

The Naimibian Holocaust: Genocide Ignored, History Repeated, Yet Reparations Denied

Kenneth L. Lewis

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ESSAY

THE NAIMBIAN HOLOCAUST: GENOCIDE IGNORED, HISTORY REPEATED, YET REPARATIONS DENIED

*Kenneth L. Lewis, Jr.**

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* Associate Professor of Law at Nova Southeastern University.

I. INTRODUCTION

According to eminent scholars, “[t]he term genocide was coined in 1944 by Polish law professor Raphael Lemkin, who combined the Greek *genos* (race or tribe) with the Latin *cide* (killing). Although the term is modern, the underlying acts are not.”¹ In fact, although the most famous modern genocide is arguably the Jewish Holocaust of World War II,² it was not the only genocide of the Twentieth Century, and, the Namibian Holocaust of World War I that went unchecked and unpunished led to the climate, ideology and environment that contributed in great part to the genocide of the Jews during World War II.³ “The Namibian Holocaust laid . . . the ground work for the Nazi Holocaust.”⁴ For example, akin to the scientists of Nazi Germany, who engaged in horrific experiments,

1. David L. Nesserian, *Contours [sic] of Genocidal Intent: Troubling Jurisprudence from the International Criminal Tribunals*, 37 TEX. INT’L L.J. 231, 246 (2002); see also William A. Schabas, *Convention for the Prevention of the Crime of Genocide*, U.N. AUDIO VISUAL LIBR. INT’L LAW (2008).

The term “Genocide” was first used by Raphael Lemkin in his book *Axis Rule in Occupied Europe* Although the word appears in the drafting history of the Charter of the International Military Tribunal, the final text of that instrument uses the cognate term “crimes against humanity” to deal with the persecution and physical extermination of national, ethnic, racial and religious minorities. Prosecutors also used the term occasionally in their submissions to the Nuremberg Tribunal, but “genocide” does not appear in the final judgment, issued on 30 September – 1 October 1946. . . .

2. *Id.*

3. George Steinmetz, *The First Genocide of the 20th Century and its Postcolonial Afterlives: Germany and the Namibian Ovaherero*, 12 J. INT’L INST. (2005), available at <http://quod.lib.umich.edu/j/jii/4750978.0012.201/--first-genocide-of-the-20th-century-and-its-postcolonial?rgn=main;view=fulltext> (last visited Sept. 5, 2015). See also *Namibia: Germany’s Forgotten Genocide*, available at <http://www.ibtimes.com/namibia-germanys-forgotten-genocide-214267> (last visited Sept. 6, 2015).

“[W]hen Hitler was in prison in the early 1920s, he read a tract called “The Principles of Human Heredity and Race Hygiene” by a German scientist and geneticist named Eugen Fischer, who studied the black and mixed-race people in the camps during the Namibian genocide. The book reportedly emboldened Hitler’s already virulent beliefs about racial supremacy and purity – and likely inspired him to plan the commission of a far greater genocidal campaign.”

4. *Id.*

during the Namibian Holocaust, German officials corralled the Namibian people into labor camps⁵ and then used the bones and skulls of the massacred Namibians in an attempt to “prove the racial inferiority of black people.”⁶ “Such racial ideology became a mainstay of Nazi ideology and discriminatory practices.”⁷ Nonetheless, “the [Namibian] genocide . . . [is] hardly mentioned or discussed,”⁸ and, unlike the Jewish Holocaust, the German education system ignores the Namibian Genocide.⁹ Shockingly, even Pope Francis willfully ignored or failed to acknowledge the Namibian Holocaust.¹⁰

5. Rachel Anderson, *Redressing Colonial Genocide under International Law: the Herrero’s Cause of Action Against Germany*, 93 CAL. L REV. 1155, 1166 (2005).

The German Imperial Chancellor, Prince Von Bullow, ordered the creation of concentration camps in Hereroland in 1904. By late May 1905[,] the Germans had taken 8,040 Herero Prisoners of war, of whom more than three-quarters were women and children. The Germans immediately shipped the prisoners to slave-labor camps.... The Germans killed all Hereros who tried to escape the inhuman conditions in the camps immediately and without mercy.... [The Germans] established concentration camps in December 1905 for Hereros who had [sic] surrendered to Germans. By May 1906, the Germans ... captured 14,769 Hereros: 4,137 men, 5,989 women, and 4,643 children. Two months later, von Lindequist wrote to the Colonial Department that “the northern and central parts of the country, in particular Herero land proper, are virtually devoid of Herero [and] [t]hose still roaming about will consider themselves luck if they come to no harm

6. Eric Van Grasdorff et al., *Germany’s Genocide in Namibia*, INT’L J. SOCIALIST RENEWAL (2012), <http://links.org.au/node/2786> (last visited Sept. 14, 2015).

