



KATHOLIEKE UNIVERSITEIT LEUVEN

FACULTY OF LAW AND CRIMINOLOGY

Academic Year 2023 - 2024

THE REPARATION OF COLONIAL HARM

A Study of European State Practice

Promotor: Prof. Dr. J. WOUTERS

Supervisor: G.A. RAMIREZ BUCHHEISTER

Corrector: Prof. Dr. T. MARGONI

Master's Thesis, submitted by

Nel CHRISTIE

as part of the final examination for the
degree of MASTER OF LAW



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SUMMARY

KEYWORDS: COLONIALISM – STATE RESPONSIBILITY – INTERNATIONAL HUMAN RIGHTS LAW – REPARATIONS – RESTITUTION – COMPENSATION – SATISFACTION – REHABILITATION – GUARANTEES OF NON-REPETITION

This thesis explores the complexities of the harm inflicted upon African nations and their peoples under European colonial regimes and the pursuit of reparations for these historical injustices and their ongoing effects. It aims to evaluate the extent to which European initiatives for reparations constitute a State practice under international law. Three vital questions form the common thread of this inquiry: ‘What constitutes colonial harm? What forms of reparations can address it? And what initiatives have European States undertaken?’ The findings reveal a fragmented response underpinned by moral acknowledgement but inconsistent action. Although there is a growing recognition of the moral imperative to address colonial legacies, a lack of consistency impedes the formation of a genuine State practice. Nevertheless, the progressing ethos surrounding reparations shows a meaningful shift in attitudes toward reconciliation.

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Setting off on this academic journey through the complex field of international law, with particular emphasis on reparations for colonialism, has been both insightful and challenging. Examining the depths of past atrocities has served as a powerful reminder of the long-lasting effects of colonialism. This thesis has been a profound learning experience that has shaped my perspective in unexpected ways, despite the challenges of confronting such harsh realities. I firstly would like to thank my promotor, Prof. Dr. Jan Wouters. His expertise in the field of international law has been a great source of inspiration. I would also like to extend my sincere gratitude to my supervisor Gustavo Alejandro Ramírez Buchheister for his invaluable guidance. The direction my study has taken has been significantly influenced by his positive reinforcement and helpful comments. Lastly, I am grateful to my mother, Dr. Katrien Maes, and my sister, Dr. Hannah Christie, for their academic insights and meticulous proofreading. Their faith in me has been a continual source of motivation. This thesis is the culmination of not just my efforts, but also the collective support and encouragement of those around me. Their input has added immeasurable value to this work.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and People's Rights
ASR	Draft Articles on Responsibility of States for Internationally Wrongful Acts
DAC	Development Assistance Committee
DRC	Democratic Republic of the Congo
ECtHR	European Court of Human Rights
EU	European Union
EUR	Euro
FCDO	Foreign, Commonwealth and Development Office
HRC	Human Rights Committee
GBP	British pound sterling
GNI	Gross national income
GNR	Guarantees of non-repetition
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICOM	International Council of Museums
ILC	International Law Commission
NGO	Non-governmental organization
ODA	Official Development Aid
OECD	Organization for Economic Co-operation and Development
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
TWAIL	Third World Approaches to International Law
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USD	United States dollar

INTRODUCTION

“We cannot change the past, but we can change our blindness towards the past.”¹ Nigerian writer Chimamanda Ngozi Adichie’s compelling words capture the essence of this thesis, which dives into the depths of colonial harm and the pursuit of reparations. In light of this quote, this work calls into question the phenomenon of ‘colonial amnesia’, *i.e.* the societal tendency to distort and erase the injustices of this system so as to uphold narratives of colonial benevolence, while marginalizing or silencing dissenting voices and alternative perspectives.² Despite the dissolution of European colonial regimes in Africa, their shadows linger in contemporary society. While the topic has gained traction, it remains contentious, evoking uneasiness and hesitancy.³ This thesis attempts to break the silence, engaging with difficult realities and contributing to the discourse on decolonization and reparations.

At the heart of this study lies a fundamental query: ‘To what extent does the awarding of reparations by European States as a means of atonement for colonial harm inflicted upon former African colonies and their peoples constitute a State practice?’ This question is of an evaluative nature, necessitating a legal assessment of the alignment of reparations awarded by European States with the expectations of State practice under international law. Drawing on the insights of the International Court of Justice (ICJ), the study examines the legal criteria of extensivity and consistency in State conduct. Navigating through historical narratives and legal frameworks, this thesis investigates an array of sources, from official statements to judicial rulings. The central question steers the trajectory of inquiry, supported by three key sub-questions: ‘What constitutes colonial harm? What forms of reparations can address colonial harm? And what initiatives for reparations have taken place in Western Europe?’

This academic exploration develops throughout three chapters, which correlate to the first, second, and third sub-questions, respectively. After outlining the methodology of this thesis, Chapter I lays the foundation, defining colonial harm and studying its manifestations. Chapter II delves deeper,

¹ Quote from Chimamanda Ngozi Adichie’s speech at the Humboldt Forum calling European powers to restitute illegally acquired African artifacts. See S. OKOBI, “Adichie Calls out European Powers to Return Unlawfully Acquired Artifacts from Africa, Other Continents”, *This Day* 2021, <https://www.thisdaylive.com/index.php/2021/09/28/adichie-calls-out-european-powers-to-return-unlawfully-acquired-artifacts-from-africa-other-continents>.

² R. FLETCHER, “The Art of Forgetting: imperialist amnesia and public secrecy”, *Third World Quarterly* 2012, Vol. 33, No. 3, 423–439; K. BRUYNEEL, “The Trouble with Amnesia: Collective Memory and Colonial Injustice in the United States” in G. BERK, D. GALVAN and V. HATTAM (eds.), *Political Creativity: Reconfiguring Institutional order and Change*, Philadelphia (PA), University of Pennsylvania Press, 2013, 1–30 (preprint); C. STAHN, “Confronting Colonial Amnesia: Towards New Relational Engagement with Colonial Injustice and Cultural Colonial Objects”, *Journal of International Criminal Justice* 2020, Vol. 18, No. 4, 793–824.

³ J. SARKIN, “The Coming of Age of Claims for Reparations for Human Rights Abuses Committed in the South”, *International Journal on Human Rights* 2004, Vol. 1, No. 1, 67–125; K.-C. TAN, “Colonialism, Reparations and Global Justice” in J. MILLER and R. KUMAR (eds.), *Reparations: interdisciplinary inquiries, s.l.*, Oxford University Press, 2007, 280–306.

setting out a typology of reparations for colonial harm. Chapter III dissects European State practice, analyzing initiatives aimed at redressing colonial legacies. The conclusion summarizes the results of this study, answering the main research question. Remembering Adichie's advice to confront our past honestly will be vital as we progress through these chapters: a more equitable future can only be achieved by recognizing history and finding ways to honor it.

METHODOLOGY

PROBLEM DEFINITION AND RELEVANCE

The aim of this thesis is to address three prominent societal and academic challenges. Firstly, this study confronts the persistent phenomenon of ‘colonial amnesia’, in which past injustices are forgotten or remembered in a way that erases the history of colonialism and silences its ongoing effects.⁴ While European colonial regimes in Africa have long been eradicated, the pain and suffering they have caused must not be historicized.⁵ The partition of Africa with the haphazard drawing of borders and disregarding of cultural norms led directly to the political instability and poverty that many ex-colonies face at present.⁶ The central role racism had in colonial politics is still felt today, as highlighted by the United Nations (UN) High Commissioner for Human Rights in June 2020, who attributed contemporary racial violence, systemic racism, and discriminatory policing to nations’ failure to confront and reckon with their historical legacies of slavery and colonialism.⁷ While the topic has greatly gained traction in recent years due to the TWAIL scholarship and the ‘Black Lives Matter’ movement, it is still a subject that institutions such as the government, but also universities, are very apprehensive of engaging with, as it is so highly controversial.⁸ For this reason, this thesis aims to contribute towards the unfinished debate surrounding decolonization and to shine light on the historical justifications for reparations.

Secondly, this study aims to address the alleged impossibility of repairing colonial harm within the parameters of international law. The legal regime surrounding State responsibility for wrongful acts

⁴ R. FLETCHER, “The Art of Forgetting: imperialist amnesia and public secrecy”, *Third World Quarterly* 2012, Vol. 33, No. 3, 423–439; K. BRUYNEEL, “The Trouble with Amnesia: Collective Memory and Colonial Injustice in the United States” in G. BERK, D. GALVAN and V. HATTAM (eds.), *Political Creativity: Reconfiguring Institutional order and Change*, Philadelphia (PA), University of Pennsylvania Press, 2013, 1–30 (preprint); C. STAHN, “Confronting Colonial Amnesia: Towards New Relational Engagement with Colonial Injustice and Cultural Colonial Objects”, *Journal of International Criminal Justice* 2020, Vol. 18, No. 4, 793–824.

⁵ I.W. ZARTMAN, “Europe and Africa: Decolonization or Dependency?”, *Foreign Affairs* 1976, Vol., 54, No. 2, 325; T. ZUBERI, *African Independence: How Africa Shapes the World*, s.l., Rowman & Littlefield Publishers, 2015, 49–90.

⁶ B.M. RATCLIFFE, “The Economies of the Partition of Africa: Methods and Recent Research Trends”, *Canadian Journal of African Studies* 1981, Vol. 15, No. 1, 3–31; I.L. GRIFFITHS, *The African Inheritance*, London, Routledge, 1995; A.A. MAZRUI, “The Blood of Experience: The Failed State and Political Collapse in Africa”, *World Policy Journal* 1995, Vol. 12, No. 1, 28–34; “Colonial Repercussions: Namibia. 115 years after the genocide of the Ovaherero and Nama”, *European Center for Constitutional and Human Rights* 2019, https://www.ecchr.eu/fileadmin/Publikationen/ECCHRNAMIBIA_DS.pdf.

⁷ M. FREEMAN, “Back To The Future: The Historical Dimension Of Liberal Justice” in M. DU PLESSIS (ed.), *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, Antwerp, Intersentia, 2007, (29) 33; J. THOMPSON, “Historical Injustice and Reparation: Justifying Claims of Descendants”, *Ethics* 2001, Vol. 112, No. 1, (114) 116–117; M. R. MARRUS, “Official Apologies and the Quest for Historical Justice”, *Journal of Human Rights* 2007, (75) 82.

⁸ TWAIL stands for ‘Third World Approaches to International Law’. See M. MUTUA, “What is TWAIL?”, *Proceedings of the ASIL Annual Meeting* 2000, Vol. 94, 31–38. For more on the topic of Black Lives Matter, see J. BEAMAN, “Toward a Reading of Black Lives Matter in Europe”, *JCMS* 2032, Vol. 59, 103–114.

has long held a well-established role within international law.⁹ Repairing harm done to the injured State is considered crucial to maintaining a balanced world order.¹⁰ However, the application of the current international framework regarding reparations is deemed impossible under mainstream scholarly interpretation due to legal barriers such as the intertemporal principle and the impossibility of quantifying the suffered harm.¹¹ It is important to bear in mind that this is no coincidence. European States historically have held a dominant position in global politics which enabled them to rule out their liability.¹² States hence recognize no more than a moral responsibility to repair colonial harm.¹³ Legal discourse regrettably stalls at this conclusion, impeding efforts towards redress and

⁹ J. CRAWFORD, *State Responsibility: The general part*, New York, Oxford University Press, 2013, 92.

¹⁰ International customs, court rulings, and other sources of international law have for years maintained that when a perpetrator State violates a legal obligation, it must fully compensate the injured State. See Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, *UN Doc. A/56/10* (2001) (hereafter: ASR); Resolution 56/83 of the UN General Assembly (28 January 2002), *UN Doc. A/RES/56/83* (2002), para. 3; PCIJ 26 July 1927, Chorzow Factory Case (Germany/Poland), *P.C.I.J. Rep.* 1928., Series A, No. 9, 21; PCIJ 14 June 1938, Phosphates in Morocco (Italy/France Phosphates in Morocco), *P.C.I.J. Rep.* 1938, Series A/B, No. 74, 10; ICJ 9 April 1949, Corfu Channel Case (UK/Albania), *I.C.J. Rep.* 1949, 22-23; ICJ 24 May 1980, Case concerning United States Diplomatic and Consular Staff in Tehran (USA/Iran), *I.C.J. Rep.* 1980, para. 56; ICJ 25 September 1997, Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), *I.C.J. Rep.* 1997, para. 47; D. SHELTON, "Righting wrongs: reparations in the articles on State responsibility", *American Journal of International Law* 2002, Vol. 96, No. 4, 839; R. M. BUXBAUM, "A legal history of international reparations", *Berkeley Journal of International Law* 2005, Vol. 23, No. 2, 314.

¹¹ Intertemporal principle entails that an act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs (Art. 13 ASR). Since colonialism was only officially forbidden by the UN in the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*, the consensus within mainstream legal doctrine is that establishing State responsibility for colonial harm inflicted prior to this date is impossible, as this would go against the intertemporal principle. See Resolution 1514 (XV) of the UN General Assembly (14 December 1960), *UN Doc. A/RES/1514* (1960); P.C. JESSUP, "The Palmas Island Arbitration"; *AJIL* 1928, Vol. 22, No. 4, 735-752; W. VERSFELT, *The Miangas Arbitration*, Utrecht, Kemink en Zoon, 1933, 14-16; H. LAUTERPACHT, *The Function of Law in the International Community*, Oxford, Clarendon Press, 1933, 283-285; J. WOODHOUSE, "The Principle of Retroactivity in International Law", *Transactions of the Grotius Society* 1955, (69) 69; R. HIGGINS "Some Observations on the Inter-temporal Rule in International Law" in J. MAKARCZYK (ed), *Theory of International Law at the Threshold of the 21st Century: Essays in Honour of Krzysztof Skubiszewski*, The Hague, Kluwer Law International, 1996, (867) 867; M. R. MARRUS, "Official Apologies and the Quest for Historical Justice", *Journal of Human Rights* 2007, (75) 82; J. CRAWFORD, *State Responsibility: The general part*, New York, Oxford University Press, 2013, 241; M. KOTZUR, "The temporal dimension: Non-retroactivity and its discontents" in A. TZANAKOPOULOS, *Research Handbook on the Law of Treaties*, Cheltenham, Edward Elgar Publishing, 2014, (153) 160; A. BUSER, "Colonial Injustices and the Law of State Responsibility: The CARICOM Claim to compensate slavery and (native) genocide", *Heidelberg Journal of International Law* 2017, Vol. 2, (409) 419.; C. STAHN, "Reckoning with colonial injustice: International law as culprit and as remedy?", *Leiden Journal of International Law* 2020, Vol. 33, No. 4, (823) 832.

¹² T. THIPANYANE, "Current Claims, Regional Experiences, Pressing Problems: Identification of the Salient Issues and Pressing Problems in an African Post-colonial Perspective", *Human Rights In Development Yearbook* 2001, (33) 48; R.M. SPITZER, "The African Holocaust: Should Europe Pay Reparations to Africa for Colonialism and Slavery Note", *Vand. J. Transnat'l L.* 2002, Vol. 35, No. 4, 1313-1348; Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), 19; M. MCEACHRANE, "Reparations within the UN", *OHCHR* 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/SR/Call/Michael_McEachrane.pdf.

¹³ Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (January 2002), *UN. Doc. A/CONF.189/12* (2002), para. 102; R. MARCONI, "States before their colonial past: Practice in addressing responsibility", *QIL Zoom Out* 2024, No. 103, 25-46.

reconciliation.¹⁴ Consequently, this thesis resumes this legal debate and proposes practical solutions such as a structural approach and a revised set of reparations adapted to the context of colonial harm.

Thirdly and likewise regarding the grievance that legal scholarship should not halt at the conclusion that there is no legal obligation to provide reparations, this thesis builds upon the emerging belief amongst States that there is at least a moral responsibility.¹⁵ Indeed, there has been an increasing recognition of the need for reparations at the international level in recent years, as illustrated by the Durban Declaration.¹⁶ This text was pivotal for the debate on reparations for colonialism, as it was the first time that the topic was seriously addressed with the involvement of African, Asian, and Western nations.¹⁷ Various initiatives to repair colonial harm in Europe have taken place in recent years as international pressure has been increasing.¹⁸ Going forth in this study, State practice will be used as a tool to ascertain how States are acting on the commitments made on the international plane. This may reveal shifting attitudes towards reparations for colonialism and the emergence of common standards, which could eventually lead to a legal obligation solidifying in the form of customary international law (*infra*).¹⁹

¹⁴ D.A. BUSER, “Colonial Injustices and the Law of State Responsibility: The CARICOM Claim for Reparations”, *Heidelberg Journal of International Law* 2017, Vol. 2, 409-446; K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 499-570.

¹⁵ Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (January 2002), *UN Doc. A/CONF.189/12* (2002), para. 102; L. SALVADEGO, “Which ‘reparations’ for colonial ‘crimes’?”, *QIL Zoom Out* 2024, No. 103, 5-24; R. MARCONI, “States before their colonial past: Practice in addressing responsibility”, *QIL Zoom Out* 2024, No. 103, 25-46.

¹⁶ Report of the Regional Conference for Africa (27 March 2001), *UN Doc. A/CONF.189/PC.2/8* (2001); Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (January 2002), *UN Doc. A/CONF.189/12* (2002), para. 14; Resolution 56/266 of the UN General Assembly (15 May 2002), *UN Doc. A/RES/56/266* (2002); U. SUNDBERG, “Durban : the third world conference against racism, racial discrimination, xenophobia and related intolerance” *Revue Internationale de Droit Pénal* 2002, Vol. 73, 301-317; R.E. HOWARD-HASSMANN, “Reparations to Africa and the Group of Eminent Persons”, *Cahiers d’études africaines* 2004, Vol. 44, No. 173–174, 81; C. LENNOX, “Reviewing Durban: Examining the Outputs and Review of the 2001 World Conference against Racism”, *Netherlands Quarterly of Human Rights* 2009, Vol. 27, No. 2, (191) 203. The UN also adopted a resolution in 2018 to ensure the comprehensive implementation and follow-up of the Declaration, “welcoming the call upon all the former colonial Powers for reparations”. See Resolution 73/262 of the UN General Assembly (15 January 2019), *UN Doc. A/RES/73/262* (2019).

¹⁷ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 53. However, this conference was the result of political momentum that picked up in the 1990s. See e.g.: Declaration of the first Abuja Pan-African Conference on Reparations For African Enslavement, Colonization And Neo-Colonization, sponsored by The Organization Of African Unity and its Reparations Commission (29 April 1993); Accra Declaration on Reparations and Repatriation of the Truth Commission Conference (12 August 1999); A.A. MAZRUI, *Black Reparations in the Era of Globalization*, New York, Institute of Global Cultural Studies, 2002, 135-138.

¹⁸ D.A. BUSER, “Colonial Injustices and the Law of State Responsibility: The CARICOM Claim for Reparations”, *Heidelberg Journal of International Law* 2017, Vol. 2, 409-446.

¹⁹ As will be outlined further in the methodology, there currently is a clear lack of *opinio iuris* underpinning the State practice on reparations, which is why this thesis only focuses on the first element of customary international law.

RESEARCH QUESTION

The central research question of this thesis is the following: ‘To what extent does the awarding of reparations by European States as a means of atonement for colonial harm inflicted upon former African colonies and their peoples constitute a State practice?’

To answer this central question, three sub-questions need to be addressed first:

- What constitutes colonial harm?
- What reparations may be utilized to address colonial harm?
- What are the initiatives to provide reparations for colonial harm that have taken place in Western Europe?

RESEARCH METHOD

Evaluative Question

The main research question is of an evaluative nature. Therefore, this thesis will assess to what extent reparations utilized in Europe correspond with the elements currently expected of State practice under international law.²⁰ Two main criteria may be distilled from the case law of the International Court of Justice (ICJ): State practice must cumulatively be extensive and consistent. Regarding the first criterium of extensivity, the Court clarifies that State practice entails a widespread and representative participation in a rule, *c.q.* the idea that reparations ought to be awarded to atone for colonial harm.²¹ However, widespread participation does not mean the practice should be universal; it can also be regional, as implied by the Court in the *Asylum Case* which concerned the region of Latin-America.²² The second criterium, consistency, implies State practice should be virtually uniform and settled, meaning it does not need to be perfect.²³ However, the ICJ ruled in the *Asylum Case* that many

²⁰ L. KESTEMONT and P. SCHOUKENS, *Rechtswetenschappelijk schrijven*, Leuven, Acco, 2017, 32.

²¹ ICJ 20 February 1969, North Sea Continental Shelf Cases (Germany/Denmark and Germany/Netherlands), *I.C.J. Rep.* 1969, 3, para. 73; G.C. JONATHAN, “La coutume locale”, *Annuaire français de droit international* 1961, Vol. 7, No. 1, 119–140; L. CONDORELLI, “Custom” in F. MAYOR and M. BEDJAOUI (eds.), *International Law: Achievements and Prospects*, Leiden, Brill Nijhoff, 1992, 204; M. H. MENDELSON, “The formation of customary international law” in J. BARRETT and J.P. GAUCI (eds.), *British Contributions to International Law, 1915-2015 (Set): An Anthology Set*, Leiden, Brill, 2020, 219.

²² ICJ 20 November 1950, *Asylum Case* (Colombia/Peru), *I.C.J. Rep.* 1950, 266; M.R. GARCIA-MORA, “The Colombian-Peruvian Asylum Case and the Doctrine of Human Rights”, *Va. L. Rev.* 1951, Vol. 37, No. 7, 927–966; A.A. D’AMATO, “The Concept of Special Custom in International Law”, *American Journal of International Law* 1969, Vol. 63, No. 2, 211–223.

²³ ICJ 20 February 1969, North Sea Continental Shelf Cases (Germany/Denmark and Germany/Netherlands), *I.C.J. Rep.* 1969, 3, para. 73–77; ICJ 26 November 1984, Nicaragua Case (Nicaragua/USA), *I.C.J. Rep.* 1984, 392; M. AKEHURST, “Custom as a source of international law”, *British Yearbook of International Law* 1975, Vol. 47, No. 1, 1–53; L.

fluctuations and contradictions between States precluded uniform usage.²⁴ Without these elements, one cannot speak of ‘State practice’, merely a series of isolated events or a habit.²⁵ The term consequently ought to be avoided until it has been established that a conduct qualifies as such.²⁶

Scope and Limitations

The scope of this research shall be subject to the following limitations. The geographic scope of this thesis will encompass the relationship between European former colonial powers and their ex-colonies on the African continent. This limitation is necessary due to the worldwide scale of colonization. There are too many examples to analyze adequately within the scope of this research. Many countries besides the ones included in this thesis had colonial agendas on other continents, or even in Europe itself. Spain and Portugal’s presence in Latin America, United Kingdom’s rule in Ireland, and the Netherlands’ occupation of the Caribbean Islands are all pertinent examples. Colonialism is, of course, not a uniquely European phenomenon. Japan vastly expanded its imperium during the 19th and 20th centuries in the Western Pacific Ocean and East Asia.²⁷ This thesis is limited to studying the conduct of the main actors represented at the 1884 Berlin Conference on the partitioning of Africa, who ul

CONDORELLI, “Custom” in F. MAYOR and M. BEDJAOUI (eds.), *International Law: Achievements and Prospects*, Leiden, Brill Nijhoff, 1992, 188; M. H. MENDELSON, “The formation of customary international law” in J. BARRETT and J.P. GAUCI (eds.), *British Contributions to International Law, 1915-2015 (Set): An Anthology Set*, Leiden, Brill, 2020, 212; “International Customary Law and Principles” in K. LEINS, *New War Technologies and International Law: The Legal Limits to Weaponising Nanomaterials*, Cambridge, Cambridge University Press, 2022, 86–118.

²⁴ ICJ 20 November 1950, Asylum Case (Colombia/Peru), *I.C.J. Rep.* 1950, 266.

²⁵ K. GOROBETS, “Practical Reasoning and Interpretation of Customary International Law” in P. MERKOURIS, J. KAMMERHOFER and N. ARAJÄRVI (eds.), *The Theory, Practice, and Interpretation of Customary International Law in The Rules of Interpretation of Customary International Law*, Cambridge, Cambridge University Press, 2022, 370-392.

²⁶ Consequently, words such as ‘initiatives’ and ‘conduct’ shall be used to refer to the practices before the final analysis is made in the conclusion.

²⁷ M.E. PAGE and P.M. SONNENBURG, *Colonialism: an international social, cultural, and political encyclopedia*, Santa Barbara, ABC-CLIO, 2003, 883-1208.

timately ended up controlling land in Africa.²⁸ Hence the relationship of Belgium,²⁹ France,³⁰ Germany,³¹ Italy,³² Portugal,³³ and the UK³⁴ with their former colonies constitutes the focus of this thesis. The fact that these States' colonial regimes had a common origin (*i.e.* the Berlin Conference) and that they share a common legal tradition provides both a necessary focus and an interesting angle to this research. While Spain was also present at the Berlin conference, it is excluded from the scope of this research because there is little to no action on the topic of African colonialism in this State, neither political nor academic.³⁵ When the debate does take place, it tends to center on the nation's occupation of Latin-America.³⁶

²⁸ A.S. WHITE, "The Partition of Africa", *The Nineteenth century: a monthly review* 1894, Vol. 36, No. 209, 23–37; S. PRESS, *Rogue Empires: Contracts and Conmen in Europe's Scramble for Africa*, Cambridge (MA), Harvard University Press, 2017, 52–84

²⁹ The land under Belgian colonial rule was the Belgian Congo (present-day Democratic Republic of the Congo) from 1908 to 1960 and Ruanda-Urundi (present-day Rwanda and Burundi) from 1922 to 1962. Although in the aftermath of the Berlin Conference (1884–1885), the Belgian Congo was formally credited to Leopold II, King of the Belgians (1865–1909), from 1908 until 1960. See P. PODDAR, "Belgium and its Colonies" in P. PODDAR, R.S. PATKE and L. JENSEN (eds.), *A Historical Companion to Postcolonial Literatures: Continental Europe and its Empires in Edinburgh Companions to Literature and the Humanities*, Edinburgh, University Press, 2008, 6–58.

³⁰ It is not as straightforward to make this summary for France, as there were different categories such as the 'Départements et Régions d'Outre-Mer' and the French protectorates. However, disregarding these nuances, the following regions were historically under French control: Algeria (1830–1961), Morocco (1912–1956), Tunisia (1881–1956), West Africa (1895–1958), Equatorial Africa (1910–1958), French Cameroon (1920–1960), French Madagascar (1897–1958), French Somalia (1896–1967) and the French domain St. Helena (1854–present). See P. PODDAR, "France and its Colonies" in P. PODDAR, R.S. PATKE and L. JENSEN (eds.), *A Historical Companion to Postcolonial Literatures: Continental Europe and its Empires in Edinburgh Companions to Literature and the Humanities*, Edinburgh, University Press, 2008, 106–198.

³¹ Germany occupied German Southwest Africa (now Namibia) (1884–1915), Togoland (now the Republic of Togo) (1884–1914), German Cameroon (which – next to contemporary Cameroon – included parts of present-day Gabon, Congo, Central African Republic, Chad and Nigeria) (1884–1920), and German East Africa (now Burundi, Rwanda and Tanzania) (1885–1918). See C.A. BLACKSHIRE-BELAY, "German Imperialism in Africa: The Distorted Images of Cameroon, Namibia, Tanzania, and Togo", *Journal of Black Studies* 1992, Vol. 23, No. 2, 235–246.

³² The territories under Italian occupation were Eritrea (1882–1947), Somalia (1950–1960), Libya (1911–1947) and Ethiopia (1936–1941). See P. PODDAR, "Italy and its Colonies" in P. PODDAR, R.S. PATKE and L. JENSEN (eds.), *A Historical Companion to Postcolonial Literatures: Continental Europe and its Empires in Edinburgh Companions to Literature and the Humanities*, Edinburgh, University Press, 2008, 261–313.

³³ Portugal colonized Angola (1575–1975), Mozambique (1505–1975), São Tomé and Príncipe (1485–1975), the Cape Verde Islands (1462–1975) and Guinea-Bissau (1588–1974). See P. PODDAR, "Portugal and its Colonies" in P. PODDAR, R.S. PATKE and L. JENSEN (eds.), *A Historical Companion to Postcolonial Literatures: Continental Europe and its Empires in Edinburgh Companions to Literature and the Humanities*, Edinburgh, University Press, 2008, 429–505.

³⁴ British West Africa was comprised of Gambia (1816–1965), Ghana (1821–1957), Nigeria (1914–1954), Southern Cameroon (1916–1961), and Sierra Leone (1808–1961) while British East Africa covered Kenya (1920–1963), Uganda (1894–1962), and Tanzania (previously Tanganyika and Zanzibar) (1916–1961). In British South Africa there was South Africa (1806–1910), Northern Rhodesia (Zambia) (1888–1964), Southern Rhodesia (Zimbabwe) (1923–1980), Nyasaland (Malawi) (1981–1964), Basutoland (Lesoto) (1884–1966), Bechuanaland (Botswana) (1885–1966), and Swaziland (Eswatini) (1903–1968). Britain also jointly colonized Sudan with Egypt, which was known as the condominium government (1899–1956). See P. WOODWARD, "Empire on the Nile. The Anglo-Egyptian Sudan 1898–1934", *African Affairs* 1987, No. 86, Vol. 344, 447–448; J.E. INIKORI, "British Imperialism and Globalization: British West Africa, 1821–1900" in J.E. INIKORI, *British Imperialism and Globalization, c. 1650–1960: Essays in Honour of Patrick O'Brien*, Martlesham, Boydell & Brewer, 2022, 97–134.

³⁵ C. MUÑOZ and S. MARTÍN, "Reparation for colonialism? The long road to historical justice in Spain", *Magazine of the European Observatory on Memories* 2022, Vol. 6, 70–73.

³⁶ "Spain Uneasily Revisits Its Colonial Past", *Bloomberg* 2024, <https://www.bloomberg.com/news/newsletters/2024-02-03/spain-uneasily-revisits-its-colonial-past>.

Regarding the temporal scope of this study, only measures of reparation that have taken place since the African countries gained their independence from Europe are considered. This is justified due to the aim of this research, namely contributing to the debate surrounding the decolonization of international law.³⁷ Additionally, examples of reparation covering the period when European colonial regimes were still in place in Africa are virtually non-existent, as the peoples the colonizers ruled over were deemed inferior and not worthy of compensation.³⁸

While State practice is one of two elements necessary to identify an emerging rule of customary international law, this thesis does not further consider the possibility of the studied rule, *i.e.* the responsibility of States to provide reparations for colonial harm, constituting an international custom. This is due to a clear lack of the second constitutive element of customary international law, namely *opinio iuris*. As will be demonstrated extensively in the rest of this study, many examples of States providing reparations for colonial harm exist. However, States strongly insist they grant these remedies due to a moral responsibility, not a legal obligation.³⁹ This view is furthermore supported by mainstream legal doctrine as the law on State responsibility for wrongful acts is deemed inapplicable to context of colonialism due to various obstacles, most notably the intertemporal bar (*supra*).⁴⁰ States thus cannot be said to provide reparations due to the conviction that they are legally obliged to do so. Nonetheless, this lack of *opinio iuris* does not imply State practice cannot be studied

³⁷ As outlined above, this is a debate that only really picked up in the 1990s. See the Report of the Regional Conference for Africa (27 March 2001), UN Doc. A/CONF.189/PC.2/8 (2001); Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (January 2002), UN Doc. A/CONF.189/12 (2002), para. 14; Resolution 56/266 of the UN General Assembly (15 May 2002), UN Doc. A/RES/56/266 (2002); U. SUNDBERG, “Durban : the third world conference against racism, racial discrimination, xenophobia and related intolerance” *Revue Internationale de Droit Pénal* 2002, Vol. 73, 301-317; R.E. HOWARD-HASSMANN, “Reparations to Africa and the Group of Eminent Persons”, *Cahiers d’études africaines* 2004, Vol. 44, No. 173–174, 81; C. LENNOX, “Reviewing Durban: Examining the Outputs and Review of the 2001 World Conference against Racism”, *Netherlands Quarterly of Human Rights* 2009, Vol. 27, No. 2, (191) 203. The UN also adopted a resolution in 2018 to ensure the comprehensive implementation and follow-up of the Declaration, “welcoming the call upon all the former colonial Powers for reparations”. See Resolution 73/262 of the UN General Assembly (15 January 2019), UN Doc. A/RES/73/262 (2019).

³⁸ P.D. CURTIN, “The Black Experience of Colonialism and Imperialism”, *Daedalus* 1974, Vol. 103, No. 2, 17-29.

³⁹ Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (January 2002), UN Doc. A/CONF.189/12 (2002), para. 102; R. MARCONI, “States before their colonial past: Practice in addressing responsibility”, *QIL Zoom Out* 2024, No. 103, 25-46.

⁴⁰ State responsibility for wrongful acts is the legal regime, codified in the Articles on State responsibility (ASR), that describes States’ core compensatory duty “to make full reparation for the injury caused by the internationally wrongful act” where “injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State” (Article 31 ASR). This principle would logically apply to the colonial harm outlined above as well, except a number of legal hurdles such as the intertemporal principle stand in the way of this. This principle prescribes that States cannot be held liable for acts that were not illegal at the time, as was the case for colonialism. See *e.g.*: K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 513-524.

independently in a useful way. A legal obligation is not required to speak of State practice; a moral responsibility may suffice.⁴¹

This thesis examines a wide range of categories of colonial harm in Chapter I. However, two related concepts are excluded from the scope of this research, namely slavery and apartheid. Although the latter are both intrinsically connected to colonialism and have comparable historical settings, the focus of this thesis on colonialism allows for a more rigorous examination of the phenomenon's distinct dynamics, legal frameworks and historical legacies. Slavery and apartheid, while frequently happening in colonial contexts, have unique legal and social characteristics that merit independent investigation. Furthermore, the complexity and implications of colonialism alone provide substantial material for in-depth investigation, while integrating slavery and apartheid risks diluting the thesis's emphasis and coherence.

Sources

The center of this research is the harm that was inflicted during the European States' colonial regimes in Africa. This topic is of a highly factual nature and the scope of this research does not include individual investigations of the events described. Therefore, this thesis looks at reliable sources such as the works of parliamentary truth commissions, for example the one that was installed in Belgium (*infra*), and human rights institutions and organizations such as the UN Human Rights Office.

To define what reparations exist within international law, this thesis relies on a legal-doctrinal approach.⁴² UN instruments on the topic such as the 2005 *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* are utilized as a guideline.⁴³ Given this is a non-binding instrument, there is not a lot of case law to rely upon for contextualization.⁴⁴

⁴¹ Draft Conclusions on Identification of Customary International Law, in Report of the International Law Commission on the Work of Its Seventieth Session (30 April-1 June and 2 July-10 August 2018), *UN Doc. A/73/10* (2018), Conclusion 6, para. 2; K. GOROBETS, "Practical Reasoning and Interpretation of Customary International Law" in P. MERKOURIS, J. KAMMERHOFER and N. ARAJÄRVI (eds.), *The Theory, Practice, and Interpretation of Customary International Law in The Rules of Interpretation of Customary International Law*, Cambridge, Cambridge University Press, 2022, 370-392.

