CORRUPTION IN SIERRA LEONE: CONSEQUENCES OF BRITISH COLONIZATION

By Jeremy Ridgeway†

ABSTRACT

This paper analyzes international jurisdiction for the United Nations (herein after UN) International Court of Justice to retroactively apply UN Resolution 1514 to the United Kingdom's (formerly Great Britain) colonization of Sierra Leone. The central objective of this study is to establish (a) the International Court of Justice (hereinafter ICJ) has jurisdiction to hear a human rights case brought by Sierra Leone against the United Kingdom for colonization in violation of Resolution 1514; and (b) British colonization of Sierra Leone is a violation *jus cogens*.

To this end, Part I explores UN Resolution 1514, which grants independence to colonial countries and their people. An examination of the jurisprudence of the 1940's Nuremberg Trials, Control Council Law No. 10, fundamental human rights and the International Military Tribunal's rationale for charging military and political leaders of the Third Reich with Crimes Against Peace and Humanity, supports the position that Sierra Leone has standing before the ICJ to bring action against the United Kingdom for violating international human rights law during the colonization of Sierra Leone. The UN General Assembly's adoption of *Resolution 1514 Declaration Granting Independence to Colonial Countries and Peoples* on December 14, 1960 and case law from International Court of Justice strengthen the claim that United Kingdom's colonization of Sierra Leone constitutes a violation of *fundamental human rights*.

Part II of the paper examines Resolution 1514 as a norm of *jus cogens,* the highest form of international law. An evaluation of *jus cogens* and Resolution 1514 will reveal the United Kingdom's colonization of Sierra Leone violated the most-supreme international law.

---

† Jeremy Corneil Ridgeway currently serves as a Magistrate for the Commonwealth of Virginia. He graduated with an LL.M. in International Human Rights from Regent University School of Law in 2015. He obtained his Juris Doctor from the David A. Clarke School of Law in Washington D.C. in 2014. He previously has served as an advocate for low-income clients at an HIV/AIDS legal clinic and an immigration and human rights clinic, and as an intern for the Dominica Ministry of Legal Affairs in Roseau, Dominica, and at the Human Rights and Advocacy Centre in Accra, Ghana. While obtaining his LL.M., he worked for the Center for Global Justice, where he conducted international research and produced legal memorandum in support of human rights issues, such as child sacrifice in Uganda and police reformation in Kenya.

The paper concludes that the United Kingdom's' colonization of Sierra Leone violated international human rights law and *jus cogens*. Consequently, the United Kingdom is subject to the International Court of Justice for violating Sierra Leone's fundamental human rights.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

The topic of this paper evolved during my childhood after learning my family's roots trace back to the Mandingo tribe of Sierra Leone and the Fulani tribe of Guinea-Bissau. As a young African-American whose great-grandparents were slaves in Alabama, I envied my classmates that were able to name the country where their families originated. After learning my family history, I became infatuated with African history and the perseverance my ancestors displayed during the slave era and the Civil Rights movement. The strength of my ancestors, which came from God, constituted a major source of inspiration while working on this paper.

I wish to express gratitude to my wife, Kellisia Ridgeway (2015 LL.M. candidate), whom I met while serving as a legal representative at the Human Rights Advocacy Centre in Accra, Ghana. While obtaining my Juris Doctor, Kellisia encouraged me to pursue my true passion, international human rights law. Furthermore, when I became disheartened during the drafting process, she reminded me that God had a greater purpose for the paper.

I owe a special thanks to my family; particularly my parents, who support me in all my educational endeavors. The public school system provided a basic understanding of black history; however, my parents forced me to read books, like the *Narrative of the Life of Fredrick Douglas, An American Slave*, and write reports to ensure I truly understood and appreciated the sacrifices our ancestors made.

My final expression of gratitude is reserved for Professor William Magee. Professor Magee spent numerous hours helping me prepare the article. Most importantly, Professor Magee prayed with and for me during the challenging drafting process. I am forever grateful for his assistance.

DEDICATION

This paper is dedicated to the people of Sierra Leone and other former colonial territories that constantly strive to overcome the consequences of colonialism.

