An International Law Deconstruction of the Hegemonic Denial of the Right to Reparations

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Abstract: *The dominant denial of the right to reparations for slavery relies on two premises. One, the principle of non-retroactivity in international law holds that facts must be judged by the law in force at that time. Two, it is asserted that transatlantic slavery would have been "legal". The article shows that the latter premise is wrong. We need to look into "pre-Maafa"[1] international law and African laws concerning slavery, forced labour, and crimes against humanity. African societies participated in the shaping of international law at least as much as Europeans, who before transatlantic slavery were a not very powerful global minority. Historical evidence shows that transatlantic enslavement in Africa and slavery were illegal by the laws of African peoples. Transatlantic slavery was even illegal by the laws of European enslaver states at the time. An overview of the forms of reparations that international law provides illustrates the necessity of holistic and comprehensive reparations.*

Keywords: Reparations, Slavery, International Law, African Law, Maafa.

On the following pages I wish to explore, at a fundamental level, how international law provides an affirmative base for reparation claims for transatlantic slavery. Members of no other group were ever subjected, over a comparable period of time, to attacks as serious to their physical and mental integrity as the Africans targeted to be deported to the Americas and their descendants (Plumelle-Uribe 2004, 194). Yet, no reparation whatsoever has ever been made. The dominant scholarly opinion categorically shuts the door on such claims for justice by resorting to the principle of *non-retroactivity* and the allegation (presented as if it was a fact) that transatlantic slavery would have been "legal" at its time.

The principle of *non-retroactivity*, a tenet of contemporary and classic international law, stipulates that the legal responsibility of a state can only be established if the state committed an act that was "internationally wrongful" at the time it occurred. According to Article 2 of the International Law Com-

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1   Some reparation activists employ the concept of Maafa in designating the crime (comprising its different stages of slavery, colonialism and neo-colonialism) for which reparation is sought. Maafa is a Kiswahili word meaning "disaster", and is used to describe over 500 years of warfare and genocide experienced by African people under enslavement and colonialism and their continued impact on African people throughout the world. The term was introduced by anthropologist Marimba Ani (see: Ani 1988).

mission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, an act (action or omission) of a state is internationally wrongful and engages its international responsibility, if a) the act is by international law attributable to that state, and if b) it constitutes a violation of an obligation that the state owes under international law. However, and importantly, the qualification as internationally wrongful is not affected by differing legal qualifications in internal law (Art. 3 ILC Draft Articles). *Non-retroactivity* has long featured as a general principle of international customary law. Combined with the allegation of the international "legality" at that time, *non-retroactivity* is invoked to block all claims to reparations for transatlantic slavery.

This is a scientifically untenable position, however. When one contends that slavery was legal, it needs to be asked by whose standards it would have been legal. The allegation of legality is based on the colonial laws that European enslaver states passed *after* they had already been instigating transatlantic slavery for more than a century. However, slavery and enslavement such as practiced in the transatlantic system were not legal by the laws of affected Africans, nor did they conform with "international law" standards of the time. Even most European enslaver states had passed, in developments up to the sixteenth century, legislation abolishing, or at least severely restricting, slavery. For the most part these laws had not been abrogated and continued to be in force throughout transatlantic slavery. Thus, the historically documented facts indicate that transatlantic slavery was illegal. What needs to be done is to thoroughly investigate the actual law(s) in force at that time, and to therewith enable a legal appraisal of the reparation claim, all while remaining respectful of international law. To do so is the ambition of this article.

Even if, on a purely definitional basis, it can be argued that classic "international law" was born only in the seventeenth century, it cannot be denied that regimes of legal regulation of international, or inter-polity, contact can be retraced back for much longer. There was no distinctive cut between the developments of this ancient "international law", present at the time of the beginnings of transatlantic slavery, and the international law we have today. Before transatlantic slavery, regions of Africa were active participators in international relations, and many African societies had highly developed political and social institutions. Their legal perspectives on slavery need to be included in the assessment of the international legal status of slavery at that time. Europeans, having always been a global minority (and before transatlantic slavery not a particularly powerful one), could not unilaterally decide the rules of international law.

The clarification of the legal status of transatlantic slavery at the time it was perpetrated is the crux of the matter when it comes to the reparations "debate" on a legal and state level. As Patrick Robinson, Judge at the Interna-

tional Court of Justice, stated in his commentary to my thesis on "International Legal Responsibility and Reparations for Transatlantic Slavery", "once it is established that slavery was illegal at the relevant time, the outstanding related questions, such as whether that practice rises to the level of genocide, will fall into place; by far the more thorny question is whether the practice of slavery was illegal at the relevant time" (Robinson, pers. comm. 2012).

Evolution and State of International Law Before Transatlantic Slavery

European enslaver states were only, as a consequence of their crime of transatlantic slavery, able to impose a global dominance, a dominance that also permeates the legal sphere up to this day and that made it possible for them to enact regulations declaring de-humanizing chattel slavery to be "legal". Prior to transatlantic slavery, Africa participated as much as Europe, or more, in the formation of "international" law. It is by the standards of this pre-Maafa international law that the legal status of transatlantic slavery has to be assessed.

Roots of International Law

> If one perceives (...) international law as the set of rules, written and non-written, applicable to subjects and situations that do not exclusively pertain to internal law, it is permissible to affirm that it has always existed. (Carreau 2007, 30)

"International" (or sometimes called inter-polity) law has its origins in international commerce (Hummer, Neuhold, and Schreuer 1997, 14-17). Africans were involved in international trade at least as much as Europeans prior to the late-fifteenth century. The trade of gold, ivory, silk and spices between Africa, Persia, India, China and Europe had taken place for centuries (Hess 2000, 5).

Ancient testimonies of international law are numerous. One of the best known, involving an African party, is the peace and alliance treaty concluded in 1279 BCE between Ramses II of Egypt and Hattusili II of the Hittites (Nussbaum 1954, 4-6). Once concluded, such agreements had to be strictly respected; thus we find here the one of the most basic premises of international law, the principle of *pacta sunt servanda*.[2] Another standard of this ancient international law was that ambassadors had to be well treated and their person was inviolable. Every breach of this principle constituted a wrongful act that could justify to resort to war (Carreau 2007, 31). The historical evidence suggests that these rules of international contact were known and respected by African states in their dealings with European officials and traders both before

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2 *Pacta sunt servanda* is a basic international law postulate, meaning agreements must be kept.

and at the beginning of transatlantic slavery. This African conformity with international law was often times not reciprocated by European counterparts who disrespected agreements, ignored the sovereignty of African states and violently disposed rulers unwilling to collaborate with them in transatlantic slavery/enslavement (Clarke 1998, 16). It is also noteworthy that, much earlier, the Roman Empire was obliged to maintain relations with its unconquerable adversaries on the basis of international law and agreements. During and between the Punic wars, their adversaries were Africans. In the treaties between the Roman Empire and Carthage in 509, 306 and 279 BCE, heavy maritime restrictions were laid upon the Romans, whose ships were excluded from important African coastal waters (Nussbaum 1954, 4-6).