⁴² M. VAN HOECKE, *Methodologies of legal research: which kind of method for what kind of discipline?*, Oxford, Hart Publishing, 2011, 1-18.

⁴³ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006); Draft Articles on Prevention and Punishment of Crimes Against Humanity, in the Report of the International Law Commission on the Work of Its Seventy-first Session, *UN Doc. A/74/10* (2019).

⁴⁴ M.M. GOMAA, "Non-Binding Agreements in International Law" in L. BOISSON DE CHAZOURNES and V. GOWLLAND-DEBBAS (eds.), *The International Legal System in Quest of Equity and Universality*, s.l., Brill Nijhoff, 2001, 229-250.

Subsequently, jurisprudence such as authoritative handbooks, introductory works, and specialized articles are used as the main tool to interpret these UN texts.

As this thesis revolves around the State practice surrounding reparations, it is important to delineate which sources are considered when establishing said conduct. Since the work of the International Law Commission (ILC) has high authoritative value within international law, the ILC guidelines on what constitutes State practice are used as a guide when determining which sources are taken into consideration.⁴⁵ The 2018 ILC *Draft Conclusions* state that forms of State practice “may include, but are not limited to: diplomatic acts and correspondence; conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct ‘on the ground’; legislative and administrative acts; and decisions of national courts.”⁴⁶ As the ILC has clarified that there is no hierarchy between these sources, this study takes all of them into account equally.⁴⁷

⁴⁵ H.W. BRIGGS, *The international law commission*, Ithaca (NY), Cornell University Press, 1965; F.L. BORDIN, “Reflections of Customary International Law: The Authority of Codification Conventions and ILC Draft Articles in International Law”, *The International and Comparative Law Quarterly* 2014, Vol. 63, No. 3, 535–567.

⁴⁶ Draft Conclusions on Identification of Customary International Law, in Report of the International Law Commission on the Work of Its Seventieth Session (30 April-1 June and 2 July-10 August 2018), *UN Doc. A/73/10* (2018), Conclusion 6, para. 2.

⁴⁷ *Ibid.*, Conclusion 6, para. 3.

CHAPTER I. DEFINING COLONIAL HARM

SECTION I. INTRODUCTION

As posed in the introduction, this Chapter aims to provide an answer to the sub-question ‘What constitutes colonial harm?’ Section II outlines the historical context of this thesis to clarify that colonialism is not merely a finished chapter of Europe’s past. In Section III, ‘colonial harm’ is defined as a concept. A terminological distinction between colonial harm in the strict and broad sense is distilled from different streams of academic discourse on the topic, which is of relevance in the remainder of this work. Section IV offers a conclusion to the sub-question.

SECTION II. COLONIZATION AND DECOLONIZATION

In 1885, a seminal event took place in Berlin, where representatives from thirteen European powers, along with the United States of America and the Ottoman Empire, convened to engage in political negotiations intended to partition the African continent.⁴⁸ The Berlin Conference was not the start of Europe’s presence in Africa; merchants had set up trade posts along the coast centuries before to meet the European demand for natural resources such as ivory.⁴⁹ However, the Berlin Conference is regarded as the foundation for a heightened period of colonial expansion known as ‘The Scramble for Africa’.⁵⁰ Not all countries represented at the convention obtained possession of African territory: Austria-Hungary, Russia, Denmark, the Netherlands, Sweden-Norway, the Ottoman Empire and the US gained no land. Nonetheless, the Berlin Act determined what land Portugal, the UK, France, Italy, Spain and Belgium would govern.⁵¹

⁴⁸ S. FÖRSTER, W.J. MOMMSEN and R. ROBINSON, *Bismarck, Europe, and Africa: the Berlin Africa Conference 1884-1885 and the onset of partition*, Oxford, University Press, 1988, 1-34; S. PRESS, *Rogue Empires: Contracts and Conmen in Europe’s Scramble for Africa*, Cambridge (MA), Harvard University Press, 2017, 3; J. YAO, “The Power of Geographical Imaginaries in the European International Order: Colonialism, the 1884–85 Berlin Conference, and Model International Organizations”, *International organization* 2022, Vol. 76, No. 4, 901–928.

⁴⁹ J. DAGENAIS and M.R. GREER, “Decolonizing the Middle Ages: Introduction”, *Journal of Medieval and Early Modern Studies* 2000, Vol. 30, No. 3, 431–448; L. GARDNER and T. ROY, *The economic history of colonialism.*, Bristol, University Press, 2020, 1-18.

⁵⁰ M.E. CHAMBERLAIN, *The Scramble for Africa*, London, Longmans, 1974; T. PAKENHAM, “The Scramble for Africa”, *The English historical review* 1994, Vol. 109, No. 434, 1319; B. HARLOW and M. CARTER, *The Scramble for Africa*, Durham (NC), Duke University Press, 2003, 368; H. FISCHER, “130 years ago: carving up Africa in Berlin”, 2015, <https://www.dw.com/en/130-years-ago-carving-up-africa-in-berlin/a-18278894>.

⁵¹ S. PRESS, *Rogue Empires: Contracts and Conmen in Europe’s Scramble for Africa*, Cambridge (MA), Harvard University Press, 2017, 52-84. To be precise, the Congo Free State was under private rule of the King Leopold I until 1908, when its governance was bestowed on the Belgian State. See B. BEVERNAGE, “The making of the Congo question: truth-telling, denial and ‘colonial science’ in King Leopold’s commission of inquiry on the rubber atrocities in the Congo Free State (1904–1905)”, *Rethinking history* 2018, 22, Vol. 2, (203) 203.

Around the middle of the 20th century, the rule of European States in Africa started to disintegrate, leading to widespread instability and political uprisings on the African continent.⁵² Many colonized nations, such as the Belgian Congo, French Algeria, British Kenya and Portuguese Angola demanded their independence and fought for their sovereignty.⁵³ This process known as ‘decolonization’ was the start of a paradigmatic shift in the international community.⁵⁴ In 1960, the United Nations proclaimed in the *Declaration on the Granting of Independence to Colonial Countries and Peoples* that subjecting peoples to alien subjugation, domination, and exploitation violates fundamental human rights, undermines the UN Charter, and obstructs global peace.⁵⁵

For the first time in history, self-determination was recognized as a fundamental right by the international community.⁵⁶ This could be seen as the emergence of a new postcolonial world order.⁵⁷ However, the process of decolonization did not end when the colonies gained their independence.⁵⁸ International law was instrumental in the colonization of the African continent, as it enabled the treatment of colonial populations in ways that would not have been permitted in Europe.⁵⁹ It is argued by postcolonial scholars that the international legal order is a continuation of colonialism by other means and that international law is fundamentally determined by the ‘colonial matrix’ even now.⁶⁰

⁵² I.W. ZARTMAN, “Europe and Africa: Decolonization or Dependency?”, *Foreign Affairs* 1976, Vol.,54, No. 2, 325; T. ZUBERI, *African Independence: How Africa Shapes the World*, s.l., Rowman & Littlefield Publishers, 2015, 49-90.

⁵³ P. TAOUA, *African freedom: how Africa responded to independence*, Cambridge, Cambridge University Press, 2018, 1-33.

⁵⁴ W.D. MIGNOLO, *The Darker Side of Western Modernity*, Durham, Duke University Press, 2011, xv.

⁵⁵ Resolution 1514 (XV) of the UN General Assembly (14 December 1960), *UN Doc. A/RES/1514* (1960). See also Art. 1 of the International Covenant on Civil and Political Rights of 16 December 1966, *United Nations Treaty Series*, Vol. 999, 171; Art. 1 of the International Covenant on Economic, Social and Cultural Rights of 3 January 1976, *United Nations Treaty Series*, Vol. 993, 3.

⁵⁶ R.E. HOWARD-HASSMANN and A. P. LOMBARDO, *Reparations to Africa*, Philadelphia (PA), University of Pennsylvania Press, 2008, 89.

⁵⁷ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), 11.

⁵⁸ I.W. ZARTMAN, “Europe and Africa: Decolonization or Dependency?”, *Foreign Affairs* 1976, Vol.,54, No. 2, 325–343; P. TAOUA, “The Anti-Colonial Archive: France and Africa’s Unfinished Business”, *SubStance* 2003, Vol. 32, No. 3, 146–164; C.A. BABOU, “Decolonization or National Liberation: Debating the End of British Colonial Rule in Africa”, *The ANNALS of the American Academy of Political and Social Science* 2010, Vol. 632, No. 1, 41–54; V. NESIAH, “German colonialism, reparations and international law”, *Völkerrechtsblog* 2022, <https://voelkerrechtsblog.org/german-colonialism-reparations-and-international-law/>.

⁵⁹ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 526; J. A. KÄMMERER, “Colonialism”, *Max Planck Encyclopedia of Public International Law* 2018, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e690?rskey=m089tU&result=1&prd=OPIL>.

⁶⁰ For more on the ‘colonial matrix’, see W.D. MIGNOLO, “Introduction: Coloniality of power and de-colonial thinking”, *Cultural Studies* 2007, Vol. 21, Nos. 2–3, 155–167. Furthermore, on colonialism and international law: A. ANGHIE, “The evolution of international law: Colonial and postcolonial realities”, *Third World Quarterly* 2006, Vol. 27, No. 5, 739–753; W.D. MIGNOLO, “The Making and Closing of Eurocentric International Law: The Opening of a Multipolar World Order”, *Comparative Studies of South Asia, Africa and the Middle East* 2016, Vol. 36, No. 1, 182–195; I.J. GASSAMA, “International Law, Colonialism, and the African” in M.S. SHANGUHYIA and T. FALOLA (eds.), *The*

Furthermore, interactions between European and African States (and their nationals) continue to be shaped by this power dynamic.⁶¹ It thus becomes evident that colonialism is not merely a historical fact, necessitating a thorough understanding of the impact of this regime and its ongoing effects.

SECTION III. COLONIAL HARM SENSU STRICTO AND SENSU LATO

§1. Colonialism vs. Colonial Harm

The discourse on reparations typically centers around the term ‘colonialism’, which is defined by the Oxford English Dictionary as “the principle, policy, or practice of acquiring full or partial political control over another country and occupying it with settlers”.⁶² However, this is too broad a concept to utilize and does not adequately address the core of this discussion, namely that it is the harm resulting from colonialism that should be subject to repair. Consequently, this thesis shall use the term ‘colonial harm’, referring to the multitude of political, economic, and moral damage that was inflicted on the peoples and nations of Africa.⁶³ The occupation of Africa caused a vast array of different types of damage, the effects of which can still be felt today in many instances (*infra*). For this reason, this thesis infers a conceptual distinction between past harm, ‘colonial harm *sensu stricto*’, and present harm, ‘colonial harm *sensu lato*’.

§1. Colonial Harm *Sensu Stricto*: Past Harm

Past harm refers to the historical injustices that occurred during colonial rule. It can be thought of as ‘colonial harm *sensu stricto*’ and is to be distinguished from ‘colonial harm *sensu lato*’, which will be dealt with in the following title. Exhaustively summarizing all harm inflicted would prove near

Palgrave Handbook of African Colonial and Postcolonial History, New York, Palgrave Macmillan, 2018, 551–567; F. ZARBIYEV, “Decolonisation: A Past That Keeps Questioning Us”, *Global Challenges* 2021, Vol. 10, No. 6.

⁶¹ The unequal distribution of socio-economic power between European and African States had led to many exploitative practices, which are collectively referred to as ‘neocolonialism’. For example, in addition to excessively being the target of military interventions, African nations are subject to an investment arbitration system that is built on the safeguarding of Western interests. See *i.e.*: I.W. ZARTMAN, “Europe and Africa: Decolonization or Dependency?”, *Foreign Affairs* 1976, Vol. 54, No. 2, 325; A. ANGHIE, “The evolution of international law: Colonial and postcolonial realities”, *Third World Quarterly* 2006, Vol. 27, No. 5, 739–753; J. OGAR, L. NWOYE and S.A. BASSEY, “Archetype of globalization: illusory comfort of neo-colonialism in Africa”, *International Journal of Humanities and Innovation* 2019, Vol. 2, No. 3, 90–95; F. ZARBIYEV, “Decolonisation: A Past That Keeps Questioning Us”, *Global Challenges* 2021, Vol. 10, No. 6.

⁶² Although most definitions are criticized by academics for being overly simplistic and Eurocentric. See H. DIPPEL, “A Short History of Colonialism”, *The European Legacy* 2014, Vol. 19, No. 4, 499–500. Imperialism and colonialism are regarded as synonymous concepts. See R.J. HORVATH, “A Definition of Colonialism”, *Current Anthropology* 1972, Vol. 13, No. 1, 45–57; J. A. KÄMMERER, “Colonialism”, *Max Planck Encyclopedia of Public International Law* 2018, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e690?rskey=m089tU&result=1&prd=OPIL>.

⁶³ W. GREAVES, “Damaging Environments: Land, Settler Colonialism, and Security for Indigenous Peoples”, *Environment and Society* 2018, Vol. 9, No. 1, 107–124; M.M. JACOB, K.L. GONZALES, D. CHAPPELL BELCHER, J.L. RUEF and S. RUNNINGHAWK JOHNSON, “Indigenous cultural values counter the damages of white settler colonialism”, *Environmental Sociology* 2021, Vol. 7, No. 2, 134–146; G.N. PRICE, “The Reparable Damages of European Colonialism in Sub-Saharan Africa” in R.F. AMERICA (ed.), *Accounting for Colonialism: Measuring Unjust Enrichment and Damages in Africa*, Cham, Springer International Publishing, 2023, 203–212.

impossible, due to the all-encompassing nature of colonialism.⁶⁴ Nevertheless, a range of forms of harm can be named. Firstly, the continent was carved up arbitrarily along longitudinal and latitudinal lines, having no regard of natural borders or ethnic groups whatsoever and in the absence of any African States at the Berlin Conference.⁶⁵ The haphazard drawing of these frontiers has led to many bloody disputes.⁶⁶ This was not the only way in which colonial regimes caused internal conflict on the continent. It is generally accepted that the 1994 Rwandan genocide was a direct consequence of Belgium's policy that set the Hutu and Tutsi, social groups which had previously lived together harmoniously, against each other.⁶⁷ This mass murder is estimated to have resulted in 500.000 to one million casualties.⁶⁸ Sadly, this was not at all the only occurrence of genocidal acts on the African continent. The Herero genocide took place in German South-West Africa, or what is now Namibia, between 1904 and 1908. As a result of their rebellion, the Herero people were subjected to sexual slavery, malnutrition, and confinement in concentration camps, where they were forced to labor, and suffered from dehydration after being deported to the desert. Of the estimated 80,000 Herero people, about 65,000 passed away as a result.⁶⁹ The former examples are by no means the only cases of genocide; these mass killings were part of a larger rationale which WOLFE describes as the 'logic of elimination' employed by settler-colonialism.⁷⁰

⁶⁴ R.J. HORVATH, "A Definition of Colonialism", *Current Anthropology* 1972, Vol. 13, No. 1, 45–57; M. PHEKO, "Effects of colonialism on Africa's past and present" (Address at AZAPO commemoration of African Liberation Day), 2012, 1-9; H. DIPPEL, "A Short History of Colonialism", *The European Legacy* 2014, Vol. 19, No. 4, 499–500; J. A. KÄMMERER, "Colonialism", *Max Planck Encyclopedia of Public International Law* 2018, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e690?rskey=m089tU&result=1&prd=OPIL>.

⁶⁵ F.M. DENG, "Africa and the New World Dis-Order: Rethinking Colonial Borders", *The Brookings Review* 1993, Vol. 11, No. 2, 32–35; J.-A. MBEMBÉ and S. RENDALL, "At the Edge of the World: Boundaries, Territoriality, and Sovereignty in Africa", *Public Culture* 2000, Vol. 12, No. 1, 259–284; H. FISCHER, "130 years ago: carving up Africa in Berlin", 2015, <https://www.dw.com/en/130-years-ago-carving-up-africa-in-berlin/a-18278894>.

⁶⁶ Relationships between a number independent African states have been strained by a number of boundary disputes caused by colonial interference, including those involving Ghana and Togo, Kenya and Somalia, Sudan and Uganda, Somalia and Ethiopia, and Nigeria and Cameroon. See E.M. GBENENYE, "African colonial boundaries and nation-building", *Inkanyiso* 2016, Vol. 8, No. 2, 117–124.

⁶⁷ M. MAMDANI, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda, s.l.*, Princeton University Press, 2020; N. SCHIMMEL, "A Postcolonial Reflection on the Rwandan Genocide Against the Tutsi and Statement of Solidarity with Its Survivors", *Journal of Victimology and Victim Justice* 2021, Vol. 4, No. 2, 179-196.

⁶⁸ M. VERPOORTEN, "The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Province", *Population* 2005, Vol. 60, No. 4, 331–367.

⁶⁹ J.-B. GEWALD, "Herero genocide in the twentieth century: Politics and memory" in J. ABBINK, K. VAN WALRAVEN and M. DE BRUIJN (eds.), *Rethinking Resistance, s.l.*, Brill, 2003, 279–304; R.E. HOWARD-HASSMANN and A. P. LOMBARDO, *Reparations to Africa*, Philadelphia (PA), University of Pennsylvania Press, 2008, 100-102; A.D. COOPER, "Reparations for the Herero Genocide: Defining the limits of international litigation", *African Affairs* 2007, Vol. 106, No. 422, 113–126.

⁷⁰ P. WOLFE, "Settler colonialism and the elimination of the native", *Journal of Genocide Research* 2006, Vol. 8, No. 4, 387–409. See for example on the lesser-mentioned genocides Portugal committed in Angola, Mozambique and Timor: J.-M. NEVES, "'Portuguese race' and empire", *Social Identities* 2023, Vol. 29, No. 5, 498–515.

Secondly, the extensive economic exploitation faced by African nations under colonial rule stands out as a major past injustice. Colonial powers frequently exercised control over crucial cash commodities such as cocoa, palm oil, gold, diamonds, rubber and many more.⁷¹ This trade dynamic strongly favored them, creating conditions that were often detrimental for African producers.⁷² The effects additionally extended to commerce and infrastructure plans that were deliberately created to further colonial objectives.⁷³ For instance, railways were built from the interior to the coast, giving priority to the export of resources to Europe and ignoring the need to support regional trade.⁷⁴ Furthermore, it was not rare for labor to be forced upon the indigenous population, such as the extreme coercion to extract rubber to which the Congolese people were subjected under King Leopold II of Belgium's rule.⁷⁵ On top of this, local communities repeatedly experienced forced displacement and dispossession of their ancestral lands, which frequently led to the loss of their means of subsistence.⁷⁶

Thirdly, the cultural disruption and social injustice suffered under colonialism must not be forgotten. Indigenous languages, customs, and civilizations were frequently destroyed, suppressed, or disrupted.⁷⁷ The loss of cultural identity and legacy among colonial populations was exacerbated by the imposition of European attitudes and customs in the name of a 'civilization project'.⁷⁸ Despite a

⁷¹ F. TADEU, "Colonial Trade and Extractive Institutions in British and French Africa", *JEL Classification* 2015, No. 17, 1-27; V. GIACOMIN, "The transformation of the global palm oil cluster: dynamics of cluster competition between Africa and Southeast Asia (c.1900–1970)", *Journal of Global History* 2018, Vol. 13, No. 3, 374–398; N. OPPONG and K.O. ACHEAMPONG, "Africa: oil, colonialism and development" in R. DANNREUTHER and W. OSTROWSKI, *Handbook on Oil and International Relations*, s.l., Edward Elgar Publishing, 2022, 179–190.

⁷² G. OLIVIER, "From Colonialism to Partnership in Africa–Europe Relations?", *The International Spectator* 2011, Vol. 46, No. 1, 53–67; M. SOKO and J.-P. LEHMANN, "The state of development in Africa: concepts, challenges and opportunities", *J Int Relat Dev* 2011, Vol. 14, No. 1, 97–108.

⁷³ J. RICART-HUGUET, "The Origins of Colonial Investments in Former British and French Africa", *British Journal of Political Science* 2022, Vol. 52, No. 2, 736–757; A. GREINER, "Colonial Schemes and African Realities: Vernacular Infrastructure and the Limits of Road Building in German East Africa", *The Journal of African History* 2022, Vol. 63, No. 3, 328–347.

⁷⁴ G. AUSTIN, "African Economic Development and Colonial Legacies", *International Development Policy* 2010, No. 1, 11–32; S. OCHENI and B.C. NWANKWO, "Analysis of Colonialism and Its Impact in Africa", *Cross-Cultural Communication* 2012, Vol. 8, No. 3, 46–54.

⁷⁵ R.E. HOWARD-HASSMANN and A. P. LOMBARDO, *Reparations to Africa*, Philadelphia (PA), University of Pennsylvania Press, 2008, 88–105; M. VAN WAIJENBURG, "Financing the African Colonial State: The Revenue Imperative and Forced Labor", *The Journal of Economic History* 2018, Vol. 78, No. 1, 40–80.

⁷⁶ W. WERNER, "A Brief History of Land Dispossession in Namibia", *Journal of Southern African Studies* 1993, Vol. 19, No. 1, 135–146; R. ROBERTS and W. WORGER, "Law, Colonialism and Conflicts over Property in Sub-Saharan Africa", *African Economic History* 1997, No. 25, 1–7; P.D. OCHEJE, "'In the Public Interest': Forced Evictions, Land Rights and Human Development in Africa", *Journal of African Law* 2007, Vol. 51, No. 2, 173–214.

⁷⁷ B.O. IGBOIN, "Colonialism and African cultural values", *African Journal of History and Culture* 2011, Vol. 3, No. 6, 96–103; S. OCHENI and B.C. NWANKWO, "Analysis of Colonialism and Its Impact in Africa", *Cross-Cultural Communication* 2012, Vol. 8, No. 3, 46–54; J.L. AMSELLE and E. M'BOKOLO, *Au cœur de l'ethnie: ethnies, tribalisme et État en Afrique*, Paris, La découverte, 2017.

⁷⁸ D. TRICOIRE, "The Enlightenment and the Politics of Civilization: Self-Colonization, Catholicism, and Assimilationism in Eighteenth-Century France" in D. TRICOIRE, *Enlightened Colonialism: Civilization Narratives and Imperial Politics in the Age of Reason in Cambridge Imperial and Post-Colonial Studies*, Cham, Springer International Publishing, 2017, 25–46; A. CESAIRE, "Discourse on Colonialism" in D. BRYDON (ed.), *Postcolonialism: Critical*

certain degree of agency and efforts to maintain precolonial ways of life, the African identity became more rigid and exclusive under the influence of the colonial administration and the Church.⁷⁹ These regimes upheld a fundamentally unequal system based on race in favor of the colonizers, placing them in positions of superiority and subjecting indigenous inhabitants to rules and practices that were biased against them, leading to persistent societal inequities.⁸⁰

§2. Colonial Harm *Sensu Lato*: Present Harm

Present harm encompasses the ongoing effects of colonialism, or ‘colonial harm *sensu lato*’. Each of the forms of past colonial harm outlined above has repercussions today. Firstly, by erroneously drawing borders and combining different ethnic groups without taking into account pre-existing social structures, colonial policies created the conditions for political instability.⁸¹ Power struggles developed as newly established States struggled to resolve internal divides created by colonial authority.⁸² Because local dynamics were not taken into account while imposing political systems, which frequently mirrored European models, the result was weak governance institutions that were vulnerable to authoritarianism, civil unrest, and coups.⁸³ Many African countries continue to struggle with corruption, which has its roots in colonial traditions. An enduring culture of bribery, nepotism, and cronyism was fostered by the exploitative character of colonial administration.⁸⁴ A mindset of

Concepts, London, Routledge, 2023, 310-339; D. M. NATERMANN, *Pursuing Whiteness in the Colonies: Private Memories from the Congo Freestate and German East Africa (1884-1914)*, Münster, Waxmann, 2018, 11-18.

⁷⁹ B.O. IGBOIN, “Exploring the Senses and Exploiting the Land: Railroads, Bodies and Measurement in Nineteenth-Century French Colonies”, *African Journal of History and Culture* 2011, Vol. 3, No. 6, 96–103; Expert Report of the Parliamentary Committee of Enquiry in Charge of Research on the Congo Free State (1885-1908) and the Belgian Colonial Past in Congo (1908-1960), Rwanda And Burundi (1919-1962), the Impact and the Consequences this Should be Given (Bijzondere Commissie belast met het onderzoek over Congo-Vrijstaat (1885-1908) en het Belgisch koloniaal verleden in Congo (1908-1960), Rwanda en Burundi (1919-1962), de impact hiervan en de gevolgen diehieraan dienen gegeven te worden) (hereinafter: “Congo Committee”), Belgian Chamber of Representatives 2021-22, Doc. 55 1462/003, 511-514.

⁸⁰ G. BRAUSCH, *Belgian administration in the Congo*, London, Oxford University, 1961; C. LU, “Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress”, *Journal of Political Philosophy* 2011, Vol. 19, No. 3, 261–281.

⁸¹ B.M. RATCLIFFE, “The Economies of the Partition of Africa: Methods and Recent Research Trends”, *Canadian Journal of African Studies* 1981, Vol. 15, No. 1, 3–31; I.L. GRIFFITHS, *The African Inheritance*, London, Routledge, 1995; A.A. MAZRUI, “The Blood of Experience: The Failed State and Political Collapse in Africa”, *World Policy Journal* 1995, Vol. 12, No. 1, 28–34; “Colonial Repercussions: Namibia. 115 years after the genocide of the Ovaherero and Nama”, *European Center for Constitutional and Human Rights* 2019, https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS.pdf.

⁸² E.M. GBENENYE, “African colonial boundaries and nation-building”, *Inkanyiso* 2016, Vol. 8, No. 2, 117–124.

⁸³ R.E. HOWARD, “Civil Conflict in Sub-Saharan Africa: Internally Generated Causes”, *International Journal* 1996, Vol. 51, No. 1, 27–53; L. SCHNEIDER, “Colonial Legacies and Postcolonial Authoritarianism in Tanzania: Connects and Disconnects”, *African Studies Review* 2006, Vol. 49, No. 1, 93–118; G.K. KIEH and P.O. AGBESE, “Introduction: the tragedies of the authoritarian state in Africa” in G.K. KIEH AND P.O. AGBESE (eds.), *Reconstructing the authoritarian state in Africa*, London, Routledge, 2014, 1-17.

⁸⁴ M.M. MULINGE and G.N. LESETEDI, “Interrogating Our Past: Colonialism and Corruption in Sub-Saharan Africa”, *African Journal of Political Science* 1998, Vol. 3, No. 2, 15–28; DANIEL N. MLAMBO, M.A. MUBECUA, S.E. MPANZA and V.H. MLAMBO, “Corruption and Its Implications for Development and Good Governance: A Perspective from Post-Colonial Africa”, *Journal of Economics and Behavioral Studies* 2019, Vol. 11, No. 1(J), 39–47.

personal gain at the expense of the common good was fostered by the systematic plundering of economic resources.⁸⁵ The stability and advancement of African countries were further weakened by post-colonial authorities who, having inherited these corrupt practices, continued a cycle of poor administration and fraud.⁸⁶

Secondly, exploitation and a skewed economic structure are hallmarks of colonialism's economic legacy in Africa. Without considering the long-term effects on local economies, colonizers took vital resources.⁸⁷ Due to this exploitative paradigm, the economies of many countries became reliant on a limited number of commodities, making them susceptible to changes in the world market.⁸⁸ Food insecurity was exacerbated when cash-crop cultivation was imposed, upsetting traditional subsistence agricultural methods.⁸⁹ The development of human capital and productive capacities was further hampered by colonial rulers' lack of investment in infrastructure and education.⁹⁰ As a result, many African countries are still suffering from underdevelopment and are finding it difficult to diversify their economies and escape the bonds of past economic exploitation.⁹¹

Thirdly, racial hierarchies were ingrained throughout the colonial era and continue in numerous forms to this day.⁹² Discrimination was at the core of European colonialism and the ideology of white

⁸⁵ I. MEKOA, "How Africa Got into a Mess: Colonial Legacy, Underdevelopment, Corruption and Human Rights Violations in Africa", *J. Rev. Global Econ.* 2019, No. 8, 43–52.

⁸⁶ M.M. MULINGE and G.N. LESETEDI, "Interrogating Our Past: Colonialism and Corruption in Sub-Saharan Africa", *African Journal of Political Science* 1998, Vol. 3, No. 2, 15–28. Nonetheless, it has been argued that this should not always be attributed to colonialism, as present-day African leaders also have a responsibility to exercise in this regard. See J. MAPUVA and F. HARI, "Colonialism no longer an excuse for Africa's Failure", *Journal of Sustainable Development in Africa* 2010, Vol. 12, No. 5, 22–36.

⁸⁷ R.E. HOWARD-HASSMANN, "Reparations to Africa and the Group of Eminent Persons", *Cahiers d'études africaines* 2004, Vol. 44, No. 173–174, 82; S. OCHENI and B.C. NWANKWO, "Analysis of Colonialism and Its Impact in Africa", *Cross-Cultural Communication* 2012, Vol. 8, No. 3, 46–54; K. KALU and T. FALOLA, "Introduction: Exploitation, Colonialism, and Postcolonial Misrule in Africa" in K. KALU and T. FALOLA (eds.), *Exploitation and Misrule in Colonial and Postcolonial Africa*, Cham, Springer International Publishing, 2019, 1–23.

⁸⁸ I.W. ZARTMAN, "Europe and Africa: Decolonization or Dependency?", *Foreign Affairs* 1976, Vol. 54, No. 2, 325–343; F.M. DENG, "Africa and the New World Dis-Order: Rethinking Colonial Borders", *The Brookings Review* 1993, Vol. 11, No. 2, 32–35; V. BJORN LUND, H. BJORN LUND and A.F. VAN ROOYEN, "Why agricultural production in sub-Saharan Africa remains low compared to the rest of the world – a historical perspective", *International Journal of Water Resources Development* 2020, Vol. 36, No. 1, S20–S53.

⁸⁹ H. STEIN, "Economic development and the anatomy of crisis in Africa: from colonialism through structural adjustment", *Centre of African Studies* 2001, <https://www.rrojasdatabank.info/devstate/Stein.pdf>, 11.

⁹⁰ E. HUILLERY, "History Matters: The Long-Term Impact of Colonial Public Investments in French West Africa", *American Economic Journal: Applied Economics* 2009, Vol. 1, No. 2, 176–215; D. ACEMOGLU and J.A. ROBINSON, "Why is Africa poor?", *Economic History of Developing Regions* 2010, Vol. 25, No. 1, 21–50.

⁹¹ R. VON ALBERTINI, "Colonialism and Underdevelopment: Critical Remarks on the Theory of Dependency", *Itinerario* 1980, Vol. 4, No. 1, 42–52; N. MIZUNO and R. OKAZAWA, "Colonial experience and postcolonial underdevelopment in Africa", *Public Choice* 2009, Vol. 141, No. 3, 405–419.

⁹² H. SINGH, "Confronting colonialism and racism: Fanon and Gandhi", *Human Architecture: Journal of the Sociology of Self-Knowledge*, Vol. 5, No. 3, 341–352; J. PIERRE, "Race in Africa Today: A Commentary", *Cultural anthropology* 2013, Vol. 28, No. 3, 547–551; O. NNAEMEKA, "Racialization and the Colonial Architecture: Othering and the Order of Things", *PMLA* 2008, Vol. 123, No. 5, 1748–1751.

supremacy was used to justify the enslavement and dehumanization of native populations.⁹³ While colonialism has been abolished formally, its ongoing racially discriminatory effects have not been addressed sufficiently.⁹⁴ Due to the global scale of colonialism, bias towards people of African descent is prevalent in all countries in many areas of life.⁹⁵ This phenomenon is referred to as ‘structural discrimination’, a term that indicates the systematic and institutionalized practices, policies and norms within a society that perpetuate racial inequality and disproportionately disadvantage certain racial or ethnic groups.⁹⁶ Next to this, colonial beliefs are still present in international politics and define today’s world order. Post-World War II international organizations, including the United Nations and the International Monetary Fund (IMF), were heavily influenced by the geopolitical landscape of the period and reflect the influence of former colonial powers in their design. Eurocentrism is reflected in these institutions, shaping their power structures and decision-making procedures.⁹⁷

SECTION IV. CONCLUSION

Attempting to define colonial harm necessitates digging into a painful chapter of European history filled with past wrongs of a political, economic and social nature which continue to affect African nations today. Despite being a major step forward, the decolonization wave in the 20th century did not completely heal these wounds. The division of colonial harm into harm *sensu stricto* and *sensu lato* highlights the multitude of injustices, from historical crimes like the Herero genocide to contemporary issues like political unrest and economic dependence. The next chapter sets out how this vast array of wrongdoings may be addressed by reparations.

⁹³ P. WOLFE, “Settler colonialism and the elimination of the native”, *Journal of Genocide Research* 2006, Vol. 8, No. 4, 387–409; A. SMITH, “Indigeneity, settler colonialism, white supremacy” in D.M. HOSANG, O. LABENNETT and L. PULIDO (eds.), *Racial Formation in the Twenty-First Century*, s.l., University of California Press, 2012, 66-94.

⁹⁴ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para. 18.

⁹⁵ N.T. SAITO, *Settler Colonialism, Race, and the Law: Why Structural Racism Persists*, New York, New York University Press, 2020, 1-9; K. ANDREWS, *The New Age of Empire: How Racism and Colonialism Still Rule the World*, s.l., Penguin UK, 2021, 1-24; D. DE GROOT, “Briefing on EU legislation and policies to address racial discrimination”, *European Parliamentary Research Service* 2023, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/745691/EPRS_BRI\(2023\)745691_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/745691/EPRS_BRI(2023)745691_EN.pdf), 8-11.

⁹⁶ E. BONILLA-SILVA, “Rethinking Racism: Toward a Structural Interpretation”, *American Sociological Review* 1997, Vol. 62, No. 3, 465–480; N. TZOUVALA, “Settler Colonialism, Race, and the Law: Why Structural Racism Persists Review Essay”, *Melb. J. Int’l L.* 2021, Vol. 21, No. 2, 469–489.

⁹⁷ K. DYKMANN and K. NAUMANN, “Changes from the margins: non-European actors, ideas and strategies in international organizations. Introduction”, *Comparativ. Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung* 2013, Vol. 23, No. 4, 9-20; K. ANDREWS, *The New Age of Empire: How Racism and Colonialism Still Rule the World*, s.l., Penguin UK, 2021, xiii; F. ZARBIYEV, “Decolonisation: A Past That Keeps Questioning Us”, *Global Challenges* 2021, Vol. 10, No. 6.

CHAPTER II. TYPOLOGY OF REPARATIONS FOR COLONIAL HARM

SECTION I. INTRODUCTION

As reparations are a central concept to this thesis, this chapter extensively analyzes the second sub-question, namely ‘What reparations may be utilized to address colonial harm?’ To answer this question, this thesis draws inspiration from the pre-existing legal framework on reparations for victims of gross human rights violations, which was developed in the past century (Section II). It is argued that these norms may be applied by analogy to the context of colonialism, as it is considered a human rights violation contemporaneously. Before establishing a typology of reparations applicable to colonial harm, a methodological sidenote is made in Section III, proposing a structural approach to reparations. Section IV provides a concrete typology of reparations for colonial harm, which is divided into five measures, namely restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition. Section V concludes this chapter.

