁶ Much of the \$60 billion spent by the U.S. between 2003 and 2012 for Iraqi “relief and reconstruction” was used to bolster the Iraqi security forces and not to rebuild infrastructure.⁴⁷ The U.S. Special Inspector General for Iraqi Reconstruction found that \$8 billion allocated to construction projects was wasted and a significant portion of the remaining funds were unaccounted for.⁴⁸ The war against ISIS in 2014 destroyed much of the remaining infrastructure.⁴⁹

⁴⁴ The Office of UN High Commissioner for Human Rights explained that any counter-terrorism measures must comport with a human rights framework. Office of the U.N. High Commissioner for Human Rights, Fact Sheet No. 32, Human Rights, Terrorism, and Counterterrorism (July 1, 2008), <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf> [<https://perma.cc/7DDC-K5HT>]. For examples of contested legal doctrine, see e.g., INT’L CRISIS GROUP, OVERKILL: REFORMING THE LEGAL BASIS FOR THE U.S. WAR ON TERROR (September 17, 2021), https://icg-prod.s3.amazonaws.com/005-us-counter-terrorism_1.pdf [<https://perma.cc/5ZY7-YMLZ>]; Onder Bakircioglu, *The Future of Preventive Wars: The Case of Iraq*, 30 THIRD WORLD Q. 1297 (2009), <http://www.jstor.org/stable/40388184>, [<https://perma.cc/V3YW-UQVK>]; Andrew Cohen, *The Torture Memos, 10 Years Later*, THE ATLANTIC (Feb. 6, 2012), <https://www.theatlantic.com/national/archive/2012/02/the-torture-memos-10-years-later/252439/> [<https://perma.cc/FU5J-WKVS>] (“...another administration is justifying another extraordinary departure from American legal policy-- the assassination of U.S. citizens abroad, with drone strikes, in a secret manner, without affording those citizens any due process. Trust us, the Bush folks said, when it comes to treatment of detainees. Trust us, the Obama White House says, now when it comes to which citizens we are entitled to kill without trial.”).

⁴⁵ *Infra*, Section II.

⁴⁶ Hawa, *supra* note 12 (describing the form of reparations owed to Iraqi people specifically but noting that Iraq is only one of many places targeted by the War on Terror).

⁴⁷ CRAWFORD, *supra* note 11, at 21-22.

⁴⁸ *Id.*

⁴⁹ *Id.* at 18.

Refuge includes hosting the millions of displaced persons in the U.S. or facilitating resettlement to other countries in a safe and welcoming atmosphere. The “Costs of War” project estimates that over 929,000 people have died from direct war violence, and over 38 million people have become displaced by the Global War on Terror.⁵⁰ More than 9.2 million Iraqis have been displaced since the 2003 invasion, yet the U.S. Department of State “Direct Access” refugee program has resettled around only 47,750 Iraqis to date.⁵¹ The United Nations estimates that over 550,000 Afghans have been internally displaced since January 2021 in addition to three million people who were displaced prior to this year, and approximately nine million since the beginning of the crisis.⁵² These are numbers from two of the many countries impacted by the Global War on Terror. The U.S. resettled around 600 Afghan refugees in fiscal year 2020.⁵³ This number has since slightly increased to around 1,600 in fiscal year 2022.⁵⁴ The total annual refugee resettlement ceiling for fiscal year 2023 is 125,000 – an increase from the low of 18,000 under the Trump administration,⁵⁵ but still a fraction of the total number of persons displaced by the Global War on Terror. The U.S. accepts less than 1% of the world’s displaced

⁵⁰ See generally *Cost of War*, WATSON INST. INT’L & PUB. AFFS., BROWN UNIV., <https://watson.brown.edu/costsofwar/> [<https://perma.cc/LEW2-U9AV>] (last visited Feb. 19, 2023); *Creating Refugees: Displacement Caused by the United States’ Post-9/11 Wars*, WATSON INST. INT’L & PUB. AFFS., BROWN UNIV. (Aug. 19, 2021), https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War_Vine%20et%20al_Displacement%20Update%20August%202021.pdf [<https://perma.cc/Z28L-JDP4>]; Tariq Ali, *The War on Terror: 20 Years of Bloodshed and Delusion*, THE NATION (Sep. 7, 2021), <https://www.thenation.com/article/world/9-11-war-terror/> [<https://perma.cc/7L7B-AGEA>].

