

Taking responsibility for violations of international humanitarian law during colonial occupation: The case of Germany's neutralisation of the Maji Maji uprising in the former Tanganyika

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Abstract: *Rules of international humanitarian law (IHL), commonly referred to as the laws of The Hague, have been in existence since antiquity. By the time the scramble for Africa and subsequent military retaliatory attacks from the indigenous people occurred, steps towards the codification of IHL had already begun in earnest. Indeed, even as Germany was entrenching itself in the East African territory formerly known as Tanganyika, the foundational principles setting out the do's and don'ts in armed conflict were not unknown. Germany was also bound by those principles. This notwithstanding, Germany committed grave breaches of IHL while crushing the Maji Maji uprising in total disregard of the laws then in existence. Consequently, the government of Tanzania has in the recent past, and premised on the principle of state responsibility, made demands for Germany to take responsibility for those violations, with scholars adding their voices to this demand. This chapter undertakes an examination of Germany's conduct in neutralising the uprising through the lens of IHL, and concludes that the choice of means and methods of warfare adopted by Germany to quell the rebellion violated all international law standards in place at the time. It argues that Germany bears accountability for its actions for violating those international norms and obligations, and ends by proposing remedial measures as it acknowledges the likely challenges.*

1 Introduction

Although the bulk of the universal legal instruments that make up international humanitarian law (IHL) were not codified until the mid-nineteenth century, rules regulating the conduct of warfare have been in existence, albeit in a fragmented manner, since antiquity. Indeed, by the time the scramble for Africa and ensuing military retaliatory responses from the local people occurred, significant steps towards codification of IHL had already been put in place. *Jus cogens* norms drawn from custom and usage had found acceptance among all civilised nations. In addition, the ratification of the earliest IHL instruments seeking to regulate the conduct of warfare and geared towards preservation of humanity was already taking place.

As one of the major European powers engaged in the scramble for Africa, Germany had already ratified the 1899 Hague Conventions (II) with respect to the laws and customs of war on land, where it had

generally been accepted by the state parties, that the main objective of war was to bring complete submission to the enemy in the fastest way possible, causing the least loss of life and damage to property as possible.¹ Needless cruelty, loss of life and destruction of life were already prohibited under the Hague Conventions and Regulations.² More importantly, it was generally understood by the European powers attending the Hague conference that the Convention and the Regulations would be applied to their overseas possessions and colonies.³

Between 1905 and 1907, when Germany was suppressing the war of self-determination waged by the local inhabitants of the territory then known as Tanganyika against the colonial occupiers, Germany was bound by existing IHL principles, and particularly by the non-derogable *jus cogens* norms and customs of war. Indeed, these norms and customs were already embodied in customary international law. It would, therefore, have been expected that having been engaged with the formation of the rules relating to humanity in war, having made commitments to observe them, and being bound by these laws, Germany would respect them.

German forces, however, committed widespread atrocities and grave breaches of the rules and customs of war during the suppression of the uprising, actions that violated the accepted standards of war set by the international community. The weapons and strategies employed to quell the uprising blurred every known line in international law and tipped into obscurity the scales of humanity in favour of winning the war for Germany, in total disregard of the suffering caused to humanity.

This chapter examines Germany's conduct in neutralising the uprising and evaluates that conduct through the lens of IHL. It posits that Germany, in total disregard of *erga omnes* obligations, engaged in a disproportional response to the Maji Maji uprising, thus breaching fundamental IHL principles, the aftermath of which has negatively impacting the territory in perpetuity. The chapter argues that Germany bears a legal responsibility to remedy the historical harms committed against the people of its former East African colony, as set out by the state responsibility in international law principle.

1 T Erskine Holland (ed) *The laws and customs of war on land: As defined by the Hague Convention of 1899* (1904) 3.

2 As above.

3 As above.

The chapter, which relies mainly on doctrinal and desk research, is divided into six parts. The first is the introduction, while the second highlights the historical context, details the nature and intensity of the war, the organisational structure and the manner in which Germany violated existing IHL principles during the counterinsurgency. The third part examines Germany's conduct in the manner in which it responded to the Maji Maji uprising through the lens of IHL, and argues that Germany breached the customs of war in existence at the time of the uprising. It further argues that the scope of application extended to the occupied colonies, and postulates that Germany was obligated, under international law, to observe the existing laws of war, yet nonetheless violated them.

The fourth part interrogates Germany's obligations to the then territory of Tanganyika and the international community under the state responsibility and *erga omnes* legal concepts as contemplated under international law. The fifth part examines the question of Germany's legal accountability and obligations for IHL violations and resultant suffering of the people and that of Tanzania. It posits that the nation and people of Tanzania can invoke the principle of state responsibility to hold Germany liable for breaching *erga omnes* obligations despite the passage of time. This part discusses examples of redress mechanisms for colonial injustices undertaken by three jurisdictions, namely, Kenya, Namibia and the Caribbean States, from which Tanzania can borrow. The sixth and final part concludes by proposing redress measures towards righting those historical wrongs. As it makes recommendations for redress mechanisms, the chapter acknowledges the various likely legal barriers, but emphasises that Germany remains legally bound under customary law norms and obligations.

2 The Maji Maji uprising: Historical context

2.1 Germany's occupation of Tanganyika

The period from the late nineteenth to the early twentieth century was a very critical time for the African continent. This was the time when the floodgates for colonisation of Africa were opened to the European

powers.⁴ During this period, and pursuant to the Berlin Conference, several European countries carved out the continent of Africa and shared among themselves the territories, without any or with very little consultation with the local inhabitants.⁵ Following the dividing up and partitioning of the continent, the European powers declared protectorates over the regions they colonised, took effective occupancy and developed what was referred to as a sphere of influence.⁶ In the case of Germany, it carved out for itself and occupied the territories of Togo, Cameroon and modern-day Namibia, but also established itself in what was known as German East Africa colony or *Deutsch-Ostafrika* by colonising countries encompassing present-day Rwanda, Burundi and Tanzania, then known as Tanganyika.

Relations between the colonisers and the inhabitants of the colonised territories, however, were always strained right from the outset. The colonisers usually considered themselves as having entered a territory that belonged to no one, consequently ignoring the local inhabitants and often seeking to forcefully and, usually violently, impose their policies on the local inhabitants.⁷ Given that most of the policies introduced by the colonisers were oppressive, instances of violent resistance in what became wars of self-determination were not uncommon.⁸

Upon occupation of the territory of Tanganyika, Germany sought to impose policies that were very unpopular with the local populace. Among these were policies involving heavy taxation whereby all manner of taxes, hitherto foreign to the inhabitants, were introduced. These included cottage and poll taxes, burial tax, poll tax and tax for dhows.⁹ In addition, communal labour and cultivation on German-run cotton plantations was forced on the people. These policies, which amounted to economic exploitation, were all crafted for Germany's gain and meant to exploit the local inhabitants.¹⁰ The forced cotton growing cultivation

4 IA Kanu 'The colonial legacy: The hidden history of Africa's present crisis' (2012) 1 *Afrav Ijab: An International Journal of Arts and Humanities* 124.

