Call for Papers

REPARATIONS IN INTERNATIONAL LAW: A CRITICAL REFLECTION

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Almost a century has passed since the much-celebrated judgment on the merits was delivered in the case concerning the *Factory at Chorzów*. In this 1928 judgment, the Permanent Court of International Justice affirmed the essential principle of reparation contained in the actual notion of an illegal act. It held "that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed". This principle – *i.e.* that restitution is the preferred form of reparation - was subsequently asserted by the International Law Commission (ILC) as the basic tenet governing the consequences of internationally wrongful acts in Articles 34-39 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts of 2001.

The precise contours of this normative proposition remain unclear, not least because of the profound structural transformations since the rendering of that judgment. Like all judgments, *Factory at Chorzów* is a child of its time, reflecting the strictly bilateralist nature of the international legal order in the inter-War period and the State-centric character of international norms at that time. As such, reparation is focused on the loss sustained by the injured State and is intended to reinstate the *status quo ante* without much regard to additional considerations or to the interests of stakeholders other than the States involved. However, since *Factory at Chorzów*, the world has witnessed a remarkable change with the creation of the United Nations, the prohibition on the use of force, the obligation to settle international disputes peacefully, the development of new rules reflecting broader community interests (*i.e.* human rights and the environment), and legal constructs such as peremptory norms and obligations *erga omnes*.

At the same time, States have established new mechanisms to administer reparations beyond the inter-State paradigm, notably human rights courts, investment arbitral tribunals, the International Criminal Court (ICC), and *ad hoc* institutions. Reparation has been recognised as part of a victim's right to a remedy and enshrined in treaties like the ICC's Rome Statute. This codification builds upon the practice of many States after World War II, which provided reparations to war victims by establishing public compensation schemes, restitution of property, satisfaction through criminal trials, the erection of monuments, and the creation of national days of remembrance. Across the Americas, a wave of reparations was implemented as part of transitional justice processes in numerous States, including Argentina, Chile, and Colombia. The Inter-American Court of Human Rights continues to award tailored and progressive reparations to victims.

In response to such developments, scholars and practitioners have argued that the principles enunciated in *Factory at Chorzów* may no longer adequately serve the needs of the international community and require recalibration to account for the structural shifts of international law. This raises the question: What scope is there for a reconceptualisation of the rules relating to reparation, and what should these rules be? In this volume, we invite papers that critically reflect on the normative evolution of reparations since the *Factory at Chorzów* case.

We welcome contributions that explore the ways in which traditional forms of reparation (restitution, compensation, and satisfaction) have been (re)interpreted and applied in fields reflecting broader community values, like human rights, the environment, and criminal justice. We also invite contributions that explore new forms of reparations such as rehabilitation and collective reparations. Contributions that examine the jurisprudence of investment tribunals, and the ways in which reparation has been understood in the framework of bilateral investment treaties, as well as papers on the restitution of cultural heritage are welcome. Finally, we invite submissions on recent efforts to repair historical wrongs – such as reparations for colonial times, slavery, oppression - and the ways in which the legal principle of reparation has been conceptualised in support of these claims.

We, Julie Fraser, Emmanuel Giakoumakis, and Otto Spijkers, the editors of Volume 53 of the Netherlands Yearbook of International Law, are pleased to invite submissions for this volume, to be published in Spring 2024. Authors are invited to submit a full draft of no more than 10,000 words including footnotes by 31 March 2023. Authors are not obliged to send in an abstract beforehand, but feel free to contact the volume editors in case you need further information. All drafts must be submitted in Word (.docx) format and must conform to our style guidelines, which are available at the publisher's website: https://www.asser.nl/media/795957/nyil-authors-guidelines_061022.pdf. Further information about the process can be obtained from the volume editors. We - Julie Fraser, Emmanuel Giakoumakis, and Otto Spijkers - can be reached at nyil.reparations@gmail.com.