⁵¹ *Iraqi Refugees*, WATSON INST. INT’L & PUB. AFFS., BROWN UNIV., <https://watson.brown.edu/costsofwar/costs/human/refugees/iraqi> [<https://perma.cc/8PVM-HHM6>] (last visited Feb. 19, 2023); Jon Jackson, *U.S. Reexamining Applications for 100,000 Iraqi Refugees, as Some Are Suspected of Fraud*, NEWSWEEK (June 18, 2021, 12:10 PM), <https://www.newsweek.com/us-reexamining-applications-100000-iraqi-refugees-some-are-suspected-fraud-1602045> [<https://perma.cc/NC6B-JV2Z>].

⁵² Philip Oltermann, *Afghanistan Refugees: How Many are Being Evacuated and Where Will They Go?*, THE GUARDIAN (Aug. 20, 2021), <https://www.theguardian.com/world/2021/aug/20/afghanistan-refugees-evacuation-q-and-a> [<https://perma.cc/Z4ED-6726>]; Jared Keyel, *Responsibility to Redress: Global Harm Obligation and the Afghan and Iraqi Refugee Crisis*, 5 SPECTRA (2016), <https://www.spectrajournal.org/articles/86/print/> [<https://perma.cc/NW59-QMWA>].

⁵³ Charles Davis, *Despite Taliban Threat, the U.S. has Accepted Fewer than 500 Afghan Refugees This Year*, BUS. INSIDER (Aug. 16, 2021), <https://www.businessinsider.com/us-accepted-fewer-than-500-afghan-refugees-2021-8>. [<https://perma.cc/B729-24TU>].

⁵⁴ REFUGEE PROCESSING CENTER, REFUGEE ARRIVALS BY STATE AND NATIONALITY FISCAL YEAR 2022 (2022), <https://www.wrapsnet.org/documents/FY%202022%20Arrivals%20by%20State%20and%20Nationality%20as%20of%2030%20Sep%202022.pdf> [<https://perma.cc/ZU2Y-AYJV>].

⁵⁵ Migration Policy Institute, *U.S. Annual Refugee Resettlement Ceilings and Number of Refugees Admitted, 1980-Present* (last visited Mar. 22, 2023), <https://www.migrationpolicy.org/programs/data-hub/charts/us-refugee-resettlement> [<https://perma.cc/H46C-RSNV>].

population “contrary to the myth of being overburdened by generosity.”⁵⁶ Forcing the U.S. government to provide reparations because of human rights violations it committed during the Global War on Terror would deter other states from initiating or continuing their own violent counter-terrorism operations abroad.

The U.S. should make monetary payments to the survivors of the wars and the families of those killed, tortured, disabled, and disappeared. Most individuals impacted by these violations do not receive any monetary payment from the U.S., let alone reparations.⁵⁷ Congress has taken some action to provide monetary payments to those affected by U.S. military aggression but these are expressly not meant to be reparations.⁵⁸ Section 8127 of the Consolidated Appropriations Act provides *ex gratia* payments (i.e., sympathy and condolence payments) to certain civilians killed and injured in combat operations.⁵⁹ According to a memorandum by

⁵⁶ HARSHA WALIA, BORDER AND RULE: GLOBAL MIGRATION, CAPITALISM, AND THE RISE OF RACIST NATIONALISM 39 (2021).