Within these ancient lines of international law, the duty to make reparation for wrongs had also long been recognized. "The principles of Mosaic, Islamic, and even English common law are all rooted in *compensation for injury* caused by another" (Winbush, O. 2003, 150). The parties of the treaty concluded between King Ramses II of Egypt and Hittite King Hattusilis III regarded their consensual obligations as legally binding and accepted that any breach of it involved a duty to make reparation (Schwarzenberger 1976, 102). In African legal traditions reparation was also a well-established legal concept. African legal systems placed more importance on limiting the damage for the victim than on retaliating on the aggressor. Thus, reparation and reconciliation were accorded high importance (Kiné Camara 2004).

African States and Societies Before and at the Time of Transatlantic Enslavement

Fundamentally, the allegation that slavery was "legal" at the time it occurred depends on the assumption that the political and social organisation of African entities did not qualify them as subjects of international law. Most European scholars stick to this purely fictional point of view that in Africa, at the time,

> such 'political' entities certainly did not constitute subjects of international law in accordance to the state model . . ., that is a political and legal expression of a collective identity sufficiently cohesive and stable to be able to enter into relations with other political entities in the framework of the principles of international law and to assure the full exercise of the sovereign competences and prerogatives recognized by this law. (Boschiero 2004, 250).

Yet, even in European law doctrine, the first explicit theoretical enunciation of sovereignty as one of the essential criteria of the state was given by Jean Bodin only in 1576 (Carreau 2007, 305). It follows that, at the time of the arrival of the first European slaver expeditions in Africa at the end of the fifteenth century, the European powers were not defined as "sovereign states"

because they did not yet know this concept. In contrast, international law and most of its basic rules did exist already (ibid., 305). According to Bodin, sovereignty encompasses the capacity to make laws and to enforce them, restricted only by divine law, the law of nature, and reason, common to all nations (Carreau 2007, 34). Building on Bodin, European scholars identified the elements of the state as territory, population/people and sovereignty.

The legal practice recognizes the criterion of territory as fulfilled even if a state exercises effective power only in a core territory while the exact frontiers are not yet defined (Hummer, Neuhold, and Schreuer 1997, 142). Concerning the criterion of population/people, the administrative court of Cologne stated in the *Duchy of Sealand* case that "whilst size was irrelevant, in order to constitute a people the group of persons in question must form a cohesive vibrant community . . . It must be aimed at the maintenance of an essentially permanent form of communal life in the sense of sharing a common destiny" (*Duchy of Sealand* [Administrative Court of Cologne], Judgement of 3 May 1978, ILR 1989, 687). In international legal practice and doctrine, a people is generally defined as constituting a community with a common history and solidarity in the present, and these ties will continue in the future. Communal links of solidarity, tied to a common history, have always been a crucial characteristic of African societies. Finally, sovereignty rests on the monopoly of public administration, the capacity to edict a rule and the ability have it respected. It is reflected, for example, in the maintenance of a unified army. There were African regents, like Queen Nzinga, who fought the enslavers in their territories over a long period with strong, organized armies while ruling well administered states (Hess 2000, 43). In the *Lotus* case, the Permanent Court of International Justice (PCIJ), precursor of today's International Court of Justice (ICJ), made it clear that in case of doubt, a limitation of sovereignty must be interpreted restrictively (Carreau 2007, 352). In the *Greenland* affair, the PCIJ recalled that "legislation is one of the most obvious forms of the exercise of sovereign power" *(Legal Status of Eastern Greenland* [Denmark vs. Norway], Judgement of 5 April 1933, PCIJ, Ser. A./B., No. 53, 28). Complex legislation by African states is evidenced, for example, in records of European traders who complained about taxation laws (Chinweizu 1987, 36), such as in the empire of Songhay. Similar facts can be established for other African states at the time, such as for the kingdoms of Zambezi (Zimbabwe, Zambia and Malawi) who were engaged in the trade of gold, silver, iron and copper (Chinweizu 1987, 199). As Nigerian historian Chinweizu analysed,

> the hundred years between 1450 et 1550 were a period of social reforms and of innovations in statecraft in the kingdoms and empires of Africa . . . On the lower Niger at Benin, Oba Ewuare, after he came to the throne in 1440, vigorously extended the kingdom, taking

and incorporating over two hundred new towns. He built good roads in Benin City, added new walls and ditches to the city's defences, and being a patron of the arts, he encouraged wood and ivory carving. By forming the State Council of Benin, he gave to the kingdom a strong central government. (1987, 188-90)

It is important to point out that, once the criteria are met, a state exists: "The existence or disappearance of the state is a question of fact; . . . the effects of recognition by other states are purely declaratory" (qtd. in Pellet 1992, 182).[3] Recognition has some legal significance in that it serves as indication of statehood. Recognition in international law is not subjected to formal constraint, it can be given tacitly, for example, by the establishment of diplomatic relations. Europeans not only thus recognized African states on the continent through the conclusion of treaties and the establishment of diplomatic contacts, but also on the other side of the Atlantic. In 1678, the governor of Pernambouc, as a representant of the king of Portugal, concluded a peace treaty with the Republic of Palmares, thus recognizing the Republic as equal and a quasi-nation. In 1685, the king of Portugal Pedro II himself sent a communication to Zumbi, the leader of the Palmares (Police 2003, 96).

To conclude, it is safe to state that many of the African societies affected by transatlantic enslavement were indeed states by the standards of international law; others lacked a sovereign administrating force and were therefore not states in the strict sense. Yet, these societies also knew and practiced law, including conceptions of human rights. Comparative studies on historic human rights conceptions in decentralized and state societies in Africa show that both of these types of societies knew and protected such rights. The Akamba of East Africa, a less rigidly organized society, and the Akan, a state society, both recognized that, as an inherently valuable being, the individual was naturally endowed with certain basic rights. Thus, "it was an absolute principle of Akan justice that no human being could be punished without trial" (Wiredu 1990, 252). Grotius argued in the seventeenth century that extra-European territories "now have and always have had their own kings, their own government, their own laws, and their own legal systems . . . [The Portuguese] do not go there as sovereigns but as foreigners. Indeed they only reside there on sufferance" (Grotius 2000, 14). Historical documents clearly show that European officials initially recognized African states and sovereigns as equals. Thus, Ramusio, the secretary to the rulers in Venice, suggested to "let [the merchants] go and do business with the King of Timbuktu and Mali, and there is no doubt they will be well received there with their ships and their goods and treated well, and

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3   This, quoted in the article noted, is taken directly from the Peace Conference on the former Yugoslavia (Arbitration Commission), Opinion n°1 of 29 November 1991.

granted the favours that they ask" (Davidson 1961, 26). Why this attitude towards Africans subsequently changed cannot be answered here. However, claiming that people, who by all standards were sovereign and equal, were not subjects of international and could therefore not contribute to the development and content of international law, does not turn such false allegations into reality.