ABBREVIATIONS

APC	All People's Congress Political Party, Sierra Leone
BP	British Petroleum International Limited Company
CAST	Consolidated African Shares Selection Trust
C.C. Law 10	Control Council Law No. 10
ECOWAS	Economic Community of West African States
ECOMOG	Economic Community of West African States Monitoring Group
GA	United Nations General Assembly
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IMT	International Military Tribunal
UN	United Nations
UNOMSIL	United Nations Observer Mission in Sierra Leone
RUF	Revolutionary United Front
TRC	Truth and Reconciliation Commission

DEFINITION OF KEY TERMS

Positive law, also known as *natural law,* is a system of right or justice held to be common to all human beings from nature rather than from the rules of society.[1] According to Thomas Aquinas, natural law philosopher, natural law serves as a check on the ruler and as a guarantee that justice is observed.[2] Therefore, positive law criminalizes conduct all individual know to be immoral.

Universalization refers to the practice of giving something a worldwide character or application.[3] For example, article 1 of the United Nations *Universal Declaration of Human Rights* states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Black Loyalists were emancipated slaves who were loyal to the Britain's Royal colonies during the American Revolution.[4] The Black Loyalists of Nova Scotia were the first group of repatriated freed slaves to return to Sierra Leone.[5]

The *Berlin Conference* was a series of negotiations (Nov. 15, 1884-Feb. 26, 1885) at Berlin, in which the major European nations met to decide all questions connected with the river basin in Central Africa.[6] During that time period, each European power sought to safeguard its commercial interest in Africa.[7] As a result of the colonization and the conference, the United Kingdom occupied or annexed Egypt, the Sudan, British East Africa (Kenya and Uganda), British Somaliland, Southern and Northern Rhodesia (Zimbabwe and Zambia), Bechuanaland (Botswana), Orange Free State and the Transvaal (South Africa), Gambia, Sierra Leone, Nigeria, British Gold Coast (Ghana) and Nyasaland

---

[1] Positive Law, http://www.britannica.com/EBchecked/topic/471836/positive-law (last visited Apr. 2, 2015).
[2] Jack Donnelly, *Natural Law and Right in Aquinas Political Though*, in The Western Political Quarterly 520, 522 (University of Utah, 1980).
[3] Universalize, http://www.merriam-webster.com/dictionary/universalize (Apr. 1, 2015)
[4] Woody Holton, *The Black Loyalist Directory: African American in Exile After the American Revolution by Graham Russell Hodges; Susan Hawkes Cook; Alan Edward Brown*, in The William and Mary Quarterly Third Series 831, 831 (Woody Holton, 2006).
[5] James Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone*, in 35 The Williams Quarterly (Omohundro Institute of Early American History and Culture ed., 1978)
[6] Berlin West Africa Conference, http://www.britannica.com/EBchecked/topic/62214/Berlin-West-Africa-Conference (last visited Jan. 1, 2015)
[7] Elizabeth Heath, Berlin Conference of 1884-1885, Oxford Reference, (Jan. 12, 2015, 2:15 PM) http://www.oxfordreference.com/view/10.1093/acref/9780195337709.001.0001/acref-9780195337709-e-0467.

(Malawi).[8] These countries accounted for more than 30% of Africa's population.[9]

[8] Saul David, *Sierra Leone and the 'Scramble for Africa*, BBC, Apr. 16, 2015, http://www.bbc.co.uk/history/british/abolition/scramble_for_africa_article_01.shtml.
[9] *Id*.

CORRUPTION IN SIERRA LEONE: CONSEQUENCES OF BRITISH COLONIZATION

1. INTRODUCTION

1.1 BRIEF OVERVIEW OF THE CURRENT STATE OF SIERRA LEONE

On April 27, 1961, Sierra Leone, a former British Crown colony and protectorate, became an independent sovereign State.[10] The new nation was born at the stroke of midnight, when its green, white and blue flag was unfurled. Huge crowds gathered at Brookfield Playground in Freetown to watch the historic moment.[11] Festive cheering erupted, as Sierra Leone became the latest African state to win independence, after more than 150 years of colonial rule.[12] Unfortunately, the cheers were overshadowed by the state of emergency, declared ten days before, following a campaign of sabotage by the opposition of the All People's Congress (APC).[13] The party urged that independence be postponed until free elections were held.[14] Sierra Leone was less than two weeks old, and the country was already off to a tumultuous start.