SECTION II. GENERAL FRAMEWORK

Due to the rise of fundamental rights in the 20th century, the traditional approach to reparations of State responsibility was no longer regarded as providing adequate redress for victims of gross human rights violations.⁹⁸ It is within this context that the concept of transitional justice was developed.⁹⁹ This discipline describes how society deals with the consequences of grave human rights violations while prioritizing the satisfaction of the victims.¹⁰⁰ It is a field of law that concerns reparations, but also institutional reform, gender justice, peace processes, sustainable development, prevention, and much more.¹⁰¹ For these reasons, it is crucial to apply this doctrine when decolonizing international law to create a peaceful, just, and inclusive society.¹⁰² The concept of transitional justice has gained

⁹⁸ A. RANDELZHOFFER and C. TOMUSCHAT, *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights*, s.l., Martinus Nijhoff Publishers, 1999, viii; M. NOWAK, “The right to reparation of victims of gross human rights violations”, *Human Rights in Development* 2003, Vol. 7, 280-281.

⁹⁹ R. NAGY, *Transitional Justice*, New York, NYU Press, 2005, 1-31; K. ANDRIEU, “Transitional justice: A new discipline in Human Rights”, *Online Encyclopedia of Mass Violence* 2010, Vol. 18, 1-37.

¹⁰⁰ J. DOAK, “The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions”, *International Criminal Law Review* 2011, Vol. 11, No. 2, 263–298; “About transitional justice and human rights”, *OHCHR*, s.d., <https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights>.

¹⁰¹ Report of the UN Secretary-General (23 August 2004), *UN Doc. S/2004/616*, 3; D. AGUIRRE and I. PIETROPAOLI, “Gender Equality, Development and Transitional Justice: The Case of Nepal”, *International Journal of Transitional Justice* 2008, Vol. 2, No. 3, 356–377.

¹⁰² “What Is Transitional Justice?”, *International Center for Transitional Justice*, s.d., <https://www.ictj.org/what-transitional-justice>.

traction within international law in recent years. It has even been recognized by the UN as a principle fundamental to democracy, rule of law, and human rights.¹⁰³

Subsequently, the UN General Assembly aimed to consolidate the best practices of past decades concerning reparations in 2005 *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*.¹⁰⁴ Herein, it is stated that reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law may take the five following forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁰⁵ These measures largely correspond to the traditional legal regime surrounding State responsibility, although they are then applied to the context of gross human rights violations, providing useful guidelines on how these measures may be implemented.

While it may not be adjudicated as such due to the intertemporal bar, colonialism is contemporaneously considered a gross human rights violation, namely the infringement of people's right to sovereignty.¹⁰⁶ Additionally, many of the atrocities committed under colonial rule that were considered justified at the time, are no longer thought to be justified.¹⁰⁷ Even if the intertemporal

¹⁰³ "What Is Transitional Justice?", UN 2008, https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf.

¹⁰⁴ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006); M.C. BASSIOUNI, "International Recognition of Victims' Rights", *Human Rights Law Review* 2006, Vol. 6, No. 2, 203–279.

¹⁰⁵ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 18. See also Article 12(3) of the Draft Articles on Prevention and Punishment of Crimes Against Humanity, in the Report of the International Law Commission on the Work of Its Seventy-first Session, *UN Doc. A/74/10* (2019): "victims (...) have the right to obtain reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition".

¹⁰⁶ Resolution 1514 (XV) of the UN General Assembly (14 December 1960), *UN Doc. A/RES/1514* (1960); Resolution 1514 (XV) of the UN General Assembly (14 December 1960), *UN Doc. A/RES/1514* (1960); Art. 1 of the International Covenant on Civil and Political Rights of 16 December 1966, *United Nations Treaty Series*, Vol. 999, 171; Art. 1 of the International Covenant on Economic, Social and Cultural Rights of 3 January 1976, *United Nations Treaty Series*, Vol. 993, 3; R. HIGGINS "Some Observations on the Inter-temporal Rule in International Law" in J. MAKARCZYK (ed), *Theory of International Law at the Threshold of the 21st Century: Essays in Honour of Krzysztof Skubiszewski*, The Hague, Kluwer Law International, 1996, (867) 867; M. R. MARRUS, "Official Apologies and the Quest for Historical Justice", *Journal of Human Rights* 2007, (75) 82; M. DU PLESSIS *e.a.*, "Occupation, colonialism, apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law", 2009, https://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/IainScobbie.pdf, 2; J. CRAWFORD, *State Responsibility: The general part*, New York, Oxford University Press, 2013, 241; M. KOTZUR, "The temporal dimension: Non-retroactivity and its discontents" in A. TZANAKOPOULOS, *Research Handbook on the Law of Treaties*, Cheltenham, Edward Elgar Publishing, 2014, (153) 160 and C. STAHN, "Reckoning with colonial injustice: International law as culprit and as remedy?", *Leiden Journal of International Law* 2020, Vol. 33, No. 4, (823) 832.

¹⁰⁷ R.E. HOWARD-HASSMANN, "Reparations to Africa and the Group of Eminent Persons", *Cahiers d'études africaines* 2004, Vol. 44, No. 173–174, 82; R.E. HOWARD-HASSMANN and A. P. LOMBARDO, *Reparations to Africa*, Philadelphia (PA), University of Pennsylvania Press, 2008, 100–102; C. LU, "Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress", *Journal of Political Philosophy* 2011, Vol. 19, No. 3, 261–281; H. FISCHER, "130 years ago: carving up Africa in Berlin", 2015, <https://www.dw.com/en/130-years-ago-carving-up-africa->

principle prohibits legal persecution, the fundamental ideas and gravity of these brutalities are very similar to those which constitute the foundations of the framework for gross human rights violations. By applying these norms *per analogiam*, the significant and long-lasting effects of colonialism are recognized. This strategy not only emphasizes the continued applicability of human rights frameworks but is also a critical first step in promoting responsibility, peacemaking, and substantive reparations for the profound injuries caused by colonization. How and which of the measures of the framework on gross human rights violations are relevant and useful to the context of colonial harm is the subject matter of Section IV.

This thesis utilizes a broad conception of victimhood, referring to any subject (State, person, or community) that has been affected by colonial harm.¹⁰⁸ It draws inspiration from the framework on State responsibility for wrongful acts, as well the rules concerning reparations for gross human rights violations to establish a typology of reparations for colonial harm (*infra*). The regime of State responsibility focuses on recompensing the injured State, whereas the framework on gross human rights violations centers around providing remedies for individuals affected by the violations (*infra*). These two approaches are combined, as a wide range of injustices - which have affected States as a whole, their people, and their descendants - are taken into account.¹⁰⁹

First, the victims of colonial harm *sensu stricto* are those who suffered historically, *i.e.* those who were directly subjected to colonial atrocities (States or individuals). The descendants and communities who must deal with the effects of the injuries are considered indirect victims.¹¹⁰ Second,

in-berlin/a-18278894; F. ZARBIYEV, “Decolonisation: A Past That Keeps Questioning Us”, *Global Challenges* 2021, Vol. 10, No. 6; J. BHABHA, “Introduction” in J. BHABHA, M. MATAACHE and C. ELKINS (eds.), *Time for reparations: a global perspective in Pennsylvania studies in human rights*, Philadelphia, Pennsylvania, University of Pennsylvania Press, 2021, 1-15; N. SCHIMMEL, “A Postcolonial Reflection on the Rwandan Genocide Against the Tutsi and Statement of Solidarity with Its Survivors”, *Journal of Victimology and Victim Justice* 2021, Vol. 4, No. 2, 179-196.

¹⁰⁸ International law recognizes the concept of the ‘collective victim’, such as indigenous communities that suffered human rights violations collectively. It is widely supported that collective processes should be used to enforce the rights of those who have jointly suffered from widespread abuses of their rights. See Art. 15 of the Convention concerning Indigenous and Tribal Peoples in Independent Countries (adopted by the General Conference of the International Labour Organisation at its seventy-sixth session) of 27 June 1989, *United Nations Treaty Series*, Vol. 1650, 383; C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 41.

¹⁰⁹ According to international human rights law, a violation can produce direct as well as indirect victims (such as a family member or close companion) if they have suffered physical, mental, material, or moral harm even though they have not strictly been ‘targeted’. For this reason, the concepts of ‘victim’ and ‘person entitled to reparations’ are not necessarily synonymous. See Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 8; Art. 12(1)b of the Draft Articles on Prevention and Punishment of Crimes Against Humanity, in the Report of the International Law Commission on the Work of Its Seventy-first Session, *UN Doc. A/74/10* (2019); C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 42.

¹¹⁰ C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 41-42.

the victims of colonial harm *sensu lato* are those contemporaneously dealing with the negative effects of colonialism. As outlined above, this pertains to the modern-day consequences of colonialism such as structural racial discrimination and loss of cultural identity. In this sense, there can only be direct sufferers of colonial harm *sensu lato*, since all colonized communities may be considered to have this status. Moreover, the distinction between colonial harm in the strict and broad sense can lead to certain victims “wearing a double hat”. A descendant of a sufferer of colonial harm may be an indirect victim of colonial harm *sensu stricto* and direct victim of colonial harm *sensu lato*, which could lead to the need or occurrence of double reparations. Lastly, the concept of the ‘collective victim’ is extremely useful in the context of colonial harm. As entire communities were affected by colonialism, it may be more useful to take a group approach.¹¹¹ This falls under what is known as a ‘structural approach’, which will be outlined in the following section.

SECTION III. STRUCTURAL APPROACH

This thesis aims to address the critique from the perspective of transitional justice that the reparations discourse focusses excessively on past instances of quantifiable harm (corresponding to colonial harm *sensu stricto*), while the harm that was done by colonialism is far more widespread and current than this.¹¹² A structural approach to reparations is better suited to this context because it addresses not only individual acts of injury, but also the broader societal implications of colonialism (colonial harm *sensu lato*).¹¹³ This method does not imply that measures pertaining to the reparation of colonial harm *sensu stricto* ought to be omitted entirely: an effective approach to reparations for colonial harm should combine both perspectives. This entails acknowledging the underlying causes of past injustices like colonialism and racial discrimination, as well as their persistent structural impacts.¹¹⁴

¹¹¹ C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 41-42; M. MCEACHRANE, “Reparations within the UN”, OHCHR 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/SR/Call/Michael_McEachrane.pdf.

¹¹² Adjudicating each individual instance of harm suffered in the past would prove near impossible and also be insufficient, due to the far-reaching implications that colonialism has had, such as poverty, war and racism. See D. SHELTON, “The World of Atonement: Reparations for Historical Injustices”, *Netherlands International Law Review* 2003, Vol. 50, No. 3, 289–325; M. MCEACHRANE, “Reparations within the UN”, OHCHR 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/SR/Call/Michael_McEachrane.pdf; V. NESIAH, “German colonialism, reparations and international law”, *Völkerrechtsblog* 2022, <https://voelkerrechtsblog.org/german-colonialism-reparations-and-international-law/>; H. FISCHER, “130 years ago: carving up Africa in Berlin”, 2015, <https://www.dw.com/en/130-years-ago-carving-up-africa-in-berlin/a-18278894>; R. MARCONI, “States before their colonial past: Practice in addressing responsibility”, *QIL Zoom Out* 2024, No. 103, 25-46.

¹¹³ “Beyond Reparations: Toward Structural Transformation” in C. LU, *Justice and Reconciliation in World Politics*, Cambridge, Cambridge University Press, 2017, 248–281; T. WALIGORE, “Redress for Colonial Injustice: Structural Injustice and the Relevance of History”, *Global Justice: Theory Practice Rhetoric* 2018, Vol. 11, No. 2, 15–28; M. MCKEOWN, “Backward-looking reparations and structural injustice”, *Contemp Polit Theory* 2021, Vol. 20, No. 4, 771–794.

¹¹⁴ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para. 8.

The former view has furthermore been endorsed by the UN Special Rapporteur on contemporary forms of racism in 2019, E. TENDAYI ACHIUME, who highlighted a holistic approach to reparations, emphasizing the need to address both past wrongs and the ongoing systemic inequalities stemming from colonialism.¹¹⁵ Addressing this wide range of harm also necessitates a broader approach to the types of recompense that may be used. One should look beyond the possibility of “paying” reparations, challenging the current debate which tends to center on monetary compensation.¹¹⁶ How this may take shape concretely will be the subject of the next section.

SECTION IV. FIVE TYPES OF REPARATIONS

Although public international law has long acknowledged many types of reparations, the language used in human rights law regarding reparations is rather fragmented. Nonetheless, the victims’ rights recognized by international law are all similar in essence, albeit not necessarily in wording.¹¹⁷ It is now evident that victims of abuses of human rights are entitled to restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition, which must be used complementarily in order to fully atone for the material and moral harm endured due to colonialism.¹¹⁸

§1. *Restitution*

A. Definition

Restitution entails that a State must re-establish the situation which existed before the wrongful act was committed.¹¹⁹ This goes beyond the narrow interpretation of the concept that refers to the material act of returning objects to their legally or morally rightful owners, which will be elaborated upon

¹¹⁵ States ought to “adopt a structural and comprehensive approach to reparations: Member States should adopt an approach to reparations that accounts for not only historical individual and group wrongs, but also the persisting structures of racial inequality, discrimination and subordination that have slavery and colonialism as their root causes”. See Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para. 57.

¹¹⁶ E. ROMAN, “Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits”, *Berkeley La Raza L.J.* 2002, Vol. 13, No. 2, 369–386; E. KLEIN and E. FOUKSMAN, “Reparations as a Rightful Share: From Universalism to Redress in Distributive Justice”, *Development and Change* 2022, Vol. 53, No. 1, 31–57; G. QIAO and X. ZHANG, “The Long-term Effects of Colonialism on Poorer Nations and What is Owed to Them: Monetary Restitution, Archaeological Artifacts, and climate change”, *J Stud Res* 2023, Vol. 12, No. 4, 1-9.

¹¹⁷ C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, *International Commission of Jurists* 2006, 149.

¹¹⁸ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006). See also Article 12(3) of the Draft Articles on Prevention and Punishment of Crimes Against Humanity, in the Report of the International Law Commission on the Work of Its Seventy-first Session, *UN Doc. A/74/10* (2019): “victims (...) have the right to obtain reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition”.

¹¹⁹ Art. 35 ASR. However, ‘restitution’ does not have a universal definition; it may also refer to recreating of the circumstances that would have existed if the wrongdoing had not occurred. See the ILC Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (submitted to the UN General Assembly as a part of the Commission’s report covering the work of its 53rd session), *UN Docs. A/56/10*, 96.

further below.¹²⁰ Restitution in general, however, is the preferential form of reparation provided it is not materially impossible and does not involve a burden out of all proportion to the sought benefit.¹²¹ Within the context of human rights, it should restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.¹²² The goal is not only to acknowledge past wrongs but to actively restore the rights, dignity, and well-being of the affected individuals and communities.¹²³ Considering the amount of time that has passed since the independence of the former colonies, not all of the forms of restitution proposed by the 2005 *Basic Principles* (such as the restoration of liberty) are practically applicable for victims of colonial harm.¹²⁴ Nevertheless, there are measures that may offer adequate satisfaction regarding instances of harm inflicted during colonial rule. In the next paragraphs, the regimes surrounding the restitution of historical objects, personal identity and family ties, and economic opportunities will be elaborated upon.

B. Restitution of Historical Objects

The matter of the restitution of colonial artifacts has been central to the debate surrounding the reparation of colonial harm. Many objects of great cultural significance have found their way into museums and private collections throughout the ages, which is increasingly considered improper in a postcolonial world order.¹²⁵ As described above, the restitution of property is a subcategory of restitution that consists of the material act of returning objects to their legally or morally rightful owners.¹²⁶ It is a measure that applies to the context of the atonement for colonial harm *sensu stricto*,

¹²⁰ T. O'DONNELL, "The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?" *European Journal of International Law* 2011, Vol. 22, No. 2; 49–80; T. BESTERMAN, "Crossing the Line: Restitution and Cultural Equity" in L. TYTHACOTT and K. ARVANITIS (eds.), *Museums and Restitution: New Practices, New Approaches*, s.l., Routledge, 2014, 19–36; B. GAUDENZI and A. SWENSON, "Looted Art and Restitution in the Twentieth Century: Towards a Global Perspective" *Journal of Contemporary History* 2017, Vol. 52, No. 3, 491–518; F. BOEHME, "Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany", *Global Studies Quarterly* 2022, Vol. 2, No. 4, 1-2.

¹²¹ J. BARKER, "The Different Forms of Reparation: Compensation" in J. CRAWFORD, A. PELLET and S. OLLESON (eds.), *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (599) 600-601; C. GRAY, "The Different Forms of Reparation: Restitution" in J. CRAWFORD, A. PELLET and S. OLLESON, *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (589) 590.

¹²² Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 19; C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", International Commission of Jurists 2006, 149.

¹²³ M. MCEACHRANE, "Reparations within the UN", *OHCHR* 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/SR/Call/Michael_McEachrane.pdf; "What is Transitional Justice?", *International Center for Transitional Justice*, s.d., <https://www.ictj.org/what-transitional-justice>.

¹²⁴ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 19.

¹²⁵ J. VAN BEURDEN, *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam, University Press, 2022, 11-12.

¹²⁶ T. O'DONNELL, "The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?" *European Journal of International Law* 2011, Vol. 22, No. 2; 49–80; T. BESTERMAN, "Crossing the

since it entails giving back African heritage to the sovereignty of their rightful owners, be that the State, individual surviving citizens, or their successors.¹²⁷

It is a very practical way in which States can directly recognize the illegitimacy of the property of which they had claimed ownership and attempt to make things right, which is ultimately one of the main goals of transitional justice.¹²⁸ Particularly the cases of stolen art and human remains are central to the academic discourse surrounding restitution, since the presence of cultural relics in European museums and private collections appears to be perceived as increasingly problematic by the public.¹²⁹ Cultural property restitution is complicated and context-specific, frequently including artifacts that have acquired additional significance as a result of being displaced.¹³⁰

The traditional state-focused approach within international law is increasingly being challenged due to the growing awareness that museums serve as vital intermediaries, by exposing the ways in which former colonists associate their identity with stolen art.¹³¹ Some academics argue that museums are political institutions by nature, reflecting unequal power dynamics in international relations.¹³² There are norms dealing with the issue of plundering and restitution today, such as the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the *1995 UNIDROIT Convention on Stolen or Illegally Exported*

Line: Restitution and Cultural Equity” in L. TYTHACOTT and K. ARVANITIS (eds.), *Museums and Restitution: New Practices, New Approaches*, s.l., Routledge, 2014, 19–36; B. GAUDENZI and A. SWENSON, “Looted Art and Restitution in the Twentieth Century: Towards a Global Perspective” *Journal of Contemporary History* 2017, Vol. 52, No. 3, 491–518; F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, Vol. 2, No. 4, 1-2.

¹²⁷ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 19.

¹²⁸ F. SARR and B. SAVOY, “The Restitution of African Cultural Heritage: Toward a New Relational Ethics”, 2018, http://restitutionreport2018.com/sarr_savoy_en.pdf, 29; F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, (1) 2.

¹²⁹ *Ibid.*, para. 19; J. VAN BEURDEN, *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam, University Press, 2022, 11-12; R. AZIMI, “‘The end of colonial denial’: Restitution is underway in European museums”, *Le Monde* 2023 (news site), https://www.lemonde.fr/en/culture/article/2023/05/04/the-end-of-colonial-denial-restitution-is-underway-in-european-museums_6025365_30.html.

¹³⁰ ¹³⁰ F. SARR and B. SAVOY, “The Restitution of African Cultural Heritage: Toward a New Relational Ethics”, 2018, http://restitutionreport2018.com/sarr_savoy_en.pdf, 31 F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, Vol. 2, No. 4, 1-2.

¹³¹ C. SYLVESTER, *Art/Museums: International Relations Where We Least Expect It*, Boulder (CO), Routledge, 2009, 2-3; L. AMINEDDOLEH, “The Role of Museums in the Trade of Black Market Cultural Heritage Property”, *Art Antiquity & L.* 2013, Vol. 18, No. 3, 227–254.

¹³² P. MANDLER, “What Is ‘National Identity’? Definitions and Applications in Modern British Historiography”, *Modern Intellectual History* 2006, Vol. 3, No. 2, 271–297; L. TYTHACOTT and K. ARVANITIS, *Museums and Restitution: New Practices, New Approaches*, s.l., Routledge, 2014, 3; J. TIDY and J. TURNER, “The Intimate International Relations of Museums: A Method”, *Millennium: Journal of International Studies* 2020, Vol. 48, No. 2, (117) 120.

Cultural Objects.¹³³ However, similar to other norms that may be applied for the reparation of colonial harm, they cannot be applied retroactively resulting in claims based on goodwill and postcolonial justice, rather than multilateral international law.¹³⁴

C. Restitution of Personal Identity and Family Ties

Seeing as colonialism often deeply disrupted and had lasting effects on the colonized people's private and family lives, measures that aim to restore the enjoyment of human rights such as identity, family life, and citizenship may also be in order.¹³⁵ Firstly, States can aim to repair the individual violations of these rights (colonial harm *sensu stricto*, for instance by restoring citizenship rights that were wrongfully taken away or bringing families that were separated due to forced displacements back together.¹³⁶ Secondly, one may think of measures aimed at repairing colonial harm *sensu lato* geared towards the later African generations or African diaspora such as community building measures or cultural preservation programs.¹³⁷ However, these are more a matter of rehabilitation and will be discussed under paragraph four.

D. Restitution of Economic Opportunities

To restore the deep economic disruption that colonial ventures caused on the African continent, States must also consider reparatory measures of a more commercial or financial nature.¹³⁸ Concerning colonial harm *sensu stricto*, one could think of the restitution of natural resources and mining sites to their rightful owners as a more direct form of repairing colonial harm *sensu stricto*.¹³⁹ However, this first category will not be examined further in this thesis, as the land redistribution that occurred across

¹³³ UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property of 14 November 1970, *United Nations Treaty Series*, Vol. 823, 231; UNIDROIT Convention on stolen or illegally exported cultural objects of 24 June 1995, *United Nations Treaty Series*, Vol. 2421, 457.

¹³⁴ J. VAN BEURDEN, *Treasures in trusted hands: negotiating the future of colonial cultural objects*, Leiden, Sidestone Press, 2017, 99; F. BOEHME, "Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany", *Global Studies Quarterly* 2022, (1) 3.

¹³⁵ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 19; V. BROCH-DUE, *Violence and Belonging: the quest for identity in post-colonial Africa*, s.l., Routledge, 2004, 1-49.

¹³⁶ S. ADEJUMOBI, "Citizenship, Rights, and the Problem of Conflicts and Civil Wars in Africa", *Human Rights Quarterly* 2001, Vol. 23, No. 1, 148-170; P.D. OCHEJE, "'In the Public Interest': Forced Evictions, Land Rights and Human Development in Africa", *Journal of African Law* 2007, Vol. 51, No. 2, 173-214; N. WITTMANN, "Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security", *Global Justice* 2017, Vol. 9, No. 2, 211.

¹³⁷ K. KONADU-AGYEMANG, B.K. TAKYI and J.A. ARTHUR, *The New African Diaspora in North America: Trends, Community Building, and Adaptation*, s.l., Lexington Books, 2006.

¹³⁸ S. VAN BEURDEN, "Restitution or cooperation? Competing visions of post-colonial cultural development in Africa", *Global Cooperation Research Papers* 2015, Vol. 12, 1-25.

¹³⁹ N. WITTMANN, "Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security", *Global Justice* 2017, Vol. 9, No. 2, 211; A. MUNYAI, "African renaissance: effects of colonialism on Africa's natural resources and the right to development", *Journal for Juridical Science* 2020, Vol. 45, No. 1, 1-27.

the African continent during its decolonization was an extremely varied and large-scale project, constituting an entire field of study in itself.¹⁴⁰

Measures aimed towards colonial harm *sensu lato* include developing economic opportunities, job training programs and efforts strengthening impacted groups in the workforce.¹⁴¹ These methods of economic strengthening fall under the concept of development aid, which is defined as aid expended in a manner that is anticipated to promote development, whether achieved through economic growth or other means.¹⁴² Development aid (also referred to as development cooperation, foreign aid, economic assistance, etc.) may be bilateral or multilateral, and governmental or private (though this study is limited to governmental aid).¹⁴³ As a concept, this form of assistance sits between restitution, compensation, and rehabilitation, due to the wide variety of forms it can take, ranging from financial assistance to sending food, building schools, setting up job programs, providing medical aid, *etc.*¹⁴⁴ For this reason, development aid is also an umbrella term for various forms of rehabilitative services that may be provided (*infra*).

While set up with (arguably) good intentions, development aid is viewed by some as a highly questionable practice.¹⁴⁵ Even described as a “continuation of colonialism by other means”, it has been criticized as contaminated by white saviorism and ineffective at combatting poverty.¹⁴⁶

¹⁴⁰ D. FAY and D. JAMES, “The anthropology of land restitution: an introduction” in D. FAY and D. JAMES (eds.), *The Rights and Wrongs of Land Restitution: ‘Restoring What Was Ours*, London, UK, Routledge, 2008, 1–24; J. PAINE, “Redistributive Political Transitions: Minority Rule and Liberation Wars in Colonial Africa”, *The Journal of Politics* 2019, Vol. 81, No. 2, 505–523.

¹⁴¹ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 19.

¹⁴² C. MINOIU and S.G. REDDY, “Development Aid and Economic Growth: A Positive Long-Run Relation” (IMF Working Paper), 2009, <https://www.imf.org/external/pubs/ft/wp/2009/wp09118.pdf>; “Official development assistance (ODA)”, *OECD*, *s.d.*, <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.html>.

¹⁴³ Paris Declaration and Accra Agenda for Action, *OECD*, *s.d.*, <https://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>.

¹⁴⁴ S. ALYSON, “Development Aid: A continuation of colonialism by other means”, *The Africa Report* 2022, <https://www.theafricareport.com/209146/development-aid-a-continuation-of-colonialism-by-other-means/>.

¹⁴⁵ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para. 54; V. DIMIER and S. STOCKWELL, “Development, Inc.? The EEC, Britain, Post-Colonial Overseas Development Aid, and Business”, *Business History Review* 2023, No. 97, Vol. 3, 513–546; B.K. ASHDOWN, A. DIXE and C.A. TALMAGE, “The Potentially Damaging Effects of Developmental Aid and Voluntourism on Cultural Capital and Well-Being”, *Int. Journal of Com. WB* 2021, Vol. 4, No. 1, 113–131.

¹⁴⁶ S. VAN BEURDEN, “Restitution or Cooperation? Competing Visions of Post-Colonial Cultural Development in Africa”, *Global Cooperation Research Papers* 2015, No. 12, (1) 4; A. MORENO CELY, “Imagine alternative future(s) of the Belgian development cooperation”, 2022, https://cris.vub.be/ws/portalfiles/portal/93966286/Decolonizing_Belgian_Development_Coop_Final_Report_V_EN.pdf; S. ALYSON, “Development Aid: A continuation of colonialism by other means”, *The Africa Report* 2022, <https://www.theafricareport.com/209146/development-aid-a-continuation-of-colonialism-by-other-means/>; I. PLESEA, “Belgian development aid 'contaminated with white saviour complex', new study finds”, *The Brussels Times* 2023, <https://www.brusselstimes.com/422786/belgian-development-aid-contaminated-with-white-saviour-complex-new-study-finds>;

Although bordering on financial compensation, cash transfers are evaluated more positively, as they provide more agency to the African administrations.¹⁴⁷ The main distinction between the two categories at hand is that compensation pertains to assessable damage (*infra*), whereas financial aid can be used for a range of measures that facilitate economic development.

§2. Compensation

A. Definition

Compensation covers any financially assessable damage including loss of profits insofar as it is established, to the extent that the injury cannot be made good by restitution.¹⁴⁸ Within the context of repairing colonial harm, it should be categorized as all monetary forms of recompense, save for the more complex matter of development aid (*supra*).¹⁴⁹ Compensation should be provided for the assessable damage as appropriate and proportional to the gravity of the violation and the circumstances of each case.¹⁵⁰ Practical obstacles such as the widespread scale of the injuries and the amount of time that has passed make the financial compensation of colonial harm a highly contentious subject, since, for one, quantifying the amount that ought to be paid is not straightforward.¹⁵¹ Nonetheless, numerous practically applicable examples of reparatory measures exist, provided the will of the colonizing State and the injured parties to execute them. The next paragraphs will further delve into the compensation of individual harm and symbolic compensation.

B. Compensation of Colonial Harm *Sensu Stricto*

Due to the requirement that injuries need to be financially assessable in order to be made good by compensation, the following proposed measures are all related to colonial harm *sensu stricto*. As for which damage should be recompensed, the 2005 *Basic Principles* suggest the indemnification of

¹⁴⁷ J. SHAPIRO, “The impact of recipient choice on aid effectiveness”, *World Development* 2019, Vol. 116, 137–149; S. ALYSON, “Development Aid: A continuation of colonialism by other means”, *The Africa Report* 2022, <https://www.theafricareport.com/209146/development-aid-a-continuation-of-colonialism-by-other-means/>.

¹⁴⁸ Article 36 ASR; ICJ 25 September 1997, Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), *I.C.J. Rep.* 1997, para. 152; C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 149; J. BARKER, “The Different Forms of Reparation: Compensation” in J. CRAWFORD, A. PELLET and S. OLLESON (eds.), *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (599) 604; J. CRAWFORD, *Brownlie’s Principles of Public International Law*, Oxford, Oxford University Press, 2012, 571.

¹⁴⁹ N. WITTMANN, “Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security”, *Global Justice* 2017, Vol. 9, No. 2, 211.

¹⁵⁰ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 20.

¹⁵¹ R. ALDRICH, “Apologies, Restitutions, and Compensation: Making Reparations for Colonialism” in M. THOMAS and A.S. THOMPSON, (ed.), *The Oxford Handbook of the Ends of Empire*, Oxford, Oxford University Press, 2018, (714) 728-729; H. FRAIHI, “Our Colonial Past Should Make Us More Aware of Modern Forms of Slavery”, *The Low Countries* 2019, <https://www.the-low-countries.com/article/our-colonial-past-should-make-us-more-aware-of-modern-forms-of-slavery>.

physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and the costs required for legal or expert assistance, medicine and medical services, and psychological and social services.¹⁵² This is essentially an exercise in applying traditional tort law - where the responsible party must pay damages to the injured party - to the case of colonial harm.¹⁵³ While it is impossible to atone for all the harm that colonial regimes have caused in this way (as outlined in the introduction), a State making this gesture can have a strong symbolic effect, as will become apparent when individual examples such as the Mau Mau and Herero cases are analyzed below.¹⁵⁴

Without claiming to be an exhaustive list, one could firstly think of compensating those still alive contemporaneously who were tortured or subjected to other forms of violence during imperial rule for their rehabilitative services such as medical costs and psychological assistance.¹⁵⁵ Secondly, recompensing opportunities lost due to colonial rule such as employment, education, and social benefits due discriminatory practices at the time may offer some satisfaction.¹⁵⁶ Thirdly, the loss of earning potential that individuals or communities that experienced property loss, economic exploitation, or decreased earning capacity may be subject to compensation, though it is again a thin line dividing this category and the development aid previously associated with restitution.¹⁵⁷ Lastly, the compensation of moral damage is another valuable but complex angle. While it undoubtedly falls

¹⁵² Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 20.

¹⁵³ C. VAN DAM, *European Tort Law*, s.l., OUP Oxford, 2013; P. GILIKER, *Research Handbook on EU Tort Law in Research Handbooks in European Law*, Cheltenham, Edward Elgar Publishing, 2017.

¹⁵⁴ L.H. MEYER, "Surviving Duties and Symbolic Compensation" in L.H. MEYER (ed.), *Intergenerational Justice*, s.l., Routledge, 2012, 79-90; K. VAN DER SPEETEN, "Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms", *Jura Falconis* 2021, Vol. 57, No. 2, 505.

¹⁵⁵ T. FALOLA, *Colonialism and Violence in Nigeria*, s.l., Indiana University Press, September 25, 2009; S. MORTON, "Torture, Terrorism and Colonial Sovereignty" in S. MORTON and S. BYGRAVE (eds.), *Foucault in an Age of Terror: Essays on Biopolitics and the Defence of Society*, London, Palgrave Macmillan UK, 2008, 183-195. Paying for rehabilitative services may also be considered rehabilitation in itself, illustrating that the distinction between compensation and rehabilitation is not always straightforward to make in practice. See J. SHAPIRO, "The impact of recipient choice on aid effectiveness", *World Development* 2019, Vol. 116, 137-149.

¹⁵⁶ D. TRICOIRE, "The Enlightenment and the Politics of Civilization: Self-Colonization, Catholicism, and Assimilationism in Eighteenth-Century France" in D. TRICOIRE, *Enlightened Colonialism: Civilization Narratives and Imperial Politics in the Age of Reason in Cambridge Imperial and Post-Colonial Studies*, Cham, Springer International Publishing, 2017, 25-46; A. CESAIRE, "Discourse on Colonialism" in D. BRYDON (ed.), *Postcolonialism: Critical Concepts*, London, Routledge, 2023, 310-339; D. M. NATERMANN, *Pursuing Whiteness in the Colonies: Private Memories from the Congo Freestate and German East Africa (1884-1914)*, Münster, Waxmann, 2018, 11-18.

G. BRAUSCH, *Belgian administration in the Congo*, London, Oxford University, 1961; C. LU, "Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress", *Journal of Political Philosophy* 2011, Vol. 19, No. 3, 261-281.

¹⁵⁷ R.E. HOWARD-HASSMANN, "Reparations to Africa and the Group of Eminent Persons", *Cahiers d'études africaines* 2004, Vol. 44, No. 173-174, 82; S. OCHENI and B.C. NWANKWO, "Analysis of Colonialism and Its Impact in Africa", *Cross-Cultural Communication* 2012, Vol. 8, No. 3, 46-54; K. KALU and T. FALOLA, "Introduction: Exploitation, Colonialism, and Postcolonial Misrule in Africa" in K. KALU and T. FALOLA (eds.), *Exploitation and Misrule in Colonial and Postcolonial Africa*, Cham, Springer International Publishing, 2019, 1-23.

under the category of colonial harm *sensu stricto*, as many people could claim to have endured moral suffering due to colonialism, the ongoing effects of colonial regimes likewise produce a multitude of injuries contemporarily (colonial harm *sensu lato*).¹⁵⁸ However, the harm resulting from this second category is far less straightforward to quantify financially.¹⁵⁹ It may hence be more suitable to apply a structural approach in the form of symbolic compensation.¹⁶⁰

C. Compensation of Colonial Harm Sensu Lato: Symbolic Compensation

In light of the above-mentioned practical difficulties such as the widespread scale of the damage and the continuing passage of time, symbolic compensation might be a more tenable course of action. One could argue that the symbolic nature of the action and the abandoning of the criterium of assessability make it lean towards the category of satisfaction (*infra*). However, the emphasis on the financial aspect of the reparation makes it more fit to be categorized as compensation. Symbolic compensation seeks to promote progressive reconciliation rather than expecting the complete rectification or restoration of the harm inflicted by colonialism and viewing the matter as resolved, which makes it a measure better suited for the reparation of colonial harm *sensu lato*.¹⁶¹ Most

¹⁵⁸ Although victims of colonial harm *sensu stricto* would likely mostly be descendants of those affected due to the amount of time that has passed (see the section on victims above). See on the moral harm caused due to colonialism, *i.e.*: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para. 18; Summary of the panel discussion on the negative impact of the legacies of colonialism on the enjoyment of human rights. Report of the Office of the United Nations High Commissioner for Human Rights (1 June 2023), *UN Doc. A/HRC/54/4* (2023); B.O. IGBOIN, “Colonialism and African cultural values”, *African Journal of History and Culture* 2011, Vol. 3, No. 6, 96-103; S. OCHENI and B.C. NWANKWO, “Analysis of Colonialism and Its Impact in Africa”, *Cross-Cultural Communication* 2012, Vol. 8, No. 3, 46-54; J.L. AMSELLE and E. M'BOKOLO, *Au cœur de l'ethnie: ethnies, tribalisme et État en Afrique*, Paris, La découverte, 2017; D. TRICOIRE, “The Enlightenment and the Politics of Civilization: Self-Colonization, Catholicism, and Assimilationism in Eighteenth-Century France” in D. TRICOIRE, *Enlightened Colonialism: Civilization Narratives and Imperial Politics in the Age of Reason in Cambridge Imperial and Post-Colonial Studies*, Cham, Springer International Publishing, 2017, 25-46; A. CESAIRE, “Discourse on Colonialism” in D. BRYDON (ed.), *Postcolonialism: Critical Concepts*, London, Routledge, 2023, 310-339; D. M. NATERMANN, *Pursuing Whiteness in the Colonies: Private Memories from the Congo Freestate and German East Africa (1884-1914)*, Münster, Waxmann, 2018, 11-18.