7. *Id.* See also *Memories of Genocide at the Hands of Germany Fuels Radicalism in Namibia*, available at <http://www.theglobeandmail.com/news/world/memories-of-genocide-at-the-hands-of-germany-fuels-radicalism-in-namibia/article4627436/stating> (last visited Sept. 8, 2015).

New research suggests that the German racial genocide in Namibia from 1904 to 1908 was a significant influence on the Nazis in the Second World War. Many of the key elements of Nazi ideology – from racial science and eugenics to the theory of *Lebensraum* (creating “living space” through colonization) – were promoted by German military veterans and scientists who had begun their careers in South-West Africa, now Namibia, during the genocide.

8. *Id.*

9. *Id.*

10. On April 12, 2015, Yahoo News published an Article entitled, *Turkey Recalls Ambassador Over Pope’s Genocide Words*.

Pope Francis on Sunday marked the 100th anniversary of the slaughter of Armenians by calling the massacre by Ottoman Turks “the first genocide of the 20th century” and urging the international community to recognize it as such. Turkey immediately

To be sure, the notion that genocide is a crime to be punished by civilized peoples directly evolves from the idea that there are certain inherent crimes against humanity.¹¹ Early in the Twentieth Century, the drafters of the Convention (IV) Respecting the Laws and Customs of War on Land and its annex: “Regulations concerning the Laws and Customs of War on Land recognized that the conduct of men and nations, whether during times of peace or war, must be subject to circumscribed by customary law, “laws of humanity” and public conscience.”¹² This Essay will analyze the atrocities committed by Germany in Namibia and examine whether Germany’s conduct was unlawful under international law.

This Essay will analyze the atrocities committed by Germany in Namibia and examine whether Germany’s conduct was unlawful under international law.

II. THE NAMIBIAN HOLOCAUST

“Places like Auschwitz were not Germany’s first concentration camps

responded by recalling its
ambassador and accusing Francis of spreading hatred and “unfounded claims.”

11. Nesserian, *supra* note 1, at 249. See also M. Cherif Bassiouni, *Crimes Against Humanity*, CRIMES OF WAR, available at <http://www.crimesofwar.org/a-z-guide/crimes-against-humanity/> (last visited Aug. 25, 2015).

Arising from the ashes of World War II, the IMT’s mandate provided first for the punishment of crimes against peace and war crimes. But it also included a provision to address Nazi abuses of civilians under the concept of crimes against humanity.

12. The Hague, *Convention with Respect to the Laws and Customs of War on Land*, Preamble, Oct. 18, 1907, INT’L COMM. OF THE RED CROSS, available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BD48EA8AD56596A3C12563CD0051653F> (last visited Aug. 10, 2012).

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization; Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;...

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

and the [Jewish] Holocaust was not Germany's First Genocide."¹³ In fact, the Herero and the Nama genocide was carried out by Germany in South West Africa, now called Namibia.¹⁴ The Germans sought to achieve the total extermination of the Namibian people.¹⁵ The Germans forced men, women, and children into concentration camps.¹⁶ The men, women, and children were starved and malnourished. They were whipped and raped and forced into backbreaking labor.¹⁷ Like the German Jews, who were persecuted some thirty years later, the Namibians were "tattooed and forced to wear identity badges . . ." ¹⁸ During the period of the Namibian Holocaust, the Ovaherero people of Namibia were forced to change religions, "their land was seized and sold to German settlers," and their ruling hierarchy and leadership structure was banned.¹⁹ To accomplish their genocidal goals, the Germans poisoned waterholes and hunted and lynched the Namibian people.²⁰

So cruel were the Germans that they forced Ovaherero people (including women and children) into a waterless desert.²¹ General von Trotha explained his position on annihilation of the Namibians by stating, in his letter to Herero people, the following:

The Herero are no longer German subjects The Herero nation must . . . leave the country. If they do not leave, I will force them out with the Groot Rohr (cannon). Every Herero, armed or unarmed . . . will be shot dead within the German borders. I will

13. *Namibia: Genocide and the Second Reich* (BBC Bristol 2005) [hereinafter *Namibia*].