Only seventeen years after holding free elections, Sierra Leone adopted a new constitution that proclaimed it a one party state with the All People's Congress as the sole legal party.[15] As a result, the 1960's and 1970's post independent democracy was undermined by despotism and state sponsored corruption.[16] Since achieving independence, diamonds were the cause of destruction and misery for several decades.[17] Sierra Leone's notoriously crooked diamond mining industry affected its escape under the shadow of corruption, for the control of diamond mines became a bargaining tool for government officials and opponents of the one party system.

1.2 THE CORRUPTION OF THE DIAMOND INDUSTRY AND THE CIVIL WAR

In 1991, former army corporal Faday Sankoh and his Revolutionary United Front (RUF) commenced their campaign against

---

[10] Sierra Leone Independence Act 1961, c.16, s.9
[11] *1961: Sierra Leone wins independence*, BBC News (APR. 27, 1961), http://news.bbc.co.uk/onthisday/hi/dates/stories/april/27/newsid_2502000/2502411.stm.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Sierra Leone profile – Timeline*, BBC News (March 18, 2015), http://www.bbc.co.uk/news/mobile/world-africa-14094419
[16] *Id.*
[17] Ian Smillie, *"Getting to the Heart of the Matter: Sierra Leone, Diamonds, And Human Security." Social Justice 27.4 (82), Neoliberalism, Militarism, And Armed Conflict (2000):* 24. *JSTOR*. Web. 08 Apr. 2015.

President Momoh, capturing towns on the border of Liberia; this rebellion marked the beginning of a civil war.[18] The rebellion was characterized by banditry and horrific brutality, wreaked primarily on civilians.[19] Between 1991 and 1999, the war claimed over 75,000 lives, caused half a million Sierra Leoneans to become refugees and displaced half the country's 4.5 million people. [20]

According to the UN court, RUF's commander, Taylor, ordered the RUF to gain control over the mines, exchange diamonds for European imported weapons and facilitate arms smuggling. [21] Diamond mining rights in Sierra Leone that were once exclusively owned by the Consolidated African Shares Selection Trust (subsidiary of the Selection Trust Group of London), were now under the authority of the Sierra Leone Government National Diamond Mining Company.[22]

In the 1970s, Sierra Leoneans lost control of the diamond industry. Through series of closed deals the diamond rights in Sierra Leone were sold to forty-eight private non-native parties. A major party was the British Petroleum International Limited company (BP), which owned a forty-nine percent stake of the industry.[23] Because of the high demand for the mineral, the war was about who controlled the natural resources. [24] Thus, whoever controlled the mines had economic and political power.[25] By the war's end, the RUF generated an annual profit ranging from $25 million to $125 million.[26]

1.3 SIERRA LEONE CONTINUES TO SUFFER FROM CORRUPTION

Today Sierra Leone continues to suffer from corruption.[27] Various international organizations attempted to resolve the conflict in Sierra Leone with economic and military backed sanctions. For example, in 1997 the UN Security Council adopted resolution 1132, which prohibits the export and import of petroleum and forbids the exportation of arms in

---

[18] *Sierra Leone profile – Timeline*, *supra* note 8.
[19] *See* SMILLIE, *supra* note 6, at 24.
[20] *Id.*
[21] Floreana Miesen, *Blood Diamonds*, Development and Cooperation (MAY. 21, 2012, 10:30 AM), http://www.dandc.eu/en/article/blood-diamonds-fuelled-sierra-leones-civil-war.
[22] Josephe Kargbo, "The Mining sector and growth in Sierra Leone: Lessons for the future", *in* Johnson, O.E.G. (ed.). *Economic challenges and policy issues in early 21st century Sierra Leone*. International (February 13, 2015), http://www.theigc.org/wp-content/uploads/2012/03/Johnson-Ed.-2012-.pdf.
[23] *Id.*
[24] Miesen, *supra* note 11.
[25] *Id.*
[26] *Id.*
[27] 2014 Ebola Outbreak in West Africa – Case Counts, http://www.cdc.gov/vhf/ebola/outbreaks/2014-west-africa/case-counts.html (last visited MAR. 12, 2015).