African and European Practice and Legal Conceptions of Servile Labour and Slavery

The assessment alone that African states were subjects of international law does not determine the legal status of transatlantic slavery at during the period it occurred. A thorough historical investigation into the laws and legal concepts of both European and African states is needed. It is often alleged, by reparation detractors, that Africans themselves would have practised "slavery" for times immemorial, and that they actively participated in transatlantic enslavement. Both contentions are of great legal significance and will be scrutinized and deconstructed in the following section.

African Servile Labour

With regard to the allegation of a high prevalence of slavery in pre-Maafa Africa, we must keep in mind that the use of the same semantic term to describe disparate social realities changes nothing to these divergent situations, and must neither influence an eventual legal qualification. The people who are eagerly qualified as inter-African slaves were not submitted to the dehumanisation that was intrinsic to transatlantic slavery (Asare 2002, 20). African "slaves" did not have their ears cut off, the name of their master was not iron-branded on their breasts, their babies were not killed when bothering the sleep of the mistress (Hess 2000, 130), they were not cruelly tortured for minor "infractions" or roasted alive over a couple of days. Dogs were not trained to drink their blood and nourish off their flesh (Plumelle-Uribe 2001, 74). The European colonial enslaver codes defined the status of slaves as movables and provided for all these atrocities. This dehumanisation was unknown to African societies. The concept and reality of African "slavery" coincided rather with the meaning of the terms "servile labour" or "serfdom" (Scelle 1934a, 55-57), terms that most European scholars prefer to reserve to the description of situations were Europeans subjugated other Europeans. As Plumelle-Uribe rightly observes, the monopoly of words and definitions is not neutral. It is part of the manipulation of history and the control of its interpretation (2001, 30), also in the legal domain.

Probably the most pertinent disquisition about African systems of servile labour and slavery has been made by Inikori. In his seminal article "Slaves or serfs?", Inikori applied to African evidence the formula employed by modern historians to distinguish slaves from serfs in pre-capitalist Europe, and concluded that

> it is . . . clear that the chattel slavery experienced by Africans in the Americas was something new for them . . . The claim that the pre-existence of chattel slavery in the coastal societies of western Africa facilitated the growth and development of the trans-Atlantic slave trade is not borne out of evidence . . . For the few who were already in bondage before capture and forced transportation to the Americas, their socioeconomic conditions in Africa were much closer (in many cases even superior) to those of serfs in medieval Europe than to those of chattel slaves. All of this may help explain the phenomenon observed by students of slave societies in the Americas that the greater the proportion of African-born people in the population, the greater the incidence of resistance or revolt. (2001, 68)

Scholarly descriptions of the nineteenth century Sokoto Caliphate in northern Nigeria evidence that dependent populations lived in agricultural villages. They worked with their families on their own farms, allotted to them by their masters. "By 2:30 pm work on the lords' fields was over and they were free to return to their own farms" (ibid., 59). The land that they possessed for their own use was inheritable, though it could not be sold. People were also paid for any additional work, such as thatching, done for the master (Hill 1976, 418). Hausa tradition and customary law imposed severe limitations on masters' possibilities of selling servile individuals living in a household (Inikori 2001, 60). Despite such facts, European scholars call these people "slaves" and their settlements "slave-villages."

With the Banamba in Mali, another example of an African "slave society", "slaves" had rights to free time and a plot of land. An incident is documented where a master requested millet beyond his rightful share. After consulting, the "slaves" responded through their elder spokesman:

> Mahmady, I salute you; all who are here are your captives. They salute you. You have asked us for millet but you know that the millet which is in our granaries is ours, because we planted it. If we do not want to sell, it is because we want to conserve it. We will not sell it today. We have given you the part that belongs to you, because you are our master. But you shall not get more until the next harvest. Mahmady, do not count on our millet, because we will keep it for the winter. (Klein and Roberts 1980, 381).

Now imagine an enslaved African on a plantation in the Americas saying that to a master. Yet, this scenario his took place in a society that was described as having a slave system that was "clearly among the harshest in West Africa" (ibid., 379).

One European explorer described that the institution of "slavery" in Kongo (one of the regions first touched by massive enslavement by the Europeans/Portuguese) appeared tolerable, and that a "slave" could even become deputy chief. "Slaves" had civic and property rights, and there were multiples procedures for manumission, several of which could be taken on the sole initiative of the "slave" (Ki-Zerbo 1978, 210). Even in pre-Maafa Dahomey, where the elite became deeply involved in transatlantic slavery at a later time, individual masters did not have the right of life and death over their slaves. Only the sovereign king had this right over human beings, and anyone who contravened this legal principle was punished by decapitation (Avajon 2005, 38-41). Another state whose elite sold many other Africans to European slavers in the eighteenth and nineteenth centuries was the Ashante empire. Traditionally, however, before its elite had become corrupted by European slave demand and the slave-gun cycle, a quasi-unescapable reality in the region, masters did not have the right to kill "slaves". Anyone who killed a human, free or "slave", without royal permission, was persecuted for murder. Mutilating "slaves" without permission was also forbidden, because the servile labourer was considered a human, not chattel (Testart 2001, 50-52). Davidson reports of a contemporary British witness who documented that in Ashante "a slave might marry; own property; himself own a slave; swear an oath; be competent witness; and ultimately become heir to his master. Such briefly were the rights of an Ashanti slave. They seemed in many cases practically the ordinary privileges of an Ashanti free man" (1961, 38-40). In the Bamoun kingdom (Cameroun) masters also did not have the right of life and death or even of harsh physical punishment over their "slaves". Every act of mistreatment of a servile labourer was severely dealt with and could lead to the imposition of a death sentence for a master in case that the servile labourer had died (Ajavon 2005, 40-41). In Senegambia, one of the areas touched early by transatlantic slavery, "slave-owners . . . did not have powers of life and death over their slaves . . . Slaves could also change masters by destroying the property of a kinder master and getting themselves given to them *in lieu* of damages" (Barry 1998, 115). In Igboland, another region where many captives were taken for transatlantic slavery, the loss of freedom was a form of punishment and not at all comparable to chattel slavery in its conditions (Oriji 2003, 62-78).