5 ME Chamberlain *The scramble for Africa* (2010) 3.

6 A Boddy-Evans 'What caused the "scramble for Africa"?' (2012) *African History* 1-5.

7 G Mwakikagile *Africa and the west* (2000) 4-61.

8 As above.

9 K Njogu 'Swahili and the Maji Maji resistance against German rule' in A Mazrui & K Njogu *Swahili in spaces of war: A sociolinguistic odyssey* (2023) 29.

10 R Tetzlaff *Germany as a colonial power in Africa: An introduction to history, politics and society* (2022) 91-103.

activities meant that the traditional agricultural practices for the local communities were disrupted, leading to food shortages and economic hardship for them. Moreover, the German colonial authorities would often resort to the use of brutal and violent tactics to enforce those policies, thereby exacerbating tensions among the inhabitants. This created widespread agitation, resentment, discontentment and hostility among the inhabitants and against the colonisers. By 1905, the local inhabitants, determined to free themselves from the German colonial oppression, retaliated through the Maji Maji uprising. The uprising soon became a large-scale war of resistance pitting the local warriors against the German soldiers.¹¹

2.2 The insurgency

Historians postulate that the uprising began in the Rufiji valley of present-day Tanzania, initially as a reaction, by the inhabitants of Tanganyika, to those oppressive schemes imposed on them by the colonial German authorities.¹² The uprising was thereafter to acquire a spiritual ideology, an ideology that spread beyond the Rufiji valley, uniting diverse peoples in the then mainland Tanganyika.¹³ The uprising soon covered a large area spreading from Lindi to Songea in the South and stretching from Dar es Salaam in the South. It is estimated that the war covered a total area of 100 000 square miles (equivalent to 259 000 square kilometres).¹⁴ The war was majorly fuelled by prophetic religious leaders, in particular *Kinjekikitile Ngwale*. The religious leaders convinced the local warriors that once they smeared themselves with 'sacred' water, the German bullets would not harm them and that, instead, the water would render them a victory against the oppressors.¹⁵ Consequently, local warriors, drawn from several ethnic groups in the Southern and Southwestern parts of Tanganyika, organised themselves ready to engage in armed resistance against the German colonial dominance. Under the command of *Kinjekitile*, who was to become the spiritual leader of the movement,

11 J Giblin & J Monson *Maji Maji: Lifting the fog of war* (2010) 6.

12 J Iliffe 'The organisation of the Maji Maji rebellion' (1967) 8 *Journal of African History* 495-512.

13 As above.

14 As above.

15 M Sadock 'The Maji Maji war and the prevalence of diseases in South-Eastern Tanzania, 1905-1910' (2010) 7 *Tanzania Zamani* 298.

and 'donned' in 'holy' water or *maji*,¹⁶ and strongly believing that the *maji* would protect them from German bullets and deliver a victory to them, the local inhabitants waged a war of self-determination against the German colonisers.¹⁷ The *maji* was to become the movement's unifying factor during the entire war.¹⁸

In July 1905, therefore, fuelled by the 'sacred' water spiritual beliefs, using traditional and archaic weapons such as bows and arrows, doused with the 'holy' water and employing guerrilla and ambush tactics, the first warriors of the uprising moved against the Germans by attacking the colonial outposts and destroying the Germans' cotton crops.¹⁹ The inspiration, caused by the beliefs in the 'holy' water, saw the local inhabitants come together regardless of the differences in ethnicity, culture or language and, by August of that year, they had attacked several German establishments throughout the territory.²⁰ The target of their attacks were the German colonisers and their allies who included the *Akidas* or African administrators and collaborators, the *Askaris* or African soldiers fighting on the German side as well as other foreigners.²¹ Initially, the local warriors appeared successful, especially when they managed to destroy property and kill a number of people from the German side. However, their early success proved deceptive in the face of the brutal and ferocious counter-insurgency that was to be unleashed from the colonial soldiers' side.²²

16 K Njogu 'Swahili and the Maji Maji resistance against German rule' in Mazrui & Njogu (n 9) 29.

17 *Maji* means 'water' in the Kiswahili language, the national language of the region. The spiritual leaders had led the warriors to strongly believe that the water had magic powers which would turn the German bullets into water and therefore they would not be harmed.

18 UM Musa & M Dauda 'An assessment of the Maji-Maji revolt in Tanganyika (modern-day Tanzania) 1905-1907' (2022) 1 *Confluence Journal of History and International Affairs* 260-272.

19 Musa & Dauda (n 18) 265.

20 Musa & Dauda (n 18) 266.

21 Sadock (n 15) 4.

22 J Koponen 'Maji Maji in the making of the south' (2010) 7 *Tanzania Zamani* 1-58.

2.3 The counter-insurgency and aftermath

The Germans retaliated with brutal and extreme force, dispatching thousands of troops to the territory to crush the uprising.²³ The sheer numbers of the German soldiers coupled with modern weaponry was no match for the locals. Additionally, the Germans combined their superior weaponry with scorched earth strategies and tactics where they burned down everything to deliberately inflict famine, starvation and hunger on the local populace so as to starve them into submission.²⁴ Consequently, whole villages and shelters were set on fire, crops in the fields and in granaries and all food supplies were set on fire.²⁵ This military tactic used by the German soldiers to defeat the opponent not only achieved its goal but went beyond by causing numerous fatalities, with several hundreds of thousands of people, including young children, and vulnerable members of the community dying from hunger and diseases arising from the scorched earth policies.²⁶

The systematic colonial use of the scorched earth tactics, which became a deliberate orchestrated famine as a weapon of war, was a tactic that was incapable of distinguishing between the warriors and civilians and appears to have been targeted at civilian populations. This resulted in significant and unnecessary loss of life.²⁷

By 1907, when the uprising was eventually quelled, the human losses and suffering on the side of the local populace, both in terms of tangible death toll and unquantifiable broken spirits, was real and utterly devastating.²⁸ Most of the areas affected by the uprising were completely destroyed.²⁹ Studies indicate that some parts of the country were left wholly unpopulated while others lost more than half or two-thirds of their population.³⁰

23 As above.

24 T Sunseri 'The Maji-Maji War, 1905-1907' in T Spear (ed) *Oxford research encyclopedia of African history* (2022) 1-40.

25 EF Eliya, G Singh & EP Mihanjo 'The impact of military strategies during the Maji Maji war on non-combatants: Women and children in Songea district' (2022) 24 *Indian Journal of African Studies* 1-21.

26 Eliya and others (n 25) 3.

27 Koponen (n 22) 1-58.

28 Musa & Dauda (n 18) 267.

29 J Iliffe 'A modern history of Tanganyika' (1992) 1 *Tanzania Zamani* 35-40.

30 As above.

The intensity of Germany's response can be determined from the casualties on both sides. While on the German side the deaths were counted in hundreds, made up of 15 Europeans and about 377 local collaborators, scholars have placed the number of local inhabitants' deaths at anywhere between 75 000 to 300 000.³¹ The casualties from the local people are said to have accounted for at least a third of the population.³² The merciless and systematic scorched earth tactics employed by the Germans meant that not only were crops in the fields burnt, but also food and seeds in the granaries, leading not just to hunger, but to the destruction of fertile land whose impact was felt for generations.