transit through the United Kingdom without an export license.[28] In 1998, the Nigerian led and UN backed West African intervention force, Economic Community of West African States Monitoring Group (hereinafter ECOMOG) stormed Freetown to drive out rebels.[29]

On July 13, 1998 the Security Council established the United Nations Observer Mission in Sierra Leone (hereinafter UNOMSIL), with the authorized strength of seventy military observers, for an initial period of six months.[30] In accordance with its mandate the mission monitored and advised efforts to disarm combatants and restructure the nation's security forces.[31] Unarmed UNOMSIL teams, under the protection of ECOMOG, documented reports of on-going atrocities and human rights abuses committed against civilians.[32] However, a report produced by Human Rights Watch with testimonies of witnesses to over 180 summary executions of rebel prisoners, indicate ECOMOG forces authorized mass killings of civilians.[33] With the support of the UN, soldiers who were sent to oust the rebel forces committed the same mutilation and execution crimes they were sent to put an end.

International intervention in Sierra Leone was a failure because of its complex mixture of economic, political and social conflicts that begins with the United Kingdom's colonization of Sierra Leone. Today Sierra Leone remains among the world's poorest countries, ranking 180th out of 187 countries in the Human Development Index.[34] Efforts by the UN and the United Kingdom to develop Sierra Leone failed. Nevertheless, in recent years a new proposition has taken shape in the form of restorative justice with retroactive legislation and reparations. This paper will examine retroactive legislation, a form of restorative justice, as a solution to Sierra Leone's state of corruption.

PART I
LEGAL STANDARD FOR RETROACTIVE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW

---

[28] S.C. Res. 1132, ¶ 2, U.N. Doc. S/RES/1132 (OCT. 8, 1997).
[29] *Sierra Leone profile – Timeline*, *supra* note 8.
[30] *Sierra Leone – UNOMSIL*, UN.org, http://www.un.org/en/peacekeeping/missions/past/unomsil/UnomsilB.htm (last visited MAR. 10, 2015).
[31] *Id.*
[32] *Id.*
[33] *V. Human Rights Abuses Committed By ECOMOG, Sierra Leone Defense Forces, and Police*, (MAR. 10, 2015), http://www.hrw.org/reports/1999/sierra/SIERLE99-04.htm.
[34] *About Sierra Leone*, www.sl.undp.org, http://www.sl.undp.org/content/sierraleone/en/home/countryinfo.html (last visit April 1, 2014).

2. EX-POST FACTO APPLICATION OF UN GENERAL ASSEMBLY RESOLUTION 1514

2.1 INTRODUCTION

The purpose of this chapter is to examine why the United Kingdom is liable before the ICJ for human rights crimes that occurred during its colonization of Sierra Leone. On December 14, 1960, the UN General Assembly adopted UN Declaration 1514:

The subjection of people of alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to promotion of world peace and co-operation.[35]

The declaration officially ended colonialism in all its forms and manifestations. [36] Thereafter, the General Assembly adopted further legislative acts whose ties to resolution 1514 are clear: resolution 1515 of 15 December 1960, on the sovereign right of States to dispose of their own wealth and natural resources and resolution 1803 of 14 December 1962, on States' permanent sovereignty over those natural resources.[37]

It is undisputed that Freetown, the capital of Sierra Leone, was colonized in 1808; a century and a half prior to UN Declaration 1514, and Resolution 1515 and 1803. Also, under the legal principle *nullum crimen sine lege*, it is generally known that a person should not face criminal punishment for an act that became illegal after the act was performed.[38] However, that universally recognized principle changed after the Nuremberg trials of 1945.