¹⁵⁹ R. ALDRICH, “Apologies, Restitutions, and Compensation: Making Reparations for Colonialism” in M. THOMAS and A.S. THOMPSON, (ed.), *The Oxford Handbook of the Ends of Empire*, Oxford, Oxford University Press, 2018, (714) 728-729; H. FRAIHI, “Our Colonial Past Should Make Us More Aware of Modern Forms of Slavery”, *The Low Countries* 2019, <https://www.the-low-countries.com/article/our-colonial-past-should-make-us-more-aware-of-modern-forms-of-slavery>.

¹⁶⁰ “Beyond Reparations: Toward Structural Transformation” in C. LU, *Justice and Reconciliation in World Politics*, Cambridge, Cambridge University Press, 2017, 248–281; T. WALIGORE, “Redress for Colonial Injustice: Structural Injustice and the Relevance of History”, *Global Justice : Theory Practice Rhetoric* 2018, Vol. 11, No. 2, 15–28; M. MCEACHRANE, “Reparations within the UN”, *OHCHR* 2019, https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/SR/Call/Michael_McEachrane.pdf; M. MCKEOWN, “Backward-looking reparations and structural injustice”, *Contemp Polit Theory* 2021, Vol. 20, No. 4, 771–794.

¹⁶¹ J. MCGONEGAL, *Imagining Justice: The Politics of Postcolonial Forgiveness and Reconciliation*, s.l., McGill-Queen's Press - MQUP, 2009, 3-23; K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 541.

importantly, the symbolic gesture of granting recompense signals that the former colonial power values rectification, which can be considered the first step.¹⁶²

However, awarding a flat rate or symbolic amount still does not entirely relieve the quantification issue; it remains unclear how such large-scale damage can be expressed in money.¹⁶³ Nonetheless, current African debt and the state of the economy have been proposed as guidelines for the measurement.¹⁶⁴ Alternatively, more emphasis can be put on the symbolic aspect rather than the financial aspect: with respect to what Britain should pay to India, S. THAROOR proposed the sum of one pound per year payable for 200 years of imperial rule.¹⁶⁵ Moreover, the question of who precisely should receive the compensation constitutes another practical obstacle. There is no clear criterion to define whether it should be the injured (successor)-State, NGOs, the African people, or others.¹⁶⁶ As a result, it is difficult to realize symbolic compensation because Western States don't appear very eager to investigate this issue and they typically tend to struggle to garner enough political support.¹⁶⁷

§3. Satisfaction

A. Definition

Satisfaction constitutes the last of the three forms of reparation provided for by the *lex generalis* codified in the Articles on State Responsibility (ASR).¹⁶⁸ This measure aims to restore a person's sense of dignity, mental wellbeing, and reputation.¹⁶⁹ Article 37 clarifies that it is viewed as an ancillary means of reparation within the doctrine of State responsibility, only to be used when

¹⁶² L.H. MEYER, "Surviving Duties and Symbolic Compensation" in L.H. MEYER (ed.), *Intergenerational Justice*, s.l., Routledge, 2012, 79-90; G. COLLSTE, "Rectification for Atrocities Under Colonialism", *International Journal of Post-Colonial Studies* 2016, (852) 860.

¹⁶³ R. ALDRICH, "Apologies, Restitutions, and Compensation: Making Reparations for Colonialism" in M. THOMAS and A.S. THOMPSON, (ed.), *The Oxford Handbook of the Ends of Empire*, Oxford, Oxford University Press, 2018, (714) 728-729; H. FRAIHI, "Our Colonial Past Should Make Us More Aware of Modern Forms of Slavery", *The Low Countries* 2019, <https://www.the-low-countries.com/article/our-colonial-past-should-make-us-more-aware-of-modern-forms-of-slavery>.

¹⁶⁴ R. E. HOWARD-HASSMANN, "Moral Integrity and Reparations to Africa", *Human Rights in Development Yearbook* 2001, Vol. 7, No. 1, 350.

¹⁶⁵ S. THAROOR, "Saying Sorry to India: Reparations or Atonement?", *Harvard International Law Journal, Online Scholarship Symposium* 2018, <https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/Tharoor-Reparations.pdf>, 4.

¹⁶⁶ K. VAN DER SPEETEN, "Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms", *Jura Falconis* 2021, Vol. 57, No. 2, 543. This is why this thesis used a broad conception of victimhood, taking into account States as well as individuals.

¹⁶⁷ R. ALDRICH, "Apologies, Restitutions, and Compensation: Making Reparations for Colonialism" in M. THOMAS and A.S. THOMPSON (eds.), *The Oxford Handbook of the Ends of Empire*, Oxford, Oxford University Press, 2018, (714) 728-729.

¹⁶⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, *UN Doc. A/56/10* (2001).

¹⁶⁹ C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", *International Commission of Jurists* 2006, 149.

restitution and compensation are not possible or do not suffice.¹⁷⁰ According to the ILC one must think of injuries that are non-material or non-financially assessable in this respect, which is often the case for colonial harm (*supra*).¹⁷¹

Satisfaction may consist of an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality, insofar as it is not out of proportion to the injury or humiliating to the responsible State.¹⁷² Following paragraphs will further outline the measures proposed by the *2005 Basic Principles* that are applicable to the context of colonial harm: the public apology, commemorations and tributes, truth commissions, educational programs, and cessation. Searching for the whereabouts of the disappeared will not be included in the list due to lack of practical applicability in light of the time that has passed since the historical facts, *idem* for judicial and administrative decisions against the persons liable, due to the alleged impossibility of establishing legal responsibility set out above.¹⁷³

B. Public Apology

The public apology is a speech act intended to express remorse for the suffering that past colonizers inflicted during their rule.¹⁷⁴ It is a way of addressing past (and potentially current) colonial harm, which, in principle, requires the acknowledgement of the historical facts or violations, a promise of non-repetition towards the future, and the acceptance of responsibility by the head of State of the colonizer.¹⁷⁵ This last element is politically controversial due to the belief that this may open the

¹⁷⁰ A. P. LOMBARDO and R. E. HOWARD-HASSMANN, “Africans on Reparations: An Analysis of Elite and Activist Opinion”, *Canadian Journal of African Studies/La Revue canadienne des études africaines* 2005, (517) 519; R. B. BILDER, “The Role of Apology in International Law and Diplomacy”, *Va. J. Int'l L.* 2006, (433) 451; E. WYLER and A. PAPAUX, “The Different Forms of Reparation: Satisfaction” in J. CRAWFORD, A. PELLET and S. OLLESON, *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (623) 625.

¹⁷¹ ILC Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (submitted to the UN General Assembly as a part of the Commission’s report covering the work of its 53rd session), *UN Docs. A/56/10*, 106.

¹⁷² Article 37 ASR; E. WYLER and A. PAPAUX, “The Different Forms of Reparation: Satisfaction” in J. CRAWFORD, A. PELLET and S. OLLESON (eds.), *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (623) 635.

¹⁷³ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22.

¹⁷⁴ J. MURPHY, “Revisiting the Apology as a Speech Act: The Case of Parliamentary Apologies”, *Journal of Language and Politics* 2015, Vol. 14, No. 2, 175–204; F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, Vol. 2, No. 4, 1-2.

¹⁷⁵ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22; L. TAFT, “Apology Subverted: The Commodification of Apology”, *Yale Law Journal* 2000, (1135) 1140; R. B. BILDER, “The Role of Apology in International Law and Diplomacy”, *Va. J. Int'l L.* 2006, (433) 469; C. JENKINS, “Taking Apology Seriously” in M. DU PLESSIS, *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, Antwerp, Intersentia, 2007, (53) 60; M. R. MARRUS, “Official Apologies and the Quest for Historical Justice”, *Journal of Human Rights* 2007, (75) 79; R. E. HOWARD-HASSMANN, “Official Apologies”, *Transitional Justice Review* 2012, (31) 38; G. COLLSTE, “Rectification for Atrocities Under Colonialism”, *International Journal of Post-Colonial Studies* 2016, (852) 860; N. WITTMANN, “Reparations—Legally Justified and Sine qua non for Global Justice,

floodgates to legal claims for reparations through financial compensation.¹⁷⁶ This concern, however, lacks merit from the perspective of international State responsibility, as a formal apology is not a condition for its establishment.¹⁷⁷ Nonetheless, a public apology can serve many purposes such as the acknowledgement of the pain inflicted upon victims of gross human rights violations, the amendment of the relations between the former colonizer and their colonies, and the confirmation of the respect for international law.¹⁷⁸ Although regarded as a supplementary method of reparation by the ASR, a carefully considered and genuine apology can have a strong symbolic effect and be a useful means of reconciliation in the pursuit of transitional justice.¹⁷⁹

C. Public Commemorations

Public commemorations constitute the first means of satisfaction in the list of “other appropriate modalities” to repair colonial harm.¹⁸⁰ They may provide victims with some sense of closure, which is especially crucial in situations when there have been long-standing abuses of the rights of groups or large numbers of people who are often not identifiable individually, such as is the case for colonialism.¹⁸¹ In these situations, public remembrance has symbolic meaning and serves as a form of reparation for both the present and the future generations. This goes beyond the right to truth of individual victims or closely related persons: the right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is the “duty to remember”, which the State must assume in order to keep revisionism and negationism at bay.¹⁸²

Peace and Security”, *Global Justice* 2017, Vol. 9, No. 2, 211; K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 50.

¹⁷⁶ R. B. BILDER, “The Role of Apology in International Law and Diplomacy”, *Va. J. Int'l L.* 2006, (433) 468; K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 54.

¹⁷⁷ S. AL AMOURI and S. SMIS, “Inter-state Apologies for Colonial Injustices from an International State Responsibility Perspective: A Commentary on the Belgian Controversy”, *ASIL Insights* 2023, Vol. 27, No. 4, 5-6.

¹⁷⁸ H. K. JOSEPHS, “The Remedy of Apology in Comparative and International Law: Self-Healing and Reconciliation”, *Emory Intl L Rev* 2004, (53) 63; J.-M. COICAUD, “Apology: A Small Yet Important Part of Justice”, *Japanese Journal of Political Science* 2009, (93) 110; R. E. HOWARD-HASSMANN, “Official Apologies”, *Transitional Justice Review* 2012, (31) 34.

¹⁷⁹ R. B. BILDER, “The Role of Apology in International Law and Diplomacy”, *Va. J. Int'l L.* 2006, (433) 453; M. FREEMAN, “Back To The Future: The Historical Dimension Of Liberal Justice” in M. DU PLESSIS, *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, Antwerp, Intersentia, 2007, (29) 50.

¹⁸⁰ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22.

¹⁸¹ C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, *International Commission of Jurists* 2006, 148-149.

¹⁸² Report of the Special Rapporteur on the Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political) (2 October 1997), *UN Doc. E/CN.4/Sub.2/1997/20/Rev.1* (1997), para 17; M.C. CAMPISI, “From a Duty to Remember to an Obligation to Memory? Memory as Reparation in the Jurisprudence of the Inter-American Court of Human Rights”, *International Journal of Conflict and Violence* 2014, Vol. 8, No. 1, 61-74; I. LOTEM, *The Memory of*

Public commemorations such as the constructing of monuments or the renaming of streets have the advantage of being more persistently apparent, so that they may contribute to ensuring that future generations remain aware of the historical injustices that were committed under European colonial rule.¹⁸³ Whereas these measures are traditionally not part of the sanctions repertoire of the European human rights framework, the Inter-American Court of Human Rights has interestingly previously sanctioned commemorative measures to atone for human rights violations on behalf of the American States in question, such as the naming of a street and an educational center after the victims, or the dedication of a public monument to the sufferers of the injuries.¹⁸⁴

Another contentious topic in the discourse on satisfaction is how colonial statues should be dealt with today.¹⁸⁵ The debate appears to be divided into two schools: those who believe the statues should be completely erased from public spaces, and those who think they should be recontextualized by adding an informational plaque or relocating them to a museum.¹⁸⁶ While the arguments ‘pro-erasure’ (such as paying respect to the victims) certainly have some merit, monuments have an ability to express collective memory and thus contribute to the fight against historical negationism, rendering the arguments ‘pro-recontextualization’ more convincing.¹⁸⁷ Nonetheless, both practices are utilized by European States as will be set out below in Chapter III. While commemorations may take a range of forms, this chapter will limit itself to the removal and erection of colonial statues, as well as the renaming of streets or other public places, so it may give an accurate overview of initiatives regarding this topic.

Colonialism in Britain and France: The Sins of Silence in *Cambridge Imperial and Post-Colonial Studies*, Cham, Springer International Publishing, 2021.

¹⁸³ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 500.

¹⁸⁴ Inter-American Court of Human Rights 26 May 2001, Series C No. 77, Villagrán Morales e.a./Guatemala (Street Children Case), para. 103; Inter-American Court of Human Rights 27 February 2002, Series C No. 92, Trujillo Oroza/Bolivia, para. 122; Inter-American Court of Human Rights 30 November 2001, Series C No 87, Barrios Altos/Peru, para. 44(f) and operative paragraph 5(f).

¹⁸⁵ A. GOODRICH and P. BOMBARDELLA, “What are statues good for? Winning the battle or losing the battleground?”, *Koers : Bulletin for Christian Scholarship* 2016, Vol. 81, No. 3, 1–10; J. GREGORY, “Statue wars: collective memory reshaping the past”, *History Australia* 2021, Vol. 18, No. 3, 564–587; S. LABADI, “Colonial statues in post-colonial Africa: a multidimensional heritage”, *International Journal of Heritage Studies* 2024, Vol. 30, No. 3, 318–331.

¹⁸⁶ C. DEBORAH, “Statues in the Square: Hauntings at the Heart of the Empire”, *Art History* 2006, Vol. 29, No. 4, 660–697; I. GODDEERIS, “Colonial Streets and Statues: Postcolonial Belgium in the Public Space”, *Postcolonial Studies* 2015, Vol. 18, No. 4, 397–409; F. AHMAD and J. MONAGHAN, “World of statues: the ‘war on terror,’ memorialisation, and colonial violence”, *Critical Studies on Terrorism* 2021, Vol. 14, No. 4, 484–489; C.C. PRESCOTT and J. LAHTI, “Looking Globally at Monuments, Violence, and Colonial Legacies”, *Journal of Genocide Research* 2022, Vol. 24, No. 4, 463–470.

¹⁸⁷ Z. ÇELİK, “Colonial statues and their afterlives”, *The Journal of North African Studies* 2020, Vol. 25, No. 5, (711) 723.

D. Truth Commissions

Closely related are efforts to verify the facts of colonial legacies and publicly disclose this truth, in particular the installation of a parliamentary truth commission.¹⁸⁸ Numerous national and international legal instruments recognize the right to know the truth regarding gross human rights violations as a separate and independent right.¹⁸⁹ The right to truth extends to all persons and communities affected, in an effort to provide everyone impacted by human rights abuses a full picture of what happened, why it happened, and who was accountable.¹⁹⁰ Truth commissions are *ad hoc* bodies that are sanctioned by a State to gather data on historical facts and human rights abuses.¹⁹¹ They provide victims with a forum to tell their tales and work to produce an extensive report that offers suggestions for reconciliation.¹⁹² Professionals from a variety of fields, including academia, healthcare and human rights law, make up these committees.¹⁹³ Truth commissions are primarily intended to provide an authentic historical record of a nation in order to keep historical events from being forgotten or misrepresented.¹⁹⁴ Additionally, they play the vital function of accepting the truth, as nations acknowledge past wrongs and confess harm done.¹⁹⁵ Truth commissions do, however, have

¹⁸⁸ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22; E. WYLER and A. PAPAUX, “The Different Forms of Reparation: Satisfaction” in J. CRAWFORD, A. PELLET and S. OLLESON, *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (623) 633.

¹⁸⁹ Updated Set of principles for the protection and promotion of human rights through action to combat impunity of the Commission on Human Rights on its sixty-first session (8 February 2005), *UN Doc. E/CN.4/2005/102/Add.1* (2005), Principles 2 and 4; Resolution 60/147 of the UN General Assembly 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 (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 11(c) and 24.

¹⁹⁰ Promotion and Protection of Human Rights, Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights (8 February 2006), *UN Doc. E/CN.4/2006/91* (2006), 11-15; Updated Set of principles for the protection and promotion of human rights through action to combat impunity of the Commission on Human Rights on its sixty-first session (8 February 2005), *UN Doc. E/CN.4/2005/102/Add.1* (2005), principles 2 and 4; C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, *International Commission of Jurists* 2006, 81-90; S. PARMENTIER and M. ACIRU, “The Whole Truth and Nothing but the Truth? On the Role of Truth Commissions in Facing the Past” in P. MALCONTENT (ed.), *Facing the Past. Amending Historical Injustices Through Instruments of Transitional Justice*, Cambridge, Cambridge University Press, 2016, (225) 239.

¹⁹¹ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 556.

¹⁹² T. M. ANTKOWIAK, “Truth as Right and Remedy in International Human Rights Experience”, *Mich. J. Int’l L.* 2002, (977) 996; L. J. LAPLANTE, “On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Develop”, *Yale Hum. Rts. & Dev. L.J.* 2007, (141) 146; S. PARMENTIER and M. ACIRU, “The Whole Truth and Nothing but the Truth? On the Role of Truth Commissions in Facing the Past” in P. MALCONTENT (ed.), *Facing the Past. Amending Historical Injustices Through Instruments of Transitional Justice*, Cambridge, Cambridge University Press, 2016, (225) 226.

¹⁹³ L. HUYSE, *Alles gaat voorbij, behalve het verleden*, Leuven, Van Halewyck, 2006, 157; C. JENKINS, “Taking Apology Seriously” in M. DU PLESSIS (ed.), *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, Antwerp, Intersentia, 2007, (53) 78.

¹⁹⁴ L. VAN DEN HERIK, “Historical Inquiry as a Form of Colonial Reparation?”, *Harvard International Law Journal, Online Scholarship Symposium* 2018, <https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/Herik-Reparations.pdf>, 5.

¹⁹⁵ P. B. HAYNER, “Fifteen Truth Commissions - 1974 to 1994: A Comparative Study”, *HRQ* 1994, (597) 607.

several drawbacks, chief among them being that governments frequently neglect to put their recommendations into practice.¹⁹⁶ A government's readiness to act, which is frequently affected by civil society organizations, determines the true impact of truth commissions.¹⁹⁷ Furthermore, presenting the truth might be difficult and contradictory, exposing nuances of uncertainty in the past.¹⁹⁸

E. Educational Programs

Satisfaction can also involve raising awareness of colonial harm in educational material at different levels by putting in place programs to guarantee that curricula accurately depict historical violations.¹⁹⁹ The development of decolonized educational programs is a measure that relates to both colonial harm *sensu stricto* and *sensu lato*. On the one hand it is meant to pay tribute to the victims of colonialism by passing on the truth to later generations.²⁰⁰ On the other, it can contribute towards preventing further injustices, since education is considered crucial for preventing and combatting racism, xenophobia, and related intolerance.²⁰¹ Decolonizing national curriculums, starting, for instance, through history lessons in secondary school that focus on marginalized or erased perspectives and histories, should be a primary concern for schools.²⁰² Through prioritizing this knowledge, educational systems possess the potential to affirm and strengthen historically marginalized groups.²⁰³ In order to confront persistent systems of privilege and prejudice, educational institutions should actively participate in anti-racist and decolonial activities that promote critical thinking and cultural sensitivity.²⁰⁴

¹⁹⁶ C. JENKINS, "Taking Apology Seriously" in M. DU PLESSIS (ed.), *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, Antwerp, Intersentia, 2007, (53) 79.

¹⁹⁷ S. PARMENTIER and M. ACIRU, "The Whole Truth and Nothing but the Truth? On the Role of Truth Commissions in Facing the Past" in P. MALCONTENT (ed.), *Facing the Past. Amending Historical Injustices Through Instruments of Transitional Justice*, Cambridge, Cambridge University Press, 2016, (225) 244.

¹⁹⁸ M. PARLEVLIET, "Considering Truth. Dealing with a Legacy of Gross Human Rights Violations", *Netherlands Quarterly of Human Rights* 1998, (141) 158.

¹⁹⁹ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22.

²⁰⁰ K. VAN DER SPEETEN, "Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms", *Jura Falconis* 2021, Vol. 57, No. 2, 547.

²⁰¹ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mutuma Ruteere on the Twenty-Third Session of the Human Rights Council (2 April 2013), *UN Doc. A/HRC/23/56* (2013), para. 1.

²⁰² K.D. REGMI, "The enduring effects of colonialism on education: three praxes for decolonizing educational leadership", *International Journal of Leadership in Education* 2022, 1–19.

²⁰³ A.E. LOPEZ, *Decolonizing educational leadership: exploring alternative approaches to leading schools*, Cham, Palgrave Macmillan, 2020, 7.

²⁰⁴ A.A. ABDI, "Clash of Dominant Discourses and African Philosophies and Epistemologies of Education: Anti-colonial Analyses" in A.A. ABDI, *Decolonizing Philosophies of Education*, Rotterdam, SensePublishers, 2011, 131-147; J.D. CUMMINS and E. CHANG, "Safe Zones, Dangerous Leadership: Decolonial Leadership in Settler-Colonial School Contexts", *Journal of school leadership* 2020, Vol. 30, No. 6, 519–540; K.D. REGMI, "The enduring effects of

F. Cessation

Cessation is a means of repairing colonial harm *sensu stricto*, which consists of effective measures aimed at the ending of continuing violations.²⁰⁵ It is sometimes categorized as a stand-alone means of reparation separate from satisfaction in the literature on gross human rights violations.²⁰⁶ N. WITTMAN proposes an activist approach to the topic of cessation in her article *Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security*, namely that postcolonial societies that were integrated into their colonial States should seek independence, as this would pose an end to the Western powers' exploitation of Africans through the systems that were brutally reinforced by colonialism.²⁰⁷ The reality is, however, contemporaneously more complex than this, as some territories have willingly stayed part of the colonizer State after other countries' independence (*infra*).

§4. Rehabilitation

A. Definition

Rehabilitation is a comprehensive process that aims to return the sufferers of colonial harm to a condition of social, psychological, and physical well-being.²⁰⁸ It is a well-recognized form of reparation within international human rights law, illustrated for instance by Article 39 of the *Convention against Torture* and Article 14 of the *Convention on the Rights of the Child* both emphasizing how crucial it is to provide victims of abuse with means of comprehensive rehabilitation, in addition to financial compensation.²⁰⁹ Rehabilitation serves to acknowledge the disruptions and social inequalities caused by colonization, by promoting initiatives to serve the general well-being of victims of colonial harm.²¹⁰ Concretely, the measures can be divided into medical and psychological

colonialism on education: three praxes for decolonizing educational leadership", *International Journal of Leadership in Education* 2022, 13-14.

²⁰⁵ D. SHELTON, "Righting Wrongs: Reparations in the Articles on State Responsibility", *American Journal of International Law* October 2002, Vol. 96, No. 4, 834; P. D'ARGENT, "Reparation, Cessation, Assurances and Guarantees of Non-Repetition" in A. NOLLKAEMPER and I. PLAKOKEFALOS (eds.), *Principles of shared responsibility in international law: An appraisal*, Cambridge, Cambridge University Press, 2014, 208–250.

²⁰⁶ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22. For example, the 2019 Draft articles on Prevention and Punishment of Crimes Against Humanity (*supra*) list cessation as a separate category of reparations; C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", *International Commission of Jurists* 2006, 96.

²⁰⁷ N. WITTMANN, "Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security", *Global Justice* 2017, Vol. 9, No. 2, 211-212.

²⁰⁸ C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", *International Commission of Jurists* 2006, 149.

²⁰⁹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 26 June 1987, *United Nations Treaty Series*, Vol. 1465, 85; UN Convention on the Rights of the Child of 10 November 1989, *United Nations Treaty Series*, Vol. 1577, 3.

²¹⁰ C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", *International Commission of Jurists* 2006, 143-144; N. SVEAASS, "Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation", *European Journal of Psychotraumatology* 2013, Vol. 4, No. 1, 1-11.

care as well as legal and social services.²¹¹ While States usually group these measures under the umbrella term of ‘development aid’, it is worthwhile upholding the conceptual distinction between the various reparations provided for in the *2005 Basic Principles*, in order to be concise and clarify which instances of colonial harm reparations are justified for.

B. Medical Aid

Given the widespread and long-lasting consequences of colonialism on African societies’ health, it is crucial that medical aid be provided as a form of rehabilitation.²¹² This may apply to colonial harm in the strict sense. Medical care is essential for treating physical conditions and illnesses that may have been brought on by or made worse by colonial neglect and exploitation.²¹³ Traditional farming methods were frequently disturbed by colonial policies such as land seizures and forced relocations, which resulted in food scarcity and malnutrition among colonized populations.²¹⁴ Furthermore, colonial occupation exacerbated the spread of infectious diseases such as malaria by exploiting indigenous populations, changing land usage, providing limited health care, *etc.*, but also brought new illnesses from Europe such as smallpox.²¹⁵ Moreover, exploitative practices frequently led to environmental deterioration, including pollution, deforestation, and contaminated water supplies, which in turn caused health issues like exposure to harmful substances, waterborne infections, and respiratory ailments.²¹⁶ However, one must note that not many of the original victims of these atrocities may be compensated due to the time that has elapsed since.

Nonetheless, the above-mentioned repercussions are not solely historical. Seeing as they continue to have an impact on people and communities, rehabilitation is a reparatory measure that is of utmost

²¹¹ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22.

²¹² *Ibid.*

²¹³ M.O.S. AFOLABI, “Entrenched Colonial Influences and the Dislocation of Health Care in Africa”, *Journal of Black and African Arts and Civilization* 2011, Vol. 5, No. 1, 229-247; S. AU and A. CORNET, “Medicine and colonialism” in J. VANDENDRIESSCHE and B. MAJERUS (eds.), *Medical histories of Belgium, s.l.*, Manchester University Press, 2021, 99–133.

²¹⁴ W. WERNER, “A Brief History of Land Dispossession in Namibia”, *Journal of Southern African Studies* 1993, Vol. 19, No. 1, 135-146; R. ROBERTS and W. WORGER, “Law, Colonialism and Conflicts over Property in Sub-Saharan Africa”, *African Economic History* 1997, No. 25, 1–7; H. STEIN, “Economic development and the anatomy of crisis in Africa: from colonialism through structural adjustment”, *Centre of African Studies* 2001, <https://www.rrojasdatabank.info/devstate/Stein.pdf>, 11; P.D. OCHEJE, “‘In the Public Interest’: Forced Evictions, Land Rights and Human Development in Africa”, *Journal of African Law* 2007, Vol. 51, No. 2, 173–214.

²¹⁵ A.I.R. WHITE, “Historical linkages: epidemic threat, economic risk, and xenophobia”, *Lancet* 2020, Vol. 395, No. 10232, 1250–1251; J.B. BUMP and I. ANIEBO, “Colonialism, malaria, and the decolonization of global health”, *PLOS Global Public Health* 2022, Vol. 2, No. 9, 569-590.

²¹⁶ N.J. REO and A.K. PARKER, “Re-thinking colonialism to prepare for the impacts of rapid environmental change” in J.K. MALDONADO, B. COLOMBI and R. PANDYA (eds.), *Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions*, Cham, Springer International Publishing, 2014, 163–174; P. BLAIKIE and H. BROOKFIELD, “Colonialism, development and degradation” in P. BLAIKIE and H. BROOKFIELD (eds.), *Land Degradation and Society*, London, Routledge, 2015, 100-121.

relevance to colonial harm *sensu lato* as well. Many health disasters such food scarcity, infectious disease outbreaks and environmental disasters that the people of the African continent endure, have their roots in settler colonialism.²¹⁷ In post-colonial cultures, the adoption of Westernized foods and lifestyles enforced by colonizers has led to the rise of chronic illnesses such as diabetes, hypertension, and cardiovascular disorders.²¹⁸ Offering these rehabilitative medical services is a way that the former colonizers can take responsibility for the harm caused.

C. Psychological Care

People who have been colonized often suffer severe psychological wounds, which can result in a severe sense of inferiority, loss of dignity, and cultural disruption.²¹⁹ Psychological care can be a useful tool in order to navigate these feelings, keeping in mind an anthropological sidenote, namely that therapy is highly culturally sensitive practice, which cannot necessarily be transplanted into African societies.²²⁰ For the same reasons as above relating to medical care, mental health services can be useful to address colonial harm both in the strict and broad sense given the high prevalence of mental health disorders among colonized populations as a result of historical and intergenerational trauma.²²¹ The psychological effects of colonization, such as discrimination and loss of cultural

²¹⁷ WERNER, “A Brief History of Land Dispossession in Namibia”, *Journal of Southern African Studies* 1993, Vol. 19, No. 1, 135-146; R. ROBERTS and W. WORGER, “Law, Colonialism and Conflicts over Property in Sub-Saharan Africa”, *African Economic History* 1997, No. 25, 1-7; H. STEIN, “Economic development and the anatomy of crisis in Africa: from colonialism through structural adjustment”, *Centre of African Studies* 2001, <https://www.rojasdatabank.info/devstate/Stein.pdf>, 11; P.D. OCHEJE, “‘In the Public Interest’: Forced Evictions, Land Rights and Human Development in Africa”, *Journal of African Law* 2007, Vol. 51, No. 2, 173-214; N.J. REO and A.K. PARKER, “Re-thinking colonialism to prepare for the impacts of rapid environmental change” in J.K. MALDONADO, B. COLOMBI and R. PANDYA (eds.), *Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions*, Cham, Springer International Publishing, 2014, 163-174; P. BLAIKIE and H. BROOKFIELD, “Colonialism, development and degradation” in P. BLAIKIE and H. BROOKFIELD (eds.), *Land Degradation and Society*, London, Routledge, 2015, 100-121; A.I.R. WHITE, “Historical linkages: epidemic threat, economic risk, and xenophobia”, *Lancet* 2020, Vol. 395, No. 10232, 1250-1251; J.B. BUMP and I. ANIEBO, “Colonialism, malaria, and the decolonization of global health”, *PLOS Global Public Health* 2022, Vol. 2, No. 9, 569-590.

²¹⁸ Y.K. SEEDAT, “Impact of poverty on hypertension and cardiovascular disease in sub-Saharan Africa: review article”, *Cardiovascular Journal of Africa* 2007, Vol. 18, No. 5, 316-320; S. MOOLA, “Decolonising South African public health care system: the case of diabetes”, *African Journal of Rhetoric* 2019, Vol. 11, No. 1, 171-193.

²¹⁹ M. KEBEDE, “The Rehabilitation of Violence and the Violence of Rehabilitation: Fanon and Colonialism”, *Journal of Black Studies* 2001, Vol. 31, No. 5, 539-540; B.O. IGBOIN, “Colonialism and African cultural values”, *African Journal of History and Culture* 2011, Vol. 3, No. 6, 96-103; S. OCHENI and B.C. NWANKWO, “Analysis of Colonialism and Its Impact in Africa”, *Cross-Cultural Communication* 2012, Vol. 8, No. 3, 46-54; J.L. AMSELLE and E. M'BOKOLO, *Au cœur de l'ethnie: ethnies, tribalisme et État en Afrique*, Paris, La découverte, 2017.

²²⁰ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22; M. MAKHUBELA, “‘From psychology in Africa to African psychology’: Going nowhere slowly”, *Psychology in Society* 2016, No. 52, 1-18.

²²¹ This last concept refers to the phenomenon where descendants of colonized peoples continue to struggle with mental health issues as a result of trauma passed down from previous generations. See F. MASSON and L.H. SMITH, “Colonisation as collective trauma: Fundamental perspectives for social work” in T. KLEIBL, R. LUTZ, N. NOYOO, B. BUNK, A. DITTMANN, B. SEEPAMORE (eds.), *The Routledge Handbook of Postcolonial Social Work*, s.l., Routledge, 2019, 13-26.

identity can lead to depression and other mental health disorders, which may be relieved by psychological counseling.²²²

D. Legal aid

Rehabilitation may also consist of legal aid in the form of providing free counseling for victimized groups.²²³ The rehabilitation of colonial harm in the strict sense refers to righting legal errors from the past such as clearing criminal records and overturning erroneous convictions, which is once more difficult to implement in practice due to the time passed.²²⁴ Concerning colonial harm *sensu lato* however, legal aid can consist of international NGOs aiding and promoting the access to justice and the defense of human rights.²²⁵ This may be a valid way for ex-colonizers to atone for the political and judicial destabilization that was caused in Africa, although this is a questionable practice from an anthropological point of view, in light of the debate surrounding the universality of human rights which questions the general applicability of certain liberal Western conceptions of values such as gender equality and children's rights.²²⁶

E. Social Services

Social services attempt to remedy both past and present colonial harm as they attempt to restore various aspects of African society that were disrupted due to colonial interference.²²⁷ Without constituting an exhaustive list, a first example concerns community support programs, such as opening community centers or cultural events, which may reinforce community ties within populations that were disrupted due to colonialism.²²⁸ Second, housing and infrastructural aid, which

²²² K. CZYZEWSKI, "Colonialism as a Broader Social Determinant of Health", *The International Indigenous Policy Journal* 2011, Vol. 2, No. 1, 1-14.

²²³ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22.

²²⁴ A. ALIVERTI, H. CARVALHO, A. CHAMBERLEN and M. SOZZO, *Decolonizing the Criminal Question: Colonial Legacies, Contemporary Problems*, s.l., Oxford University Press, 2023.

²²⁵ I. CHAARA, J.-B. FALISSE and J. MORICEAU, "Does legal aid improve access to justice in 'fragile' settings? Evidence from Burundi", *Journal of Peace Research* 2022, Vol. 59, No. 6, 810-827.