In addition, part of the German soldiers' war strategy was to cart away, as spoils of war, human remains of people they had killed while quelling the uprising.³³ Consequently, they decapitated, looted and carted away the skulls of spiritual leaders and tribal chiefs, including those of Chief Mkwawa and Chief Songea. While Chief Mkwawa's skull has since been repatriated back to Tanzania, that of Chief Songea has not and remains on display in a museum in Germany.³⁴

Torture was also used as a war strategy. The Germans captured civilians and tortured them in chains before summarily executing them.³⁵ Women, children and the elderly were directly targeted and indiscriminately attacked and killed. The indiscriminate burning of crops in the villages and in the field caused widespread famine resulting in many deaths from hunger and disease susceptibility caused by the famine.³⁶ Those who did not die due to being directly targeted by the soldiers perished from the effects of the scorched earth policy which brought about sustained hunger and starvation and diseases such as diarrhoea, smallpox, sexually transmitted diseases and parasitic infections.³⁷

31 A Beverton 'Maji Maji uprising (1905-1907)' *Black Past* (web blog), 21 June 2009, <https://blackpast.org/global-african-history/maji-maji-uprising-1905-1907/> (accessed 4 March 2026).

32 As above.

33 As above.

34 N Rushohora 'Desperate mourning and atrophied representation: A tale of two skulls' (2019) 51 *African Historical Review* 25-45.

35 N Rushohora 'Graves, houses of pain and execution: Memories of the German prisons after the Majimaji war in Tanzania (1904-1908)' in PJ Havik and others (eds) *Empires and colonial incarceration in the twentieth century* (2021) 75-99.

36 Sadock (n 15) 298.

37 Sadock (n 15) 1-59.

The systematic capture and enslavement of the weak and vulnerable, including children and women, as war captives was also employed as part of the fighting strategies. Instances of women and children being captured and being held hostage and subjected to torture have been reported. Local fighters who were captured would be imprisoned without trial while others were killed through public hangings to force them to surrender.³⁸

3 The crushing of Maji Maji through international humanitarian law lens

The uprising, to which scholars have referred as the greatest African rebellion against early European occupation,³⁹ has been determined to be a war of self-determination, thus bearing all the hallmarks of an armed conflict, reaching the threshold of IHL, thus attracting the concern of international law for purposes of IHL.⁴⁰ Even though the local warriors did not have much military organisation worth the name, they had a common agenda, a military plan and a commander and, thus, qualified as combatants under IHL, deserving protection as provided by the then established IHL rules.⁴¹ This war therefore qualifies as an international armed conflict.⁴²

The Maji Maji fighters met the criteria of combatants and consequently deserved protection availed to combatants under the 1899 Convention, which by then had already been negotiated under the International Peace Conference held at The Hague in 1899.⁴³ Germany is listed as having been one of the powers that took part in the final act of the International Peace Conference, which was convoked by the contracting

38 As above.

39 J Iliffe *Tanganyika under German rule, 1905-1912* (1969) 86.

40 SE Salako 'Civil wars and the right to self-determination' (2013) 2 *International Law Research* 136.

41 Y Arai-Takahashi 'Thresholds in flux – The standard for ascertaining the requirement of organisation for armed groups under international humanitarian law' (2021) 26 *Journal of Conflict and Security Law* 79-115.

42 K Njogu 'Swahili and the *Maji Maji* resistance against German rule' in Mazrui & Njogu (n 9) 29.

43 JB Scott *The Hague Conventions and Declarations of 1899 and 1907: accompanied by tables of signatures, ratifications and adhesions of the various powers and texts of reservations* (1915) 37.

powers for the best interests of humanity.⁴⁴ Having the hallmarks of an international armed conflict, therefore, there was a need for parties to the hostilities, consisting of local warriors under the military command of their religious leaders, on the one hand, and the German military, on the other, to engage in the hostilities within the confines of the existing rules of war of the time.

The Germans had conventional superior weapons and also proceeded to use a most devastating military tactic in the form of scorched earth policy.⁴⁵ The scorched earth policy utilised as a military tactic to defeat the opponents was used despite the fact that international law and the ethics of war prohibit the deployment of war tactics that harm non-combatants. The sheer brutality and ruthlessness of the German response blurred all moral, ethical and legal obligations for the conduct of warfare existing at the time.

Further, the Germans plundered human body parts against all conceivable rules and customs of war in addition to using torture as a military tactic against set out prohibitions. Germans captured civilians, put them in chains and summarily executed them, against the very customary law rules meant to regulate warfare, protect civilians and prevent unnecessary suffering in war. Women, children and the elderly were attacked against the very principles of protection of the vulnerable. The German counter-insurgency included systematic capture and enslavement of the weak and vulnerable, including children and women as war captives.

While the means and methods of warfare employed by the local inhabitants were exotic if not strange, they were, by no means, a match to the sophisticated weaponry and military weight of the Germans. In light of this reality, Germany's counter-insurgency was expected to respect the principle of proportionality, and upon attaining the objective of bringing submission to the enemy, to proceed no further. The fighting practices employed by the Germans against the local people, however,

44 JB Scott *The reports to the Hague Conferences of 1899 and 1907: being the official explanatory and interpretative commentary accompanying the draft conventions and declarations submitted to the conferences by the several commissions charged with preparing them together with the texts of the final acts, conventions and declarations as signed, and of the principal proposals offered by the delegations of the various powers as well as of other documents laid before the commissions* (1917) 15.

45 Eliya and others (n 25) 1-21.

resulted in a breach of every principle known to humanity and, by the time the uprising was quelled in 1907, Tanganyika was in ruins, ruins it has been struggling to recover from.

Germany's quashing of the Maji Maji uprising, therefore, was in total breach of all established *jus in bello* rules of the day. Its intention did not appear to neutralise the enemy as provided under the military necessity principle. It appears that its objective was not just to win the war, but to win the war with total and unlimited use of force contrary to the principle of limitation and military necessity, set out in existing consensus legal documents. The counter-insurgency appears to have been geared towards destroying this African territory and annihilating its people through continued ruthless, brutal and unrestrained violence on people already weakened through colonial subjugation.

The procedure for using certain means and methods of warfare to suppress the troops of the enemy and to inflict losses on the enemy is allowable at the very minimum acceptable level. The right of warring parties to a conflict to choose the means and methods of warfare, therefore, is restricted. It is prohibited to use indiscriminate force against the enemy, but contrary to this prohibition and *jus in bello* regulations, Germany employed indiscriminate and unnecessary force against civilians and against persons it had captured or who had surrendered and no longer posed a threat.

While it was not until 1977 when the prohibition of use of scorched earth tactics was prohibited through treaty, when the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Impacts was adopted, the use of scorched earth policy was already prohibited under customs and the then existing IHL instruments. Germany nevertheless employed scorched earth strategies as a method of warfare. These included the burning of crops and food stores where fields, granaries and local food supplies were burned or confiscated, leading to widespread hunger and famine in the region. The Germans also forcefully commandeered livestock, food and other resources from local populations, leaving them hungry and destitute.⁴⁶ The result was a huge loss of lives and property, untold hardships to the people and a lasting effect on the environment.

46 T Sunseri 'The Maji-Maji war, 1905-1907' in T Spear (n 24) 57.

Lasting effects included de-population, environmental damage and destruction of property. The impact still reverberates today.⁴⁷ Scorched earth tactics employed by the Germans through destruction and confiscation of available foodstuffs in the granaries and burning and destruction of the crops in the fields during the planting season was a cruel famine strategy,⁴⁸ tantamount to what scholars have referred to as 'ecocide' and 'environicide'.