⁵⁷ Luke Moffett, Cheryl Lawther, Sunneva Gilmore, & Ebba Lekvall, *The Limits of the Law: Putting Reparations into Practice*, EUR. J. OF INT’L L.: TALK! (July 2, 2019), <https://www.ejiltalk.org/the-limits-of-the-law-putting-reparations-into-practice/> [<https://perma.cc/WS3L-8QKX>]; Missy Ryan, *U.S. Military Made \$2 Million in Civilian Casualty Payments in Afghanistan in Recent Years*, WASH. POST (August 17, 2020), https://www.washingtonpost.com/national-security/us-military-made-2-million-in-civilian-casualties-payments-over-5-years-in-afghanistan/2020/08/17/cd550af0-d025-11ea-af07-1d058ca137ae_story.html [<https://perma.cc/DC2X-XE8T>] (data released shows the individual payments have fluctuated widely, the military’s “uneven, typically opaque handling of the civilian toll of battlefield operations”); Nathalie Weizmann, *State Responsibility and Reparation for Torture as a Violation of IHL*, JUST SEC. (December 10, 2014), <https://www.justsecurity.org/18232/state-responsibility-reparation-torture-violation-ihl/> [<https://perma.cc/7ZHA-9AAX>].

⁵⁸ See generally U.S. GOV’T. ACCOUNTABILITY OFFICE, GAO-07-699, THE DEPARTMENT OF DEFENSE’S USE OF SOLATIA AND CONDOLENCE PAYMENTS IN IRAQ AND AFGHANISTAN (May 2007), <https://apps.dtic.mil/sti/pdfs/ADA468288.pdf> [<https://perma.cc/K8VA-U2XG>]. One Department of Defense annual report distinguishes *ex gratia* payments from other responses to property damage, personal injury, or death to civilians that are incidental to U.S. military operations. The payments “seek to convey feelings of condolence or sympathy toward the victim or the victim’s family” but “(1) not required by law; (2) an admission of wrongdoing; or (3) for the purpose of compensating the victim or the victim’s family for their loss.” DEP’T OF DEF., ANN. REP. ON CIVILIAN CAS. IN CONNECTION WITH U.S. MIL. OPERATIONS, at 17-18 (2019), <https://media.defense.gov/2019/May/02/2002126767/-1-1/1/ANNUAL-REPORT-CIVILIAN-CASUALTIES-IN-CONNECTION-WITH-US-MILITARY-OPERATIONS.PDF> [<https://perma.cc/53UQ-JMTM>]. Congress has authorized *ex gratia* payments in each National Defense Authorization Act (“NDAA”) since 2005: Section 1213 of the NDAA authorized \$3 million in payments for fiscal year 2020. National Defense Authorization Act for Fiscal Year 2020, S. 1790, 116th Cong. (1st Sess. 2019), <https://www.congress.gov/116/plaws/publ92/PLAW-116publ92.pdf> [<https://perma.cc/EX5G-8ADR>]; see also H.R. REP. NO. 116-333 (2019) (Conf. Rep.), <https://www.congress.gov/116/crpt/hrpt333/CRPT-116hrpt333.pdf> [<https://perma.cc/B34Y-RDSG>].

⁵⁹ Consolidated Appropriations Act of 2014, H.R. 3547, 113th Cong. (2d Sess. 2014). See Sahr Muhammedally, *Civilian War Victims Receive Recognition in U.S. Law*, JUST SEC. (April 3, 2014),

the Undersecretary of Defense about these payments, only civilians who are considered “friendly to the United States” and are not residents of countries or territories in armed conflict with the U.S. who suffered “property damage, personal injury, or death” as a result of U.S. military activity are eligible.⁶⁰ In addition to strict eligibility, these payments made are “not legally required, nor may they be construed or considered as an admission or an acknowledgement of any legal obligation to provide compensation, payment, or reparations for property damage, personal injury, or death.”⁶¹ The “principal goal” is to advance U.S. military objectives (“obtain and maintain friendly relations with and the support of local population”) and not to be accountable for human rights violations.⁶² Such language distances the U.S. from acknowledging its responsibility to repair some of the harms caused even as any payment is a fraction of the total economic and human destruction of the Global War on Terror.