14. Julian Abagond, *The Herero and Nama Genocide*, ABAGONDWORDPRESS (July 26, 2012), <https://abagond.wordpress.com/2012/07/26/the-herero-and-nama-genocide/>.

There is no guesswork about this being a genocide: we have the orders, the letters and the diaries that leave no doubt that the Germans meant to wipe out the Herero and Nama and take their land. It was not just a case of a general gone mad or a war gone wrong.

Id.

15. *Id.* General Lothar Von Trotha explained that the reason for the brutality against the Namibians was to achieve "their total extermination." *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Steinmetz, *supra* note 3.

20. *Id.*; see also Reinhart Kössler & Henning Melber, *The Genocide in Namibia (1904-08) and its Consequences: Toward a Culture of Memory for a Memory Culture Today – a German Perspective*, (Aug. 13, 2015), [http://www.africavenir.org/news-details/archive/2012/march/article/reinhart-koesslerhenning-melber-the-genocide-in-namibia-1904-08-and-its-consequences-toward-a-c.html?tx_ttnews\[day\]=19&cHash=7938231a5e3aa2af3da08f3f090bc93d](http://www.africavenir.org/news-details/archive/2012/march/article/reinhart-koesslerhenning-melber-the-genocide-in-namibia-1904-08-and-its-consequences-toward-a-c.html?tx_ttnews[day]=19&cHash=7938231a5e3aa2af3da08f3f090bc93d).

21. Steinmetz, *supra* note 3.

no longer accept women and children²²

General von Trotha also unapologetically stated that he considered armed battles against the Namibian people as a “war of races.”²³ Consequently, he resigned himself to a philosophy of brutality and violence and stated, “[i]t has been and remains my policy to exercise the violence with *gross terrorism* and even with cruelty. *I annihilate the African tribes by floods of money and floods of blood.* It is only by such sowings that a [new permanent German state] will be there to stay.”²⁴

III. THE ANNIHILATION OF THE INDIGENOUS NAMIBIAN PEOPLE WAS UNLAWFUL UNDER INTERNATIONAL LAW, TREATIES, AND CONVENTIONS

“[G]enocide is a crime under international law, contrary to the spirit and aims of [global peace] and condemned by the civilized world.”²⁵ To be sure, “genocide, [like that committed in Namibia], has inflicted great losses on humanity at all periods of history, and [thus] international cooperation [was] and is required in order to liberate mankind from such an odious scourge”²⁶ and to punish the perpetrators of such reprehensible and criminal acts. The question one must logically ask is whether, by slaughtering thousands of Namibian families, Germany violated international law.

A. Germany Violated Customary International Law

Customary international law results from consistent practices that states follow as a result of legal obligation.²⁷ Customary international law

22. *Id.*; see *Namibia: Genocide and the Second Reich*, *supra* note 13.

“The important thing about [Von Trotha’s letter] is the putting down into writing an official sanctioning of Genocide. . . .”

Id.

23. Kössler & Melber, *supra* note 20

24. *Id.*

25. William Schabas, *Convention for the Prevention of the Crime of Genocide*, at 2, available at http://legal.un.org/avl/pdf/ha/cppcg/cppcg_e.pdf (last visited July 25, 2012); see also *Convention on the Prevention and Punishment of the Crime of Genocide*, Preamble, Dec. 9, 1948, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-Eng-lish.pdf> (last visited Aug. 20, 2012).

26. Schabas, *supra* note 25.

27. Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law 1* (Chicago John M. Olin Law & Economics Working Paper No. 63, 2d Series), www.law.uchicago.edu/files/files/63.Goldsmith-Posner.pdf.

is so pervasive in international relations, “[g]overnments take care to comply with [it], and often incorporate its norms into domestic statutes.”²⁸ Moreover, a violation of customary international may be the basis and legal ground for war or international claims against the perpetrators.²⁹ Indeed, any legal scholar must then question whether, prior to the Namibian Holocaust, the international community tried or punished states or individuals for the scourge that Germany carried out in Namibia. That the term genocide may have first been used in 1944³⁰ does not in and of itself mean that the international community did not, prior to World War II, punish genocidal conduct.³¹ Moreover, prior to 1944, the liquidation of the ethnic groups and other populations may have been regarded as crimes against humanity, or crimes against peace, or war crimes.³²