In many pre-Maafa African societies, "slaves" or their descendants gradually became members of the lineage, as young people eventually became eld-

ers. The tasks of these "slaves" may have been more menial, but still they were often granted responsibilities in trade, craft production, and other occupations, and were treated very much as members of the household (Lovejoy 2000, 14-15). The role of servile labour in assimilating outsiders into the host society in Africa has been well documented (Davidson 1961, 30). In Ewe society in south-eastern Ghana (called "Slave Coast" by Europeans),

> before intensified pursuits of the Atlantic slave trade, domestic slaves were usually criminals or debtors sold into slavery. Domestic slavery played the role prisons serve in industrialized societies; . . . there is now ample evidence that domestic slavery was a marginal economic and social force before Atlantic slavery took off in the fifteenth and sixteenth centuries. In fact, domestic slavery became a significant phenomenon in Africa only by the nineteenth century when it was influenced by global forces and demand. (Bailey 2007, 11)

One effect of transatlantic slavery was the corruption of indigenous legal institutions. Instead of resorting to traditional legal means of redress, the corrupt powerful turned to the "slave trade" (ibid., 50). Comprehensive reparations must also provide the means for a deep investigation into these processes that are at the root of many problems in African societies up to the present. Multiple scholars have retraced that phenomenon of servile institutions approximating chattel slavery were new in tropical Africa, and that their development was linked strongly to the growth of export demand for captives, first across the Sahara and later across the Atlantic (Inikori 1992, 38). A UNESCO report of experts of 1978 assessed that

> the traditionally organized authorities, for example in Jolof, Cayor, Balol, Songhay, Congo and Zimbabwe, were in various ways and at various times, confronted with the pressure of European and Muslim demand for slaves. They were all upset by this pressure. Such upsets were accompanied by an increase of social tensions, a worsening of servitude, especially quantitatively, and by a transformation of the former processes of social integration that the various forms of personal dependence provided in African society prior to the fifteenth century. . . . [N]one of the experts present disputed the idea that the slave trade was responsible for the economic backwardness of Black Africa. (Inikori 1982, 58-59)

From all this, it is clear that the assertion that "slavery" was widespread in pre-Maafa Africa is factually wrong and can thus not be used to substantiate the argument of transatlantic slavery having been "legal".

Also, "slavery" in African societies was not racialized, as in the transatlantic system where the mere fact of being of African descent was presumptive of slave status, and slave status was for life (Palmer 1998, 8). In the United

States, for example, manumission (the act of a slave holder freeing an enslaved person) became increasingly difficult and often impossible. An early law of Maryland, dating from 1633, declared that

> All Negroes or other slaves within the province, all Negroes to be hereafter imported, shall serve *durante vita*: but there children were to serve likewise . . . A South Carolina law of 1740 provided that any free Negro should be sold at public auction if they had harboured a runaway slave, or was charged "with any other criminal matter". A Black person in Mississippi could be sold as a slave unless he was able to prove himself free. (Davidson 1961, 38-39)

Testimonies and journal entries by contemporary European officials also recount that transatlantic slavery was wholly different from African servile labour through the former's complete disregard for the humanity of its victims. Pruneau de Pommegorge, who worked for the *Compagnie des Indes*, noted that children of women who were sold into transatlantic slavery were taken from them and thrown to the wolves (de Pommegorge 1789, 210-211). On the ships, sick people and toddlers, being especially weak and prone to sickness, were often thrown overboard (Ki-Zerbo 1978, 216). The average life expectancy of a slave (once he/she surpassed childhood and was put to work on the plantation) was five to seven years (ibid., 222).

No laws protected Africans from any cruelty the white masters could conceive. Men, women and children were at their complete mercy. Punishment in transatlantic slavery included the putting of the person into facial or whole-body gibbets (a human form framework made of iron bands with metal spikes on the inside); the utilisation of thumbscrews; extreme lashing and smearing wounds with salt and hot pepper; limb amputation; alive muring (encasing within a pit or wall); and smearing the whole naked body with honey and then tying the person to a tree for days so that bees, ants and mosquitos would cover and bite every inch of their body (Peret 1999, 36-37).

It is an accepted fact, often emphasized by European reparation opponents, that trans-Saharan/Arab enslavement of Africans existed long before transatlantic slavery. Initially, slaves in Islam were prisoners taken in holy wars, and only those who were not Muslims were legally enslaveable. This rule, however, was broken more often than not (Lovejoy 2000, 15-16). Regarding the legality of trans-Saharan/Arab enslavement of Africans, historical documents need to be analysed, such as a letter from 1391 by the king of Bornu, Biri Ben Idriss, to Sultan al Malik Az Zahir Barquq, where the king denounced Arab slaver gangs raiding his country and abducting numerous subjects who were Muslims themselves and thus not legally enslaveable (Ki-Zerbo 1978, 158). In the Songhay Empire, the renowned legal scholar Ahmed Baba issued an infamous fatwa in which he condemned trans-Saharan slavery (Baba Kaké 1998,

26). Soundjata, founder of the Mali Empire, fought against the institution of slavery in that part of Islamized Africa. Upon his instalment as emperor in 1213, he proclaimed the Manden Charter in which slavery was explicitly outlawed. He organised armed brigades that assured the enforcement of this law and fought Arab slavers. The Manden Charter furthermore contained an explicit recognition of basic human rights, long before any such document was issued in Europe: "Every human life is a life. One life is not superior to another. Every wrong done to a life demands reparation" (Plumelle-Uribe 2008, 52).

African Collaboration and Resistance

When it comes to the issue of African collaboration, often brought up as an argument against reparations, it is important to keep in mind that throughout the centuries of transatlantic slavery, African sovereigns, leaders and people fought with all their might to stop this genocide. When Portuguese slaving activities first began in Kongo, they had been based on a mutual agreement with the Kongo king, and conformed to the customary act of one monarch turning over to another, an ally, a quantity of captives. This custom was common in both Africa and Europe. However, the Portuguese did not honour the agreement with the Kongolese king. It was in these circumstances that, in 1526, King Afonso I sent a letter to his Portuguese homologue John III, stating the following:

> We cannot reckon how great the damage is, since the above-mentioned merchants daily seize our subjects, sons of the land and sons of our noblemen and vassals and our relatives. Thieves and men of evil conscience take them . . . They grab them and cause them to be sold: and so great, Sir, is their corruption and licentiousness that our country is utterly depopulated. The king of Portugal should not countenance such practices . . . we need from your Kingdom no other than priests and people to teach in schools, and no other goods but wine and flour for the holy sacrament: that is why we ask of Your Highness to . . . assist us in this matter, commanding your factors that they should send here neither merchants nor wares, because it is our will that in these kingdoms [of Kongo] there should not be any trade in slaves nor market for slaves. (Davidson 1961, 158-159).