The demand for Western governments to pay reparations for violence, oppression, and other exploitation is not new.⁶³ There is some precedent for Western governments paying reparations to the people of another country they have harmed, as a result of consciousness-raising and sustained public pressure. For example, the U.S. paid reparations to Japanese Americans for internment and violations of their civil rights during World War II with the Japanese American Claims Act of 1948. The Civil Liberties Act of 1988 provided monetary reparations to Japanese American survivors of internment and a congressional apology for the racist policy.⁶⁴ After the Mau rebellion in the 1950s, the U.K. provided monetary payments

<https://www.justsecurity.org/8882/civilian-war-victims-receive-recognition-law/>
[<https://perma.cc/895B-2VCA>].

⁶⁰ DEP’T OF DEF., MEMORANDUM ON INTERIM REGULS. FOR CONDOLENCE OR SYMPATHY PAYMENTS TO FRIENDLY CIVILIANS FOR INJ. OR LOSS THAT IS INCIDENT TO MIL. OPERATIONS (2020), <https://media.defense.gov/2020/Jun/23/2002320314/-1/-1/1/INTERIM-REGULATIONS-FOR-CONDOLENCE-OR-SYMPATHY-PAYMENTS-TO-FRIENDLY-CIVILIANS-FOR-INJURY-OR-LOSS-THAT-IS-INCIDENT-TO-MILITARY-OPERATIONS.PDF> [<https://perma.cc/4L5F-ZDNH>]; Matt Gluck, *An Examination of U.S. Military Payments to Civilians Harmed During Conflict in Afghanistan and Iraq*, LAWFARE BLOG (October 8, 2020), <https://www.lawfareblog.com/examination-us-military-payments-civilians-harmed-during-conflict-afghanistan-and-iraq>. [<https://perma.cc/Q83E-5BS9>]

⁶¹ *Id.*

⁶² *Id.*

⁶³ Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations*, 3 COLUM. J. RACE & L. 147, 150, 157-58 (2013) (“A few pivotal movements resulting in restitution for historical injustices are: the Civil War era and declared awards of reparations to newly freed slaves, both those who fought in battle alongside white soldiers in the Civil War, and those who were in forced bondage on the plantations of their captors; Native Americans for loss of land and deprivation of civil liberties; the Jews of the Holocaust and its survivors; Japanese Americans who survived the internment camps in America; and the Waikato people of New Zealand.”).

⁶⁴ Bilal Qureshi, *From Wrong to Right: A U.S. Apology for Japanese Internment*, NPR (Aug. 9, 2013), <https://www.npr.org/sections/codeswitch/2013/08/09/210138278/japaneseinternment-redress> [<https://perma.cc/9VUR-JGAP>].

to some of the Kenyans tortured and killed in the Kenyan fight for independence against British colonial rule.⁶⁵

One notable example of the “full reparations” that international law aspires to achieve is the Caribbean Community Secretariat (“CARICOM”) ongoing demand for European countries involved in the trans-Atlantic slave trade to pay long overdue reparations.⁶⁶ Reparations on behalf of survivors of crimes against humanity of genocide, slavery, slave trading, and apartheid is imperative, but still unmet. The movement is gaining traction with the first International Reparations Summit was held in New York City in April 2015.⁶⁷ Several countries including the United States are setting up reparations committees.⁶⁸ Another positive development is that, in February 2021, the House Judiciary Committee on the Constitution, Civil Rights, and Civil Liberties conducted a hearing on H.R. 40, the “Commission to Study and Develop Reparation Proposals for African-Americans Act.”⁶⁹ CARICOM makes the urgency clear: “Reparations is the moral imperative of our age and we believe that the struggle for reparations will become the pre-eminent human rights movement of

⁶⁵ Rashaan Ayesh, *The World's Long History of Reparations*, AXIOS (June 22, 2019), <https://www.axios.com/why-nations-pay-reparations-45502a9f-a5e2-486b-af22-c158789507a2.html> [https://perma.cc/KYM9-F63R].