B. *Germany Violated the 1899 Hague Convention*

Germany became a party to the Hague Convention³³ in 1900; however, Germany may argue that it had no obligation to act pursuant to its international obligations under the 1899 Hague Convention, because the indigenous people of Namibia were not parties to the agreement.³⁴ Others argue that because Germany entered into treaties with the indigenous Namibian people, it recognized those groups as a state and thus, those groups were entitled to the protections of international law.³⁵ At a minimum, Germany, as a signatory to the 1899 Hague Convention acknowledged and agreed that it should and would not use prisoners of war as slaves, starve prisoners of war, or confine prisoners of war absent

28. *Id.*

29. *Id.*

30. Nesserian, *supra* note 1.

31. See Jeremy Sarkin & Carly Fowler, *Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claim Act Genocide Case of the Herero of Namibia*, 9 HUMAN RIGHTS REVIEW 1, 3 (2008), <http://ssrn.com/abstract=1280992>.

32. Nesserian, *supra* note 1, at 249.

33. The Hague, *Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land*, Preamble, July 29, 1899, INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9FE084CDAC63D10FC12563CD00515C4D>.

34. *Id.* art. 1.

The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the “Regulations respecting the Laws and Customs of War on Land” annexed to the present Convention.

Id.

35. See Sarkin & Fowler, *supra* note 31, at 14.

an indispensable measure of safety.³⁶ Consequently, by raping, starving, torturing and enslaving the Herero and Nama people, Germany violated international law.³⁷

Under then existing international law, Germany's systematic extermination and enslavement of the indigenous Namibian people and populations was unlawful.³⁸ For example, pursuant to Article VI of the

36. The Hague, *supra* note 33, Annex:

Article 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

CHAPTER II.--On Prisoners of War

Article 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers remain their property.

Article 5

Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

Article 6

The State may utilize the labor of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

Article 7

The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

37. See *Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claim Act Genocide Case of the Herero of Namibia*.

"Germany was a party to the Anti-Slavery Convention of 1890, which protected the aboriginal population of Africa." See also *General Act of the Brussels Conference relating to the African Slave Trade, signed on 2 July 1890*, revised by the Convention of St. Germain of 10 September 1919. Sarkin & Fowler, *supra* note 31, at 13. <http://ssrn.com/abstract=1280992>. Germany had entered into several treaties and agreements regarding its activities in German South West Africa and in 1890, Germany signed the Anti-Slavery Convention which protected the aboriginal population of Africa. See also *General Act of the Brussels Conference relating to the African Slave Trade, signed on 2 July 1890*, revised by the Convention of St. Germain of 10 September 1919.

38. Anderson, *supra* note 5, at 1172-73.

1885 Berlin West Africa Convention, which Germany signed in 1885, Germany had an obligation to suppress slavery, preserve existing tribes and to ensure that the lives of the occupied peoples were improved.³⁹

Article 6, in pertinent part states as follows:

Article 6

All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour [sic] all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.⁴⁰

Furthermore, the Berlin West Africa Treaty prospectively prohibited the Germany government from using the indigenous Namibian population as slaves and from selling those slaves to private corporations, because the treaty declared, and Germany acknowledged, that slavery violated international law and must be forbidden.⁴¹ The unambiguous language of Chapter II of the treaty states in pertinent part as follows:

39. *Id.* at 1173-74.

Article 6

All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.

Christian missionaries, scientists and explorers, with their followers, property and collections, shall likewise be the objects of especial protection.

Freedom of conscience and religious toleration are expressly guaranteed to the natives, no less than to subjects and to foreigners. The free and public exercise of all forms of divine worship, and the right to build edifices for religious purposes, and to organize religious missions belonging to all creeds, shall not be limited or fettered in any way whatsoever.