Environicide has been termed as a crime against nature, which is as abhorrent as the crime of genocide.⁴⁹ Kreike defines environicide as an act of intentionally or unintentionally damaging, destroying, or making inaccessible the 'environmental infrastructure' on which life depends: the burning or flooding of fields, the destruction of irrigation, food storage systems and hunting grounds.⁵⁰ The term was first used in 1970 during a Conference on War and National Responsibility, where Professor Galston proposed new international instrument to ban the crime of 'ecocide', which he defined as unlawful, extensive activities aimed at nature and intentional destruction of the natural environment as planned elements of a war tactic.⁵¹ Proposals have subsequently been made to include 'ecocide' in the list of international crimes.⁵² Further elements of the proposed crime of ecocide have been given as the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.⁵³ This is an accurate definition of what happened to the people of Tanganyika, many of whom were starved to death through the war tactics employed by Germany.

Rules of war from ancient times have always provided for the protection of the people, their culture and heritage.⁵⁴ According to

47 JM Mbaku 'International law and the struggle against government impunity in Africa' (2019) 42 *Hastings International & Comparative Law Review* 114.

48 S Kowalska 'Ecocide: A threat to biological tissue and ecological safety' (2023) 20 *Veredas do Direito* 1-15.

49 As above.

50 As above.

51 As above.

52 P Higgins, D Short & N South 'Protecting the planet: A proposal for a law of ecocide' (2013) 59 *Crime, Law and Social Change* 252.

53 Higgins and others (n 52) 257.

54 R Teijgeler 'Preserving cultural heritage in times of conflict' in GE Gorman & SJ Shep (eds) *Preservation management for libraries, archives and museums* (2006) 133-165.

Rushohora, the Germans considered it their right to cart away to Germany as spoils of war human remains of people they had killed while quelling the uprising.⁵⁵ Consequently, they looted and carted away the skulls of two spiritual leaders and tribal chiefs, namely, Mkwawa and Songea. While Chief Mkwawa's skull has since been repatriated back to Tanzania, that of Chief Songea has not and still lies on display in a museum in Germany.⁵⁶ The German plundering of human body parts against all conceivable rules and customs of war is inexcusable.

Germany committed all these atrocities despite the existence of customary law norms, and legal clauses confirming that even in cases not covered by any law in force, the human person remains under the protection of the principles of humanity and the dictates of public conscience. Germany also ignored existing IHL instruments underpinning the principles of humanity in place at the time of quelling the uprising, and which affirmed the internationally accepted customary law norms and other guidelines dictating how warring parties should conduct themselves during hostilities. Furthermore, the protective measures for various categories of people in armed conflict situations, including women, children and the captured who pose no threat, were ignored as were guidelines on the protection of civilians and civilian objectives. The prohibited use of certain weapons that cause unnecessary suffering were employed despite the legal and customary rules imposing the prohibitions, which Germany was, and ought to have been, aware of.

Looked at through the lens of IHL, Germany's neutralisation of the Maji Maji uprising amounted to mass atrocities as it disproportionally responded to the uprising, contrary to the very tenets of IHL. It engaged in various breaches of *jus in bello* whose negative impact is being felt to this day. International law demands that Germany takes responsibility. However, perhaps to fully comprehend the extent of Germany's guilt in violating the laws that it knew of or ought to have known of, it is important to examine the rules governing humanity in war existing at that point in time.

55 Rushohora (n 34).

56 As above.

4 International humanitarian law: Origin, historical cultural and religious context

As already seen, even though it was not until the nineteenth century that a movement to codify the laws of war began leading to the birth of IHL in the format existing today, aspects of laws and customs of warfare intended to limit the destruction of war, and providing for humane fighting have existed for as long as human beings have existed.⁵⁷ Indeed, IHL is said to be located in a long history of codes of warfare straddling different times and different cultures.⁵⁸ These laws, customs and practices employed during warfare, which have always been geared towards the humanisation of war, have existed since antiquity.⁵⁹ Given the intensity of wars, humanisation can only be achieved through principles that seek to limit the devastation that war has the potential to cause. Essential aspects of these principles are contained in established *jus in bello* principles that restrict and/or prohibit the use of certain means and methods of warfare.⁶⁰ In the early centuries, there were generally accepted understandings among nations as to what was proper and not proper conduct in the battlefield.⁶¹ These conducts are what constitute the basic and essential principles of *jus in bello*. They have been either moral, ethical or legal and have generally been understood and accepted as behaviour that governs the conduct of parties to a conflict to the greatest extent possible. Key principles include distinction, which requires distinguishing between combatants and civilians to avoid harm to non-combatants and their objectives, proportionality, which requires a limitation concerning the use of certain specific means and methods of warfare to ensure that any harm caused is not excessive in relation to the anticipated military advantage. Regarding the principle of military necessity, the requirement is that there has to be justification in the

57 A Alexander 'A short history of international humanitarian law' (2015) 26 *European Journal of International Law* 109-138.

58 As above.

59 JM Henckaerts & L Doswald-Beck *Customary international humanitarian law* (2005) xvi.

60 U Fikriyati & A Fawaid 'Saving lives and limiting the means and methods of warfare: Five Indonesian Tafsir views' (2022) 60 *Al-Jami'ah: Journal of Islamic Studies* 167-198.

61 R Mushkat '*Jus in bello* revisited' (1988) 21 *Comparative and International Law Journal of Southern Africa* 10.

use of force. Use of force has to be only to achieve military advantage and not to cause unnecessary suffering. Generally, legal, moral and ethical requirements have called upon parties to hostilities to ensure the humane treatment for everyone, treating everyone, including the weak, the elderly and even the dead, with dignity, in observance of the principle of humanity. That is what is meant by humanisation of war.⁶² Indeed, scholars and jurists writing in the mid-1800s refer to the 'Laws of Nations' as laws already established and accepted, grounded in custom (*jus cogens*), and regarded as peremptory and authoritative norms possessing the force of law. Even though Germany committed blind acts of vengeance, war massacres of the innocent, carting away human trophies and engaging in acts that caused unnecessary suffering to the people of Tanganyika for generations to come, it was not due to a lack of rules and regulations governing warfare. They have existed from time immemorial, and Germany knew them or ought to have known them.

4.1 The knights and Middle Ages: *Jus in bello*

The ancients and knights of the Middle Ages, as well as jurists of the early period, all testify to the existence of these rules and regulations.⁶³ Rules speaking to *jus in bello* principles have been reported as early as the period before Christ (BC). By 246 BC for instance, Hannibal, the Carthaginian general, had laid down rules of conduct in warfare.⁶⁴ These rules, which included respect for the dead and treating the dead with dignity, can be said to have been precursors of the protective measures afforded to warring parties during hostilities, which are contained in key IHL instruments, including the Geneva Conventions of 1949.

62 C Stahn 'The International Committee of the Red Cross's influence on related areas of international law' in R Geiß, A Zimmermann & S Haumer (eds) *Humanising the laws of war: The Red Cross and the development of international humanitarian law* (2017) 185-212.