²²⁶ B.M. RATCLIFFE, "The Economies of the Partition of Africa: Methods and Recent Research Trends", *Canadian Journal of African Studies* 1981, Vol. 15, No. 1, 3-31; C.M. CERNA, "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts", *Human Rights Quarterly* 1994, Vol. 16, No. 4, 740-752; I.L. GRIFFITHS, *The African Inheritance*, London, Routledge, 1995; A.A. MAZRUI, "The Blood of Experience: The Failed State and Political Collapse in Africa", *World Policy Journal* 1995, Vol. 12, No. 1, 28-34; J. DONNELLY, "The Relative Universality of Human Rights", *Human Rights Quarterly* 2007, Vol. 29, No. 2, 281-306; "Colonial Repercussions: Namibia. 115 years after the genocide of the Ovaherero and Nama", *European Center for Constitutional and Human Rights* 2019, https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS.pdf.

²²⁷ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 22; F. MASSON and L.H. SMITH, "Colonisation as collective trauma: Fundamental perspectives for social work" in T. KLEIBL, R. LUTZ, N. NOYOO, B. BUNK, A. DITTMANN, B. SEEPAMORE (eds.), *The Routledge Handbook of Postcolonial Social Work*, s.l., Routledge, 2019, 13-26.

²²⁸ C. BARRIO, "The Cultural Relevance of Community Support Programs", *Psychiatric Services* 2000, Vol. 51, No. 7, 879-884.

helps provide affordable accommodation and improve infrastructure, can advance living conditions and promote community welfare.²²⁹ Third, initiatives to uphold and revive indigenous languages, customs and cultural practices may serve the purpose of rehabilitation.²³⁰ Lastly, facilitating dialogue, in particular between ex-colonizers and colonies, but also between social groups that were driven apart due to colonialism, can assist in the reconciliation of these historical injustices and promote healing.²³¹

§5. Guarantees of Non-Repetition

A. Definition

In the broader context of gross human rights violations, guarantees of non-repetition (GNR), or guarantees of non-recurrence, are concepts that help to ensure states do not revert back into conflict.²³² They consist of a variety of laws, processes, statements, and deeds that are taken up (mostly) by a State to resolve past democracy and human rights problems that have caused the issue.²³³ GNR is another example of the fragmented framework of reparations. In DROGUE'S *The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide*, it is not listed as a form of reparation and categorized separately with cessation (which was listed above as a measure of satisfaction, in accordance with the traditional divide that the regime on State responsibility makes).²³⁴ However, in this work, the classification of the more authoritative source of the UN 2005 *Basic Principles* will be followed and GNR will be regarded as a separate category of reparations. Applied to the context of colonial harm, GNR broadly may be divided into four categories: the duty to adopt legislative measures to prevent further violations; the protection of vulnerable groups; human

²²⁹ A.P. COTTON and R.W.A. FRANCEYS, "Urban infrastructure: Trends, needs and the role of aid", *Habitat International* 1988, Vol. 12, No. 3, 139–147; N. GRAHAM, "Financing infrastructure for housing developments: case studies from Sub-Saharan Africa", *Case Study Series* 2016, Vol. 4, 2–22.

²³⁰ I.J. WANI, "Cultural Preservation and the Challenges of Diversity and Nationhood: The Dilemma of Indigenous Cultures in Africa Cultural Preservation Symposium: Essays & Articles", *UMKC L. Rev.* 1990, Vol. 59, No. 3, 611–644.

²³¹ F. WILMER, "Where You Stand Depends on Where You Sit" in J.M. BEIER (ed.), *Indigenous Diplomacies*, New York, Palgrave Macmillan US, 2009, 187–206.

²³² C.J. TAMS, "Recognizing Guarantees and Assurances of Non-Repetition: LaGrand and the Law of State Responsibility Symposium: Reflections on the ICJ's LaGrand Decision", *Yale J. Int'l L.* 2002, Vol. 27, No. 2, 441–444; P. D'ARGENT, "Reparation, Cessation, Assurances and Guarantees of Non-Repetition" in A. NOLLKAEMPER and I. PLAKOKEFALOS (eds.), *Principles of shared responsibility in international law: An appraisal*, Cambridge, Cambridge University Press, 2014, 208–250.

²³³ J.J. SARKIN, "Towards a Greater Understanding of Guarantees of Non-Repetition (GNR) or Non-Recurrence of Human Rights Violations: How GNR Intersects Transitional Justice with Processes of State (Re)Building, the Rule of Law, Democratic Governance, Reconciliation, Nation Building, Social Cohesion and Human Rights Protection", *Stan. J. Int'l L.* 2021, No. 57, Vol. 2, 191–230.

²³⁴ C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", International Commission of Jurists 2006, 96.

rights training; and measures relating to the civilian control over military and security forces (which will not be discussed further to their limited applicability to the context of colonial harm).²³⁵

B. Legislative Measures

Lawmaking is a vital first step toward stopping violations from happening again, especially when it comes to addressing the long-lasting effects of colonialism.²³⁶ The responsibility to adopt legislative reforms in response to gross human rights violations is well established in international law. It has become a standard practice that international human rights courts and committees which find a violation of human rights law request the State to amend its legislation to offer appropriate protection towards the future.²³⁷ Moreover, this principle was underlined by the Human Rights Committee in *General Comment No 31 on Article 2*.²³⁸ To prevent future imperialistic exploitation, States should adopt strong national safeguards to protect the autonomy and sovereignty of all people. It can be argued that national safeguards are redundant, as the principle of self-determination is already widely regarded as a rule of *jus cogens*, meaning it is so vital that it binds all States and does not allow any deviations.²³⁹ However, reparations do not only serve a legal function; they are also symbolic.²⁴⁰ Writing the principle of self-determination (or its counterpart non-intervention on foreign territory)

²³⁵ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 23.

²³⁶ Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 23; C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, *International Commission of Jurists* 2006, 99-100.

²³⁷ See for example: HRC 30 March 1982, CCPR/C/15/D/45/1979, Suárez de Guerrero/Colombia, para. 15; IACtHR 27 November 1998, Series C No. 42, Loayza Tamayo/Peru (Reparations), para. 164; IACtHR 20 January 1999, Series C No. 44, Suárez Rosero/Ecuador (Reparations), para. 97-99; ACHPR 6 November 2000, No. 231/99, Avocats sans Frontières (on behalf of Gaëtan Bwampamye)/Burundi; ACHPR 7 May 2001, No. 218/98, Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project/Nigeria; ACHPR 7 May 2001, No. 211/98, Legal resources foundation/Zambia; HRC 29 August 2003, CCPR/C/78/D/941/2000, Young/Australia, para 12; ECtHR 22 June 2004, No. 31443/96, Broniowski/Poland, para. 194; ECtHR 22 February 2005, No. 35014/97, Hutten-Czapska/Poland, para. 192.

²³⁸ HRC General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004), *UN Doc. CCPR/C/21/Rev.1/Add.13* (2004), para. 7.

²³⁹ Resolution 1514 (XV) of the UN General Assembly (14 December 1960), *UN Doc. A/RES/1514* (1960); Art. 1 of the International Covenant on Civil and Political Rights of 16 December 1966, *United Nations Treaty Series*, Vol. 999, 171; Art. 1 of the International Covenant on Economic, Social and Cultural Rights of 3 January 1976, *United Nations Treaty Series*, Vol. 993, 3; ICJ 30 June 1995, East Timor Case (Portugal/Australia), *I.C.J. Rep.* 1995, 9; ICJ 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, *I.C.J. Rep.* 2004, 136; M.W. JANIS, “The Nature of Jus Cogens”, *Conn. J. Int’l L.* 1988, Vol. 3, No. 2, 359–363; Study of the Special Rapporteur on the Right of Peoples to Self-determination (20 June 1978); *UN Doc. E/CN.4/Sub.2/405* (1978), para. 75; M. DU PLESSIS, F. EL-AJOU, V. KATTAN, M. KEARNEY, J. REYNOLDS, R. ROSENBERG, I. SCOBIE and V. TILLEY, “Occupation, colonialism, apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law”, 2009, https://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/IainScobbie.pdf, 2; M. SAUL, “The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?”, *Human Rights Law Review* 2011, Vol. 11, No. 4, (609) 625; “Self-determination”, *LLI*, s.d., [https://www.law.cornell.edu/wex/self_determination_\(international_law\)#:~:text=Self%2Ddetermination%20denotes%20the%20legal,a%20number%20of%20international%20treaties](https://www.law.cornell.edu/wex/self_determination_(international_law)#:~:text=Self%2Ddetermination%20denotes%20the%20legal,a%20number%20of%20international%20treaties).

²⁴⁰ R.A. GREELEY, M.R. ORWICZ, J.L. FALCONI, A.M. REYES, F.J. ROSENBERG and L.J. LAPLANTE, “Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights”, *International Journal of Transitional Justice* 2020, Vol. 14, No. 1, 165–192.

into the constitution, for instance, is the highest form of legal protection that a State can offer and a strong symbolic commitment towards the future.

C. Protection of Vulnerable Groups: Human Rights Safeguarding

The general framework on the reparations of gross human rights violations only speaks of the protection of vulnerable groups, such as medical professionals or journalists and providing human rights training for police and military forces.²⁴¹ While these measures are less relevant to the context of this thesis when interpreted literally, an important parallel regarding the reparation of colonial harm can be distinguished when combining them. The protection of vulnerable groups can serve as a crucial safeguard against the repetition of colonial harm, particularly in the case of the African diaspora in Europe, who can be seen as vulnerable groups in ex-colonizer states due to the racial inferiorization of these people perpetuated by colonialism and international law.²⁴² By supporting the empowerment of these groups, a safeguard can be built against the continuation of discriminatory practices as well as the potential resurrection of racist ideologies, which have been shown to be a necessary condition for the success of imperialism, as racist beliefs were used to justify European colonialism.²⁴³ In other words, safeguarding national minority group rights and prospects not only atones for historical injustices, but also can also inhibit the normalization of discriminatory behaviors that could pave the way for new colonialist endeavors. Concretely, these measures would consist of legal protections, such as the enactment of anti-discrimination laws and their enforcement by installing adequate monitoring mechanisms.²⁴⁴

SECTION V. CONCLUSION

Contrasting the traditional approaches towards reparations that focus on the monetary compensation of quantifiable harm, this thesis proposes a structural approach. The pursuit of reparations for colonial harm requires such a structural approach, as it can recognize the complexity and ongoing impact of the historical injustices involved. This chapter has proposed a structure that encompasses the following five categories of reparations. First, restitution entails the restoration of rights, dignity, and

²⁴¹ C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 103-105.

²⁴² Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para. 18; A. QUIJANO AND M. ENNIS, “Coloniality of power, Eurocentrism and Latin America”, *Nepantla: Views from South* 2000, Vol. 1, No. 3, 533-535; A. ANGHIE, *Imperialism, Sovereignty and the Making of International Law*, Cambridge, Cambridge University Press, 2005.

²⁴³ HRC Report on Global Extractivism and Racial Equality (14 May 2019), *UN Doc. A/HRC/41/54* (2019), para. 25.

²⁴⁴ Human rights protection will constitute the focus of the corresponding section in Chapter III, although this approach ought to be complemented by a range of other measures to be effective, such as promoting awareness and political representation.

well-being of victimized people and groups by returning historical objects, rectifying identity and family rights, and mending economic disparities resulting from colonial exploitation. Second, compensation should acknowledge both quantifiable and unquantifiable harms by offering financial recompense. Third, satisfaction aims to restore dignity and reputation, particularly when restitution and compensation are not viable, through public apologies, commemorations, truth commissions, educational programs, and cessation measures. Fourth, rehabilitation efforts involve medical aid, psychological care, legal assistance, and social services to aid the well-being of individuals and communities affected by colonial legacies. Fifth, guarantees of non-repetition, through legislative reforms and human rights safeguarding, aim to ensure that the errors of the past do not reoccur. The next chapter will examine how European States have put these reparative measures into effect.

CHAPTER III. EUROPEAN CONDUCT CONCERNING REPARATIONS FOR COLONIAL HARM

SECTION I. INTRODUCTION

Chapter III aims to provide an answer to the sub-question ‘What initiatives to provide reparations for colonial harm have taken place in Europe?’ As set out in the methodology, initiatives subsume all manner of conducts, from diplomatic, executive, legislative, and administrative acts, to decisions of national courts, taken into consideration without any form of hierarchy.²⁴⁵ In Section II, the analysis of the five forms of reparations (restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition) made in the previous chapter will be resumed, with a systematic review of the practical applications of the central five measures per relevant State, namely Belgium, France, Germany, Italy, Portugal, and the UK. Section III concludes this chapter.

SECTION II. FIVE TYPES OF REPARATIONS IN PRACTICE

§1. Restitution

As described earlier, restitution entails the restoration of the situation that existed before colonial interference to the fullest extent possible.²⁴⁶ This may firstly consist of the return of cultural property to their rightful owners, such as African heritage objects or human remains to their sovereign states. Secondly, restitution may also involve restoring personal identity and family ties, such as citizenship rights and reunifying separated relatives. Thirdly, it may concern addressing economic disruption via programs such as development aid.

²⁴⁵ Draft Conclusions on Identification of Customary International Law, in Report of the International Law Commission on the Work of Its Seventieth Session (30 April-1 June and 2 July-10 August 2018), *UN Doc. A/73/10* (2018), Conclusion 6, para. 2; F.L. BORDIN, “Reflections of Customary International Law: The Authority of Codification Conventions and ILC Draft Articles in International Law”, *The International and Comparative Law Quarterly* 2014, Vol. 63, No. 3, 535–567.

²⁴⁶ Article 35 ASR; Resolution 60/147 of the UN General Assembly (21 March 2006), *UN Doc. A/RES/60/147* (2006), para. 19; J. BARKER, “The Different Forms of Reparation: Compensation” in J. CRAWFORD, A. PELLET and S. OLLESON (eds.), *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (599) 600–601; T. O’DONNELL, “The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?” *European Journal of International Law* 2011, Vol. 22, No. 2; 49–80; T. BESTERMAN, “Crossing the Line: Restitution and Cultural Equity” in L. TYTHACOTT and K. ARVANITIS (eds.), *Museums and Restitution: New Practices, New Approaches*, s.l., Routledge, 2014, 19–36; B. GAUDENZI and A. SWENSON, “Looted Art and Restitution in the Twentieth Century: Towards a Global Perspective” *Journal of Contemporary History* 2017, Vol. 52, No. 3, 491–518; F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, Vol. 2, No. 4, 1–2.

A. Restitution of Historical Objects

1. Belgium

Belgium saw a considerable shift in its approach to cultural property restoration toward decolonization in recent years. The debate mainly centers on the collection of the Royal Museum for Central Africa (“AfricaMuseum”) in Tervuren, Belgium.²⁴⁷ One notable endeavor is the PROCHE project, which is a federal science policy program implemented by the AfricaMuseum that investigates the origins of its Congolese collections.²⁴⁸ In June 2021, the federal government of Belgium issued a decision to declare items at the AfricaMuseum, which were known to have been plundered, to be the rightful property of the Democratic Republic of the Congo (DRC).²⁴⁹ Belgium’s Restitution Bill of July 3rd, 2022 marked a significant step in international colonial collection returns.²⁵⁰ Although it has been in force for two years, this framework has not led to any restitutions in practice.²⁵¹ However, there are two recent symbolic gestures worth mentioning. First, the National Museum of Kinshasa received a Kakuungu mask of the Suku tribe on indefinite loan from the AfricaMuseum during King Philip’s visit to Congo in June 2022. That transfer was the symbolic start of a process by which 84,000 inventoried objects should eventually return to their countries of origin.²⁵² Second, the tooth of Patrice Lumumba, a Congolese leader who was assassinated due to Belgian political influence, was ceremoniously returned to his descendants in 2022, 61 years after his murder.²⁵³

²⁴⁷ The museum can be considered a State institution as it a federal scientific institute under the authority of the Secretary of State for Federal Science Policy. See “Mission, ethics and organisation”, *AfricaMuseum*, s.d., https://www.africamuseum.be/en/about_us/mission_organisation.

²⁴⁸ PROCHE is an acronym for ‘PROvenance Research on the Ethnographic Collection - Herkomstonderzoek op de Ethnografische collectie’. See “Provenance Research Project”, *AfricaMuseum*, s.d., https://www.africamuseum.be/en/discover/project_proche.

²⁴⁹ J. BEURDEN, *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam, University Press, 2022, 12.

²⁵⁰ Bill of 3 July 2022 Recognizing the Alienability of Goods Linked to the Belgian State’s Colonial Past and Determining a Legal Framework for Their Restitution and Return, *Moniteur Belge* 28 September 2022, 70.607. This bill sets a precedent as the first legal framework for large-scale restitutions. However, its narrow scope excludes items such as archives and human remains. Initially stringent, it was diluted to give the government broad negotiation freedom, making future restitutions largely dependent on individual bilateral terms. See B. ZOURLI, “Restitution of historical objects between DR-Congo and Belgium: beyond symbols, the need for lasting cooperation”, *Equal Times* 2023, <https://www.equaltimes.org/restitution-of-historical-objects>.

²⁵¹ B. DEMARSIN and M.-S. DE CLIPPELE, “Pioneering Belgium: Parliamentary Legislation on the Restitution of Colonial Collections”, *Santander Art and Culture Law Review* 2022, 2, . 8 While the framework is mentioned on the AfricaMuseum’s website, no examples of bilateral agreements applying these rules can be found today. See “Restitution”, *AfricaMuseum*, s.d., https://www.africamuseum.be/en/about_us/restitution.

²⁵² “Directeur AfricaMuseum in Congo om teruggave museumstukken te bespreken”, *De Standaard* 2023, https://www.standaard.be/cnt/dmf20230922_95363765.

²⁵³ M. DE MOOR, “Premier De Croo biedt excuses aan voor moord op Lumumba: ‘Niet normaal dat dit nooit opgehelderd werd’”, *De Standaard* 2022, https://www.standaard.be/cnt/dmf20220620_92877796.

2. France

France's stance on the return of cultural goods has altered considerably in recent years, most notably since President Macron's 2017 address in Ouagadougou, in which he pledged to restore African artifacts within five years.²⁵⁴ In 2018, experts Bénédicte Savoy and Felwine Sarr delivered a report entitled *The Restitution of African Cultural Heritage* (also known as the Sarr-Savoy Report), which provided guidelines for restitution based on historical contexts and principles, eventually leading to a formal legal framework.²⁵⁵ Following the report's release, President Macron issued a statement reaffirming his commitment to facilitating both immediate and lasting restitution.²⁵⁶ This was regarded as a major shift in French policy toward African heritage, recognizing the need to address the legacy of colonialism.²⁵⁷ On December 24, 2020, the National Assembly passed the Act on the Return of Cultural Property to the Republic of Benin and Senegal.²⁵⁸ While an official policy on restitution was proclaimed, little progress has been achieved. There have been cases of restitution, such as the return of 24 skulls to Algeria.²⁵⁹ However, France did not take action on the 26 Benin items (mandated by the 2020 Act) until October 2021. The instances where returns were made effectively are isolated examples at present.²⁶⁰

²⁵⁴ "Discours d'Emmanuel Macron à l'université de Ouagadougou", *Elysée* 2017, <https://www.elysee.fr/emmanuel-macron/2017/11/28/discours-demmanuel-macron-a-luniversite-de-ouagadougou>.

²⁵⁵ F. SARR and B. SAVOY, *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, 2018, https://web.archive.org/web/20190328181703/http://restitutionreport2018.com/sarr_savoy_en.pdf; C. LABADIE, "Decolonizing collections: A legal perspective on the restitution of cultural artifacts", *ICOFOM Study Series* 2021, Vol. 49, No. 2, 134.

²⁵⁶ "Remise du rapport Savoy/Sarr sur la restitution du patrimoine africain", *Elysée* 2018, <https://www.elysee.fr/emmanuel-macron/2018/11/23/remise-du-rapport-savoy-sarr-sur-la-restitution-du-patrimoine-africain>.

²⁵⁷ J. PAQUETTE, "France and the restitution of cultural goods: the Sarr-Savoy report and its reception", *Cultural Trends* 2020, Vol. 29, No. 4, 302–316.

²⁵⁸ Bill of 24 December 2020 on the return of cultural property to the Republic of Benin and the Republic of Senegal, *Journal Officiel de la République Française* 26 December 2020, n° 0312. France agreed in this bill to transfer ownership of the 26 Benin artifacts that had been placed under the care of the Quai Branly-Jacques Chirac Museum. Additionally, this law required the return of El Hadj Omar Tall's sword to the Republic of Senegal. On November 5, 2020, France and the Republic of Madagascar also signed a deposit agreement in response to the latter's official request for the return of the crown-shaped ornament from the dome of the dais of the last Malagasy queen, Ranaivalona III. See "Return of cultural goods", *France Diplomacy - Ministry for Europe and Foreign Affairs*, s.d., <https://www.diplomatie.gouv.fr/en/country-files/africa/cultural-exchanges/return-of-cultural-goods/>; M. MURPHY and B. TILLIER, "Éthique et politique de la restitution des biens culturels à l'Afrique: les enjeux d'une polémique", *Sociétés & représentations* 2019, Vol. 48, No. 2, 257–270.

²⁵⁹ C. MÉHEUT, "France Returned 24 Skulls to Algeria. They Weren't What They Seemed", *The New York Times* 2022, <https://www.nytimes.com/2022/10/17/world/europe/france-algeria-restitution-skulls.html>.

²⁶⁰ F. BOEHME, "Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany", *Global Studies Quarterly* 2022, Vol. 2, No. 4, 5–6.

3. Germany

Germany's approach to the repatriation of colonial objects has been slow-paced and contentious.²⁶¹ In 2019, various German institutions, including the *Länder* (German federal States), the Foreign Ministry and local governments, jointly issued a report to return heritage items that had been plundered in former German colonies, beginning with the repatriation of cultural objects and human remains.²⁶² There have been several applications, such as the return of a whip and bible to Namibia by a museum in Stuttgart, as well as a proposal on behalf of Germany to send 1,000 human skulls to its former East African colonies.²⁶³ Most notably, Nigeria, and Germany signed a Joint Declaration on the Return of Benin Bronzes on July 1st, 2022.²⁶⁴ This agreement initiated the process of returning 1,130 objects that were plundered during the British punitive expedition in Benin City in 1897. To date, this is one of the largest restitutions of looted artifacts.²⁶⁵ Such returns, however, are still uncommon and are only possible through State level initiatives. As of yet, there is no set formal legislative mechanism for returns in the future.²⁶⁶

²⁶¹ At State level, there have been isolated cases of returning plundered colonial relics. For example, while 20 skulls confiscated during German colonization of present-day Namibia were returned in 2011, this event was mired by an incident regarding a foreign ministry official storming out after an altercation with demonstrators. More remains were ceremonially returned in 2018, with a German official pleading for forgiveness at the transfer to Namibian officials. See E. BEIS, "Eklat bei Rückgabe der Herero-Gebeine: Bis auf die Knochen blamiert", *Die Tageszeitung* 2011, <https://taz.de/!5110750>; F. BOEHME, "Reactive remembrance: The political struggle over apologies and reparations between Germany and Namibia for the Herero genocide", *Journal of Human Rights* 2020, Vol. 19, No. 2, 238–255 "Namibia: Tears, anger as Germany returns human remains", *Al Jazeera*, s.d., <https://www.aljazeera.com/news/2018/8/29/tears-anger-as-germany-returns-human-remains-seized-from-namibia>.

²⁶² The report (which was inspired by the Sarr-Savoy report) underlined the significance of people being entitled to their cultural heritage, requiring institutions to produce and publish inventory of plundered objects of cultural significance, so that source communities may seek repatriation. See the Framework Principles of 13 March 2019 for dealing with collections from colonial contexts agreed by the Federal Government Commissioner for Culture and the Media, the Federal Foreign Office Minister of State for International Cultural Policy, the Cultural Affairs Ministers of the *Länder* and the municipal umbrella organisations; "Germany Sets Guidelines for Repatriating Colonial-Era Artifacts", *The New York Times*, s.d., <https://www.nytimes.com/2019/03/15/arts/design/germany-museums-restitution.html>; "Germany reveals Framework Principles for Dealing with Collections from Colonial Contexts", *Contemporary And*, s.d., <https://contemporaryand.com/magazines/germany-reveals-framework-principles-for-dealing-with-collections-from-colonial-contexts/>.

²⁶³ D. PELZ, "Namibia: Dispute over return of the Witbooi Bible", *DW* 2019, <https://www.dw.com/en/namibia-dispute-over-return-of-the-witbooi-bible/a-47712784>; J. BEURDEN, *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam, University Press, 2022, 161; "Germany offers to return 1,000 human skulls to former east African colonies", *RFI* 2023, <https://www.rfi.fr/en/africa/20230121-germany-offers-to-return-1-000-human-skulls-to-former-east-african-colonie>.

²⁶⁴ Joint Declaration of 1 July 2022 on the Return of Benin Bronzes and Bilateral Museum Cooperation between The Federal Republic of Germany, represented by The Federal Foreign Office and The Federal Government Commissioner for Culture and the Media, and The Federal Republic of Nigeria, represented by The Federal Ministry of Information and Culture and The Ministry of Foreign Affairs.

²⁶⁵ B. FALCUCCI, "A repository of colonial intervisibility and memory: the Colonial Museum in Rome", *Revue d'histoire culturelle* 2023, Vol. 8, No. 6, 2.

²⁶⁶ F. BOEHME, "Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany", *Global Studies Quarterly* 2022, Vol. 2, No. 4, 7.

4. Italy

Italy's colonial past in Africa produced a collection of antiques and cultural objects, many of which were obtained during the colonial era via forceful means. While restitution efforts have been made, they appear rather scattered in nature. The repatriation of the Lion of Judah in 1968 and the Axum Stele in 2009, for instance, prompted discussions on how to react to the absence of these symbols that were once dominant in Rome.²⁶⁷ Another notable example is the repatriation of two Venus statues, the Venus of Lepcis Magna and the Venus of Cyrene, which took place as part of the Italy-Libya Friendship Treaty of 2008.²⁶⁸ This was an agreement that set out a broader range of reparations for colonial harm, but had dubious underlying intentions (*infra* under 'compensation').²⁶⁹ The restitution occurred nearly ten years apart and were subject to two vastly different approaches. While the return of the Venus of Lepcis Magna was portrayed as a genuine act of reconciliation towards the Libyan government, the repatriation of the Venus of Cyrene was reduced to a political quip between Italian Prime Minister Silvio Berlusconi and Libyan leader Muammar Gaddafi.²⁷⁰ By giving these items back, Italy moves toward reconciliation, although there is no overarching legislative framework and the process is still dependent on Italy's goodwill.

²⁶⁷ The gilded bronze monument known as the Lion of Judah in Rome had come to represent the triumph of fascist imperialism in Ethiopia. Its return to Ethiopia in 1968 was a turning point in Italy's process of coming to terms with its colonial past. Similarly, the Axum Stele represented Italy's conquest of Ethiopia and was used as fascist propaganda in Rome. The city responded to its removal by commissioning a new memorial in 2009 to commemorate the victims of the 9/11 terrorist attacks in the United States on September 11, 2001. See R. PANKHURST, "Ethiopia, The Aksum Obelisk, and the Return of Africa's Cultural Heritage", *African Affairs* 1999, Vol. 98, No. 391, 229–239; F. MARCELLO and A. CARTER, "The Axum Obelisk: Shifting concepts of colonialism and empire in Fascist and 21st-century Rome" in D.E. COSLETT (ed.), *Neocolonialism and Built Heritage: Echoes of Empire in Africa, Asia, and Europe, s.l.*, Routledge, 2019, 42–64; C. ALBANO, "Forgotten Images and the Geopolitics of Memory: The Italo-Ethiopian War (1935–6)", *Cultural History* 2020, Vol. 9, No. 1, 72–92; C. BELMONTE, "Monuments of Italian Colonialism as a Transcultural Heritage: Invisibility, Restitutions, Absence", *Interventions* 2024, 7.

²⁶⁸ Italy-Libya Friendship Treaty of 30 August 2008 (Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista, fatto a Bengasi il 30 agosto 2008), Chamber of Representatives, 16th Legislature, No. 2041.

²⁶⁹ C. DE CESARI, "The paradoxes of colonial reparation: Foreclosing memory and the 2008 Italy–Libya Friendship Treaty", *Memory Studies* 2012, Vol. 5, No. 3, 316–326.

²⁷⁰ The Venus of Lepcis Magna, a statue seized by Italy during colonial rule, was returned in 1999, under the liberal administration of Massimo D'Alema. The Venus of Cyrene, a symbol of Italian colonial power, encountered substantial obstacles to repatriation in 2008. Its return was ultimately mandated by a 1998 agreement between Italy and Libya. However, during Silvio Berlusconi's government, Italy altered its stance by presenting it as a generous gift to Libya rather than reparation. This attitude glossed over the colonial background, as seen in Berlusconi's statement, "Muammar, I brought your girlfriend back", turning the profound act of restitution into a political quip between leaders. See T. SCOVAZZI, "The Return of the Venus of Cyrene", *Art Antiquity & L.* 2009, Vol. 14, No. 4, 355–358; C. DE CESARI, "The paradoxes of colonial reparation: Foreclosing memory and the 2008 Italy–Libya Friendship Treaty", *Memory Studies* 2012, Vol. 5, No. 3, 316–326; F.R. GREENLAND, "The Restitution of Antiquities and the Modern Italian State", *Memoirs of the American Academy in Rome* 2023, Vol. 68, 64.

5. Portugal

Recently, there has been an increasing amount of contention around Portugal's attitude toward the restitution of cultural objects. The 2020 political proposal to achieve the “decolonization of culture” was a turning point in this debate, triggering a wide range of reactions.²⁷¹ The director of the National Museum of Ethnology underlined the importance of examining each case of restitution carefully, differentiating between pieces seized by force and those acquired unlawfully. Portugal's branch of the International Council of Museums (ICOM) conducted a survey on the provenance of various museum collections in 2021, although success was hindered by limited resources and staff.²⁷² However, the most notable development occurred in late 2022, when the Minister of Culture Pedro Adão e Silva revealed plans for an inventory of historic objects from former Portuguese territories in Asia and Africa. The goal is to identify which goods were obtained by forceful means, looting, or theft. While the whole inventory has yet to be revealed, some examples have been identified at the National Museum of Archaeology in Lisbon and a local museum in Figueira da Foz.²⁷³ Presently, it seems no artifacts have been returned to the former colonies. This has led to Portugal being widely perceived as lagging in comparison to other European States such as Germany or France, which was even admitted recently by Adão e Silva.²⁷⁴

6. United Kingdom

The case of the Benin Bronzes has brought attention to the United Kingdom's reluctance to restore cultural objects to their own nations.²⁷⁵ The British museum, where many of the works are kept, has

²⁷¹ Joacine Katar Moreira, then deputy of the Free Party (“Partido Livre”), propositioned that, in lieu of waiting for official claims for compensation, an inventory of the cultural legacies of Portugal's former colonies ought to be carried out voluntarily. Although Portuguese lawmakers rejected this proposal, the debate on restitution and decolonization was intensified for years to come. See K. OPOKU, “Will Portugal Be The Last Former Colonialist State To Restitute Looted African Artefacts?”, *Modern Ghana* 2020, <https://www.modernghana.com/news/986892/will-portugal-be-the-last-former-colonialist-state.html>; R. CHRISTOFOLETTI and M.L. BOTELHO, *International Relations and Heritage: Patchwork in Times of Plurality*, Cham, Springer International Publishing, 2021, 233; A. TEMUDO, “Current challenges for African cultural heritage: a case study of Guinea-Bissau”, *Museus e estudos interdisciplinares* 2021, Vol. 13, 1-18; “The politics of looted African art: Decolonising Europe's museums”, *The Parliament Magazine* 2024, <https://www.theparliamentmagazine.eu/news/article/the-politics-of-looted-african-art-decolonising-europes-museums>.

²⁷² A. TEMUDO, “Current challenges for African cultural heritage: a case study of Guinea-Bissau”, *Museus e estudos interdisciplinares* 2021, Vol. 13, 1-6.

²⁷³ “Museums in Europe and the United States confront their colonial past”, *EL PAÍS* 2024, <https://english.elpais.com/culture/2024-01-28/museums-in-europe-and-the-united-states-confront-their-colonial-past.html>.

²⁷⁴ K. OPOKU, “Will Portugal Be The Last Former Colonialist State To Restitute Looted African Artefacts?”, *Modern Ghana* 2020, <https://www.modernghana.com/news/986892/will-portugal-be-the-last-former-colonialist-state.html>; “Minister of Culture admits Portugal is lagging behind in patronage and calls for ‘private participation’”, *Pulse* 2024, <https://www.portugalpulse.com/minister-of-culture-admits-portugal-is-lagging-behind-in-patronage-and-calls-for-private-participation/>.

²⁷⁵ Originally from the Kingdom of Benin, which is now in modern-day Nigeria, the Benin Bronzes are a collection of finely wrought metal sculptures and plaques. The Benin Bronzes were among the hundreds of artifacts looted by British forces during their punitive campaign against the kingdom in 1897. Numerous items from this collection were shipped to

rejected petitions for the restitution of the 900 Benin bronzes.²⁷⁶ In doing so, the museum cited the National Heritage Act of 1983 as a barrier as it prohibits the removal of items classified as national heritage from the country.²⁷⁷ However, States such as France also face such laws and have nevertheless restituted artifacts. Hence, the UK's position must be considered out of date. Unlike some European countries that have reckoned with their colonial past, it has been said that Britain's identity still heavily hinges on its imperial history.²⁷⁸ The British Museum acknowledges atrocious conditions of the acquisition of the Benin bronzes but insists it is sufficient that the pieces' histories are accounted for in the museum galleries and on the website.²⁷⁹ Nonetheless, pressure on the British Museum to change its position has greatly increased due to the growing global impetus regarding restitution, also felt in the rest of Europe.²⁸⁰ However, significant political obstacles hinder advancement still, particularly the Conservative Party's cultural campaign against leftist revisionism of colonial history.²⁸¹ It seems that this has led to the UK falling behind in the restitution debate.

B. Restitution of Personal Identity and Family Ties

When examining the restoration of identity and family ties, the case of the children of inter-racial couples born during the colonial era is especially relevant. They were perceived as an enormous threat by European colonizers as they did not fit the white-black, master-slave dialectic of the colonial paradigm.²⁸² As a result, this group was widely victimized as colonial administrations attempted to

Europe, where they were placed in both private and museum collections. Since then, there has been a great deal of discussion and controversy surrounding the Benin Bronzes, including calls for their return to Nigeria. See F. SHYLLON, "Benin Bronzes: Something Grave Happened and Imperial Rule of Law Is Sustaining It!", *Art Antiquity & Law* 2019, Vol. 24, No. 3, 274–284. D.O. ORIAKHOGBA, "Repatriation of ancient Benin bronzes to Nigeria: reflection on copyright and related issues", *Journal of Intellectual Property Law & Practice* 2022, Vol. 17, No. 10, 823–833.

²⁷⁶ The British Museum can be considered a national institution, as its principal regulator is the Department for Digital, Culture, Media & Sport. See "Governance", *British Museum*, s.d., <https://www.britishmuseum.org/about-us/governance>. Nonetheless, some public institutions such as Cambridge University have decided to return some of these artifacts, indicating this is an ongoing saga. See "Cambridge to return Benin artefacts", *University of Cambridge* 2022, <https://www.cam.ac.uk/stories/beninreturn>.