⁶⁶ In 1993, the Organization of African Unity (OAU) organized the first pan-African conference on reparations in Nigeria, resulting in the Abuja Declaration that called for reparations from all countries that benefited from slave trade and colonialism. Reparations for slavery and colonialism was also a major topic at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa. Jeremy Sarkin, *The Coming of Age of Claims for Reparations for Human Rights Abuses Committed in the South*, 1 SUR INT'L J. ON HUM. RTS. 67 (Jan. 2004), <https://sur.conectas.org/en/coming-age-claims-reparations-human-rights-abuses-committed-south/> [https://perma.cc/F6UE-MEHB]. In 2013, CARICOM established the CARICOM Reparations Commission and made their official demand for Reparations for Native Genocide and Slavery. The 10-point plan seeks the “full reparations” that international law aspires towards: a formal apology; repatriation of displaced Africans to their homeland; Indigenous Peoples Development Program; support for cultural institutions, as well as addressing public health crises and illiteracy; an African Knowledge Program; psychological rehabilitation; technology transfer; and debt cancellation. CARICOM REPARATIONS COMMISSION, *10-Point Reparation Plan*, <https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/> [https://perma.cc/A8L9-LVNU] (last visited Feb. 19, 2023); Prilly Bicknell-Hersco, *Reparations in the Caribbean and Diaspora*, 5 CARIBBEAN QUILT 35 (May 19, 2020), <https://jps.library.utoronto.ca/index.php/cquilt/article/view/34375> [https://perma.cc/5Q7K-CGA6].

⁶⁷ Philip Perry, *Caribbean Nations Seek Reparations for Slavery and Native Genocide*, BIG THINK (Dec. 30, 2016), <https://bigthink.com/politics-current-affairs/caribbean-nations-seek-reparations-for-native-genocide-and-slavery/> [https://perma.cc/VH8W-FEWM].

⁶⁸ *Id.*

⁶⁹ Don Rojas, *Congress to Convene Hearing on Reparations Bill H.R. 40*, CARICOM NEWS (Feb. 12, 2021), <https://caricomreparations.org/congress-to-convene-hearing-on-reparations-bill-h-r-40/> [https://perma.cc/TBU6-QFXU].

the 21st Century.”⁷⁰ The movement to ensure reparations for survivors of the Global War on Terror can take inspiration from CARICOM’s zealous and sustained efforts.

Reparations for the War on Terror are not solely an issue of foreign policy. The War on Terror also exacerbated the carceral state within the U.S. with the creation of the Department of Homeland Security, expansion of the national security dragnet, militarization of the police, and other punitive government policies.⁷¹ In 2021, several American organizations collaborated to prepare a grassroots policy agenda for the Biden-Harris Administration to divest from the Global War on Terror.⁷² The authors of this article support these organizations’ demands that resources spent on surveillance and violence be reinvested into “structures of community care to protect the future of our people” such as the Movement for Black Lives’ proposed BREATHE Act and the NDN Collective’s LANDBACK Campaign.⁷³

IV. CONCLUSION

The Global War on Terror is just one example of how the U.S. government has used its hegemonic police and military power for oppressive actions that it justifies using white supremacist ideology. In this way, the movement to end the Global War on Terror is intrinsically linked to efforts to #AbolishICE, #DefundPolice, get indigenous #LandBack, and enact the Red Deal.⁷⁴ While the terminology and legal framework used to support the Global War on Terror is strategically unique, the “underlying dynamic of differentiation”⁷⁵ that is used to

⁷⁰ Don Rojas, *Message from the CARICOM Reparations Commission: On the Occasion of the United States Congressional Hearing on the HR40 Bill*, CARICOM NEWS (February 17, 2021), <https://caricomreparations.org/message-from-the-caricom-reparations-commission/> [https://perma.cc/NEF9-W9EQ]. See also Muhammad, *supra* note 63, at 201-02 (“However, just as the international community has addressed other human rights violations committed in the past, it has the ability to make substantial restitution that will socially, economically, politically, and culturally repair some of the damage produced by the slave trade and its vestiges... The international community has the capacity to contribute to the evolution of legal precedent regarding human rights violations. All that is needed is for one nation-state to take that courageous step to make amends.”).