63 M Sassòli & AA Bouvier 'How does law protect in war?' (1999) 38 *Military Law and the Law of War Review* 460-461; T Meron *Bloody constraint: War and chivalry in Shakespeare* (1998) 12.

64 D Feeney 'Carthaginian laws of war' in SC Duc (ed) *The laws of yesterday's wars 2: From ancient India to East Africa* (2022) 45-109.

4.2 The Lieber Code

Towards codification of the laws of wars as we know them today, however, the Lieber Code had already been put in place by the time of the Maji Maji uprising.⁶⁵ Indeed, as far back as 1863, the Lieber Code, whose articles contained several aspects of the conduct of hostilities detailing the means and methods of engaging in warfare, had already been promulgated.⁶⁶ The military necessity principle which sets out the limit of the measures necessary or indispensable for securing the ends of war as well as the limits to go in warfare, was one of the principles found in the Lieber Code. Causing cruelty and infliction of suffering for the sake of it and causing superfluous injury was specifically forbidden. Even though the Lieber Code did not have a global flavour, given that it was meant for the Union forces fighting during the American civil war, it is seen as being one of the precursors to the codification of IHL and as a loud call towards just wars. It is noteworthy that German jurists were instrumental in advocating the Lieber Code⁶⁷ and, indeed, Francis Lieber himself was a German American. The Lieber Code was also translated into the German language.⁶⁸

4.3 Henry Dunant and *jus in bello* principles

A crucial moment for *jus in bello* principles had of course occurred during the battle of Solferino in 1859.⁶⁹ Henry Dunant, a Swiss citizen, after witnessing the suffering of helpless injured soldiers and the indignity exposed to the bodies of dead soldiers, was so horrified that he was inspired to create the Red Cross movement.⁷⁰ Dunant's efforts were later to lead to the adoption of the Geneva Convention for the Amelioration

65 D Schindler 'International humanitarian law: Its remarkable development and its persistent violation' in MN Schmitt (ed) *The development and principles of international humanitarian law* (2012) 29.

66 RR Baxter 'The first modern codification of the law of war: Francis Lieber and General Orders No 100' (1963) 3 *International Review of the Red Cross* 180.

67 TL Dowdeswell 'The Brussels Peace Conference of 1874 and the modern laws of belligerent qualification' (2017) 54 *Osgoode Hall Law Journal* 824.

68 As above.

69 C Greenwood 'Historical development and legal basis' in D Fleck & M Bothe (eds) *The Handbook of International Humanitarian Law* (2021) 101-150.

70 H McCoubrey *International humanitarian law: Modern developments in the limitation of warfare* (2019) 16-17.

of the Condition of the Wounded and Sick in Armed Forces in the Field. This Convention, which is seen as having marked the start of the Geneva tradition of IHL, was put in place in 1864.⁷¹ It is critical to note that Germany participated in the international meetings initiated by Dunant, and which culminated in the formation of the Red Cross Movement and the adoption of the 1864 Convention.⁷² Indeed, once the representatives from Germany read the horrors of war as documented by Dunant in his book *A memory of Solferino*, Germany's interest in participating in the international conference organised by the newly founded International Committee of the Red Cross (ICRC), formerly known as the 'Permanent International Committee for the Relief of Wounded Soldiers' is said to have intensified.⁷³ This conference culminated in the adoption of the 1864 Convention and, thus, by the time Germany was brutally and inhumanely quashing the Maji Maji uprising, it was familiar with the amelioration measures contained in the 1864 Geneva Convention.

4.4 The 1868 St Petersburg Declaration

By 1868, a few years before the uprising, the principle of military necessity had been well enunciated on the international stage through the 'Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight' adopted in St Petersburg, Russia,⁷⁴ referred to as the '1868 St Petersburg Declaration'.⁷⁵ While formulating the principle of military necessity in order to alleviate, as far as possible, the calamities and suffering caused by war, and while affirming, as members of civilised nations, the need to impose limits so that the necessities of war may yield to the requirements of humanity, the Declaration states, among others,

that the progress of civilization should have the effect of alleviating as much as possible the calamities of war, that the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy, that for this purpose it is sufficient to disable the greatest possible number of men;

71 WH Boothby *Weapons and the law of armed conflict* (2016) 95.

72 S Haumer '1863: The creation of the first national society at the beginning of the Movement's history' (2012) 94 *International Review of the Red Cross* 1341.

73 As above.

74 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight of 1868.

75 As above.

that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men or render their death inevitable.

This Declaration was affirming that the use of certain weapons, including those that were either explosive or charged with fulminating or inflammable substances during warfare, was contrary to the laws of humanity, and that the use of such weapons cannot be allowed among members of civilised nations. By declaring that the only legitimate objective that states should endeavour to accomplish during war is to weaken the military forces of the enemy, and that it is sufficient to disable the greatest possible number of men, the contracting powers were committing themselves to the fact that once the enemy has been weakened, it would be illegal to proceed with any further attacks. They were also committing themselves to not employ arms that unnecessarily aggravate the sufferings of men who have already been disabled by the war and arms which would render the death of the enemy inevitable given that the employment of such arms would exceed the military objective contrary to the laws of humanity.⁷⁶ The principles against administering superfluous injury and causing unnecessary suffering to the enemy, which are equally linked to military necessity and the principle of humanity, also emerge from the commitments by the contracting parties' commitments to this Declaration.⁷⁷ The North German Confederation was one of the signatory parties to this Declaration, which means that Germany was not unfamiliar with its terms.⁷⁸

4.5 The 1874 Brussels Declaration

Another significant milestone in setting out the laws and customs of warfare, which had occurred way before the Maji Maji uprising is the 'International Declaration concerning the Laws and Customs of War of 1874', known as the '1874 Brussels Declaration'.⁷⁹ Through this Declaration, the basic rules governing the treatment of prisoners of war, the laws of belligerent occupation, and the treatment of civilians were set

⁷⁶ As above.

⁷⁷ Boothby (n 71) 11.

⁷⁸ HP Gasser 'A look at the Declaration of St Petersburg of 1868' (1993) 33 *International Review of the Red Cross* 511.

⁷⁹ The International Declaration Concerning the Laws and Customs of War of 1874. See also Dowdeswell (n 67) 805.

out. For the first time, international rules governing the circumstances under which guerrilla fighters may be authorised to wage war as lawful combatants were also put in place. These rules were later adopted at the Hague Peace Conferences in 1899 and 1907 and codified in the 'Hague Regulations Concerning the Laws and Customs of War on Land'. More importantly, the Marten's Clause, which was to later be incorporated in the 1899 Hague Convention, was also proposed and accepted during this 1874 Conference. The import of the 1874 Brussels Declaration was to establish, for the first time, an agreement on the laws of war, which would be binding on the armies of belligerent states with the intention of shielding the innocent, peaceful and unarmed populations against the cruelties of war and the evils of invasion.⁸⁰ During this Conference, the laws and customs of land warfare with the goal of establishing binding rules and regulations for conducting war so as to limit the calamities were underpinned.⁸¹ Germany was represented and participated in the discussions geared towards clarification of the customs of war during the Conference.⁸²

4.6 The 1880 Oxford Manual

Coming swiftly on the heels of the 'Brussels Declaration' was the 1880 Oxford Manual, which repeated what the Brussels and the St Petersburg Declarations before it had stated, further affirming that the only legitimate end that states should have in war is to weaken the military strength of the enemy. The Oxford Manual further reiterated that there is no unlimited liberty as to the means of injuring the enemy, requiring belligerents to abstain from all needless severity, unjust and tyrannical acts, further restricting the weapons and the tactics used in warfare.⁸³

4.7 The Martens Clause and the 1899 Hague Convention

The Martens Clause, another critical provision on the laws and customs of war, had also been incorporated into legal documents by the time

80 As above.

81 VV Pustogarov 'The Martens Clause in international law' (1999) 1 *Journal of the History of International Law* 125-135.