²⁷⁷ S. DEGE, "Pressure on London to retribute artworks grows", *DW* 2023, <https://www.dw.com/en/pressure-on-london-to-restitute-artworks-grows/a-64566044>.

²⁷⁸ M.G. SINGH, "The Impact of Imperialism on British Identity", *HubPages* 2021, <https://discover.hubpages.com/education/The-impact-of-imperialism-on-british-identity>; K.C. MCKEE, "British Imperialism, National Identity, and Scotland's Built Environment", *Angles. New Perspectives on the Anglophone World* 2023, Vol. 16, 1-17.

²⁷⁹ S. DEGE, "Pressure on London to retribute artworks grows", *DW* 2023, <https://www.dw.com/en/pressure-on-london-to-restitute-artworks-grows/a-64566044>.

²⁸⁰ "Museums in Europe and the United States confront their colonial past", *EL PAÍS* 2024, <https://english.elpais.com/culture/2024-01-28/museums-in-europe-and-the-united-states-confront-their-colonial-past.html>.

²⁸¹ K.-W. LEE, "Is the Glass Half-Empty or Half-Full? Rethinking the Problems of Postcolonial Revisionism" *Cultural Critique* 1997, Vol. 36, 89–117; E. KAUFMANN, "The Politics of the Culture Wars in Contemporary Britain", *Policy Exchange* 2022, <https://policyexchange.org.uk/wp-content/uploads/2022/11/The-Politics-of-the-Culture-Wars-in-Contemporary-Britain.pdf>, 29.

²⁸² M.P. FITZPATRICK, "The threat of 'woolly-haired grandchildren': Race, the colonial family and German nationalism", *The history of the family* 2009, Vol. 14, No. 4, 356–368; S. HEYNSSENS, "Practices of Displacement:

erase their existence to maintain the *status quo*.²⁸³ Many of these children (now adults) are still alive today and constitute a particularly relevant group of victims of colonial harm *sensu stricto*. Consequently, they will form the focus of this section.

1. Belgium

The example of the ‘metis of Belgium’ demonstrates the fragmented approach Belgium has taken in the past in recognizing violations during colonialism and after the independence of the colonies. Metises are persons of mixed European and indigenous or African descent, born in interracial relationships.²⁸⁴ Family ties of metises were often disrupted by colonial practices, where children were taken away by the Belgian State from their African parents and placed in Christian institutions, leading to profound disconnects from their heritage.²⁸⁵ Belgium has gradually taken measures to restore the identity and family ties of the metises. Parliamentary hearings were held in 2017 and 2018, resulting in a parliamentary resolution proposing several remedial actions.²⁸⁶ These included measures such as belatedly granting the Belgian nationality to the victims, resolving issues with birth and marriage certificates, and providing diplomatic assistance to those who want to find their biological parents.²⁸⁷ A specialized unit at the State Archives of Belgium is supporting victims in searching for information from transferred archives, while further steps have been taken to address legal-administrative issues, such as obtaining birth certificates and reacquiring Belgian nationality.²⁸⁸

Forced Migration of Mixed-Race Children from Colonial Ruanda-Urundi to Belgium”, *Journal of Migration History* 2016, Vol. 2, No. 1, 1–31.

²⁸³ M.P. FITZPATRICK, “The threat of ‘woolly-haired grandchildren’: Race, the colonial family and German nationalism”, *The history of the family* 2009, Vol. 14, No. 4, 356–368.

²⁸⁴ Expert Report of the Congo Commission, Belgian Chamber of Representatives 2021-22, Doc. 55 1462/003, 511-514.

²⁸⁵ They were to be raised separately from their families and other children as their skin color was perceived to disrupt the colonial order. Upon the independence of the colonies, these children were in most cases taken to Belgium and left with foster families or their Belgian fathers with whom they had no connection. This led to a lack of connection to their own families and cultural background, causing complex identity questions. See Report of the Parliamentary Hearing on the Subject of the Metises of Belgium (De kwestie van de metissen uit de periode van de Belgische kolonisatie in Afrika), Belgian Senate 2017-18, No. 6-355/1, 62-69; Expert Report of the Congo Commission, Belgian Chamber of Representatives 2021-22, Doc. 55 1462/003, 511-514; K. GHEQUIÈRE, S. KANOBANA and F. CLAUS, *De bastaards van onze kolonie: verzwegene verhalen van Belgische metissen*, Roeselare, Roularta Books, 2010; S. HEYNSSSENS, *De kinderen van Save: een geschiedenis tussen Afrika en België*, Kalmthout, Polis, 2018; M. CHINI, “After 60 years, Belgium hands over birth certificate to mixed-race Métis person”, *The Brussels Times*, 2022, <https://www.brusselstimes.com/329918/after-60-years-belgium-hands-over-birth-certificate-to-mixed-race-metis-person>.

²⁸⁶ Resolution of 7 July 2017 on the Segregation of which the Metis from the Period of the Belgian Colonization in Africa were Victims (Resolutie over de segregatie waarvan de metissen uit de periode van de Belgische kolonisatie in Afrika het slachtoffer zijn geweest), Belgian Chamber of Representatives 2017-18, Doc. 54 2952/007.

²⁸⁷ Expert Report of the Congo Commission, Belgian Chamber of Representatives 2021-22, Doc. 55 1462/003, 511-514; I. GODDEERIS, “Mapping the Colonial Past in the Public Space A Comparison between Belgium and the Netherlands”, *BMGM -The Low Countries Historical Review* 2020, Vol. 135, No. 1, 70–94.

²⁸⁸ Expert Report of the Congo Commission, Belgian Chamber of Representatives 2021-22, Doc. 55 1462/003, 511-514; U. REALFONZO, “Belgium considers granting mixed-race children full access to colonial archives”, *The Brussels Times* 2022, <https://www.brusselstimes.com/belgium/232134/belgium-may-give-mixed-raced-people-full-access-to-colonial-archives>.

However, this has been a slow process; the first official birth certificate was only granted to a metis man in November of 2022.²⁸⁹

2. France

The legacy of France's colonial treatment of mixed-race children (also called 'metis') persists into the present, leaving many scarred. As in Belgium, children born to French colonialists and African women in West Africa were frequently abandoned by their fathers and split from their mothers. Described derogatorily as the "bastards of the republic", these children were placed in orphanages as a result of this practice, which was started in 1903 by Governor Ernest Roume, head of West Africa.²⁹⁰ The deliberate separation of children of mixed backgrounds from their families was a legal practice that was firmly embedded in the colonial order.²⁹¹ Currently, these "hidden children" urge France to acknowledge them as victims of colonialism and make amends. They highlight Belgium's 2019 apologies to mixed-race children from its former colonies and urge France to follow suit.²⁹² Sadly, France has not engaged in this discussion.

3. Germany

Germany equally has a history of segregation vis-à-vis mixed-race children (called "Mischlinge"), which led to their marginalization during the colonial era and extreme victimization during the Holocaust.²⁹³ However, no examples of attempts to remedy the Afro-Germans' status can be found, even though abuses went as far as marriage bans and forced sterilizations.²⁹⁴

²⁸⁹ M. CHINI, "After 60 years, Belgium hands over birth certificate to mixed-race Métis person", *The Brussels Times*, 2022, <https://www.brusselstimes.com/329918/after-60-years-belgium-hands-over-birth-certificate-to-mixed-race-metis-person>.

²⁹⁰ M. BADJI, "Le statut juridique des enfants métis nés en Afrique Occidentale Française de parents inconnus: Entre idéalisme républicain et turpitudes coloniales", *Droit et cultures : cahiers du Centre de recherche de l'U.E.R. de sciences juridiques* 2011, Vol. 61, 257–283; E. SAADA, *Empire's Children: Race, Filiation, and Citizenship in the French Colonies* (translated by Arthur Goldhammer), Chicago (IL), University of Chicago Press, 2012, 3-4; S. BRADPIECE, "Decades on, 'hidden children' forced into orphanages of colonial France remain traumatised", *France 24* 2020, <https://www.france24.com/en/africa/20200710-decades-on-hidden-children-forced-into-orphanages-of-colonial-france-remain-traumatised>.

²⁹¹ E. SAADA, *Empire's Children: Race, Filiation, and Citizenship in the French Colonies* (translated by Arthur Goldhammer), Chicago (IL), University of Chicago Press, 2012, 3-4.

²⁹² S. BRADPIECE, "Decades on, 'hidden children' forced into orphanages of colonial France remain traumatised", *France 24* 2020, <https://www.france24.com/en/africa/20200710-decades-on-hidden-children-forced-into-orphanages-of-colonial-france-remain-traumatised>.

²⁹³ M.P. FITZPATRICK, "The threat of 'woolly-haired grandchildren': Race, the colonial family and German nationalism", *The history of the family* 2009, Vol. 14, No. 4, 356–368.

²⁹⁴ K. KWIET, "Black lives didn't matter: The Afro-German experience", *Sydney Jewish Museum* 2020, <https://sydneyjewishmuseum.com.au/holocaust/black-lives-didnt-matter-the-afro-german-experience/>.

4. Italy

Mixed-race children born during and after the colonial era were systematically marginalized and discriminated against by the Italian State and the Catholic Church.²⁹⁵ The stories of these children are similar to those of the metises in Belgium, marked by marginalization and a lack of acceptance. They were the result of partnerships that the fascist State rejected, which frequently resulted in the children's abandonment. Even when the colonies obtained independence, these children faced further problems, such as being placed in children's homes to be raised by priests and nuns who acted as intermediaries between their Italian families and African mothers.²⁹⁶ Unlike Belgium, Italy regrettably does not seem to have acted on this issue.²⁹⁷

5. Portugal

Portugal's colonial history has always been framed as one of exploration and discovery as opposed to domination and repression. This viewpoint emphasizes the notion that Portuguese settlers were “good colonizers”, who socialized and blended in with the native African inhabitants.²⁹⁸ The former perspective assumes that racism was not a feature of Portugal's colonial legacy, neither historically nor currently.²⁹⁹ Portugal's current president, Marcelo Rebelo de Sousa, has suggested that the country “assume responsibility” for its previous acts. Considering his prior remarks, which minimized Portugal's involvement in the slave trade, this change in tone was noteworthy.³⁰⁰ While this policy undoubtedly affected the family life of mixed-race children, there was seemingly no systemic practice of separating children from their families and placing them in foster homes as was the case for Belgium and France. It is perhaps for this reason that Portugal has not engaged in this discussion.

²⁹⁵ S. PATRIARCA, “‘Brown Babies’ in Postwar Europe: The Italian Case”, *Max Weber Programme* 2016, Vol. 3, 1–12.

²⁹⁶ B. GAYLE PLUMMER, “Brown Babies. Race, Gender, and Policy after World War II” in B. GAYLE PLUMMER (ed.), *Windows on Freedom. Race, Civil Rights, and Foreign Affairs, 1945-1988*, Chapel Hill and London, The University of North Carolina Press, 2003, 67-91.

²⁹⁷ I. RADNEY, “Building Black Futures in Italy”, *Public Books* 2020, <https://www.publicbooks.org/building-black-futures-in-italy/>.

²⁹⁸ P. MARK, “The Evolution of ‘Portuguese’ Identity: Luso-Africans on the Upper Guinea Coast from the Sixteenth to the Early Nineteenth Century”, *The Journal of African History* 1999, Vol. 40, No. 2, 173–191; J. GORJÃO HENRIQUES, “A White Journalist Discovers the Lie of Portugal’s Colonial Past”, *Institute of the Black World 21st Century* 2017, <https://ibw21.org/commentary/white-journalist-discovers-lie-portugals-colonial-past/>.

²⁹⁹ J. BADCOCK, “Slavery memorial highlights Portugal’s racism taboo”, *BBC* 2018, <https://www.bbc.com/news/world-europe-44965631>.

³⁰⁰ S. JONES, G. FONSECA and P. OLTERMANN, “‘We need to tell people everything’: Portugal grapples with legacy of colonial past”, *The Guardian* 2023, <https://www.theguardian.com/world/2023/oct/05/portugal-grapples-with-legacy-of-colonial-past-slave-trading>.

6. United Kingdom

Europeans having relationships with native women were seen by British colonists as an unacceptable and “barbaric” habit; the established racial order of colonialism was seen as being endangered by such miscegenation.³⁰¹ This anxiety resulted from the conviction that relationships among different racial groups would distort the racial classifications that served as justification for colonial rule.³⁰² Nonetheless, the same argument as made for Portugal applies here: there was no systemic practice of separating children from their families, potentially explaining why there is less discourse on the topic in the UK.

C. Restitution of Economic Opportunities

Due to States’ tendencies to group the strengthening of economic opportunities with other rehabilitative services under the term ‘development aid’, this measure will be discussed collectively under ‘rehabilitation’, since there is no solid conceptual distinction between restitution and rehabilitation regarding this topic.³⁰³

§2. Compensation

Compensation refers to all forms of monetary recompense meant to make good any financially assessable damage including loss of profits.³⁰⁴ When previously constructing a typology of reparations, it was argued that symbolic recompense would constitute a more efficient alternative to the compensation of individual cases of colonial harm, as it does not require the exact quantification of the widespread and complex damage that colonialism caused.³⁰⁵ However, there appears to be no practical applications of this yet, meaning this section will focus on the compensation of colonial

³⁰¹ L. MBOGONI, *Miscegenation, Identity and Status in Colonial Africa: Intimate Colonial Encounters*, s.l., Routledge, 2020.

³⁰² K. CHLUDZINSKI, “The Fear of Colonial Miscegenation in the British Colonies of Southeast Asia”, *Journal of Planning Practice and Education* 2009, Vol. 1, No. 1, 54-64.

³⁰³ ³⁰³ C. MINOIU and S.G. REDDY, “Development Aid and Economic Growth: A Positive Long-Run Relation” (IMF Working Paper), 2009, <https://www.imf.org/external/pubs/ft/wp/2009/wp09118.pdf>; “Official development assistance (ODA)”, *OECD*, s.d., <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.html>.

³⁰⁴ Article 36 ASR; ICJ 25 September 1997, Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), *I.C.J. Rep.* 1997, para. 152; C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, International Commission of Jurists 2006, 149; J. BARKER, “The Different Forms of Reparation: Compensation” in J. CRAWFORD, A. PELLET and S. OLLESON (eds.), *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (599) 604; J. CRAWFORD, *Brownlie’s Principles of Public International Law*, Oxford, Oxford University Press, 2012, 571; N. WITTMANN, “Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security”, *Global Justice* 2017, Vol. 9, No. 2, 211.

³⁰⁵ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 543.

harm *sensu stricto*.³⁰⁶ Even for this last category, there are not many examples to study. As explained above, States remain decidedly wary of any forms of recompense that could set a legal precedent, while this reasoning lacks merit.³⁰⁷ Consequently, the awarding of compensation tends to be framed as an ‘*ex gratia* payment’, *i.e.* a transfer made as a gesture of kindness without admitting any fault.³⁰⁸ European States’ focus on ruling out any future liability in their apologies gives a rather self-protecting impression, impeding genuine reconciliation.³⁰⁹

A. Compensation of Colonial Harm Sensu Stricto

1. Belgium

Five metis women filed a lawsuit in 2020 against the Belgian state for abduction, abuse, neglect, and racial discrimination during their childhood in Belgian Congo. These women were born to Congolese mothers and colonial Belgian fathers, which led to their placement in the convent of the Sisters of St. Vincentius a Paolo in Katende. The women demanded compensation of 50,000 EUR each and an expert assessment to determine the moral damage they and future generations suffered. They also requested access to the file regarding their placement, if one existed.³¹⁰ However, the court of first instance in Brussels refused their claim. According to the judge, the facts cannot be considered crimes against humanity because between 1948 and 1961 they were not seen as such in the public opinion of the time. In addition, the Court stated the facts did not fit into a systematic policy of deliberate destruction, which is characteristic of crimes against humanity.³¹¹ The judge acknowledged that the women suffered and underlined that the rejection does not mean that what happened to them was acceptable under the law of the time, but unfortunately the facts are time-barred.³¹² This illustrates

³⁰⁶ Regardless, the distinction between these two categories is not straightforward to uphold in practice. In the few cases of compensation that have occurred, States do not always indicate clearly which harm they are recompensing and how this was assessed financially (*cfr.* Germany and Italy).

³⁰⁷ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 54; J. CRAWFORD, “Colonial crimes: the reparations movement stalls in Europe”, *JusticeInfo.net* 2023, <https://www.justiceinfo.net/en/115285-colonial-crimes-reparations-movement-stalls-europe.html>.

³⁰⁸ R. MARCONI, “States before their colonial past: Practice in addressing responsibility”, *QIL Zoom Out* 2024, No. 103, 25-46.

³⁰⁹ S. VAN DE PUT, “Ex Gratia Payments and Reparations: A Missed Opportunity?”, *Journal of International Humanitarian Legal Studies* 2023, Vol. 14, No. 1, 131–155.

³¹⁰ M. CHINI, “Metis women sue Belgian state for kidnapping”, *The Brussels Times* 2021, <https://www.brusselstimes.com/188855/metis-women-sue-belgian-state-for-kidnapping>; V. BEEL, “België gaat vrijuit: ‘Metissen hebben geleden, maar feiten zijn verjaard’”, *De Standaard* 2021, https://www.standaard.be/cnt/dmf20211208_98145296

³¹¹ Brussels Court of First Instance 8 December 2021, L.T.M. *e.a.*/Belgium (published in *J.L.M.B.* 2022, Vol. 22, 984); M. SMETS, “Belgisch koloniaal beleid van raciale segregatie. Een misdaad tegen de mensheid?”, *NJW* 2022, Vol. 463, 434–441.

³¹² V. BEEL, “België gaat vrijuit: ‘Metissen hebben geleden, maar feiten zijn verjaard’”, *De Standaard* 2021, https://www.standaard.be/cnt/dmf20211208_98145296.

Belgium's hesitance to compensate colonial harm, considering there have been no other cases or initiatives on the monetary reparation of colonial harm³¹³.

2. France

In 2017, French President Macron stated that it would be “totally ridiculous” for France to provide a subsidy or compensation for colonialism during a State visit to Ghana, in complete contrast to declaring his commitment to repairing France's colonial history just a week earlier in Burkina Faso. He emphasized that such measures are not beneficial for building a future, seeming to favor other forms of reconciliation such as restitution of colonial artifacts and commemoration.³¹⁴ Hence, there have been no initiatives concerning compensation in France.³¹⁵

3. Germany

The Namibian case brings to light Germany's reticence to fully admit its colonial atrocities against the Herero and Nama people, which have been described as the first genocide of the 20th century.³¹⁶ Around 80% of Namibia's Herero and up to 50% of the Nama were killed as a result of the “Extermination Order”, which was carried out between 1904 and 1908 by German soldiers under General Lothar von Trotha.³¹⁷ The enduring massacre included executions, forced marches across the desert, detention camps, and the taking of remains for racial experimentation.³¹⁸ Bilateral discussions aimed at reconciliation commenced in 2015, which resulted in Germany and Namibia signing a joint declaration in 2021.³¹⁹ However, this agreement was met with a great deal of criticism since the statement is lacking in a number of important areas, most notably the omission of the word “reparations” and the absence of direct participation of the people concerned. As a result, the deal was rejected by the descendants of the victims of the genocide, leading the procedure to come to a

³¹³ M. CHINI, “Reparations? No consensus on how Belgium should apologise for colonial past”, *The Brussels Times*, 2022, <https://www.brusselstimes.com/329556/reparations-no-consensus-on-how-belgium-should-apologise-for-colonial-past>.

³¹⁴ “Macron rules out reparations for colonialism”, *RFI* 2017, <https://www.rfi.fr/en/africa/20171204-macron-rules-out-reparations-colonialism>.

³¹⁵ However, there was a lawsuit filed for reparations for slavery which was recently rejected by the French Court of Cassation. While slavery and colonialism are related subjects, they are regarded as separate in this thesis, meaning slavery is not treated as a component of colonial harm but its own category. For more on this case, see “France's top court denies appeal for reparations by descendants of slaves”, *RFI* 2023, <https://www.rfi.fr/en/france/20230705-france-s-top-court-denies-appeal-for-reparations-by-descendants-of-slaves>.

³¹⁶ J. CRAWFORD, “Colonial crimes: the reparations movement stalls in Europe”, *JusticeInfo.net* 2023, <https://www.justiceinfo.net/en/115285-colonial-crimes-reparations-movement-stalls-europe.html>.

³¹⁷ J.-B. GEWALD, “The Great General of the Kaiser”, *Botswana Notes and Records* 1994, Vol. 26, 67–76.

³¹⁸ J. CRAWFORD, “Colonial crimes: the reparations movement stalls in Europe”, *Justice Info* 2023, <https://www.justiceinfo.net/en/115285-colonial-crimes-reparations-movement-stalls-europe.html>.

³¹⁹ Joint Declaration of May 2021 by the Federal Republic of Germany and the Republic of Namibia “United In Remembrance of Our Colonial Past, United in Our Will to Reconcile, United in Our Vision of the Future”; H. MELBER, “Germany and Namibia: Negotiating Genocide”, *Journal of Genocide Research* 2020, Vol. 22, No. 4, 502–514.

standstill.³²⁰ The amount allotted, 1.05 billion EUR to be paid as development aid over 30 years, is comparable to what Germany has spent in the last 30 years on Namibia.³²¹ This case furthermore illustrates the blurred lines between the categories of reparations, as it is framed as a compensation case, but the outcome in fact concerns rehabilitation in the form of funding various development projects.³²² The choice to not pay the sum in the form of damages, but as aid is extremely regrettable as this cannot be considered full compensation.³²³

4. Italy

The Italy–Libya Friendship Treaty, signed between General Muhammad Gaddafi and former Italian Prime Minister Silvio Berlusconi in 2008, stood as a first step toward Italy addressing its colonial history.³²⁴ In order to remedy the historical injustices resulting from Italian colonialism in Libya, this treaty included a substantial financial compensation of 5 billion USD.³²⁵ The funds would be used for infrastructural initiatives, such as building a highway along the Mediterranean coast. Italian businesses were assigned to carry them out.³²⁶ Although this is a considerable amount of money, the same critique that was previously expressed about Germany can be made, namely that it is unfortunate that the choice was made to pay out this sum in the form of rehabilitative measures as this cannot be considered full compensation.³²⁷ Critics further contend that the deal was truly motivated by economic and geopolitical considerations, namely Italian investments in Libya's oil industry and migration control.³²⁸ These underlying motives likely outweighed the genuine intention for reconciliation and atonement, playing into the politics of regret. Additionally, the Treaty was

³²⁰ H. ISILOW, “Mixed reactions in Africa as Germany formally recognizes ‘genocide’ in Namibia”, AA 2021 <https://www.aa.com.tr/en/africa/mixed-reactions-in-africa-as-germany-formally-recognizes-genocide-in-namibia/2257660>; H. MELBER, “Why reconciliation agreement between Germany and Namibia has hit the buffers”, *The Conversation*, 2022, <http://theconversation.com/why-reconciliation-agreement-between-germany-and-namibia-has-hit-the-buffers-173452>.

³²¹ P. OLTERMANN, “Germany agrees to pay Namibia €1.1bn over historical Herero-Nama genocide”, 2021, <https://www.theguardian.com/world/2021/may/28/germany-agrees-to-pay-namibia-11bn-over-historical-herero-nama-genocide>.

³²² J. CRAWFORD, “Colonial crimes: the reparations movement stalls in Europe”, *Justice Info* 2023, <https://www.justiceinfo.net/en/115285-colonial-crimes-reparations-movement-stalls-europe.html>.

³²³ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para 13.

³²⁴ Italy–Libya Friendship Treaty of 30 August 2008 (Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista, fatto a Bengasi il 30 agosto 2008), Chamber of Representatives, 16th Legislature, No. 2041.

³²⁵ A. VARVELLI, “Italy and Libya: Renewing a Special Relationship”, *The International Spectator* 2010, Vol. 45, No. 3, 117–130.

³²⁶ C. DE CESARI, “The paradoxes of colonial reparation: Foreclosing memory and the 2008 Italy–Libya Friendship Treaty”, *Memory Studies* 2012, Vol. 5, No. 3, 316–326.

³²⁷ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (21 August 2019), *UN Doc. A/74/321* (2019), para 13.

³²⁸ N. RONZITTI, “The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?”, *Bulletin of Italian Politics* 2009, Vol. 1, No. 1, 125–133.

criticized for continuously implying that Italy's considers colonialism reckoned with, frequently speaking of "closure" and the issue being "closed".³²⁹ Despite these criticisms, it must be highlighted that other countries have not taken effective action of this magnitude presently.

5. Portugal

While Portugal has been urged to confront its colonial past by the Council of Europe due to the rise of racially motivated crimes and racist rhetoric in political discourse, no plans have been proposed to compensate the victims of colonialism.³³⁰ As stated earlier, President Marcelo Rebelo de Sousa recently mentioned the need to atone for Portugal's history of imperialism, but did not specify whether this ought to take the shape of an apology or financial compensation.³³¹

6. United Kingdom

A central example regarding the compensation of colonial harm is the Mau Mau case.³³² While it is a good example of a State acting on its responsibility to provide reparations for wrongful acts, it is a claim based on domestic tort law. The Mau Mau movement was an ethnic group in Kenya who sued the United Kingdom in April 2011 before the British High Court seeking damages for assault, battery, and negligence. The UK government imprisoned the claimants in detention centers during the 1950s and subjected them to torture, castration, and sexual assault. Approximately 1.5 million Kenyans were imprisoned in villages and detention camps, tortured routinely, and subjected to other forms of brutality during the British colonial government's suppression of the Mau Mau independence movement.³³³

The Mau Mau people were given permission to bring a lawsuit before the High Court of Justice. In the end, the Government settled the case and agreed to reimburse 5,228 descendants of the victims for 19.9 million GBP in damages for the torture, abduction, and murder of the members of the Mau

³²⁹ C. DE CESARI, "The paradoxes of colonial reparation: Foreclosing memory and the 2008 Italy–Libya Friendship Treaty", *Memory Studies* 2012, Vol. 5, No. 3, 318–320; M. NESTORE, "Italy And The Denial Of Its Colonial Past", *Italics Magazine* 2021, <https://italicsmag.com/2021/06/14/italy-and-the-denial-of-its-colonial-past/>.

³³⁰ Memorandum of the Council of Europe Commissioner for Human Rights on Combating Racism and Violence against Women in Portugal (24 March 2021), CommDH(2021)4, para. 11; V. WALDERSEE and C. DEMONY, "Confront your colonial past, Council of Europe tells Portugal", *Reuters* 2021, <https://www.reuters.com/article/idUSKBN2BG137/>.

³³¹ "Portugal must assume responsibility for colonial wrongdoing", *Macao News* 2023, <https://macaonews.org/news/lusofonia/portugal-slavery-colonialism-apology/>.

³³² The Rawagede case is often also discussed in this context but does not fall within the scope of this research as it pertains to the Dutch government and Indonesia. See the Hague Court of First Instance 25 March 2020, No. C/09/428182, Rawagede case.

³³³ J.H. MERIWETHER, "African Americans and the Mau Mau Rebellion: Militancy, Violence, and the Struggle for Freedom", *Journal of American Ethnic History* 1998, Vol. 17, No. 4, 63–86; H. NISSIMI, "Mau Mau and the Decolonisation of Kenya", *Journal of Military and Strategic Studies* 2006, Vol. 8, No. 3, 1–35; P.J. IMPERATO, "Differing Perspectives on Mau Mau", *African Studies Review* December 2005, Vol. 48, No. 3, 147–154.

Mau movement.³³⁴ Nonetheless, it is argued that this is not really a colonial reparations case, as the scope remains very specific: the UK government refuses more collective action.³³⁵ However, this thesis makes a more nuanced conceptual distinction between reparations and compensation on the one hand, and colonialism and colonial harm on the other. This case is hence a valuable example of the compensation of colonial harm *sensu stricto*. Nonetheless, it appears to be an isolated occurrence: a later case that brought up the claims of an additional 40,000 Kenyans that asserted they had been raped, abused, and subjected to torture during the uprising's repression, was dismissed.³³⁶

§3. Satisfaction

Satisfaction generally aims to restore a person's sense of dignity, mental wellbeing, and reputation.³³⁷ Its five modalities relevant to the context of colonial harm are the public apology, commemorations and tributes, truth commissions, educational programs, and cessation.

A. Public Apology

In the same vein as the remarks regarding the self-protecting nature of 'ex gratia payments' made above, States generally tend to employ very careful language when apologizing for colonial harm.³³⁸ The use of expressions such as "deepest regrets" indicates a preference for the 'ex gratia apology', which has been considered a means of waiving future legal liability, rather than true reparation.³³⁹ Furthermore, States' tendency to apologize for only colonialism's most brutal crimes instead of imperialism in general has been criticized, as this reduces centuries of abuses to the responsibility of a few corrupted individuals.³⁴⁰

³³⁴ British High Court of Justice 2 August 2018, No. HQ13X02162, Kimathi and Ors/The Foreign and Commonwealth Office.

³³⁵ J. BHABHA, M. MATACHE and C. ELKINS, *Time for reparations: a global perspective in Pennsylvania studies in human rights*, Philadelphia, Pennsylvania, University of Pennsylvania Press, 2021, 10-11.

³³⁶ D. ELSTEIN, "Judge dismissed Kenyans' claims", *The Guardian* 2019, <https://www.theguardian.com/world/2019/may/21/judge-dismissed-kenyans-claims>.

³³⁷ Article 37 ASR; C. DROEGE, "The Right to a Remedy and to reparation for gross human rights violations, a practitioners' guide", International Commission of Jurists 2006, 149; E. WYLER and A. PAPAUX, "The Different Forms of Reparation: Satisfaction" in J. CRAWFORD, A. PELLET and S. OLLESON (eds.), *The Law of International State Responsibility*, Oxford, Oxford University Press, 2010, (623) 635.

³³⁸ R. B. BILDER, "The Role of Apology in International Law and Diplomacy", *Va. J. Int'l L.* 2006, (433) 468; K. VAN DER SPEETEN, "Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms", *Jura Falconis* 2021, Vol. 57, No. 2, 54; S. AL AMOURI and S. SMIS, "Inter-state Apologies for Colonial Injustices from an International State Responsibility Perspective: A Commentary on the Belgian Controversy", *ASIL Insights* 2023, Vol. 27, No. 4, 5-6.

³³⁹ S. VAN DE PUT, "Ex Gratia Payments and Reparations: A Missed Opportunity?", *Journal of International Humanitarian Legal Studies* 2023, Vol. 14, No. 1, 131-155; R. MARCONI, "States before their colonial past: Practice in addressing responsibility", *QIL Zoom Out* 2024, No. 103, 25-46.

³⁴⁰ A. TYAGI, "The Legacy Of Colonialism: Why Colonial Powers Must Apologize", *The Gazelle* 2019, <https://www.thegazelle.org/issue/171/the-legacy-of-colonialism-why-colonial-powers-must-apologize>.

1. Belgium

Prior to 2020, Belgium had only apologized for specific instances of abuse connected to its colonial past.³⁴¹ In 2002, the Belgian Prime Minister Guy Verhofstadt apologized for the role the country played in the Rwandese genocide.³⁴² The State also expressed its regrets in 2002 for its involvement in the assassination of Congolese politician Lumumba shortly after the DRC gained its independence.³⁴³ In 2019, former Prime Minister Michel offered an official apology for the maltreatment of the metises (children born to Belgian colonists and African women, *supra*) during and after the period of colonial rule.³⁴⁴ Then, in a letter to Congolese President Félix Tshisekedi on June 30th, 2020, the day of the 60th anniversary of the DRC, Belgium's King Philippe expressed his “deepest regrets” for the country’s colonial past.³⁴⁵ He stated his regret for the historical violence and suffering inflicted during the Congo Free State and the following colonial period, acknowledging that this pain is still felt today through ongoing discrimination in our society.³⁴⁶ This declaration marked the first time a Belgian king has expressed regret for the nation’s colonial heritage.³⁴⁷ However, while this declaration constituted a start toward acknowledgment and healing, it lacked substantial impact owing to a variety of issues. For instance, the noticeable omission of King Leopold II's name suggests a reluctance to show sincere regret for the royal family’s wrongdoings.³⁴⁸ Furthermore, the King avoided taking direct responsibility for the cruelty of the Belgian State by only making passing references to it and did not explicitly denounce colonialism.³⁴⁹ The King's statement of “regret” without official apologies might be related to concerns regarding preempting the work of

³⁴¹ K. VAN DER SPEETEN, “Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms”, *Jura Falconis* 2021, Vol. 57, No. 2, 49.

³⁴² E. BARTHET, ““In Belgium, the question of apologizing for our colonial past does not come up like in France””, *Le Monde* 2022, https://www.lemonde.fr/en/le-monde-africa/article/2022/06/08/in-belgium-the-question-of-apologies-for-the-colonial-past-does-not-arise-as-in-france_5986116_124.html.

³⁴³ M.-L. COLSON, “La Belgique «s’excuse» pour Lumumba”, *Libération* 2002, https://www.liberation.fr/planete/2002/02/06/la-belgique-s-excuse-pour-lumumba_392848/. This apology was reiterated more recently in 2019 by Prime Minister De Croo, see J.P. STROOBANTS, “Le premier ministre belge présente des excuses officielles pour la mort de Patrice Lumumba”, *Le Monde* 2022, https://www.lemonde.fr/afrique/article/2022/06/20/le-premier-ministre-belge-presente-des-excuses-officielles-pour-la-mort-de-patrice-lumumba_6131259_3212.html.

³⁴⁴ B. BRINCKMAN, “Michel excuseert zich bij kinderen van de kolonie”, *De Standaard*, 2019, https://www.standaard.be/cnt/dmf20190402_04297525.

³⁴⁵ “Once the Blood on Our Hands Dries: Royal Apologies for the Belgian Colonization of Congo”, *Harvard International Review* 2022, <https://hir.harvard.edu/once-the-blood-on-our-hands-dries-royal-apologies-for-the-belgian-colonization-of-congo/>.

³⁴⁶ V. ARNOULD, “Regrets, Apologies and Repair for Belgium’s Colonial Harms”, *Leuven Transitional Justice Blog* 2020, <https://law.kuleuven.be/ltjb/regrets-apologies-and-repair-for-belgiums-colonial-harms/>.

³⁴⁷ Expert Report of the Congo Commission, Belgian Chamber of Representatives 2021-22, Doc. 55 1462/003, 511-514.

³⁴⁸ K. MAGENDANE, “De magere brief van de koning”, *De Standaard* 2020, https://www.standaard.be/cnt/dmf20200703_97426133.