40. General Act of the Berlin Conference on West Africa art. 6, Feb. 26, 1885.

41. *Id.*

CHAPTER II DECLARATION RELATIVE TO THE SLAVE TRADE

Article IX

*Seeing that trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers, and seeing also that the operations, which, by sea or land, furnish slaves to trade, ought likewise to be regarded as forbidden, the Powers which do or shall exercise sovereign rights or influence in the territories forming the Conventional basin of the Congo declare that these territories may not serve as a market or means of transit for the trade in slaves, of whatever race they may be. Each of the Powers binds itself to employ all the means at its disposal for putting an end to this trade and for punishing those who engage in it.*⁴²

Rachel Anderson, in her article, makes clear that the signatory governments, intended that the Berlin West Africa Convention create binding international law.⁴³ She illustrates that the European governments reiterated their intentions to preserve the welfare of indigenous African people and create binding international law by concluding the eighth session of the Berlin West Africa Convention with the following statement: “Gentlemen, after having surrounded freedom of commerce and navigation in the centre [sic] of Africa with guarantees, and after having shown your solicitude for the moral and material welfare of the populations which inhabit it, *you are about to introduce rules in positive international law . . .*”⁴⁴

Consequently, the question facing scholars and the international community is not whether Germany violated the letter and the spirit of international law, but, instead, whether Germany had been punished for doing so. The clear answer to the latter is no.⁴⁵

Germany’s slaughter and extermination of the indigenous Herero and Nama peoples of Africa violated international law and were antithetical to the letter and the spirit of the Berlin West Africa Convention.⁴⁶ Indeed, instead of watching over the preservation of the native tribes, and caring for the improvement of the conditions of their moral and material well-

42. *Id.* art. 9 (emphasis added).

43. Anderson, *supra* note 5, at 1176.

44. *Id.* (emphasis added) (citing Annex 1 to Protocol No. 8 of the Berlin West Africa Conference, Feb. 26, 1885).

45. Kwame Opoku, *Return of Stolen Skulls by Germany to Namibia: Closure of a Horrible Chapter?*, MODERN GHANA (Nov. 21, 2010), <http://www.modernghana.com/news/362016/1/return-of-stolen-skulls-by-germany-to-namibia-clos.html>.

46. *See generally* General Act of the Berlin Conference on West Africa art. 6, Feb. 26, 1885.

being, and helping to suppress slavery,⁴⁷ Germany presided over a campaign to exterminate, subjugate, humiliate and otherwise destroy the Herero and Nama.⁴⁸ Germany, contrary to international law, did not suppress slavery. Instead, Germany subjected the Herero people to forced-labor and ignoble lives in concentration camps.⁴⁹

Consequently, Germany violated international law.

IV. GERMANY'S REASONS FOR NOT COMPENSATING THE NAMIBIAN PEOPLE ARE, AT BEST, SPURIOUS

A. *Germany Argues that Compensating the Herero Would Upset Namibia's Policy of Reconciliation*

Germany should, under international law, compensate Namibia for perpetrating the Twentieth Century's First Holocaust. Germany alleges that "[i]t would not be justified to compensate one specific ethnic group for their suffering during the colonial times, as this could reinforce ethnic tensions and thus undermine the policy of national reconciliation which we fully support."⁵⁰ That argument is tantamount to stating "compensating you for the crimes I committed and the harms I inflicted would be bad for your country." First, the Herero were not the only group whom the Second Reich exterminated or enslaved or robbed of land and possessions. Certainly, the Nama people were also liquidated or enslaved.⁵¹ As a result, they too should be compensated for suffering crimes against humanity and genocide. Indeed, Germany could choose to deal with Herero's and Nama's claims and then address further claims, or more practically, Germany could agree to make one lump sum payment to Namibia and thereby allow the government of that country to determine how to compensate victims and their survivors, whilst maintaining and furthering its own policies.

47. Anderson, *supra* note 5, at 1176 (citing Article 6 of the Berlin West Africa Conference, Feb. 26, 1885).

48. Opoku, *supra* note 45.

49. Van Grasdorff et al., *supra* note 6.

50. Petros Kuteeue, *Germany Gives No Apology, No Payout for Namibia's Herero*, MISANET (Jan. 12, 2016), <http://afrol.com/articles/10737>.

51. *Namibia*, *supra* note 13:

The Holocaust was not Germany's First Genocide. These are the victims of another genocide, but these people weren't Jews or Gypsies, and this genocide didn't take place in Europe. These are the remains of Africans. They were killed at the dawn of the Twentieth Century in concentration camps run by the armies of the Kaiser's Second Reich, thirty years before Hitler even came to power.