82 Dowdeswell (n 67) 805-850.

83 As above.

Germany brutally crushed the Maji Maji uprising. This clause, whose negotiations had begun during the Brussels Convention, had by 1899 been entrenched in the Hague Convention on the Regulation of the Laws and Customs of War on Land.⁸⁴ It is worth noting that Germany was one of the strong powers present at the negotiating table when the insertion of the Martens clause into the Brussels agreement was proposed in 1874, and also when it was entrenched in the law in the 1899 Hague Convention.⁸⁵ This clause, which is considered an overriding objective in the law seeking to regulate the conduct of armed forces during hostilities, *jus in bello* and the laws in and of war, states the following:

Until a complete code of the laws of war has been issued, the high contracting powers deem it expedient to declare that in cases not included in the regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations as they result from the usage established amongst civili[s]ed peoples, from the laws of humanity and from the dictates of public conscience.⁸⁶

Even in the absence of any written law, and on the basis of the Martens Clause, the principles of humanity and the dictates of good conscience demanded that Germany desist from the brutality it visited upon the poorly armed inhabitants of the territory of Tanganyika. The Martens Clause, therefore, legislated an expectation that all civilised nations would conduct wars in civilised ways that did not undermine the principle of humanity.⁸⁷

4.8 The 1907 Hague Convention

By 1907 Germany had, of course, suppressed the uprising with extreme brutality, in total disregard of the existing laws and customs of war. The importance of humanisation of war as set out in the Martens Clause, however, was a major concern for the international community.

84 Dowdeswell (n 67) 843.

85 A Cassese 'The Martens Clause: Half a loaf or simply pie in the sky?' in MN Schmitt (ed) *The development and principles of international humanitarian law* (2017) 373-402.

86 Preamble to the Convention IV respecting the Laws and Customs of War on Land, 1907.

87 M Abbenhuis 'Unbridled promise? The Hague's Peace Conference and their legacies' in M Abbenhuis, CE Barber & AR Higgins (eds) *War, peace and international order? The legacies of the Hague Conferences of 1899 and 1907* 1-11.

Indeed, the clause was to be replicated in the Preamble to the 1907 Hague Convention IV.⁸⁸ Today, the clause is an important concept of international law, generally, and IHL, in particular, representing, as it did during the Maji Maji war of self-determination, the expression that humanitarian considerations should be given binding legal effect during armed conflict.⁸⁹ The fact that the Preamble to the 1907 Peace Conference refers to the interests of humanity and the ever-progressive needs of civilisation⁹⁰ basically is an indication of setting standards that needed to be complied with by those who used force against others,⁹¹ something that Germany had ignored.

4.9 Ancient cultural representation of *jus in bello*

The humanisation of war has not just been a Western concern. Several cultures traditionally had their own protective rules of war, all geared towards the preservation of humanity and the prevention of unnecessary suffering. These rules are similar to those rules of IHL found in the modern Hague and Geneva Laws.⁹²

4.9.1 *Jus in bello in pre-colonial Africa*

Warfare in pre-colonial Africa was not unusual.⁹³ African societies before colonisation did have in place important social, moral and ethical values and customs that they employed while engaging in warfare.⁹⁴ Various traditional practices among Africa's different tribes were usually geared towards observance of the principle of humanity and humanisation of warfare.⁹⁵ Indeed, scholars have referenced these rules as rules meant for the continued protection of communities and the human person

88 Convention (IV) respecting the Laws and Customs of War on Land.

89 D Shanks-Dumont 'Marten's Clause and ambiguity at the birth of modern humanitarian law' in L Culbertson & S Longfield Karr (eds) *Framing devices and global legal traditions: From the ancient world to the modern nation state* (2025) 161.

90 Boothby (n 71) 14.

91 As above.

92 M Mubiala 'International humanitarian law in the African context' in MK Juma & A Suhrke (eds) *Eroding local capacity: International humanitarian action in Africa* (2002) 35-37.

93 As above.

94 As above.

95 As above.

in times of war.⁹⁶ Diallo, speaking on African traditions in the warfare in Senegal, Mali, Ghana and Niger, for instance, points out that once war was declared, then it was regulated by several categories of laws and practices.⁹⁷ These included rules of personal conduct during the hostilities where combatants were expected to respect revered cultural spaces such as places of worship, sacred woods and cemeteries.⁹⁸ It was forbidden for combatants to attack people seeking refuge in sacred places.⁹⁹ Rules on the treatment of those from the enemy side who were already defeated were in place. Just like prisoners of war have been given legal protection under the Geneva Convention,¹⁰⁰ losers and those defeated in warfare among African societies would be treated humanely by the victors. In certain cases, especially for women and children, they would be assimilated as part of the victor's families. What emerges from Diallo's treatise are aspects of genuine ethics of war where unnecessary force was discouraged, for instance, it was considered dishonourable for a warrior to kill an enemy who had surrendered. Restrictions on the methods of harming the enemy, a principle that is similar to the principle dictating that belligerents do not have unlimited choice in the means of harming an enemy are also demonstrated among pre-colonial African societies.¹⁰¹ Indeed, fighting was subject to a genuine code of conduct. For instance, it was forbidden to kill women, children or old people, to strike an enemy from behind, to profane certain places or to kill a disarmed enemy. Warring parties were not allowed to wreak vengeance on the dead from the enemy side. The dead were generally entitled to a decent burial while the wounded would be cared for.¹⁰²

Further, certain means of warfare were prohibited, such as the use of poisoned weapons, but more significant was the creation of demilitarised zones or combat zones where women, children and the elderly would be removed to shield them from adverse effects of warfare. Indeed, as Diallo observes, mercy prevailed over hatred and vengeance.¹⁰³ IHL principles,

96 As above.

97 Y Diallo 'African traditions and humanitarian law' (1976) 16 *International Review of the Red Cross* 387-401.

98 As above.

99 As above.

100 As above.

101 As above.

102 As above.

103 As above.

therefore, were not alien to Africa either and, as seen, they were in line with the ancient humanitarian law principles.

4.9.2 *Christianity and humanisation of warfare*

Evangelisation and missionary work were part of the colonisers' policies when they carved out and shared Africa among themselves. Christianity had been introduced in Tanganyika by the time of the uprising. German colonisers were therefore familiar with religious teachings in relation to humanisation in war. Indeed, religion has also historically been concerned with humanity in war. While the Old Testament does contain many incidents of destruction and atrocities during warfare,¹⁰⁴ certain Christian ethical teachings exist, including those against violence and treating others with dignity, including the dead. Christianity also contains aspects of protection of the weak and vulnerable. These teachings seem to lay certain moral foundations on warfare, violence and human dignity, and can be linked to IHL through the principle of humanity.