³⁴⁹ T. BENTLEY, “Colonial apologies and the problem of the transgressor speaking”, *Third World Quarterly* 2018, Vol. 39, No. 3, 408; W. PAULI, “Mark Van den Wijngaert: ‘Filip staat sterk’”, *Knack* 2020, <https://www.knack.be/nieuws/mark-van-den-wijngaert-filip-staat-sterk/>.

the truth and reconciliation commission, as well as the potential legal consequences of formally admitting responsibility (*supra* under Chapter II).³⁵⁰

2. France

France's approach to colonial apologies has been hesitant, with no formal apologies for colonialism as a whole.³⁵¹ In fact, Chirac's 1995 apology for the Vichy regime crimes stands as the sole formal apology from the French state, although scholars note this apology paved the way for discussions on France's colonial past, for example regarding the Algerian War.³⁵² Past presidents have expressed regret for specific injustices. For example, in 2015, the then-president Francois Hollande apologized for the "tragic" way that French soldiers in Cameroon suppressed the independence movement after 1955.³⁵³ While Macron acknowledged French state abuses in Algeria in 2018, he did not go as far as issuing a formal apology on the matter.³⁵⁴ In 2021, shortly before the release of findings from the Algeria Commission, the presidential administration announced there would be "no repentance nor apologies" for the abuses in Algeria, opting instead for "symbolic acts" of reconciliation (such as restitution and commemoration, see above and below).³⁵⁵ This attitude was reaffirmed by Macron in 2023, stating he will not ask Algeria for "forgiveness" over colonization.³⁵⁶

³⁵⁰ It is argued that formally admitting responsibility may open the floodgates of legal claims for reparations, see above on the respective section in the typology of reparations.

³⁵¹ F. BOEHME, "Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany", *Global Studies Quarterly* 2022, Vol. 2, No. 4, 6.

³⁵² During World War II, the Vichy regime aided Nazi Germany in committing many atrocities including economic exploitation, political repression, war crimes, and the Jewish persecution. See L.S. WEXLER, "Reflections on the Trial of Vichy Collaborator Paul Touvier for Crimes against Humanity in France" *Law & Social Inquiry* 1995, 20, . 1, 191–221; C. PEELER, "The Politics of Memory: Reconstructing Vichy and the Past the French Chose to Forget Fourteenth Annual International Law Symposium - Enforcing International Human Rights Law" *Whittier L. Rev.* 1998 1997, 19, . 2, 353–372; J. FETTE, "Apology and the Past in Contemporary France", *French Politics, Culture & Society* 2008, Vol. 26, No. 2, 78–113.

³⁵³ C. OKELLO, "Hollande acknowledges colonial-era Cameroon massacres but critics want apology", *RFI* 2015, <https://www.rfi.fr/en/africa/20150705-hollande-acknowledges-colonial-era-cameroon-massacres-critics-want-apology>.

³⁵⁴ H. EL KAROUI and M. DE FOUGIERES, "The Politics of Macron's Commemoration of the Algerian War", *Reflections* 2022, <https://www.institutmontaigne.org/en/expressions/politics-macrons-commemoration-algerian-war>.

³⁵⁵ "No repentance nor apologies' for colonial abuses in Algeria, says Macron", *France 24* 2021, <https://www.france24.com/en/france/20210120-no-repentance-nor-apologies-for-colonial-abuses-in-algeria-says-macron>.

³⁵⁶ K. DAOUD, "EXCLUSIF. Emmanuel Macron: « Je ne demande pas pardon à l'Algérie et j'explique pourquoi »", *Le Point* 2023, https://www.lepoint.fr/politique/exclusif-emmanuel-macron-je-ne-demande-pas-pardon-a-l-algerie-et-j-explique-pourquoi-11-01-2023-2504494_20.php; N. CAMUT, "Macron will not ask Algeria for 'forgiveness' over colonization", *Politico*, 2023, <https://www.politico.eu/article/emmanuel-macron-france-will-not-ask-algeria-for-forgiveness-over-colonisation/>.

3. Germany

Not until 2004 did Germany formally acknowledge its colonial past, placing more focus on its presence in Namibia and Tanzania in recent years.³⁵⁷ First, on the centennial of the 1904 Namibian genocide, the German Minister of Economic Development and Cooperation apologized, stating “We Germans recognize our historical, political, moral and ethical responsibility and guilt.”³⁵⁸ Still, this gesture was only considered a half-apology, since it was clarified afterwards to not represent the official German position on the matter and the acts were only later officially recognized as a genocide.³⁵⁹ In the 2021 Joint Declaration between Germany and Namibia (*supra*), Germany “apologizes and bows before the descendants of the victims.”³⁶⁰ However, this apology has not been accepted by the Namibian people, who called the amount of money offered “insulting” and “an affront to our existence”.³⁶¹ Moreover, President Frank-Walter Steinmeier apologized for the colonial-era Maji Maji massacre in Tanzania in 2023, recognizing the crimes carried out by German colonial rulers and asking for forgiveness.³⁶² Although this apology was welcomed, it is also seen as only the start of a more thorough reconciliation process.³⁶³

4. Italy

In 2008, Italy and Libya signed the Treaty on “Friendship, Partnership and Cooperation”, whereby Italy committed to paying Libya one billion USD over the course of 20 years as compensation for

³⁵⁷ F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, Vol. 2, No. 4, 8.

³⁵⁸ “Germany Asks for Namibians’ ‘Forgiveness’”, *DW*, 2004, <https://www.dw.com/en/germany-asks-for-namibians-forgiveness/a-1298060>; G. COLLSTE, “Rectification for Atrocities Under Colonialism”, *International Journal of Post-Colonial Studies* 2016, (852) 852-862.

³⁵⁹ F. BOEHME, “Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany”, *Global Studies Quarterly* 2022, Vol. 2, No. 4, 8; K. AHMED, “Descendants of Namibia’s genocide victims call on Germany to ‘stop hiding’”, *The Guardian* 2023, <https://www.theguardian.com/global-development/2023/feb/03/namibia-genocide-victims-herero-nama-germany-reparations>.

³⁶⁰ Joint Declaration of July 2021 by the Federal Republic of Germany and the Republic of Namibia “United in Remembrance of Our Colonial Past, United in Our Will to Reconcile, United in Our Vision of the Future”, para. 13.

³⁶¹ “Ethnic leaders in Namibia reject German genocide apology”, *DW* 2021, <https://www.dw.com/en/namibia-chiefs-reject-insulting-german-aid-offer-over-colonial-killings/a-57731356>. Namibian President Hage Geingob also denounced Germany recently for hypocrisy to their decision to intervene as a third party in defense of Israel in the ongoing case before the ICJ in which South Africa accused Israel of committing genocide in Gaza. See D.L. BROWN, “Why Namibia invoked a century-old German genocide in international court”, *Washington Post* 2024, <https://www.washingtonpost.com/history/2024/01/20/namibia-german-genocide-israel/>.

³⁶² During the Maji Maji Rebellion in Tanzania in the early 1900s, German colonial forces brutally killed an estimated 300,000 indigenous people, or roughly one-third of the country’s population at the time. See K. NJOGU, “Swahili and the Maji Maji Resistance Against German Rule” in A. MAZRUI and K. NJOGU (eds.), *Swahili in Spaces of War: A Sociolinguistic Odyssey*, Cham, Springer International Publishing, 2023, 29–56; N. PRINCEWILL and S. BUSARI, “German president asks for forgiveness in Tanzania over colonial-era atrocities” <https://edition.cnn.com/2023/11/01/africa/germany-apologize-tanzania-colonial-atrocities-intl/index.html>.

³⁶³ P. SANDNER, “Tanzanians welcome Germany’s apology for Maji Maji massacre”, *DW* 2023, <https://www.dw.com/en/tanzanians-welcome-germanys-apology-for-maji-maji-massacre/a-67286643>.

abuses committed during the colonial era.³⁶⁴ Prime Minister Silvio Berlusconi issued a formal apology for Italy's previous conduct in Libya.³⁶⁵ Despite this, the Treaty's avoidance of clear recognition of Italy's colonial violations and the underlying interests regarding geopolitical and economic benefits, such as having the upper hand in Libya's oil industry and the control of migration in the Mediterranean, indicate insincerity.³⁶⁶ Unfortunately, it appears this agreement was more about enriching Italy than reckoning with the past as it mostly stifled the dialogue.

5. Portugal

As previously discussed concerning Portugal, president Rebelo de Sousa has acknowledged the need to atone for Portugal's history of imperialism, but did not specify whether this ought to take the shape of an apology or financial compensation.³⁶⁷ To this date, no formal apology has been issued.

6. United Kingdom

Pursuant to the Mau Mau settlement (*supra*), British Minister of Foreign Affairs William Hague expressed his sincere regret for the suffering and grievance of those involved in the Kenyan crisis in 2013, acknowledging that the victims had been tortured and abused under British colonial rule.³⁶⁸ While Hague condemned these atrocities as reprehensible assaults of human dignity, he continued to deny judicial culpability for the colonial administration's acts. Ten years later, King Charles III expressed his "deepest regret" and "greatest sorrow" for past wrongdoings and emphasized Britain's "abhorrent and unjustifiable acts of violence" during Kenya's war for independence, just stopping short of an official apology.³⁶⁹ During the King's visit to Kenya, the Kenya Human Rights Commission (KHRC) had demanded a "unequivocal public apology" on behalf of the British

³⁶⁴ Italy-Libya Friendship Treaty of 30 August 2008 (Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista, fatto a Bengasi il 30 agosto 2008), Chamber of Representatives, 16th Legislature, No. 2041.

³⁶⁵ K. VAN DER SPEETEN, "Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms", *Jura Falconis* 2021, Vol. 57, No. 2, 49.

³⁶⁶ N. RONZITTI, "The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?", *Bulletin of Italian Politics* 2009, Vol. 1, No. 1, 125–133; A. VARVELLI, "Italy and Libya: Renewing a Special Relationship", *The International Spectator* 2010, Vol. 45, No. 3, 117–130; C. DE CESARI, "The paradoxes of colonial reparation: Foreclosing memory and the 2008 Italy–Libya Friendship Treaty", *Memory Studies* 2012, Vol. 5, No. 3, 316–326; M. NESTORE, "Italy And The Denial Of Its Colonial Past", *Italics Magazine* 2021, <https://italicsmag.com/2021/06/14/italy-and-the-denial-of-its-colonial-past/>.

³⁶⁷ "Portugal must assume responsibility for colonial wrongdoing", *Macao News* 2023, <https://macaonews.org/news/lusofonia/portugal-slavery-colonialism-apology/>.

³⁶⁸ Official Report of the House of Commons on the Parliamentary Debates (6 June 2013), Vol. 563, No. 13, 1693–1694; G. COLLSTE, "Rectification for Atrocities Under Colonialism", *International Journal of Post-Colonial Studies* 2016, (852) 858.

³⁶⁹ J. CLINTON and C. KIMEU, "King Charles stops short of apology for 'abhorrent' colonial violence in Kenya", *The Guardian* 2023, <https://www.theguardian.com/world/2023/oct/31/king-charles-stops-short-of-apology-for-british-colonial-violence-kenya>.

government.³⁷⁰ Although he lauded the King's courage, President William Ruto stressed the necessity for complete reparation.³⁷¹ The UK asserts to want to achieve a more tolerant and inclusive society today, but does not believe an apology for past deeds should constitute a part of this strategy.³⁷²

B. Public Commemorations

1. Belgium

Under pressure from the general public and the Black Lives Matter movement, Belgium has begun to address the controversy surrounding colonial statues connected to King Leopold II.³⁷³ Belgium's approach has been varied: some individual Belgian municipalities have chosen to remove the statues, while others have chosen to recontextualize them.³⁷⁴ Recently, Brussels authorities have published an ambitious report on plans to decolonize public spaces, including, for example, the Cinquantenaire Park in Brussels. However, upon the announcement of the 2030 redevelopment plan for the park, there was little mention of these plans, to the surprise of many.³⁷⁵ The regional administration also suggested establishing a Decolonization Interpretation Center and moving contentious monuments to a depot for public inspection, although this project has not materialized yet.³⁷⁶ There have also been various practices of changing street names referring to colonial rulers.³⁷⁷ While Belgium has made

³⁷⁰ C. KIMEU, "King Charles asked for 'unequivocal apology' by Kenya's rights commission", *The Guardian* 2023, <https://www.theguardian.com/global-development/2023/oct/31/king-charles-asked-for-unequivocal-apology-by-kenya-human-rights-commission>.

³⁷¹ "King Charles III says 'no excuse' for colonial atrocities during Kenya visit", *France 24* 2023, <https://www.france24.com/en/africa/20231031-king-charles-iii-says-no-excuse-for-colonial-atrocities-during-kenya-visit>.

³⁷² While research on reparations for slavery remains outside the scope of this thesis, the following statement on behalf of the British government is very telling of the UK's attitude towards reparations. British Prime Minister Rishi Sunak, when confronted in the House of Commons by the opposition with the fact that the UK has only ever expressed sorrow or deep regret on the topic of slavery, refused the possibility of the UK apologizing. He stated that "trying to unpick our history is not the right way forward, and it's not something that we will focus our energies on", emphasizing that the UK needs to focus on making society inclusive and tolerant of people from all backgrounds. See A. ADU, "Rishi Sunak refuses to apologise for UK slave trade or to pledge reparations", *The Guardian* 2023, <https://www.theguardian.com/world/2023/apr/26/rishi-sunak-refuses-to-apologise-for-uk-slave-trade-or-to-pledge-reparations>.

³⁷³ T. SCHULTZ, "Belgians Target Some Royal Monuments In Black Lives Matter Protest", *NPR* 2020, <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/05/871278150/belgians-target-some-royal-monuments-in-black-lives-matter-protest>.

³⁷⁴ L. WALKER, "Colonial statues in Halle given 'critical interpretation' but not removed", *The Brussels Times* 2020, <https://www.brusselstimes.com/394563/colonial-statues-in-halle-given-critical-interpretation-but-not-removed>; "Belgium: King Leopold II statue removed in Antwerp", *DW* 2020, <https://www.dw.com/en/belgium-king-leopold-ii-statue-removed-in-antwerp-after-anti-racism-protests/a-53755021>.

³⁷⁵ J. RANKIN, "Call for Brussels statue to be melted and made into memorial for Congo victims", *The Guardian* 2022, <https://www.theguardian.com/world/2022/feb/21/call-for-brussels-statue-to-be-melted-and-made-into-memorial-for-congo-victims>.

³⁷⁶ G. COI and C. GIJS, "Exorcising King Leopold's ghost: Brussels takes on its colonial monuments", *Politico* 2023, <https://www.politico.eu/article/decolonizing-cities-king-leopold-ii-black-lives-matter-belgium-colonial-history/>.

³⁷⁷ G. LORY and J. GILL, "New street names in Brussels as Belgium wrestles with its past", *My Europe* 2020, <https://www.euronews.com/my-europe/2020/06/25/new-street-names-in-brussels-as-belgium-wrestles-with-its-colonial-past>; "City of Ghent to rename King Leopold II Avenue", *The Brussels Times* 2021, <https://www.brusselstimes.com/150984/city-of-ghent-to-rename-king-leopold-ii-avenue>.

some efforts to remove or recontextualize monuments to its colonial past, one must conclude the majority of colonial statues still stand untouched and most street names have not been changed.³⁷⁸ No monuments to commemorate the victims of colonialism were built following this recent debate. The monument that was built to commemorate the centennial of the Colonial Exposition (which was in reality a human zoo displaying African people displaced from their homes) outside of the AfricaMuseum is now said to pay tribute to those injured, but it is dubious whether this was its original intention.³⁷⁹

2. France

France has taken a far more conservative approach to the debate on colonial statues. In response to calls to take these statues down, president Macron said “the republic will not erase any trace, or any name, from its history ... it will not take down any statue”.³⁸⁰ While there was talk of erecting a monument to commemorate the Rwandan genocide on its 29th anniversary, no substantial advancements have been made a year later.³⁸¹ Following the same sentiment France has regarding statues, there is no discernable practice of renaming streets or other public spaces with colonial names.³⁸²

3. Germany

The public debate on the decolonization of the public spaces appears to be less alive in Germany, considering there are no evident examples of statues being removed or monuments being constructed.³⁸³ Hamburg has declared its will to “decolonize” its statue of Von Bismarck, who was

³⁷⁸ R. ALDRICH, “Commemorating Colonialism in a Post-Colonial World”, *Revue électronique d'études sur le monde anglophone* 2012, Vol. 10, No. 1, 1-16; M.G. STANARD, *The Leopard, the Lion, and the Cock. Colonial Memories and Monuments in Belgium*, Leuven, Leuven University Press, 2019, 18-22; D. VERBEKE, “Verlegde Sisyfus een steen? Gecontesteerd Belgisch koloniaal erfgoed en de herdenking van de herdenking (2004-2020)”, *Brood en Rozen* 2020, Vol. 3, 51-59; I. GODDEERIS, “Belgian Monuments of Colonial Violence: the Commemoration of Martyred Missionaries”, *Journal of Genocide Research* 2022, Vol. 24, No. 4, 586–603.

³⁷⁹ “The Congo, I Presume?”, *AfricaMuseum*, s.d., https://www.africamuseum.be/nl/news/fountain_frantzen; “The human zoo of Tervuren (1897)”, *AfricaMuseum*, s.d., https://www.africamuseum.be/en/discover/history_articles/the_human_zoo_of_tervuren_1897.

³⁸⁰ C. OKELLO, “France defends colonial-era statues in the face of anti-racism protests”, *RFI* 2020, <https://www.rfi.fr/en/france/20200616-france-defends-colonial-era-statues-face-anti-racism-protests-macron-floyd>; “France won’t ‘erase’ history by removing colonial-era statues, Macron says”, *France 24* 2020, <https://www.france24.com/en/20200614-macron-vows-that-france-won-t-take-down-statues-or-erase-history>.

³⁸¹ “Rwandan genocide memorial to be built in heart of Paris”, *The Brussels Times* 2023, <https://www.brusselstimes.com/448091/rwandan-genocide-memorial-to-be-built-in-heart-of-paris>.

³⁸² R. ALDRICH, “Commemorating Colonialism in a Post-Colonial World”, *Revue électronique d'études sur le monde anglophone* 2012, Vol. 10, No. 1, 1-16; M. MESLEM, “French historians call for Paris to be cleansed of scourge of colonialism and slavery”, *Echorouk Online* 2023, <https://www.echoroukonline.com/french-historians-call-for-paris-to-be-cleansed-of-scurge-of-colonialism-and-slavery>.

³⁸³ A. SCHWARZER, “[De]colonial Memory Practices in Germany’s Public Space” in U. CAPDEPÓN and S. DORNHOF (eds.), *Contested Urban Spaces: Monuments, Traces, and Decentered Memories*, Cham, Springer

the creator of Germany's colonial empire and the host of the 1994 Berlin Conference, but has yet to formulate a concrete plan to do so.³⁸⁴ By contrast, there have been instances where Berlin has renamed public places such as streets and squares.³⁸⁵ Germany's focus on this specific form of reparation is most likely explained by its longstanding practice of renaming streets as a means of reshaping political power structures during its reunification after the Cold War.³⁸⁶

4. Italy

While the protests sparked by the Black Lives Matter movement also spread to Italy, leading to the defacement of several statues and a street, there has otherwise been no discernable practice on behalf of the State attempting to remedy these relics of colonialism.³⁸⁷ Similarly, no anticolonial monuments are underway.³⁸⁸ However, one notable example of a renaming exists: the Italian Colonial Museum was retitled in 2021 to the 'Museo Italo-Africano Ilaria Alpi' in an effort to decolonize its activities.³⁸⁹

5. Portugal

Portugal has seemingly not engaged in the debate on renaming public places to pay respect to the victims of colonialism and has even recently built a new statue which is said to glorify this regime.³⁹⁰

International Publishing, 2022, 125–146; S. VOLK, "Patriotic History in Postcolonial Germany, Thirty Years After 'Reunification'", *Journal of Genocide Research* 2022, Vol. 24, No. 2, 276–287.

³⁸⁴ A. ULEA, "Why Hamburg's plan to 'decolonise' Bismarck statue failed", *Euronews*, 2023, <https://www.euronews.com/culture/2023/07/13/hamburg-wanted-to-decolonise-its-bismarck-statue-finding-a-solution-wasnt-so-easy>.

³⁸⁵ S.S. WISSGOTT, "Berlin tackles Germany's dark colonial past... via street signs", *CGTN* 2018, https://news.cgtn.com/news/774d6a4d346b7a6333566d54/share_p.html; S. BRAUN, "Street name change major step in decolonizing Berlin", *DW* 2020, <https://www.dw.com/en/street-name-change-major-step-in-struggle-to-decolonize-berlin/a-54712751>; K. CONNOLLY, "Campaigners celebrate changing of colonial street names in Berlin", *The Guardian* 2022, <https://www.theguardian.com/world/2022/dec/02/campaigners-celebrate-changing-of-colonial-street-names-in-berlin>.

³⁸⁶ M. AZARYAHU, "German reunification and the politics of street names: the case of East Berlin", *Political Geography* 1997, Vol. 16, No. 6, 479–493.

³⁸⁷ T. FERA, "Rome Renames Street After George Floyd", *Hardcore Italians* 2020, <https://hardcoreitalians.blog/2020/06/20/rome-renames-street-after-george-floyd/>; L. TONDO, "Milan mayor refuses to remove defaced statue of Italian journalist", *The Guardian* 2020, <https://www.theguardian.com/world/2020/jun/14/milan-mayor-refuses-remove-defaced-statue-italian-journalist-black-lives-matter>; R. DMELLO, "How to decolonise a monumental ode to colonialism?", *Stirworld* 2022, <https://www.stirworld.com/think-opinions-how-to-decolonise-a-monumental-ode-to-colonialism/>; L. PERETTI, "Built to last? Material legacies of Italian colonialism: Interviews with Ruth Ben-Ghiat, Alessandra Ferrini, Viviana Gravano, Hannes Obermair, Resistenze in Cirenaica, Igiaba Scego, and Collettivo Tezeta", *Interventions* 2024, 1–18.

³⁸⁸ I. SCEGO, "To heal the wounds of colonialism, let's build monuments to its victims", *Vox* 2020, <https://voxeurop.eu/en/europe-heal-wounds-colonialism-build-monuments-victims/>.

³⁸⁹ B. FALCUCCI, "A repository of colonial intervisuality and memory: the Colonial Museum in Rome", *Revue d'histoire culturelle* 2023, Vol. 8, No. 6, 14.

³⁹⁰ The contentious statue of Father António Vieira in Lisbon portrays him with Brazilian children, symbolizing his advocacy for indigenous rights under Portuguese colonial rule. However, this statue has been criticized as he also openly defended slavery, leading to debates about colonial revisionism and the need to confront Portugal's past. See M. TEIXEIRA, "Vandalized Statute in Portugal sparks debate on racism and colonialism", *Mzemo* 2020, <https://mzemo.com/2020/06/vandalized-statute-in-portugal-sparks-debate-on-racism-and-colonialism/>.

Although no clear examples relating to the commemoration of colonial harm, as defined by this thesis, can be found, the city of Lisbon recently memorialized the victims of slavery by installing twenty street plaques and a bust of black rights defender Pai Paulino, indicating a recent change in the local government's approach to reparations in general.³⁹¹

6. United Kingdom

Despite notable incidents such as the toppling of the statue of infamous slave trader Edward Colston in Bristol and the lobbying of student movement Rhodes Must Fall in Oxford, the British government declared in 2023 that controversial statues are to stay in place.³⁹² The Ministry of Culture, however, added that custodians should put in place “a comprehensive explanation which provides the whole story of the person or event depicted, so that a fuller understanding of the historic context can be known, understood and debated”, proposing a policy of “retain and explain”.³⁹³ Consistent with the previous statement, the UK has opposed the renaming of public spaces to pay respect to victims of colonialism, although this has been criticized as hypocritical due to Britain's readiness to rename streets for other purposes.³⁹⁴ Nonetheless, some local municipalities have chosen to remove their statues.³⁹⁵ While there are no monuments that have been built in Britain, the British government has followed through on its promise to finance a memorial in Kenya to honor those tortured and killed during the Mau Mau uprising.³⁹⁶ The monument was consequently inaugurated in 2015, leading British High Commissioner Christian Turner to underline that “this memorial is about reconciliation, allowing us to discuss together the issues arising from a difficult period in our shared history, and to move forward together”.³⁹⁷ As the construction was officially funded and endorsed by the UK government, this may be considered as an element of alleged State practice.

³⁹¹ S. JONES, G. FONSECA and P. OLTERMANN, “‘We need to tell people everything’: Portugal grapples with legacy of colonial past”, *The Guardian* 2023, <https://www.theguardian.com/world/2023/oct/05/portugal-grapples-with-legacy-of-colonial-past-slave-trading>; “Lisbon street plaques tell story of Portugal's forgotten slave trade”, *RFI* 2024, <https://www.rfi.fr/en/international/20240119-lisbon-street-plaques-tell-story-of-portugal-s-forgotten-slave-trade>.

³⁹² I. LOTEM, *The Memory of Colonialism in Britain and France: The Sins of Silence in Cambridge Imperial and Post-Colonial Studies*, Cham, Springer International Publishing, 2021, 269-270.

³⁹³ “British government says controversial statues to stay—with ‘comprehensive’ explanations”, *CBC News* 2023, <https://www.cbc.ca/news/world/britain-statues-racism-toppled-1.6987186>.

³⁹⁴ Other purposes include business-related initiatives which function as strategic urban development projects with the goal of boosting local economies and drawing investment by projecting a more enticing and marketable image of the region. See A. CHAKELIAN, “Ministers may rail against renaming streets – but they ‘erase heritage’ when it suits them”, *New Statesman* 2021, <https://www.newstatesman.com/politics/uk-politics/2021/05/ministers-may-rail-against-renaming-streets-they-erase-heritage-when-it-suits>.

³⁹⁵ A. MOHDIN and R. STORER, “Tributes to slave traders and colonialists removed across UK”, *The Guardian* 2021, <https://www.theguardian.com/world/2021/jan/29/tributes-to-slave-traders-and-colonialists-removed-across-uk>.

³⁹⁶ Official Report of the House of Commons on the Parliamentary Debates (6 June 2013), Vol. 563, No. 13, 1693-1694; G. COLLSTE, “Rectification for Atrocities Under Colonialism”, *International Journal of Post-Colonial Studies* 2016, (852) 858.

³⁹⁷ “Kenya Unveils Memorial to Those Tortured During British Rule”, *Voice of America* 2015, <https://www.voanews.com/a/kenya-unveils-memorial-to-those-tortured-during-british-rule/2961238.html>.

C. Truth Commission

1. Belgium

Belgium formed the Special Parliamentary Commission on Belgium's colonial past in 2020 ('Congo Commission').³⁹⁸ The Commission's mandate encompassed not only an investigation into Belgium's colonial activities in the DRC, Rwanda, and Burundi, but also an evaluation of colonization's structural long-term effects and recommendations for future action.³⁹⁹ Originally restricted to a one-year time limit, a last extension was granted in December 2022.⁴⁰⁰ However, questions have been expressed concerning its capacity to accomplish its tasks adequately within this time. Although the commission held public hearings, its scarce communication has resulted in little public exposure and involvement.⁴⁰¹ There has been only limited contact with the DRC, Burundi, and Rwanda, which has led to requests for a delegation to travel there in order to conduct more extensive consultations.⁴⁰² The Commission is said to have collapsed at the finish line, as it has not published a final report to this day.⁴⁰³

2. France

In recent years, the French president Macron authorized the formation of two truth commissions to inquire into France's colonial past in Algeria and Cameroon, both of whose work is still ongoing in 2024.⁴⁰⁴ The Algeria Commission met for the first time in April 2023, and on November 21st, 2023,

³⁹⁸ Historically, there has been one other example of an inquiry committee relating to colonialism, namely the 'Parliamentary Committee of enquiry in charge of determining the exact circumstances of the assassination of Patrice Lumumba and the possible involvement of Belgian politicians', although it is whether this subject can be considered colonial harm attributable to Belgium. For more on this, see G. VERBEECK, "De Lumumba-commissie. Geschiedschrijving en collectieve herinnering", *BMGN - Low Countries Historical Review* 2007, Vol. 122, 1-17.

³⁹⁹ T. DESTROOPER, "Belgium's 'Truth Commission' on its overseas colonial legacy: An expressivist analysis of transitional justice in consolidated democracies", *Journal of Human Rights* 2023, Vol. 22, No. 2, 158-173.

⁴⁰⁰ "Press release – Special Parliamentary Commission on Belgium's Colonial Past: A closure in December 2022 will not allow it to complete its mandate", *Avocats Sans Frontières* 2022, <https://asf.be/press-release-special-parliamentary-commission-on-belgiums-colonial-past-a-closure-in-december-2022-will-not-allow-it-to-complete-its-mandate/>.

⁴⁰¹ K. VAN DER SPEETEN, "Reparations for Colonialism: What Does Belgium Owe Its Former Colonies? An Exploration of the Possible Belgian State Responsibility to Make Reparation for Its Colonial Past with an Assessment of Different Reparation Forms", *Jura Falconis* 2021, Vol. 57, No. 2, 559-563.

⁴⁰² "Press release – Special Parliamentary Commission on Belgium's Colonial Past: A closure in December 2022 will not allow it to complete its mandate", *Avocats Sans Frontières* 2022, <https://asf.be/press-release-special-parliamentary-commission-on-belgiums-colonial-past-a-closure-in-december-2022-will-not-allow-it-to-complete-its-mandate/>.

⁴⁰³ G. MATHYS and S. VAN BEURDEN, "History by Commission? The Belgian Colonial Past and the Limits of History in the Public Eye", *The Journal of African History* 2023, Vol. 64, No. 3, 334-343; G. PONSELET, "Belgian colonial past: Commission fails on apology to victims", *Justice Info* 2023, <https://www.justiceinfo.net/en/111372-belgian-colonial-past-commission-fails-apology-to-victims.html>; C. CAROLAN, "People are 'not ready': Investigation into Belgium's colonial past at a standstill", *The Brussels Times* 2024, <https://www.brusselstimes.com/892500/people-are-not-ready-investigation-into-belgiums-colonial-past-at-a-standstill>.

⁴⁰⁴ J. CRAWFORD, "Colonial crimes: the reparations movement stalls in Europe", *Justice Info* 2023, <https://www.justiceinfo.net/en/115285-colonial-crimes-reparations-movement-stalls-europe.html>.

it officially began its mandate in Constantine, Algeria.⁴⁰⁵ At this meeting, the Commission announced intentions for more historical study and negotiated concrete reparations, such as returning symbolic property Algeria (*supra*).⁴⁰⁶ France takes a very different stance to Belgium, where the parliamentary Congo Commission is more politically oriented. The Algeria Commission is based on an expertise-driven methodology, in which both parties are equally represented, with ten historians participating directly in the process, five from Algeria and five from France.⁴⁰⁷ Despite taking a more evidence-based approach than Belgium, the Commission has still faced criticism, such as doubts on what added value it brings to what is already widely known.⁴⁰⁸ The Cameroon Commission, similar in composition to the Algeria Commission and equally subject to criticism, has also commenced its work in 2023, although its outcome is still unclear.⁴⁰⁹

3. Germany

In recent years, scholars have urged Germany to install a truth commission to investigate its colonial past.⁴¹⁰ The above-mentioned 2021 Joint Declaration was considered a missed opportunity as it does not mention any form of truth finding.⁴¹¹ Nevertheless, Germany has presently not formally constituted a truth commission focused on its colonial past.

4. Italy

While Italy has also faced calls to install a truth commission to inquire into its colonial past, no real efforts have been made.⁴¹² Italy did, however, commission a study of its colonial activities in 1952,

⁴⁰⁵ “France-Algérie: la commission d’historiens sur la colonisation se réunit à Constantine”, *Le Monde* 2023, https://www.lemonde.fr/afrique/article/2023/11/21/france-algerie-la-commission-d-historiens-sur-la-colonisation-se-reunit-a-constantine_6201465_3212.html.

⁴⁰⁶ R. MARCONI, “States before their colonial past: Practice in addressing responsibility”, *QIL Zoom Out* 2024, No. 103, 25-46.

⁴⁰⁷ “France and Algeria revisit painful past in battle to mend colonial wounds”, *RFI* 2024, <https://www.rfi.fr/en/afrique/20240218-french-algerian-commission-of-historians-works-to-mend-colonial-wounds>.

⁴⁰⁸ T. BIHAN, “Emmanuel Macron, maître des archives”, *Afrique XXI* 2022, <https://afriquexxi.info/Emmanuel-Macron-maitre-des-archives>.

⁴⁰⁹ J. CRAWFORD, “Colonial past: can a historians’ commission help reconcile Cameroon?”, *Justice Info* 2023, <https://www.justiceinfo.net/en/119945-colonial-past-historians-commission-reconcile-cameroun.html>; V. ZINGA, “Cameroun: la «commission mémoire» sur le rôle de la France relance le débat sur l’enseignement de l’histoire”, *RFI* 2023, <https://www.rfi.fr/fr/afrique/20230228-cameroun-la-commission-m%C3%A9moire-sur-le-r%C3%B4le-de-la-france-relance-le-d%C3%A9bat-sur-l-enseignement-de-l-histoire>.

⁴¹⁰ J. SARKIN, *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904-1908, s.l.*, Bloomsbury Publishing, 2008, 4.

⁴¹¹ In 2021, Namibia and Germany jointly released a declaration that recognized the crimes Germany had committed in Namibia during the colonial era as genocide and offered formal apologies. The declaration also pledged to provide development aid and financial reparations to the impacted communities in Namibia. See S. IMANI, K. THEURER and W. KALECK, “The ‘reconciliation agreement’ – A lost opportunity”, *European Center for Constitutional and Human Rights (ECCHR)* 2021, https://www.ecchr.eu/fileadmin/Hintergrundberichte/ECCHR_GER_NAM_Statement.pdf.

⁴¹² P. SMITH, “To confront its past, Europe needs Truth & Reconciliation Commissions”, *The Africa Report* 2020, <https://www.theafricareport.com/30661/to-confront-past-europe-needs-truth-reconciliation-commissions/>.

although this can hardly be considered a truth commission as it was largely comprised of former colonial officials.⁴¹³

5. Portugal

Similarly, Portugal has not taken action on this topic, despite requests to establish a truth commission to investigate its colonial past in Africa.⁴¹⁴

6. United Kingdom

The UK has also not taken steps towards further investigating its colonial past despite it being urged to do so.⁴¹⁵

D. Educational Programs

1. Belgium

Given the complexities arising from the federalized nature of the Belgian educational system, which is divided into three language communities, there is still no formal framework in place for teaching colonial history in Belgium.⁴¹⁶ Teachers are mostly free to choose what subjects to cover in their classrooms, and as a result, pupils in the Flemish- and French-speaking parts of Belgium are exposed to varying degrees of colonial history.⁴¹⁷ The Parliament of the Francophone Community unanimously adopted a motion for a resolution in 2022, outlining a comprehensive plan to integrate Belgian colonial history into education at all levels.⁴¹⁸ This plan, however, does not seem to have

⁴¹³ G. GHIGLIONE, “As Europe Reckons With Racism, Italy Still Won’t Confront Its Colonial Past”, *Foreign Policy* 2024, <https://foreignpolicy.com/2020/07/30/as-europe-reckons-with-racism-italy-still-wont-confront-its-colonial-past/>.

⁴¹⁴ Portugal has however, installed a truth commission to inquire into the human rights violations that occurred in Brazil, see M. TORELLY, “Assessing a Late Truth Commission: Challenges and Achievements of the Brazilian National Truth Commission”, *International Journal of Transitional Justice* 2018, Vol. 12, No. 2, 194–215. Regarding the call for a commission for Portugal’s colonial past in Africa: P. SMITH, “To confront its past, Europe needs Truth & Reconciliation Commissions”, *The Africa Report* 2020, <https://www.theafricareport.com/30661/to-confront-past-europe-needs-truth-reconciliation-commissions/>.