This and other letters of protest by King Afonso I of Kongo to the King of Portugal and to the Pope are conserved in the archives of Lisbon and the Vatican. The European addressees ignored these notes of protestation and continued breaching the initial agreement with the Kongolese sovereign. In 1540, the Portuguese tried to assassinate the resisting King, and after his death a few years later, a dozen of his family members were intercepted during a voyage

destined to Portugal and enslaved to Brazil (Ajavon 2005, 77). Still, all of this did not completely destroy Kongolese resistance to enslavement. In 1556, the ruler of Ndongo, one of the provinces of the Kongo empire, was counselled by Portuguese slavers to resign his submission to the *Mani-Congo* (king). In the ensuing war, the *Ngola* (ruler) of Ndongo, armed and aided by the Portuguese, took victory, thus further destabilizing the King of Kongo's power to halt slaving. The lesson for future Kings of Kongo was that they needed to comply with Portuguese interests if they wanted to maintain their position (Plumelle-Uribe 2008, 63-64).

Yet still, resistance in the Kongo region continued. In 1704, at a time when Kongo had been plunged into chaos for two centuries of massive slave raiding and associated incitement of warfare, a young woman named Kimpa Vita was called to fight the Europeans to give back sovereignty to the Kongo. Captured at age 22 in 1706, she was burned alive by the Portuguese with her baby (Ajavon 2005, 114). Queen Nzinga Mbandi of Angola federated the region into the United Provinces and allied them to resistance rebels in Kongo. She maintained the rebellion against Portuguese enslavers for four decades (1620s to 1660s). In its first great victory, the alliance took over Luanda. Tragically, the alliance was finally defeated through the European strategy of identifying and arming collaborators (Ajavon 2005, 114).

In Benin, the reigning *Oba* (king) of 1504 to 1550 (at the beginning of Portuguese slaving activities in the region) was also actively opposed to transatlantic slavery. Capable of raising armies from 20,000 to 10,0000 men, he seized all slavers and their ships who intruded his territory (Ajavon 2005, 115). In 1720, Tamba, king in the Rio Nunez region (now Guinea), organized his people against European and African slavers. He obstructed their trade and executed captured middlemen. However, due to the might of European firearms, he was caught, sold, and enslaved, but still organized a revolt among the captives on the ship. It was brutally put down; Tamba was killed and his liver fed to his comrades, who were subsequently executed (Rashid 2003, 137).

That numerous Africans leaders and regents, such as kings and queens in Jolof, Benin, or Kongo actively opposed enslavement is documented in evidence. Tragically, by some means or other European slavers could always find individual Africans who would collaborate with them in supplying captives:

> It only required a few greedy or opportunistic persons, who felt they should enrich themselves rather than resist the inexorable pressures of supply and demand, to keep the slave trade alive. Those suppliers, in turn, rapidly became wealthy enough to become a focus of power to whom others had to accommodate. (Manning 1990, 34)

The available evidence suggests that, especially in the first decades and centuries, kings, queens and leaders actively resisted transatlantic slavery, whereas,

with the advancing of time, collaborators gained an upper hand through the help of European fire arms. However, historical records report that the majority of African people always resisted transatlantic slavery and applied various strategies to oppose it from the fifteenth to the nineteenth century (Adu-Boahen 1985, 3).

That African slaves were not available in abundance, only waiting to be purchased by Europeans, as often suggested or implied in the reparations debate, is also supported by early eyewitness accounts of Portuguese explorers and traders. Reports indicate that both Senegal and Gambia Portuguese ship captains engaged in kidnapping people, which aroused the hostility of local communities. In 1446, after several earlier captains had kidnapped people in the lower Gambia, Nino Tristao entered this river hoping to kidnap more people, but he was greeted by several boats full of men armed with bows and poisoned arrows. He and twenty of his crew lost their lives (Klein 2010, 19). It is also documented in various sources that early Portuguese enslavers were only able to kidnap children because of the people's great resistance to enslavement (eZurara 1453 [1994], 186-187). In the Sierra Leone region, one of the first British enslavers, John Hawkins, led raiding parties to kidnap Africans. This a fact that implies that slaves were not easily obtainable through commerce (Lovejoy 2000, 43).

African resistance and attacks on slave traders and trading posts bear witness that transatlantic slavery was not normal and "legal" in the eyes of the African majority, but seen as illicit. This is also the reason why, wherever possible, as in Saint-Louis and Gorée (Senegal), James (Gambia), and Bance (Sierra Leone), slave factories were located on islands to render escapes and attacks difficult. African people opposed transatlantic slavery to the extent that, in some areas, such as Guinea-Bissau, Europeans gave instructions that as soon as people approached their ships "the crew is ordered to take up arms, the cannons are aimed, and the fuses are lighted. One must, without any hesitation, shoot at them and not spare them. The loss of the vessel and the life of the crew are at stake" (Durand 1807, 191).

From the early sixteenth century on, it is documented that ships belonging to an African militia patrolled the Golf of Guinea, and that their crews of sixty or more men, armed with spears, arrows and shields, attacked European slave vessels. Such resistance was also put up by various chiefs and kings (Lara 1997, 169-170). Until the mid-eighteenth century, the entire countryside from Sierra Leone to Cape Mount was rife with slave rebellions. Not a single year passed without groups of Africans, in permanent rebellion, attacking some slave vessel. People succeeded in establishing free zones on the coast and attracting runaway slaves from all over the area (Barry 1998, 122). For example, it is documented in the historical records that

> Fort-Joseph in Senegal was attacked and all commerce ceased for six years. Several conspiracies and actual revolts by captives also erupted in Gorée Island, resulting in the death of the governor and several soldiers. In Sierra Leone the people sacked the captives' quarters of an infamous trader, John Ormond . . . Written records of the attack of sixty-one ships by land-based Africans . . . have already been found for the seventeenth and eighteenth centuries. (Diouf 2003, XII)

In the seventeenth and eighteenth centuries, *marabouts* (Muslim teachers and leaders) staged a war in the Senegal region against transatlantic enslavement. The *marabouts* succeeded in creating a region of refuge in the Fouta, but they too were eventually defeated by an alliance of neighbouring kings who had been armed by the French (Ajavon 2005, 114-15). All of this considered, the African contributors to the UNESCO-published editions of the *General History of Africa* agree that the deprivation of sovereignty through transatlantic slavery was a crime that was perpetrated against Africa very much contrary to the expressed will of the masses of African people and their rulers throughout the continent and the diaspora (Adu-Boahen 1985, 3).