2.2 THE INTERNATIONAL MILITARY TRIBUNAL AND CONTROL COUNCIL LAW 10

Prior to the Nuremberg trials, the United States, the United Kingdom, the Soviet Union and France signed the Moscow Declaration, on November 1, 1943, which established two principles: (1) that those who committed war crimes and other transgressions against international law would be tried in the countries where the crimes occurred; and (2) that the trial would be impartial to the accused "whose offenses have no particular

---

[35] Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N.Doc. A/RES/1514 (Dec. 14, 1960).
[36] *Id.*
[37] Memorandum from Professor Edward McWhinney on the Declaration on the Granting of Independence to Colonial Countries and Peoples (NOV. 14, 1960).
[38] Beth V. Shaack, *Crimen Sine Lege: Judicial Lawmaking At The Intersection of Law and Morals*, 97 Geo. L.J. 119 125-132 (2008) (discussing the nullum crimen sine lege latin maxim in international law)

geographical localization and who will be punished by joint decision of the government of the Allies."[39] This declaration paved the way for the Nuremberg trials.

In order to give effect to the Moscow Declaration of 1943 and the London Agreement issued pursuant thereto, and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, the Control Council enacted Control Council Law 10 (hereinafter C.C. Law 10).[40] Article 6 section I of the *Charter of International Military Tribunal* authorized the Tribunal to charge Nazi war criminals with (a) crimes against peace, (b) war crimes, and (c) crimes against humanity.[41] C.C. Law 10 recognized the charges against the Nazi war criminals as crimes.

Thereafter, in 1945, American, British, Soviet and French governments completed negotiations and then signed the London Agreement indicting Nazi officials for trial before a military tribunal.[42] The Agreement provided a uniform legal basis for the prosecution of major war criminals; the Charter of the International Military Tribunal was established pursuant to Article 1 of the Agreement.[43] On that basis, the International Military Tribunal (hereinafter IMT) commenced its hearings in Nuremberg, Bavaria with presiding Lord Justice, Geoffrey Lawrence.[44] The defendants were charged by the IMT with war crimes and other offenses against international law.[45] The IMT trials, better known as the Nuremberg trials, were carried out under the direct authority of the Charter of the IMT.[46]

2.3 NUREMBERG TRIALS

The Nuremberg trials were a series of thirteen trials adjudicated for the purpose of bringing Nazi Party officials and high-ranking military

---

[39] Declaration of German Atrocities, Nov. 1, 1943.
[40] Judgment, 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945-1 OCTOBER 1946, at XIX (1948) [hereinafter Nuremberg Judgment]. Control Council No. 10 was enacted to give effect to the terms of the Moscow Declaration of October 30, 1945 and the London Agreement of August 8, 1945, and the Charter issued pursuant thereto and to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal.
[41] Nuremberg Judgment, *supra* note 31, at XIII.
[42] Michael Biddiss, *The Nuremberg Trial: Two Exercises in Judgment*, 16 J. CONT .HIST 597, 597 (1981).
[43] Agreements for the Prosecution and Punishment of Major War Criminals of the European Axis; London Agreement of 1945, Apr. 8, 1945.
[44] *Id.*
[45] Nuremberg Judgment, *supra* note 34, at III.
[46] Id.

officers to justice.[47] During the Nazi regime, German Nazis systematically persecuted and murdered approximately six million Jews between 1933 and 1945.[48] The indictment contained four counts, (1) Conspiracy to commit war crimes and crimes against humanity; (2) War crimes; (3) Crimes against humanity as defined by Control Council Law 10; and (4) Membership of certain defendants in organizations, which were declared criminal by the national Military Tribunal.[49]

During the trial, the Nazi defendants claimed protection under the *nullun crimen sine lege* principle since no representation existed in either German or international law forbidding their actions.[50] The IMT rejected the defense, for *nullum crimen sine lege* constituted no limitation upon the power of the IMT to punish acts, which could properly be held as violations of *international law* when committed.[51] Moreover, the court quoting Lord Wright[52] added,

> . . . allowing the general inexpediency of retrospective legislation . . . cannot be pronounced naturally or necessarily unjust. There may be occasions and circumstances involving the safety of the [S]tate, or even the conduct of individual subjects, the justice of which prospective laws made for ordinary occasion and the usual exigencies of society for want of prevision fail to meet, and in which the inconvenience and wrong, *summum jus summa injuria.*[53]

Thus, the War IMT's rationale for retroactively applying law to charge Nazi war criminals was to enforce international law and pursue justice on behalf of those who were victims of the Holocaust.