⁴¹⁵ K. KORAM, “Britain needs a truth and reconciliation commission, not another racism inquiry”, *The Guardian* 2020, <https://www.theguardian.com/commentisfree/2020/jun/16/britain-truth-reconciliation-commission-racism-imperial>; A. HERTEN-CRABB, “Britain needs a Truth-Telling Commission on Colonialism”, *International Affairs Blog* 2022, <https://medium.com/international-affairs-blog/britain-needs-a-truth-telling-commission-on-colonialism-28a7d83a274f>; J. EMTSEVA, “International Crimes of Western Colonialism: Reflections on Philippe Sands’ *The Last Colony: A Tale of Exile, Justice and Britain’s Colonial Legacy*”, *Journal of international humanitarian legal studies* 2023, 1–14.

⁴¹⁶ S. DE RYNCK, “Regional autonomy and education policy in Belgium”, *Regional & Federal Studies* 2005, Vol. 15, No. 4, 485–500.

⁴¹⁷ C. GILBERT, “Confronting the Colonial Past? Genocide Education in Francophone Belgian Schools” in P.-P. FRAITURE, *Unfinished Histories: Empire and Postcolonial Resonance in Central Africa and Belgium*, Leuven, Leuven University Press, 2022, 81–100.

⁴¹⁸ Proposition de résolution concernant la mise en place en Fédération Wallonie-Bruxelles d’un plan transversal, structurel, inclusif relatif à l’histoire coloniale Belge et à ses conséquences, Parliament of the French Community 2019-20, No. 111/1 ; R.L. MAZLOUM, “Decolonising the Classroom: Reforming Education to Build an Anti-Racist Society”, *Green European Journal* 2022, <https://www.greeneuropeanjournal.eu/decolonising-the-classroom-reforming-education-to-build-an-anti-racist-society/>.

made any progress in 2024.⁴¹⁹ A similar proposal was made in the Flemish Community by the Minister of Education but did not reach completion.⁴²⁰ The German-speaking community has not published an action plan regarding this topic.

2. France

Since 2011, French schools have modified their curricula to incorporate colonial history, with a particular emphasis on the Algerian War and the slave trade. There is now a required module on the “Memory of the Algerian War” in the final year of secondary school.⁴²¹ However, studies show teachers still struggle to teach the new programs.⁴²² Even the most well-meaning educators frequently feel unable to explain France's history of colonial injustices to the descendants of its victims due to a lack of adequate tools.⁴²³

3. Germany

Germany, also a federal State, has a great degree of variation in the extent to which secondary education covers the history of German colonialism in Africa. In many German *Länder*, the subject is not required to be included in the curriculum, and in others, it is barely mentioned in passing.⁴²⁴ None of the German States seem to have established a curriculum that adequately addresses the country's colonial past.

⁴¹⁹ “Proposition de résolution concernant la mise en place en Fédération Wallonie-Bruxelles d’un plan transversal, structurel, inclusif relatif à l’histoire coloniale Belge et à ses conséquences (Doc. 111 (2019-2020) n°2)”, *PFWB, s.d.*, <https://back.pfwb.be/travaux/proposition-de-resolution-concernant-la-mise-en-place-en-federation-wallonie-bruxelles-dun>.

⁴²⁰ L. DE WITTE, “Kolonisatie verplicht in eindtermen secundair onderwijs, Groen zegt dat Weyts op de rem staat voor TSO en BSO”, *VRT* 2020, <https://www.vrt.be/vrtnws/nl/2020/06/10/kolonisatie-moet-verplicht-in-eindtermen-secundair-onderwijs/>.

⁴²¹ G. BOYER and V. STACCHETTI, “Enseigner la guerre d’Algérie à l’école: dépasser les enjeux de mémoires ?” in F. ABÉCASSIS, B. FALAIZE, G. MEYNIER and M. ZANCARINI-FOURNEL (eds.), *La France et l’Algérie : leçons d’histoire : De l’école en situation coloniale à l’enseignement du fait colonial*, in *Hors collection*, Lyon, ENS Éditions, 2007, 241–250.

⁴²² B. FALAIZE, O. ABSALON and P. MERIAUX, “Enseigner l’histoire de l’immigration à l’école”, *Institut National de Recherche Pédagogique, s.d.*, http://ecehg.ens-lyon.fr/ECEHG/enjeux-de-memoire/histoire-de-l-immigration/reflexions-generales/enseigner-l-histoire-de-l-immigration/enseigner_histoire_immigration.pdf/view.

⁴²³ I. LOTEM, “A decade after the riots, France has rewritten its colonial history”, *The Conversation* 2016, <http://theconversation.com/a-decade-after-the-riots-france-has-rewritten-its-colonial-history-50499>.

⁴²⁴ J. LAHTI, “German Colonialism and the Age of Global Empires”, *Journal of Colonialism and Colonial History* 2016, Vol. 17, No. 1, 5; P. HILLE, “Germany’s colonial history often missing at school”, *DW* 2020, <https://www.dw.com/en/how-german-schools-miss-out-countrys-colonial-history/a-55230081>.

4. Italy

Italy is regarded as behind the rest of Europe in confronting its past: the country's colonial history is not taught in schools and rarely discussed by politicians and intellectuals.⁴²⁵

5. Portugal

In light of the recent warning from the Council of Europe (*supra*), Portugal has implemented a new educational framework in an effort to tackle the racism stemming from its colonial past, while trying to balance its history and national pride. Literature from both Portugal and other Portuguese-speaking countries is now included in the curriculum. As of 2017, students aged ten and older have been receiving education on subjects such as slavery, colonialism, historical remembrance, and the value of multiculturalism.⁴²⁶

6. United Kingdom

In recent years, there has been a growing interest and debate in Britain regarding its imperial past, leading to calls from the public, teachers, and students to include colonial history in the compulsory curriculum.⁴²⁷ In 2020, a petition was signed by 268,772 members of the British public, sparking a debate in Parliament in the following year. The government thus officially responded that there is a statutory theme named “ideas, political power, industry and empire: Britain 1745-1901”, but topics within statutory themes are to be chosen by schools and teachers.⁴²⁸ This follows the approach of many other European approaches, leaving a large margin of appreciation and thus often a large gap in children's formal education.⁴²⁹

⁴²⁵ A.A. AHMIDA and J. MUNDY, “Genocide, Historical Amnesia and Italian Settler Colonialism in Libya—An Interview with Ali Abdullatif Ahmida”, *Middle East Report Online* 2022, Vol. 52, No. 302; G. GHIGLIONE, “As Europe Reckons With Racism, Italy Still Won't Confront Its Colonial Past”, *Foreign Policy* 2024, <https://foreignpolicy.com/2020/07/30/as-europe-reckons-with-racism-italy-still-wont-confront-its-colonial-past/>.

⁴²⁶ M.N. TOM, J. SUÁREZ-KRABBE and T. CABALLERO CASTRO, “Pedagogy of Absence, Conflict, and Emergence: Contributions to the Decolonization of Education from the Native American, Afro-Portuguese, and Romani Experiences”, *Comparative Education Review* 2017, Vol. 61, No. S1, S121–S145; S. JONES, G. FONSECA and P. OLTERRMANN, “‘We need to tell people everything’: Portugal grapples with legacy of colonial past”, *The Guardian* 2023, <https://www.theguardian.com/world/2023/oct/05/portugal-grapples-with-legacy-of-colonial-past-slave-trading>.

⁴²⁷ M. GOODFELLOW, “Put our colonial history on the curriculum – then we'll understand who we really are”, *The Guardian* 2019, <https://www.theguardian.com/commentisfree/2019/dec/05/britain-colonial-history-curriculum-racism-migration>.

⁴²⁸ “Petition: Teach Britain's colonial past as part of the UK's compulsory curriculum”, *Petitions - UK Government and Parliament*, s.d., <https://petition.parliament.uk/petitions/324092>.

⁴²⁹ F. SHAIN, “Race matters: confronting the legacy of empire and colonialism”, *British Journal of Sociology of Education* 2020, Vol. 41, No. 2, 272–280; S. JANMOHAMED, “Children need conversations about the British Empire, not culture wars”, *The National* 2023, <https://www.thenationalnews.com/opinion/comment/2023/08/10/uk-british-empire-culture-wars/>.

E. Cessation

The decolonization of Africa was a movement following World War II and extending into the 1960s and 1970s in which the African people fought for their freedom.⁴³⁰ While it took place simultaneously with the rise of human rights, the real cause of the European colonists ultimately relinquishing control is said to lie in the continent being consumed by Post-World War debt.⁴³¹ The process was long and grueling, with Zimbabwe, for example, only having its independence internationally recognized in 1980.⁴³² Today, the islands of Réunion and Mayotte; Saint Helena, Ascension, and Tristan Da Cunha; and Madeira remain under French, British and Portuguese control, respectively.⁴³³ While it has been argued that all colonies should fight for their independence, reality is more complex, as present-day ‘overseas territories’ often willingly remain under colonial control.⁴³⁴ One must, however, be critical of how voluntary this actually is as these colonial States have large political influence and colonies remain largely economically dependent upon them.⁴³⁵

§4. Rehabilitation

Rehabilitation is a comprehensive process that aims to return the sufferers of colonial harm to a condition of social, psychological, and physical well-being.⁴³⁶ As mentioned earlier, the measures relating to economic strengthening, medical aid, psychological care, legal aid, and social services will be discussed collectively as development aid due to States’ tendencies to group them under this form of reparation. Although set up with noble intentions, it is argued that this practice has many potentially damaging effects and is rooted in white saviorism, *i.e.* the phenomenon where well-meaning persons or organizations from primarily Western countries undertake development work with a paternalistic attitude toward people in non-Western countries.⁴³⁷ This approach focusses excessively

⁴³⁰ D. BIRMINGHAM, *The Decolonization Of Africa*, London, Routledge, 2019, 1-11.

⁴³¹ T. ZUBERI, *African Independence: How Africa Shapes the World*, s.l., Rowman & Littlefield Publishers, 2015, 13-48; J.L. MONEY, “The Impact of WW II on African Nationalism and Decolonization”, *Africana Studies Student Research Conference* 2018, https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1112&context=africana_studies_conf.

⁴³² See the section on scope and limitations in the methodology for when each colony gained its independence individually.

⁴³³ P. PODDAR, R.S. PATKE and L. JENSEN (eds.), *A Historical Companion to Postcolonial Literatures: Continental Europe and its Empires in Edinburgh Companions to Literature and the Humanities*, Edinburgh, University Press, 2008.

⁴³⁴ N. WITTMANN, “Reparations—Legally Justified and Sine qua non for Global Justice, Peace and Security”, *Global Justice* 2017, Vol. 9, No. 2, 211-212.

⁴³⁵ M. KUBÁT and P. SOKOL, “Colonies and dependent Territories in Contemporary World”, *Czech Journal of Political Science* 2001, No. 3, 233-257; I. WILLIAM ZARTMAN, “Europe and Africa: Decolonization or Dependency?”, *Foreign Affairs* 1976, Vol. 54, No. 2, 325-343.

⁴³⁶ C. DROEGE, “The Right to a Remedy and to reparation for gross human rights violations, a practitioners’ guide”, *International Commission of Jurists* 2006, 149.

⁴³⁷ J. KHERBAOUI and B. ARONSON, “Bleeding through the band-aid: The white saviour industrial complex” in S. HUNTER and C. VAN DER WESTHUIZEN (eds.), *Handbook of Critical Studies in Whiteness*, Abingdon, Routledge, 2021, 269-279; D. JEFFERESS, “Humanitarianism and White Savors” in J. RAVULO *e.a.* (eds.), *Handbook of Critical*

on current fragility, while negating the role former colonial powers played in creating these circumstances, as will be outlined below.

A. Development Aid

1. Belgium

The 2013 *Law on Development Cooperation*, which describes Belgium's development cooperation strategy, aims to promote social protection, private sector growth, climate change, digital development, and human rights.⁴³⁸ It centers on the term “fragility”, which is rather paternalistically defined as “the condition of a State in which the government and public institutions lack the resources and/or political will to ensure the security and protection of its citizens, to efficiently manage public affairs, and to fight against poverty among its people”.⁴³⁹ According to the last report of the OECD, Belgium spent 2.7 billion USD in official development assistance (ODA) in 2022, which represents 0.45% of its gross national income (GNI).⁴⁴⁰ Although this significant number suggests a strong State practice of investing in rehabilitation, some nuance ought to be added. While the DRC, Rwanda, and Burundi are among the top recipients of the aid, the law opts for “fragility” as a marker for which countries are to receive assistance and does not mention colonialism once, let alone indicate that colonialism might be the initial cause of the destabilization that led to this “fragility”.⁴⁴¹ When explaining why Belgium offers development aid, the website of the Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation only briefly mentions Belgium’s colonial history among four other reasons.⁴⁴² It is consequently dubious whether Belgian development aid can truly be considered as a form of reparation for colonial harm. Nonetheless, this is a form of taking responsibility that cannot be seen in all other States.

Whiteness: Deconstructing Dominant Discourses Across Disciplines, Singapore, Springer Nature Singapore, 2022, 1-15; B.K. ASHDOWN, A. DIXE and C.A. TALMAGE, “The Potentially Damaging Effects of Developmental Aid and Voluntourism on Cultural Capital and Well-Being”, *International Journal of Community Well-Being* 2021, Vol. 4, No. 1, 113–131.

⁴³⁸ Law of 19 March 2013 on Development Co-operation (Wet betreffende de Belgische Ontwikkelingssamenwerking), Belgian State Journal 12 April 2013, 22563; N. MOLENAERS, “Belgian aid in turbulent times: Some important evolutions in the period 2010-2015”, *Studia Diplomatica* 2015, Vol. 68, No. 2, 41–58.

⁴³⁹ *Ibid.*, Art. 1 (translated to English); J. FAUST, J. GRÄVINGHOLT and S. ZIAJA, “Foreign aid and the fragile consensus on state fragility”, *J Int Relat Dev* 2015, Vol. 18, No. 4, 407–427.

⁴⁴⁰ “Belgium” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1.

⁴⁴¹ *Ibid.*, 9. On the destabilization of Africa caused by colonialism, see, *i.e.*: B.M. RATCLIFFE, “The Economies of the Partition of Africa: Methods and Recent Research Trends”, *Canadian Journal of African Studies* 1981, Vol. 15, No. 1, 3–31; I.L. GRIFFITHS, *The African Inheritance*, London, Routledge, 1995; A.A. MAZRUI, “The Blood of Experience: The Failed State and Political Collapse in Africa”, *World Policy Journal* 1995, Vol. 12, No. 1, 28–34; “Colonial Repercussions: Namibia. 115 years after the genocide of the Ovaherero and Nama”, *European Center for Constitutional and Human Rights* 2019, https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_NAMIBIA_DS.pdf.

⁴⁴² “Ontwikkelingssamenwerking en Humanitaire hulp”, *FOD Buitenlandse Zaken - Buitenlandse Handel en Ontwikkelingssamenwerking*, *s.d.*, <http://diplomatie.belgium.be/nl/beleid/ontwikkelingssamenwerking-en-humanitaire-hulp>.

2. France

The 2021 *Law on Inclusive Development and Combating Global Inequalities* establishes ten thematic priorities for France's efforts to combat poverty and global inequality, e.g. education and health.⁴⁴³ Similarly to Belgium, it speaks of “fragility” and “responsibility” without ever mentioning colonialism as the root of the poverty it is attempting to address. While among the top global contributors, paying 15.9 billion USD in 2022 (0.56% GNI), France has been criticized due to the lack in transparency and the recent sudden cut of 806 million USD, leading them to be accused of having no long-term regard for the projects the funds are invested in.⁴⁴⁴ Moreover, the aid is frequently framed as neo-imperialism and a scheme for French investment in Africa by critics.⁴⁴⁵ France's former colonies Morocco and Côte d'Ivoire are furthermore among its top recipients, but Brazil (which was never a French colony) receives the largest amount of money.⁴⁴⁶ These elements must lead to the conclusion that the measure was not intended as a reparation for colonial harm, although it may still serve that purpose.

3. Germany

Although Germany is the OECD Development Assistance Committee's (DAC) second-largest contributor of development cooperation, it notably does not give precedence to its former colonies.⁴⁴⁷ Most of Germany's ODA is provided through bilateral cooperation, which is overseen by the Federal Ministry for Economic Cooperation and Development.⁴⁴⁸ Their 2030 strategy focuses on various global challenges such as poverty and environmental action, also with no mention of colonialism. While spending 35 billion USD and 0.83% of its GNI (making it the only country meeting the UN target of 0.7% of GNI), none of Germany's former colonies are amongst the top ten recipients.

⁴⁴³ Law of 4 August 2021 on Inclusive Development and Combating Global Inequalities (Loi du 4 août 2021 de programmation relative au développement solidaire et à la lutte contre les inégalités mondiales), *Journal Officiel de la République Française* 5 August 2021, No. 180.

⁴⁴⁴ C. BARBIÈRE, “French aid transparency among the worst in the world”, *Euractiv* 2016, <https://www.euractiv.com/section/development-policy/news/french-aid-transparency-among-the-worst-in-the-world/>; “France” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1; B. BOLLAG, “French government criticized over \$806M cut to aid”, *Devex* 2024, <https://www.devex.com/news/sponsored/french-government-criticized-over-806m-cut-to-aid-107193>.

⁴⁴⁵ C. WAUTHIER, “France and Africa: ‘Long Live Neo-Colonialism’”, *African Issues* 1972, Vol. 2, No. 1, 23–26; D. KOHNERT, “French domination of markets in Francophone Africa: Post-colonialism at its finest?”, *Institute of African Affairs* 2022, https://mpira.ub.uni-muenchen.de/112024/1/MPRA_paper_112024.pdf; V. DIMIER and S. STOCKWELL, “Development, Inc.? The EEC, Britain, Post-Colonial Overseas Development Aid, and Business”, *Business History Review* 2023, Vol. 97, No. 3, 513–546.

⁴⁴⁶ “France” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 9.

⁴⁴⁷ N. KEIJZER and I. FRIESEN, “Germany and the UK: Perspectives for deepening the bilateral dialogue on development policy”, *Deutsches Institut für Entwicklungspolitik* 2022, <https://www.econstor.eu/handle/10419/262285>.

⁴⁴⁸ “Germany” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1; “BMZ 2030 reform strategy. New thinking – new direction”, Federal Ministry for Economic cooperation and Development (BMZ), *s.d.*, <https://mf.gov.md/sites/default/files/BMZ%202030%20reform%20strategy.pdf>.

Instead, countries such as China and Afghanistan are prioritized.⁴⁴⁹ This is unexpected in light of the *2021 Joint Declaration* which intended 1.05 billion EUR be paid as development aid over 30 years as reparations for the Herero genocide.⁴⁵⁰ It is clear Germany does not see development aid as a means of addressing colonial harm in general, save for the proposition made to Namibia which was not accepted (*supra*).

4. Italy

Italy spent 6.5 billion total in ODA (0.32% of GNI) in 2022, aiming to address issues such as poverty, inequality, sustainable development, and human rights, as outlined in Law 125/2014. While the majority of aid goes to Somalia, and a considerable part to Ethiopia (both former Italian colonies), the framework makes no mention of their colonial relationship or reparations.⁴⁵¹ It is worth highlighting once again that Italy paid 5 billion USD in development aid to Libya in 2008 as part of greater reparations package, although the genuine compensatory nature was questioned due to alleged underlying vested interests (*supra*).⁴⁵²

5. Portugal

Portugal serves as the most notable example, with nearly all of its aid going to former colonies (504.7 million USD total and 0.23% of GNI), with Mozambique, Guinea-Bissau, Angola, Timor-Leste, Sao Tome and Principe, and Cabo Verde making up the first six in 2022.⁴⁵³ While this approach makes clear that Portugal values maintaining good relations with the countries it colonized, the 2030 Portuguese Co-operation Strategy only references wanting to build on the “particular links” between Portugal and Portuguese-speaking countries, not mentioning that this “particular link” is colonialism.⁴⁵⁴

⁴⁴⁹ UNGA Resolution on the International Development Strategy for the 2nd United Nations Development Decade (24 October 1970), *UN. Docs A/RES/2626(XXV)* (1970); “Germany” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1 and 9.

⁴⁵⁰ P. OLTERMANN, “Germany agrees to pay Namibia €1.1bn over historical Herero-Nama genocide”, 2021, <https://www.theguardian.com/world/2021/may/28/germany-agrees-to-pay-namibia-11bn-over-historical-herero-nama-genocide>.

⁴⁵¹ Law No. 125 of 11 August 2014 (Legge 11 agosto 2014, n. 125), *Gazzetta Ufficiale* 29 August 2014; “Italy” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1 and 9.

⁴⁵² C. DE CESARI, “The paradoxes of colonial reparation: Foreclosing memory and the 2008 Italy–Libya Friendship Treaty”, *Memory Studies* 2012, Vol. 5, No. 3, 316–326.

⁴⁵³ “Portugal” in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1 and 10.

⁴⁵⁴ Resolution of 9 December 2022 of the Council of Ministers (Resolução do Conselho de Ministros n.º 121/2022, de 9 de dezembro), *Diário da República* 9 December 2022, 46; J.G. CRAVINHO and M.-S. DARVICHE, “Postcolonial Portuguese Relations”, *Pôle Sud* 2005, Vol. 22, No. 1, 89–100.

6. United Kingdom

While the UK used to be Europe's leading aid donor, it now only ranks twelfth among DAC Member States, providing 15.7 billion USD of ODA (0.51% of GNI) in 2022. The UK's withdrawal from the EU in 2020 brought about a substantial change in the development cooperation architecture and strategy of the United Kingdom, seeing the establishment of the Foreign, Commonwealth and Development Office (FCDO).⁴⁵⁵ The UK's aid policy has been subject to much criticism, from being accused of abandoning world's poor to called a contemporary manifestation of colonialism.⁴⁵⁶ It has furthermore been labeled racist by the British Members of Parliament on the International Development Committee due to the belief that the structure of foreign aid under the FCDO continues to reflect the power dynamics of colonialism since the majority of decisions are still made by the UK and it depicts beneficiaries of aid as defenseless and in need of saving.⁴⁵⁷ Although Nigeria and Sudan receive a significant amount of the allocated funds, it cannot be said the UK's strategy for international development is geared towards the reparation of colonial harm as it not mentioned once in the Government's 2022 strategy.⁴⁵⁸

§5. Guarantees of Non-Repetition

Guarantees of non-repetition may consist of legislative measures that consolidate the principle of non-intervention on foreign territory or human rights safeguarding to prevent the resurgence of the racist ideologies that legitimized colonialism.⁴⁵⁹

⁴⁵⁵ C. BARBIERE, "Europe's former imperial powers continue to target aid to ex-colonies", *The Guardian* 2015, <https://www.theguardian.com/global-development/2015/apr/22/europes-former-imperial-powers-target-aid-ex-colonies>; "United Kingdom" in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 1.

⁴⁵⁶ L. DAVIES, "UK accused of abandoning world's poor as aid turned into 'colonial' investment", *The Guardian* 2021, <https://www.theguardian.com/global-development/2021/dec/21/uk-accused-of-abandoning-worlds-poor-as-aid-turned-into-colonial-investment>; "Global Britain and UK Aid Policy Towards Africa" in M. LANGAN, *Global Britain and Neo-colonialism in Africa. Brexit, 'Development' and Coloniality*, Cham, Palgrave Macmillan, 2023, 93-122.

⁴⁵⁷ Report of the House of Commons' International Development Committee on racism in the aid sector (23 June 2022), HC 150; S. CHAMPION, "In my view: Is the aid sector racist?" in OECD, *Development Co-operation Report*, Paris, OECD Publishing, 2023, 85-87.

⁴⁵⁸ Report on the UK Government's Strategy for International Development (May 2022), CP 67; "United Kingdom" in OECD, *Development Co-operation Profiles*, Paris, OECD Publishing, 2023, 9.

⁴⁵⁹ C.J. TAMS, "Recognizing Guarantees and Assurances of Non-Repetition: LaGrand and the Law of State Responsibility Symposium: Reflections on the ICJ's LaGrand Decision", *Yale J. Int'l L.* 2002, Vol. 27, No. 2, 441-444; P. D'ARGENT, "Reparation, Cessation, Assurances and Guarantees of Non-Repetition" in A. NOLLKAEMPER and I. PLAKOKEFALOS (eds.), *Principles of shared responsibility in international law: An appraisal*, Cambridge, Cambridge University Press, 2014, 208-250.

A. Legislative Measures

Notwithstanding their international commitments which were outlined in Chapter III, it does not appear any European States have incorporated the principle of non-intervention on foreign territory into their national legislation, e.g. by writing it into their constitutions.⁴⁶⁰

B. Protection of Vulnerable Groups: Human Rights Safeguarding

Human rights protection has been harmonized across Europe as it is an EU competence.⁴⁶¹ It would hence be redundant to analyze the individual discrimination frameworks in the Member States, although the degree of adequate implementation varies and some distinctions need to be added for the UK post-Brexit (*infra*). The EU has been making a concerted effort to address the pervasive issue of racism in its territory. The Commission has acknowledged Europe's colonial past and its profound consequences for society in its *2020-2025 Anti-racism Action Plan*, highlighting the historical roots of racism.⁴⁶² At the heart of the EU's legislative framework lie the Treaties and the Charter of Fundamental Rights, which both include provisions that prohibit racial discrimination and reinforce equality before the law.⁴⁶³

As for secondary EU law, the Racial Equality Directive is a key instrument, requiring equal treatment for people of all races or ethnicities in a number of areas, such as social protection, work, and education.⁴⁶⁴ Another important law is the Framework Decision on Combating Racism and Xenophobia, which mandates EU Member States to prohibit acts of incitement to violence or hatred based on race or ethnicity.⁴⁶⁵ Furthermore, the Victims' Rights Directive assures that victims of hate crimes receive adequate support, protection, and involvement in criminal processes.⁴⁶⁶ Lastly, the EU

⁴⁶⁰ M. SAUL, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?", *Human Rights Law Review* 2011, Vol. 11, No. 4, (609) 625.

⁴⁶¹ E. SPAVENTA, "Should we harmonize fundamental rights in the EU? Some reflections about minimum standards and fundamental rights protection in the EU composite constitutional system", *Common Market Law Review* 2018, Vol. 55, No. 4, 997-1023.

⁴⁶² "A Union of equality: EU Anti-racism Action Plan 2020-2025", European Commission 2020, https://commission.europa.eu/document/download/beb25da4-e6b-459e-89f7-bcd3a8f0c8_en?filename=a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf.

⁴⁶³ See Articles 2 and 3 of the Consolidated Version of the Treaty on European Union, *Official Journal of the European Union* 26 October 2012, C 326/13; Articles 10, 19 and 67(3) of the Consolidated Version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union* 26 October 2012, C 326/47; and Articles 20 and 21(1) of the Charter of Fundamental Rights, *Official Journal of the European Union* 26 October 2012, C 326/391.

⁴⁶⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of the European Union* 19 July 2000, L 180/22.

⁴⁶⁵ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, *Official Journal of the European Union* 6 December 2008, L 328/55.

⁴⁶⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *Official Journal of the European Union* 14 November 2012, L 315/57.

has prioritized the establishment of national equality bodies within Member States, which play an important role in monitoring compliance.⁴⁶⁷

However, there have been difficulties in converting these legal frameworks into practice as implementation and awareness remain critical challenges.⁴⁶⁸ While the Racial Equality Directive has been transposed by all Member States, concerns about its practical execution persist.⁴⁶⁹ Furthermore, several EU nations have not completely implemented the Victims' Rights Directive, underlining the need for further efforts to ensure the adequate protection of human rights.⁴⁷⁰ Following Brexit, the UK decided to preserve EU law until 31 December 2023 under the Retained EU Law Act.⁴⁷¹ It was consequently unclear what would be the fate of EU equality law after this date until recently, when the UK announced it would amend the Equality Act to maintain and conform to EU anti-discrimination law with effect from January 1st, 2024.⁴⁷² In general, it may be stated that the EU framework offers a strong basis for addressing racial discrimination in both legislative and enforcement contexts.

SECTION III. CONCLUSION

European States' restitution efforts differ greatly between the former colonial powers: Belgium and France, for example, have made progress toward recovering cultural objects and recognizing the suffering of mixed-race children, while other States have moved forward less rapidly. Compensation is still restricted to colonial injury in the strict sense with the UK's Mau Mau case as one of the well-known examples, whereas Germany and Italy's compensation initiatives have come under fire for their makeup and extent. Europe has taken varying approaches to facilitating satisfaction. Some public apologies have come across as self-protecting; there has been little progress in removing or recontextualizing colonial monuments; emerging truth commissions are encountering delays; there

⁴⁶⁷ D. DE GROOT, "Briefing on EU legislation and policies to address racial discrimination", *European Parliamentary Research Service* 2023, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/745691/EPRS_BRI\(2023\)745691_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/745691/EPRS_BRI(2023)745691_EN.pdf), 8-11.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive') (19 March 2021), COM(2021) 139 final.

⁴⁷⁰ D. DE GROOT, "Briefing on EU legislation and policies to address racial discrimination", *European Parliamentary Research Service* 2023, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/745691/EPRS_BRI\(2023\)745691_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/745691/EPRS_BRI(2023)745691_EN.pdf), 6-8.

⁴⁷¹ Retained EU Law (Revocation and Reform) Act of 29 June 2023, *Stationary Office* 19 July 2023, c. 28.

⁴⁷² Equality Act of 8 April 2010 (2023 Amendment), *Stationary Office* 8 November 2023, c. 28; "Government legislates to preserve EU-based discrimination law – what does this mean for employers?", *Lewis Silkin* 2023, <https://www.lewissilkin.com/en/insights/government-legislates-to-preserve-eubased-discrimination-law--what-does-this-mean-for-employers>.

has been some success in incorporating colonial history into mandatory school curricula, and the process of ceasing colonial rule over the African continent is still ongoing. Although a large sum of money is invested into development aid yearly by all former colonial powers, European States tend to shy away from using colonial harm as a starting point for aid distribution. Instead, they prioritize global challenges or “fragility”, indicating that their help is rooted in white saviorism rather than having a clear reparative goal. Highlighting that present-day racism is a product of colonialism, the EU has taken strong legal action to ensure robust anti-discrimination frameworks in the Member States. In conclusion, European States’ responses to colonial harm remains fragmented and deficient, with limited genuine action as their efforts are often overshadowed a reluctance to address the colonial roots of contemporaneous global challenges such as poverty and racism.

CONCLUSION

This thesis has examined the harm that European States brought upon former colonies and their peoples in Africa, and the efforts made to address these historical injustices through reparations. Several critical issues formed the basis of this inquiry. The ‘colonial amnesia’ experienced in European States was identified as a key hurdle standing in the way of reconciliation. In response, the vast array of harm that occurred as a result of colonialism was highlighted, ranging from historical injustices to ongoing effects. Moreover, this study contested the perceived impossibility of repairing colonial harm under international law due to current legal hurdles, offering practical solutions such as a structural approach to reparations. Furthermore, it built upon the growing recognition of a moral responsibility for reparations for colonial harm by European States, showing that the absence of a legal obligation at present does not need to signify the end of the debate. As a whole, this research contributed to the ongoing discourse on the decolonization of international law by exploring to what extent the awarding of reparations by European States as a means of atonement for colonial harm inflicted upon former African colonies and their peoples constitutes a State practice.

To answer this main research question, three sub-questions were formulated, which were addressed across three correlating chapters. Chapter I delved into the foundational understanding of colonial harm, seeking to answer the sub-question ‘What constitutes colonial harm?’ A differentiation was made between colonial harm in the strict and broad sense, illuminating the lasting impact of historical injustices on modern society. In Chapter II, the concept of reparations for colonial harm was studied, focusing on the sub-question ‘What reparations may be utilized to address colonial harm?’ A comprehensive typology of reparations was provided, proposing a structural approach comprised of restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition concerning colonial harm in the strict and broad sense. Chapter III researched the third sub-question, namely ‘What initiatives to provide reparations for colonial harm have been taken in Western Europe?’ The findings showed a fragmented and deficient response, characterized by differing degrees of restitution, compensation, satisfaction, rehabilitation, and GNR efforts, frequently overshadowed by self-protecting gestures and hesitance to challenge colonial legacies.

After having examined these fundamentals, we can finally return to the central research question: ‘To what extent does the awarding of reparations by European States as a means of atonement for colonial harm inflicted upon former African colonies and their peoples constitute a State practice?’ As outlined in the methodology, this requires an evaluation of the extensivity and consistency of the conduct studied in Chapter III. Both conditions need to be fulfilled cumulatively to be able to speak of State

practice, as opposed to a series of isolated events. Regarding the first criterion of extensivity, it can be observed that all States participated in the studied rule - namely that reparations ought to be provided for colonial harm - even if this engagement was based merely on a moral obligation. Although the degree of compliance varied per State for each type of reparation, we may generally speak of a widespread and representative practice, at least regionally in Western Europe. The second criterion of consistency is where the studied conduct falls short of being able to be considered a State practice. Although perfection is not necessary, a certain degree of uniformity and fixedness is required. While every State participated in the general rule, many gaps were found in the practice of providing reparations, such as Portugal and the UK taking little initiative on restituting colonial artifacts, most countries not mandating education on colonial history, *etc.* This level of fluctuation and contradiction does not align with the criterion of consistency, precluding the existence of a genuine State practice.

Nevertheless, the former findings should not lead us to draw the unequivocal conclusion that this conduct was a string of detached events. This study has shown that there is growing recognition of the moral imperative to repair colonial harm, whereas it would be premature to claim that this developing practice will serve as the foundation for a future legal obligation at this point in time. In other words, firstly, these developments do represent a significant shift in former colonial powers' attitudes towards reconciliation and secondly, the newly emerging ethos concerning reparations may shape common standards, as well as promote consistency in how countries address the issue in the future. However, the European practice surrounding reparations is still extremely disparate and flawed in many ways. Both former colonial powers and academia have a distinct role to play in challenging colonial amnesia. On the one hand, European States must continue to facilitate international dialogue focused on partnership and collaboration with African nations, promoting unity and accountability. On the other hand, rigorous academic research can play a crucial role by investigating underexplored topics. For example, a comparative analysis of the legal approaches to reparations across countries poses an interesting avenue for further research, since this may allow to identify prospects for international cooperation and the harmonization of legal norms. Echoing the wise words of Chimamanda Ngozi Adichie, all actors should engage in this dialogue and act more courageously, as "to act with courage is to have concrete hope in a better future."⁴⁷³

⁴⁷³ Transcribed from the end of Adichie's speech at the Humboldt Forum, see "Chimamanda Adichie Speech at the Humboldt Forum", 2021, <https://www.youtube.com/watch?v=K1Cxbq0gF6E>.

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PCA 4 April 1928, Island of Palmas Case (Netherlands/USA), *I.C.G.J.* 1928, 14.

PCIJ 26 July 1927, Chorzow Factory Case (Germany/Poland), *P.C.I.J. Rep.* 1928., Series A, No. 9, 5.

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