Tragically, the resistance of continental African leaders and people did not prevail, because Europeans supplied firearms to African rulers and individuals who were ready to enslave others. This scheme resulted in a situation where the choice for most Africans became to be enslaved or to enslave others (ibid., 47). In all regions affected by transatlantic slavery, acquisition of firearms became a necessity for self-defence, as slave raiding by those armed by Europeans increased. The guns could only be acquired from European slave traders in exchange for slaves: "This is why the most important slave-exporting areas of the time . . . were also the largest firearms importers in West Africa during this period" (Inikori 1982, 136-38).

The Legal Situation in Europe

Chattel slavery, as practised in the transatlantic system, was also not legal in the national laws of European slaver nations. Though slavery had had a long tradition in Iberian societies who initiated transatlantic slavery, it had become legally regulated in the body of laws known as the *Siete Partidas*. The *Siete Partidas* included measures that protected slaves from abuse by their masters, permitted marriages, allowed the slaves ownership of property within certain limits, and provided for manumission under a variety of circumstances. Fundamentally, the *Siete Partidas* departed from the premise that freedom was the essential right of every human being (Palmer 1998, 11). That these provisions of the *Siete Partidas* were not enforced in the Spanish and Portuguese colonies does not change the fact that they were the applicable legal basis in force at that time.

Slavery had also become illegal in England by the fifteenth century, and was thus outlawed at the time when this nation became active in the transatlantic slavery system (Davidson 1961, 61). As stated by the Court of King's Bench in the *Somerset* case, from 1540 to 1771 English law only recognized "slavish servitude", a status different from that of transatlantic chattel slavery (Van Cleeve 2006, 603). In 1596, it was ruled that chattel slavery was incompatible with English law (Mtubani 1983, 71). In 1667, however, motivated by the enormous economic gains expected from transatlantic slavery, a Crown legal position was issued that declared Africans as goods. Subsequently, English law was interpreted as permitting participation in every aspect of transatlantic slavery. Yet it must be emphasized that such an act of legislation could not, and therefore did not, change the fact that Africans were humans, and is therefore to be considered futile and void, as the preceding English laws prohibiting chattel slavery remained in force. It is a general precept of law that legislative acts that are factually absurd are void of force.

France specifically condemned the trade in slaves. A royal proclamation of 1517 declared that France, "mother of liberty", permits no slaves, and another legal dictum of 1607 confirmed this: "All persons are free in this kingdom: as soon as a slave has reached those frontiers, and became baptised, he is free" (Davidson 1961, 62). Because of this, most parliaments in France refused to register the royal slavery edicts. They thus never entered into force but were illegally carried out throughout the centuries of transatlantic slavery (Peabody 1996, 30).

In European law doctrine of the time, slavery was a much discussed subject. None of the renowned scholars deemed it as legal without any restrictions, and the majority rejected it or recognized serious boundaries imposed by natural law. Thus, according to Suarez, considered one of the founding fathers of international law theory and doctrine in Europe, slavery was not even an institution of the *ius gentium*, admissible merely as part of positive penal law, whereas he recognized liberty positively as a part of natural law (Lumb 1968, 59). Francisco de Vitoria (1480-1564), often considered as the forefather of "classic international law", wrote in his *Reflectiones de Indis* that according to divine and natural law, all men and all people were equal partners (Hummer, Neuhold, and Schreuer 1997, 20), and assessed that the sovereignty of indigenous rulers had to be respected in the same manner as that of Europeans (ibid., 152). Even when transatlantic slavery was fully instituted, the founding fathers of Western international law doctrine, Vitoria, Suarez, Grotius and Vattel continued to accord an important status to the existence of a superior or natural law imperative for all men and nations (de Frouville 2004, 13; Carreau 2007, 35).

Analysing the African and European evidence and state of laws at the time leads to the clear conclusion that transatlantic slavery was illegal from its inception. Transatlantic slavery violated general principles of international law, such as that derived from the vast majority of national, regional and communitarian legal systems. An illegal practice cannot be rendered legal by the perpetrators simply by pushing through with it in the most violent manner, extending it over a long period of 400 years and then declaring that it would have been licit from the start.

INTERNATIONAL LAW: REFLECTIONS ON WHAT FORMS REPARATION(S) COULD TAKE

The assessment of what forms reparation(s) should take must be left to descendants of enslaved Africans. A few ideas and inspirations, coming from an international law perspective, shall be given here. The notion that reparations would equal and be limited to financial compensation contributes to a considerable amount of confusion. Some African/Black people, for example, will say that they are against reparations, because accepting a sum of money would be tantamount to selling out enslaved ancestors. In view of this and other scepticisms, it is necessary to look into the general and basic rule of the international legal reparations regime, as laid out by the PCIJ when it proclaimed in the *Chorzow Factory* case that "reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" (*The Factory At Chorzów* [Germany vs. Poland], Judgement of 13 September 1928, PCIJ, 40). Grounded in this fundamental principle, international law knows restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition as forms of reparation. Numerous studies have shown the following:

> extreme coercion as well as psychological measures aimed at enslaving the body and the mind such as the most rigid slave laws, the stripping of the slaves of their humanity, the whip and stiff punishments and the deprivation of all legal rights over centuries and multiple generations has resulted in severe psychological damages. Black people could be sold, mortgaged, hired out, maimed, killed, injured, or whatever else the owner desired to do with his/her property and the "property's" loved ones. It has been argued that chronic diseases, especially hypertension, the incidence of which are highest among Diaspora Africans, are direct results of the trauma of the Middle Passage, plantation slavery and thus-induced structural violence. (Satchell 2003, 11)

Structures set in place through transatlantic slavery still endanger the health of Black people, for example through the contamination of living environments of African people with toxic substances. The long-term contamination of the vast majority of soil in Martinique and Guadeloupe in the 1990s with prohibited pesticides by the descendants of the slave masters, assisted by the French state, is but one instance. This situation had led to a high rise of cancer rates among the African descended population, higher than in Chernobyl (Bolzinger 2009). The Ivorian and Somali coasts, for instance, have become dumping grounds for toxic and nuclear waste of European countries.

Transatlantic slavery inflicted the most serious devastations on the African continent. Reparations, sticking to the *Chorzow* rule, must not only deal with the damage of the crime in the Americas, but also on the African continent and, indeed, globally. Inikori pointed out in an UNESCO project that, between 1450 and 1870, export demand for captives kept the total population of tropical Africa at a level that was far too low to stimulate the growth of internal trade, diversification of the economy, transformation of technology and the development of commodity production for export. The political and social upheavals that transatlantic slavery engendered had serious negative effects on economic activities and restricted the inter-regional flow of goods. To procure protection against the activities of slavers, security became a far more important determinant of the choice of settlement than economic considerations, thus restricting the opportunities and incentives for economic growth, development and agricultural technology in sub-Saharan Africa (Inikori 1982, 28). Since relatively young people at the peak of their productive capacity were exported, technological skills were lost to many African societies because those who practiced them were simply not there anymore to pass on and/or develop these skills. This situation also facilitated the imposition of European colonial domination, which then aggravated problems structurally, technologically and mentally, thus hardening the chains imposed by transatlantic slavery, not broken until this very day (ibid. 1992, 1-3).