Second, the Austrian government compensated the Jews for the Nazi Genocide even before Israel became a state. Austria did not, before making payment, seek to determine whether those who suffered were Askanzai or Safardic. Austria did not inquire whether those who suffered were Orthodox or Reform. Instead, the country recognized that it had legal and moral responsibilities and quickly moved to say *mia culpa* and to compensate the victims. So too should Germany.⁵²

B. Germany Argues that Should It be Found Liable for the Namibian Holocaust, All European Countries Would Be Liable for Acts the European Nations Committed During Their Occupation of Lands Controlled in Colonial Africa

Germany's argument that by admitting liability for Namibian Holocaust and compensating Namibia and or the descendants of that Holocaust would expose other European nations to liability for their conduct in colonial Africa is tantamount to saying "ignore my guilt and responsibility, so that no one else would have to admit guilt or responsibility." First, Germany's relationship with Namibia is not contingent upon whether Germany's willingness do what is right, moral and just embarrasses others, who may seek to leave their skeletons (literal and figurative) in closets. This is particularly true where Namibia and the descendants of the Namibian Holocaust consider Germany's recognition of guilt as the first step in reconciliation.⁵³

Moreover, other European nations have admitted guilt for atrocities that they committed in their colonies and have agreed to compensate those who suffered as a result of those atrocities. For example, the United Kingdom agreed to compensate five thousand elderly Kenyans, who were tortured in Kenya in the 1950s when and while Kenya was a colony of the United Kingdom.⁵⁴

Even Italy, the country that attacked Ethiopians with mustard gas in the 1930s, agreed to compensate one of its former colonies, Libya, for Italy's past crimes in Libya.⁵⁵ In fact, Italy formally apologized to Libya and agreed to pay five billion dollars to Libya.⁵⁶

Perhaps the United Kingdom and Italy, more than Germany,

52. Theresa Krininger, *Will Germany Ever Recognize the Namibian Holocaust?*, DW (Jan. 6, 2015), <http://www.dw.de/will-germany-ever-recognize-the-namibian-genocide/a-18490388>.

53. *Id.*

54. *UK Compensate Kenya's Mau Mau Torture Victims*, GUARDIAN, (June 6, 2013), available at <http://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture>.

55. Jeff Israely, *Italy Pays Reparations to Libya*, TIME (Sept. 2, 2008), available at <http://content.time.com/time/world/article/0,859,1838014,00.html>.

56. *Id.*

understand that crimes against humanity should never go unpunished, nor should the victims go without redress. It is for those reasons that William Hague, former Foreign Secretary for the United Kingdom, stated:

We understand the pain and the grief felt by those who were involved in the events of emergency in Kenya. The British government recognizes that Kenyans were subjected to torture and other forms of ill-treatment at the hands of the colonial administration The British government sincerely regrets that these abuses took place and that they marred Kenya's progress to independence. *Torture and ill-treatment are abhorrent violations of human dignity* which we unreservedly condemn.⁵⁷

Likewise, it is for those reasons that former Italian Prime Minister, Silvio Berlusconi, on his visit to Libya characterized the reparations that Italy would pay to Libya as “a material and emotional recognition of the mistakes that our country has done to yours during the colonial era.”

Notwithstanding the examples of the United Kingdom and Italy, Germany, perhaps needing to conceal that the Jewish Holocaust of World War II was not Germany's first crime against humanity, refuses to accept guilt for the Namibian Holocaust and therefore continues to pour salt in Namibian wounds.

In light of the fact that the United Kingdom and Italy have admitted guilt and accepted liability for crimes committed in their African colonies, Germany's position that it cannot acknowledge guilt and accept liability for its genocide in Namibia is merely specious.

V. THE U.N. CONVENTION ON THE PREVENTION OF GENOCIDE SHOULD BE APPLIED RETROACTIVELY TO GERMANY

Germany's genocide in Namibia was illegal under international law, because, among other things, the genocide was a crime against humanity. Consequently, although the term “genocide” may have been coined after the Namibian Holocaust, the conduct that the term describes was unlawful when Germany exterminated the indigenous Namibian population.⁵⁸ In committing genocide in Namibia, Germany violated international law.⁵⁹

Interestingly, Germany is unwilling to acknowledge that: (1) the

57. *UK Compensate Kenya's Mau Mau Torture Victims*, *supra* note 54.

58. Jeremy Sarkin, *Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act Genocide Case of the Herero of Namibia*, 9 HUM. RTS. REV. 331, 346 (Sept. 2008).

59. *Id.* at 347.