The importance of having laws of war being tempered with the laws of humanity and the dictates of public conscience reflects a universal concern for humane wars towards the preservation of humanity, protection of parties to armed conflicts and protection of the environment for posterity. Despite this, Germany engaged in brutal counter-insurgency measures against the inhabitants of Tanganyika who rose up in arms to resist the oppressive regime. This culminated in atrocities of unimaginable levels and an aftermath where aftershocks are still felt in modern-day Tanzania.

Looked at it through the lens of IHL, therefore, Germany's neutralisation of the Maji Maji uprising amounted to mass atrocities as it disproportionately responded to the uprising, contrary to the very tenets of IHL. It engaged in various breaches of *jus in bello* whose negative impact is being felt to this day. For this reason, Germany needs to be held to account pursuant to the principle of state responsibility.

104 M Sahaaf Kashani 'Comparing the views of Islam and Christianity in the protection of cultural heritage and ancient and holy works in armed conflicts' (2024) 1 *Journal of Interreligious Studies on the Qur'an and the Bible* 24-42.

5 State responsibility and erga omnes obligations

Atilas Osoria refers to colonial violence against the colonised as state crimes.¹⁰⁵ This is an apt description of the conduct of Germany towards the inhabitants of Tanganyika, its former colony during the Maji Maji war. As a colonising country, Germany had responsibilities and obligations towards everyone as contemplated under the state responsibility as well as the *erga omnes* concepts.¹⁰⁶ Germany is therefore accountable to the people of the former Tanganyika under the accountability set principles in international law.¹⁰⁷

Reisman explains that in the context of wrongs committed during colonialism, the principle of state responsibility requires that where a colonial state violated explicit undertakings that, at the time of the violation, constituted an international obligation under inter temporal principles, the main issue of responsibility can be explored and resolved in accordance with traditional and universally accepted legal principles.¹⁰⁸

In relation to *erga omnes* obligations, and as the International Court of Justice (ICJ) observed in the *Nicaragua* case,¹⁰⁹ certain principles of IHL constitute intransgressible norms of customary international law. These in turn create *erga omnes* obligations, which each state has to the international community as a whole.¹¹⁰ Following the ICJ's determination of the *erga omnes* obligations in the *Barcelona Traction* case,¹¹¹ the ICJ has subsequently developed other obligations that cannot be transgressed. These include the *erga omnes* obligation to respect the principle of self-determination recognised by the ICJ in the

105 J Atilas-Osoria 'Colonial state crimes and the CARICOM mobilisation for reparation and justice' (2018) 7 *State Crime Journal* 349-368.

106 E de Wet 'Invoking obligations *erga omnes* in the twenty-first century: Progressive developments since *Barcelona Traction*' (2013) 38 *South African Yearbook of International Law* 2-19.

107 A Buser 'Colonial injustices and the law of state responsibility: The CARICOM Claim to Compensate Slavery and (Native) Genocide' (2017) 77 *Heidelberg Journal of International Law* 409-446.

108 WM Reisman 'Reflections on state responsibility for violations of explicit protectorate, mandate, and trusteeship obligations' (1989) 10 *Michigan Journal of International Law* 231.

109 *Case Nicaragua v United States* ICJ (27 June 1986) (1986) ICJ Reports 14.

110 Drawn from the Latin language, the term *erga omnes* means 'in relation to everyone'.

111 *Case Belgium v Spain* ICJ (5 February 1970) (1970) ICJ Reports 3.

case concerning East Timor,¹¹² and the *erga omnes* obligation prohibiting the use of torture recognised by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Furundzija* case.¹¹³

Of particular relevance is the case concerning East Timor, where the ICJ, while considering the rights of the people of East Timor and the obligations of Australia and Portugal, observed, among others, that Australia had, by its conduct, failed to observe the obligation to respect the right of the people to self-determination and related rights. Notably applicable to the argument being made in this chapter is the Court's pronouncement with regard to the right to self-determination. Indeed, the Court emphasised that the right of people to self-determination is irreproachable and has an *erga omnes* character.¹¹⁴

In the *Barcelona Traction* case, the ICJ pointed out that *erga omnes* obligations are derived from international law, are the concern of every state and every state can be held to have an interest in their protection. These obligations all constitute *jus cogens* or peremptory norms and are binding on the international community under international law.

Drawing from the above legal position, the argument that Germany had legal obligations to observe the principle of respecting the right to self-determination, the principle prohibiting torture as well as the principle requiring respect for human rights but failed to do so, is not far-fetched.¹¹⁵ Instead, Germany violated principles that, at that time, constituted intransgressible international obligations.¹¹⁶ The violation of these peremptory norms, therefore, give rise to liability under international law and deserve the assessment of appropriate remedies.¹¹⁷

112 *Case Portugal v Australia* ICJ (30 June 1995) (1995) ICJ Reports 90.

113 *Case Prosecutor v Furundzija* ICTY (10 December 1998) IT-95-17/1.

114 *Case Portugal v Australia* ICJ (30 June 1995) (1995) ICJ Reports 90.

115 A Memeti & B Nuhija 'The concept of *erga omnes* obligations in international law' (2013) 14 *New Balkan Politics* 31.

116 Reisman (n 108) 231.

117 De Wet (n 106) 2-19.

6 Accountability for colonial atrocities: Illustrative examples

Calls for accountability for historical colonial atrocities and human rights violations are not uncommon, and there are numerous examples from which to draw.

6.1 The case of Kenya

In the case of Kenya, litigation has been mounted over the question of colonial responsibility on the part of the British colonial rulers over violation of the indigenous peoples' rights during the Mau Mau war of self-determination.¹¹⁸ The Mau Mau uprising, like that of the Maji Maji, was an uprising waged by the people of Kenya against the British colonial rule between 1952 and 1960. The Mau Mau uprising was fuelled by grievances and resentment to British colonial rule as in the case of the Maji Maji uprising in neighbouring Tanganyika some years earlier. In the case of Kenya, tension arose from land dispossession and political oppression. The crackdown on the indigenous people when they rose against the British colonial government had equally been violent and brutal. Thousands of Kenyans were tortured and killed in colonial detention camps. Acts of torture included systematic beatings, rape and other sexual assaults, including castration of the Mau Mau warriors as well as civilians not connected with the violence.

In 2011, victims of the colonial government's brutality and their descendants sued the British government for these series of human rights violations. The British government took responsibility for the actions of its colonial administration and not only made financial compensation to the victims, but also rendered an apology to the government of Kenya.¹¹⁹ Indeed, during his recent visit to the Republic of Kenya, King Charles III acknowledged the wrongs committed by the British colonial government while quelling the Mau Mau uprising, terming the actions as abhorrent.¹²⁰ While the King did not, understandably, render an

118 *Case Mutua et al v the Foreign and Commonwealth Office* (5 October 2012) [2012] EWHC 2678 (QB).

119 M Hasian & SM Muller 'Post-conflict peace initiatives, British Mau Mau compensation, and the mastering of colonial pasts' (2016) 11 *Journal of Multicultural Discourses* 164-180.