European slavers brutally and by all means crushed African resistance, violently replaced African sovereigns opposed to transatlantic slavery, and incited internal conflicts between and within African communities. This entrenched a permanent state of war and violence between and within peoples. In turn, this led to the gradual corruption of legal institutions (Ki-Zerbo 1978, 220-221), and is at the root of the most striking problems of the African continent today. The multiplication of wars and slave raiding led to hunger (as fields often had to abandoned due to high insecurity), an elevation of epidemics and hygiene regression. Doudou Diène, former division director at UNESCO, asserted that the persistence and amplitude of contemporary human rights vio-

lations in Africa are undoubtedly connected with the silence about these ramifications of transatlantic slavery (Diène 1998, 21-22).

In conclusion, considering the specific damage that has been done to Africa, and African people globally, by transatlantic slavery, reparations need to aim at "achieving nothing less than the total emancipation of all African people at home and abroad, . . . the uncompromising assertion of our full African sovereignty, particularly of our inalienable right to absolute self-determination" (Southey and Klu 1993, 5-8). Since the *Chorzow* rule states a primacy of restitution over all other forms of reparation, this demand is perfectly in accordance with international law. A comprehensive reparations approach, conforming to international law and honouring the legal sense and concept of the term, needs to deal with reparations as restitution (including the abandonment of the global economic and political structures set in place through transatlantic slavery, repatriation for Diaspora Africans willing to resettle in Africa and much more), compensation and rehabilitation.

CONCLUSION

Considering the realities of the contemporary international law system, international recognition of the justice and rightfulness of this reparation claim is an indispensable requirement for advancing the cause in the international legal arena. The present paper aims to make a small contribution to this end. The claim for reparation rests on a sound legal basis, and its legitimacy does not depend on the goodwill of the former enslavers (Gareau 2004, 33). That the question of reparations is dealt with on an *ex jure-*, not *ex gratia-,* basis is itself a (small) part of reparation.

Though reparations are not about making the current generations of slave owners'/nations' descendants guilty for actions of their ancestors, they are also about the descendants' own continuing responsibility for perpetuating and profiting from the structures that were set in place by their ancestors in the genocide that was transatlantic slavery. The enslavement of Africans undermined not only the life chances of its direct victims, but also destroyed potentialities for their posterity up to today (Asante 2003, 10). Finally, I would like to call to mind an ancient legal precept: *ubi jus, ibi remedium*.

REFERENCES

Adu-Boahen, Albert. 1985. *General History of Africa, Vol. VII, Africa Under Colonial Domination 1880-1935*. California: Heinemann and UNESCO.

Southey, Julie Affiong and Kofi Mawuli Klu. 1993. *Charting an African Self-Determined Path of Legal Struggle for Reparations*. Birmingham: African Reparations Movement-United Kingdom Committee.

Ajavon, Lawoetey-Pierre. 2005. *Traite et Esclavage des Noirs : Quelle Responsabilité Africaine?* Paris: Editions MENAIBUC.

Ani, Marimba. 1988. *Let The Circle Be Unbroken: The Implications of African Spirituality in the Diaspora.* New York: Nkonimfo Publications.

Asante, Molefi Kete. 2003. "The African American Warrant for Reparations." In *Should America Pay? Slavery and the Raging Debate on Reparations*, edited by Raymond A.Winbush, 3-13. New York: Amistad.

Asare, William Kweku. 2002. *Slavery Reparations in Perspective.* Victoria, BC: Trafford Publishing.

Avajon, Lawoetey-Pierre. 2005. *Traite et Escalvage des Noirs: Quelle responsablité Africaine?* Paris: Editions MENAIBUC.

Baba Kaké, Ibrahima. 1998. "La Vulgarisation de l'Histoire de la Traite Négrière." In *La Chaine et le Lien. Une Vision de la Traite Négrière*, edited by Doudou Diène, 25-29. Paris: UNESCO.

Bailey, Anne C. 2007. *African Voices of the Atlantic Slave Trade.* Kingston, JA: Ian Randle.

Barry, Boubacar. 1998. *Senegambia and the Atlantic Slave Trade.* Cambridge: Cambridge University Press.

Bolzinger, Romain, director. 2009. *Les Derniers Maîtres de la Martinique* (film). TAC Productions and Canal+.

Boschiero, Nerina. 2004. "La Traite Transatlantique et la Responsabilité Internationale des Etats." In *Crimes de l'Histoire et Réparations: Les Réponses du Droit et de la Justice*, edited by Laurence Boisson de Chazournes, Jean-François Quéguiner, and Santiago Villalpando, 203-62. Brussels: Editions Bruylant.

Carreau, Dominique. 2007. *Droit International.* Paris: Editions Pedone.

Chinweizu. 1987. *The West and the Rest of Us.* Lagos: Pero Press.

Clarke, John Henrik. 1998. *Christopher Columbus and the Afrikan Holocaust: Slavery and the Rise of European Capitalism.* New York: A&B Publisher Group.

Davidson, Basil. 1961. *The African Slave Trade.* Boston/ New York: Back Bay Books. de Frouville, Olivier. 2004. *L'Intangibilité des Droits de l'Homme en Droit*

International: Régime Conventionnel des Droits de l'Homme et Droit des Traités. Paris: Editions Pedone. de Pommegorge, Pruneau.1789. *Description de la Nigritie.* Amsterdam/Paris: Maradan.

Diène, Doudou, ed. 1998. *La Chaine et le Lien: Une Vision de la Traite Négrière.* Paris UNESCO.

Diouf, Sylvaine A., ed. 2003. *Fighting the Slave Trade. West African Strategies.* Athens: Ohio University Press.

Durand, Jean-Baptiste. 1807. *Voyage au Sénégal Fait dans les Années 1785 et 1786.* Paris: Dentu.

eZurara, Gomes Eanes. 1453. *Chronique de Guinée*. Paris: Editions Chandeigne (1994).

Gareau, Jean-Francois. 2004. "*Insoutenable Imprescriptibilité à la Lettre: Note sur l'Interaction du Temps, du Droit et du Symbole dans la Problématique de la Réparation des Crimes de l'Histoire.*" In *Crimes de l'Histoire et Réparations: Les Réponses du Droit et de la Justice*, edited by Laurence Boisson de Chazournes, Jean-François Quéguiner, and Santiago Villalpando, 25-38. Brussels: Editions Bruylant.