United Nations already determined that the Namibian Holocaust is in fact genocide,⁶⁰ and (2) the prosecution of crimes against humanity is not limited to the application of the Convention of the Prevention of Genocide, and (3) “international law . . . permits retroactive application of laws where serious international crimes are involved.”⁶¹

VI. THE INTERNATIONAL COMMUNITY’S FAILURE TO PUNISH THE SECOND REICH CATALYZED ADDITIONAL ATROCITIES AND GENOCIDE

“Injustice anywhere is a threat to justice everywhere.”⁶² “[G]roups of international actors cannot prevent or punish genocidal acts by another state when they do not remain cohesive and unequivocally committed to such ends.”⁶³ The failure of the international community to punish the Second Reich for the Namibian Holocaust catalyzed continuing genocide and crimes against humanity.⁶⁴ Certainly, the lack of action to punish those responsible for the Armenian Genocide of World War I may have further emboldened the Germans to commit crimes against humanity during World War II;⁶⁵ however, the Namibian Holocaust, which preceded the Armenian Genocide⁶⁶ (for which the perpetrators received

60. *Id.* at 351:

Additionally, the UN itself has recognized the German treatment of the Herero and Nama peoples as genocide. In 1983, the Sub-Commission of the UN Commission on Human Rights appointed Benjamin Whitaker as “Special Rapporteur with the mandate to revise, as a whole, and update the study on the question of the prevention and punishment of the crime of genocide.” In the study, Whitaker names the German massacre of the Herero as one of several examples of genocide that took place during the 20th century, and he specifically cites von Trotha’s extermination order, the poisoning of water-holes, and the shooting of African peace emissaries as examples of how this genocide was carried out.

61. *Id.* at 352.

62. Letter from Martin Luther King, Jr., “*Letter from a Birmingham Jail*,” (Apr. 16, 1963).

63. Vahakan Dadrian, *Genocide as a Problem of National and International Law: The World War I Armenian Genocide and Its Contemporary Ramifications*, 14 YALE J. INT’L L. 221, 227 (1989).

64. *Id.* at 228.

65. *Id.* at 225.

66. *Id.* at 225-26:

The failures preceded and followed the Armenian genocide carry important lessons for present-day international scholars and lawyers seeking to outlaw genocide. While the post-World War II trials in Nuremberg have shaped much of the current thought on the prevention and punishment of genocide, the trials

no punishment or the victims no reparations⁶⁷) encouraged the Turks to commit atrocities in Armenia, Mussolini to commit genocide in Ethiopia, and the Nazi's to engage in ethnic cleansing.

A. *The Armenian Genocide*

During the genocide of the Herero and Nama people, the Germans, under the pretext of security, deported the afore-mentioned people from their lands⁶⁸ and homes, and confiscated their property.⁶⁹ The Germans then embarked upon a campaign of systematic annihilation.⁷⁰ The Turks borrowed a leaf from the German playbook. The Turks ignored their obligations under international treaties and subjugated the Armenian minorities to ignoble lives.⁷¹ Like the Germans in Namibia who violated international law regarding the establishment of concentration camps and deportation, the Turks used the deportation of the Armenians as a mere smoke screen for their true ambition to liquidate the Armenians and seize control of their assets and property.⁷² Like the Herero, who were not a protectorate of any European power and were not actively sponsored by any,⁷³ the Armenians were denied the benefits of international, collective security.

resulted from a set of conditions that will rarely arise

67. *Id.* at 226 “[N]ations generally will not be able, and thus cannot be expected, to effectively police or punish themselves.” *Id.*

68. Jan-Bart Gewald, *Imperial Germany and the Herero of Southern Africa: Genocide and the Quest for Recompense*, at 59, 61, available at <https://openaccess.leidenuniv.nl/bitstream/handle/1887/4853/asc-1293873-001.pdf?sequence=1> (last visited Apr. 5, 2016).

69. *Id.* at 64, 73.

70. Dadrian, *supra* note 63, at 245.

71. *Id.* at 244-45.

72. *Id.* at 272.

In 1915 the Turkish government began and ruthlessly carried out the infamous general massacre and deportation of Armenians in Asia Minor . . . the clearance of the race from Asia Minor was about as complete as such an act, on a scale so great, could well be There is no reasonable doubt that this crime was planned and executed for political reasons. The opportunity presented itself for clearing Turkish soil of a Christian race

The real purpose of the deportation was robbery and destruction; it really represented a new method of massacre. When the Turkish authorities [like the Germans in Namibia] gave the orders for these deportations, they were merely giving the death warrant to a whole race; they understood this well

Id. at 265, 272.