⁷¹ Justice for Muslims Collective, HEART Women & Girls, Vigilant Love, Partnership to End Gendered Islamophobia, Project South, Partnership for the Advancement of New Americans, & the US Campaign for Palestinian Rights. *Abolishing the War on Terror & Building Communities of Care: A Grassroots Policy Agenda for the Biden-Harris Administration and 117th Congress* (2021), <https://static1.squarespace.com/static/5daa2e451959d419aa03a0ed/t/60380009ddf0701b42b6b8fe/1614282764135/Abolish+WOT+Policy+Agenda.pdf> [https://perma.cc/3RSF-YLM2] (“The War on Terror... is being deployed to expand the carceral and police state domestically and globally. The War on Terror infrastructure created the Department of Homeland Security and Immigration and Customs Enforcement, and intensified existing police militarization, surveillance and brutality against Black people, including Black Muslims and immigrants, indigenous communities, and other people of color.”).

⁷² *Id.*

⁷³ *Id.* at 37.

⁷⁴ *Id.* at 9-12

⁷⁵ Kanji, *supra* note 1.

justify “a one-way license of brutalization and control”⁷⁶ remains. This differentiation results in the false and racist notion that tragedy, conflict, and humanitarian crisis in countries targeted by the Global War on Terror is to be expected.⁷⁷

Communities directly impacted by the war on terror and its infrastructure have condemned the abuses of power and violence committed in the name of fighting terrorism.⁷⁸ And in response to the unlawful imprisonment of individuals at Guantánamo Bay, there was “extraordinary mobilization of lawyers throughout the world...to defend those beaten down by the U.S. government and the mass media.”⁷⁹ In this tradition, lawyers around the world have a critical role to challenge the broader erosion of human rights and civil liberties of individuals caused by the Global War on Terror. Movement lawyers must uplift the demands of those impacted⁸⁰ to first divest from and dismantle the infrastructure of the Global War on Terror and second, invest in “systems to provide care, protection, and repair for communities at home and abroad.”⁸¹ Reparations for the tremendous damage of the Global War on Terror is one crucial part of the movement for global justice, in which lawyers should be active participants⁸²

⁷⁶ *Id.*

⁷⁷ Lorraine Ali, *In Ukraine reporting, Western Press Reveals Grim Bias Toward 'People Like Us'*, L.A. TIMES (Mar. 2, 2022), <https://www.latimes.com/entertainment-arts/tv/story/2022-03-02/ukraine-russia-war-racism-media-middle-east> [<https://perma.cc/56EF-9NNU>] (“The limits of empathy in wartime are still too often measured by race.”); The Arab And Middle Eastern Journalists Association (@AMEJA), TWITTER (Feb. 27, 2022, 4:10 PM), <https://twitter.com/AMEJA/status/1498042762654015490?s=20&t=QPtjhxqRixiSxSR3gh8vTA> [<https://perma.cc/GBK5-H8PF>].

⁷⁸ Justice for Muslims Collective, HEART Women & Girls, Vigilant Love, Partnership to End Gendered Islamophobia, Project South, Partnership for the Advancement of New Americans, and the US Campaign for Palestinian Rights, *supra* note 71.

⁷⁹ Frank Deale, *In the Shadow of Guantanamo: 20 Years of the War on Terror*, CUNY L. REV. BLOG (Jan. 12, 2022), <http://www.cunylawreview.org/in-the-shadow-of-guantanamo-20-years-of-the-war-on-terror/> [<https://perma.cc/RBP4-AYN3>].

⁸⁰ Justice for Muslims Collective, HEART Women & Girls, Vigilant Love, Partnership to End Gendered Islamophobia, Project South, Partnership for the Advancement of New Americans, and the US Campaign for Palestinian Rights, *supra* note 71.

⁸¹ *Id.*

⁸² See Azeezah Kanji, *Reparations in Reverse: Afghanistan pays, Vatican prays, US preys*, AL JAZEERA (April 22, 2022), <https://www.aljazeera.com/opinions/2022/4/22/reverse-reparations-afghanistan-pays-vatican-prays-us-preys> [<https://perma.cc/ZH2K-54A9>] (“genuine reparation – to make those who have been wronged whole again – ... not a return to the previous status quo, but its radical transformation towards justice and peace”).