Grotius. 2000. *The Freedom of the Sea*. Kitchener, ON: Batoche Books.

Hess, Penny. 2000. *Overturning the Culture of Violence*. St.Petersburg: Burning Spear Uhuru Publications.

Hill, Polly. 1976. *From Slavery to Freedom: The Case of Farm-Slavery in Nigerian*

Hausaland, Comparative Studies in Society and History, Vol. 18, No.3.

Hummer, Waldemar, Hanspeter Neuhold, and Christoph Schreuer. 1997. *Österreichisches Handbuch des Völkerrechts*, *Vol.1*. Wien: Manz.

Inikori, Joseph E. 1982. *Forced Migration. The impact of the Export Slave Trade on African Societies*. New York: Africana Publishing Company.

———. 1992. *The Chaining of a Continent. Export Demand for Captives and the History of Africa South of the Sahara, 1450-1870*. Kingston: UWI, Institute of Social and Economic Research.

———. 2001. "Slaves or Serfs? A Comparative Study of Slavery and Serfdom in Europe and Africa." In *The African Diaspora. African Origins and New World Identities*, edited by Okpewho, Davies, and Mazrui, 49-75. Bloomington: Indiana University Press.

Kiné Camara, Fatou. 2004. *Pouvoir et Justice dans la Tradition des Peuples Noirs*. Paris: L'Harmattan.

Ki-Zerbo, Joseph. 1978. *Histoire de l'Afrique Noire*. Paris: Hatier.

Klein, Martin A.. 2010. "*Slavery in the Western Sudan.*" In *African Systems of Slavery,* edited by Spaulding and Beswick, 1-43. Trenton: Africa World Press.

Klein, Martin and Richard Roberts. 1980. "The Banamba Slave Exodus of 1905." *Journal of African History* 21 (3): 375-94.

Lara, Oruno Denis 1997. *Résistances et Luttes*. In Diogène, No. 179 : 167-187.

Lovejoy, Paul. 2000. *Transformations in Slavery: A History of Slavery in Africa*. Second Edition. Cambridge: Cambridge University Press.

Lumb, Richard Darrell. 1968. "Legality and Legitimacy: The Limits of the Duty of Obedience to the State." *Studies in the History of the Laws of Nations* (ed. Alexandrowicz): 52-82. The Hague: Grotian Press Society.

Manning, Patrick. 1990. *Slavery and African Life: Occidental, Oriental and African Slave Trades*. Melksham: Redwood Press.

Mtubani, C. D. Victor. 1983. "African Slaves and English Law." *PULA Botswana Journal of African Studies* 3 (2): 71-75.

Nussbaum, Arthur. 1954. *A Concise History of the Law of Nations*. New York: Macmillan.

Oriji, John Nwachimereze. 2003. "Igboland, Slavery, and the Drums of War and Heroism." In *Fighting the Slave Trade. West African Strategies,* edited by Sylvaine Diouf, 62-78. Athens: Ohio University Press.

Palmer, Colin Alphonsous, ed. 1998. *The Worlds of Unfree Labour: From Indentured Servitude to Slavery*. New York: Ashgate.

Peabody, Sue. 1996. *There Are No Slaves in France: The Political Culture of Race and Slavery in the Ancien Régime*. New York/Oxford: Oxford University Press.

Pellet, Allain. 1992. "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples" *European Journal of International Law* 3 (1): 178-85.

Peret, Benjamin. 1999. *La Commune des Palmares*. Paris: Editions Syllepse.

Plumelle-Uribe, Rosa Amelia. 2001. *La Férocité Blanche. Des Non-Blancs aux Non-Aryens: Génocides Occultés de 1492 à Nos Jours*. Paris: Editions Albin Michel.

———. 2004. "Les Crimes Contre l'Humanité et le Devoir de Réparation." In *Crimes de l'Histoire et Réparations: Les Réponses du Droit et de la Justice*, edited by Laurence Boisson de Chazournes, Jean-François Quéguiner, and Santiago Villalpando, 187-202. Brussels: Editions Bruylant.

———. 2008. *Traite des Blancs, Traite des Noirs: Aspects Méconnus et Conséquences Actuelles*. Paris: L'Harmattan.

Police, Gerard. 2003. *Quilombos dos Palmares. Lecture sur un Marronnage Bresilien*. Guyane: Ibis Rouge Editions.

Rashid, Ismael. 2003. "A Devotion to the Idea of Liberty at any Price. Rebellion and Anti-Slavery in the Upper Guinea Coast in the Eighteenth and Nineteenth Centuries." In *Fighting the Slave Trade. West African Strategies*, edited by Sylvaine Diouf, 132-151. Athens: Ohio University Press.

Satchell, Vermont. 2003. *Reparation and Emancipation*. Emancipation Lecture. Kingston: UWI.

Scelle, Georges. 1934a. *Précis de Droit des Gens. Vol.1*. Paris: Librairie du Recueil Sirey.

———. 1934b. *Précis de Droit des Gens. Vol.2*. Paris: Librairie du Recueil Sirey.

Schwarzenberger, Georg. 1976. "Towards a Comparative History of International Law." In *Essays on International Law. In Honour of Krishne Rao,* edited by *Momtaz* Nawaz, 92-106. Leiden: Sijthoff Publishing.

Testart, Alain. 2001. *L'Esclave la Dette et le Pouvoir*. Paris: Errance.

Van Cleeve, George. 2006. "Somerset's Case Revisited: Somerset's Case and its Antecedents in Imperial Perspective." *Law and History Review* 24 (3): 601-46.

Winbush, Omari I. 2003. "Reflections on Homer Plessy and Reparations.", In *Should America Pay? Slavery and the Raging Debate on Reparations*, edited by Raymond Winbush, 150-62. New York: Amistad.

Wiredu, Kwasi. 1990. "An Akan Perspective on Human Rights." In *Human Rights in Africa: Cross-Cultural Perspectives,* edited by_Adbullahi Ahmed An-Na'im and Francis Deng, 243-260. Washington, DC: Brookings Institution.

Judicial Decisions and Opinions

Duchy of Sealand (Administrative Court of Cologne), Judgement of 3 May 1978, ILR 1989, 687.

Legal Status of Eastern Greenland (Denmark vs. Norway), Judgement of 5 April 1933, PCIJ, Ser. A./B., No. 53.

The Factory At Chorzów (Germany vs. Poland), Judgement of 13 September 1928, PCIJ, Ser. A., No. 17.

Other Sources:

Email correspondence of the author with Patrick Robinson, President Judge of the UN International Criminal Tribunal for the former Yugoslavia, now at the International Court of Justice (October 2012), on file with author.