120 S Coughlan & A Soy 'King Charles says "no excuse" for Kenya colonial violence' 31 October 2023, <https://www.bbc.com/news/uk-67273676> (accessed 4 March 2026).

apology, he did express deep regret and sorrow for the conduct of the colonial government, adding to the sincere regret expressed by the UK government while settling the compensation claim filed against it. This is a clear indication that historical injustices have been and can be redressed through international law.¹²¹

6.2 The case of Namibia

In Namibia, and following years of negotiations and pressure from civil society groups, the German government has begun to qualify the massacres committed against the Herero and Nama communities during Germany's occupation of the region as genocide and war crimes. Even though the German government has insisted that there will be no legal consequences that will arise out of this qualification, at least a dialogue is being undertaken. Germany has consequently proceeded to pledge financial support for reconstruction and committed to development projects by way of reparation.¹²²

6.3 The case of the Caribbean states

Similarly, the Caribbean states have organised themselves under the Caribbean Community Common Market (CARICOM) and have also initiated claims against several European countries demanding redress for historical wrongs committed against the nations and people of the Caribbean communities during colonial occupation.¹²³ These injustices include slavery, genocide, crimes against humanity, displacement and racialised discrimination for which a Ten-Point Reparation Plan has been formulated to seek compensation for historical wrongs for the affected communities.

121 A Gulecha 'Ndiku Mutua et al v The Foreign and Commonwealth Office' (2023) 14 *Jindal Global Law Review* 297-304.

122 Buser (n 107) 421-422.

123 As above.

7 Conclusion and recommendations

7.1 Conclusion

This chapter has demonstrated that despite the existence of clear rules governing the conduct of parties engaged in armed conflict all geared towards limiting and/or mitigating the suffering and negative effects of warfare, Germany's response in quashing the Maji Maji uprising was brutal, ruthless and inhuman. The response appears to have been aimed at causing as much suffering and as much negative effects as possible. Germany breached all established rules meant to ensure the humane treatment of all individuals during warfare. The chapter identifies the principles violated by Germany, the manner in which those principles were violated, and the resultant aftermath of the violations. The chapter recognises that by the time the people of Tanganyika waged the war for self-determination against German colonial occupation and Germany retaliated in the cruellest manner possible, international treaties and conventions concretising those rules and defining key principles in IHL as we know them today had not firmly been put place. However, the chapter posits that as the Germans were occupying Tanganyika and brutally and inhumanely crushing the Maji Maji rebellion, the international community, Germany included, was in the process of concretising those rules of warfare with a view to mitigating the negative effects of warfare. Further, the *jus in bello* and peremptory principles relating to the conduct of warfare already having been in existence, and with which Germany was familiar, were enough to compel Germany to fight a just and humane war, which it did not. For this, Germany bears a legal responsibility and is accountable to the nation and people of its former colony under international law.

This chapter recognises that the journey to having Germany acknowledge responsibility for the atrocities committed against the people of Tanzania and/or remedy the wrongs caused is not clear-cut and is likely to meet several hurdles. In the case of Kenya, several legal barriers were encountered. Objections on the basis of limitation of actions due to the passage of time were not uncommon.¹²⁴ The chapter

124 J Balint 'The "Mau Mau" legal hearings and recognising the crimes of the British colonial state: A limited constitutive moment' (2016) 3 *Critical Analysis of Law* 261.

also acknowledges that current governments may not be too keen to take responsibility for historical wrongs committed by the previous colonial governments. It can hardly be said that there have been any binding legal commitments in the cases discussed. Formal apologies, for instance, have not been issued by those governments, nor have they accepted full legal responsibility in any of the cases.¹²⁵ Instead, what has been given are ‘official statements of regret’. It is also worth noting that in the case of Namibia, even though Germany has committed itself to contributing towards development aid in its former colony, legal responsibility for the colonial atrocities committed in its former colony is yet to be accepted.¹²⁶ This chapter, however, argues that international law and standards in place create a firm legal basis to navigate the legal barriers to arrive at reparative justice measures for the historical colonial injustices committed to the people and the nation of modern-day Tanzania.

7.2 Recommendations

Reparative justice involves putting in place reparation measures that seek to acknowledge and remedy the human rights violations, harm and losses previously caused. It requires those responsible to right the wrongs caused. The righting of historical wrongs can take many forms, and there is no one-size-fits-all solution. In the case of Tanzania, the following are the recommended measures to remedy violations caused through colonial rule.

7.2.1 *Formal acknowledgment of wrongdoing and apologies*

Germany has already acknowledged that the atrocities it committed against the people of modern-day Namibia, one of its former colonies, amounted to genocide, and is already engaged in compensatory measures.¹²⁷ In the case of the atrocities committed against the people

125 M Tsuda ‘The gap between recognition and the “compensation business”: The claim against Britain for compensation by Kenya’s former Mau Mau fighters’ (2012) 321.

126 S El Amouri & S Smis ‘Inter-state apologies for colonial injustices from an international state responsibility perspective: A commentary on the Belgian controversy’ (2023) 27 *American Society of International Law Insights* 1-7.

127 German Federal Government ‘Interministerial strategy to support “Dealing with the past and reconciliation (Transitional Justice)”’ (2019).

of the former Tanganyika, such an admission has not been forthcoming. The time has now come for that to happen.¹²⁸ Formal acknowledgment, followed by an apology, is very symbolic and serves a psychological purpose, helping with the healing process for a wounded nation.

7.2.2 *Restitution of human remains*

Demands for the repatriation of those human remains and of any other human parts carted away as spoils of war by the colonisers and lying in German museums have already begun. These processes need to be fast tracked to enable the burial culture of the local inhabitants to be completed. As it is, and as Rushohora points out,¹²⁹ the burial customs of the people remain interfered with given that the graves of chiefs and spiritual leaders do not contain the bones that they need to. This has created a major impact on the locals, given that graves are associated with communities' spirituality and well-being. Rushohora further argues that without a final resting place for the remains of the victims of the Maji Maji uprising, the community remains traumatised and the process of closure becomes impossible. Social, cultural and political significance is bestowed on human remains, especially in Africa and, therefore, the remains curated in German museums need to be repatriated back home with haste.¹³⁰

7.2.3 *Litigation and compensation*

International crimes were committed through violations of IHL rules. Accountability mechanisms lie in criminal prosecutions. The international community ought to have commenced criminal accountability mechanisms to hold to account those who violated the laws of war and peace, as it did after World War II. However, it is too late in the day for criminal accountability mechanisms through international criminal law for genocide, crimes against humanity and war crimes committed against the people of the then Tanganyika territory. However,

128 J Zimmerer & J zur Lage (eds) *Global memories of German colonialism* (2025) 55.

129 Rushohora (n 34) 25-45.

130 W Jilala & N Lwoga 'Identifying the peopling of Tanganyika-Germany East Africa through skeletal remains: A case study of the restitution process in Tanzania' (2022) *Academia Letters* Article 4907, 2-3.

civil litigation for purposes of compensation can be initiated. This is not unusual, and precedents are available, as earlier discussed.¹³¹

8 Truth and reconciliation processes

Truth and reconciliation processes whereby legacies of human rights abuses and historical facts are publicly acknowledged and addressed by the parties concerned can be powerful healing tools which ensure that historical records are set straight.

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