73. *Id.* at 244-49.

B. Fascist Italy's Genocide in Ethiopia

European nations failed to act, not because they were unaware⁷⁴ of the unlawful and inhumane acts visited upon the indigenous people of Namibia, but because, as a colonial power, they had unclean hands.

The German soldiers, who were stationed in Namibia, and many German citizens who lived and worked in Germany, sent postcards to each other that included pictures of slaughtered indigenous Namibian people. The German nation was very much aware of the heinous crimes the German government, soldiers, and industrialists perpetrated in Namibia. Interestingly, Europe punished Germany for their involvement in World War I, and Germany was forced to surrender its territories and reduce its military. In fact, Germany was required to pay twenty-two billion pounds for reparations.⁷⁵

As a result, one can hardly be surprised that during World War II, Germany formed an alliance with Italy, which ignored the obligations of the Treaty of Versailles and committed its own genocide in Ethiopia, by, among other things, murdering hundreds of thousands of Africans with poison mustard gas.⁷⁶ Italy recognized that the Europeans would never punish another European country for committing genocide in Africa. Europe, after World War II, demonstrated that this notion was indeed

74. See Paisley Green, *Genocide in German South-West Africa*, available at https://www.academia.edu/6487299/Genocide_in_German_South-West_Africa. “British officials meticulously compiled the information, which has since turned out to be reliable, and had little reason to lie because of the true harshness of the atrocities.” *Id.* at 5.

75. Allan Hall, *Germany Ends World War One Reparations after 92 years with £59m Final Payment*, DAILY MAIL (Sept. 28, 2010, 7:19 PM) <http://www.dailymail.co.uk/news/article-1315869/Germany-end-World-War-One-reparations-92-years-59m-final-payment.html>.

76. Bernard Bridel, *Ethiopia 1935-36: Mustard Gas and Attacks on the Red Cross*, ICRC RESOURCE CENTER, available at <https://www.icrc.org/eng/resources/documents/article/other/Sruhgm.htm> (last visited Apr. 6, 2016).

When Italian forces launched their invasion of Ethiopia – Abyssinia at the time – on the night of 2-3 October 1935, *Il Duce* could be fairly confident that he risked little in the way of prevention or reprisals. The “international community” of the time, through its enfeebled League of Nations, condemned the aggression but the sanctions it imposed were futile . . .

Junod also confronted the appalling reality of mustard gas and its effects: That evening . . . I had occasion to see with my own eyes an Italian aircraft spraying the ground with an oily liquid, dropping like fine rain and covering a huge area with thousands of droplets, each of which, when it touched the tissues, made a small burn, turning a few hours later into a blister. It was the blistering gas the British call mustard gas. Thousands of soldiers were affected by severe lesions due to this gas.

Id.

correct.⁷⁷ Europe failed to punish Germany for committing genocide in Namibia, and Italy believed its genocide of other Africans (Ethiopians) would also be ignored and go without reprisal or consequence.

To be sure, had Europe punished Germany for the genocide and crimes against humanity that Germany perpetrated in Namibia, then (1) the Turks would not have been emboldened to commit genocide in Armenia, and (2) fascist Italy would not have committed genocide and crimes of humanity against the Ethiopian people.

VI. CONCLUSION

Germany committed the first genocide of the Twentieth Century by massacring the indigenous people of Namibia. Moreover, Germany's refusal to compensate the indigenous Namibian people is a stain and blight on the German nation. As described above, The Namibian Holocaust was unlawful under international law, and no nation can consider Germany's condemnation of other leaders and nations as serious because Germany itself does not seek to acknowledge and address its own evils.

77. Richard Pankhurst, *Italian Fascist War Crimes in Ethiopia*, AN ETHIOPIAN J., available at <https://tuesday.wordpress.com/%E2%97%8F-italian-fascist-war-crimes-in-ethiopia/> (last visited Apr. 5, 2016).

On 17 December 1942, a declaration was read out in the British House of Commons, stating that Britain, the USA, the USSR, and the nine émigré governments affirmed their "solemn resolution" that those responsible for crimes should "not escape retribution." This declaration applied only to crimes committed by the Germans in Europe.

Id.

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