Subsequent analysis will utilize the rationale to justify retroactive application of UN Declaration 1514 and resolution 1515 and 1803 to the United Kingdom for its colonial exploitation of Sierra Leone.

2.4 THE RETROACTIVE APPLICATION OF INTERNATIONAL LAW

---

[47] *Nuremberg Trials*, History.com, http://www.history.com/topics/world-war-ii/nuremberg-trials (last visited March 12, 2015).
[48] *Holocaust A Call to Conscience: 40 Questions, 40 Answers,* www.projetaladin.org, http://www.projetaladin.org/holocaust/en/40-questions-40-answers/basic-questions-about-the-holocaust.html (last visited April 1, 2015).
[49] Nuremberg Judgment, *supra* note 31, at 955.
[50] *Id*. at XIII.
[51] *Id*. at 974.
[52] Lord Wright is an eminent jurist of the British House of Lords and head of the United Nations War Crimes Commission.
[53] R.W. Cooper, The Nuremberg Trial 3-4 (London Penguin Books, 1947).

A. International Law Is Not the Product of Statutes

According to Dr. Kubuschok (counsel for the defendant Schelegelberger, speaking on the behalf of all defendants) "when dealing with the problem of violation of the principle *nullum crimen sine lege*, that those laws with which the indictment is concerned and which had been made retroactive do not furnish a basis for punishment."[54] In the opening statement, Dr. Kubuschok first defended the actions of the accused by asserting that rules of the German Penal Code were part and parcel of the general body of law, and were enacted long before Control Council Law 10.[55] Under Dr. Kubuschok's legal theory and *nullum crimen sine lege*, the Nazi German defendants were exempt for crimes outlined in Control Council Law 10. The IMT rejected the defendants' claim of protection under the *nullum crimen sine lege* principle, since this principle does not restrict the power of the IMT to punish acts that violate international law when committed. [56] The IMT held that under C.C. Law 10 and international law, the *ex post facto* rule creates no legal or moral barrier to the prosecution's case.[57] Furthermore, the United States does not apply the *ex post facto* defense, in the manner asserted by Dr. Kubuschok.

Article I sec. 10 clause 1 of the United States Constitution, forbids *ex post facto* state law. In *Weaver v. Graham*, the United States Supreme Court held that for a criminal or penal law to be *ex post facto*, it must be retroactive and disadvantage the offender. The effect of the *ex post facto* law, not the form of the law, determines whether the law should apply.[58] The Supreme Court held that a Florida statue, which reduced the amount of good time or gain time earned by prisoners, violated the *ex post facto* clause as applied to those whose crime occurred before its effective date.[59] The Supreme Court reversed and remanded the appellate decision, since the Florida statute is retroactive and disadvantageous to the offender.

The German defendants could not properly assert the United States' support of the *ex post facto* claim, since the Allied Control Council does not have legislation prohibiting retroactive laws, as does the United States Constitution. Even if the Council had an *ex post facto* clause, the German argument still fails, because C.C. Law 10 does not distinguish between defendants who were charged before or after a law was enacted. C.C. Law 10 is retroactive; however, it does not disadvantage the offender, because C.C. Law 10 applies to both individuals charged before and after its enactment.

---

[54] Nuremberg Judgment, *supra* note 31, at 113.
[55] *Id.*
[56] *Id.* at 974.
[57] *Id.*
[58] Weaver v. Graham, 450 U.S. 24, 35 (1981).
[59] *Id.*

States may enact laws that forbid retroactive legislation; however, domestic law has no binding effect on international law. The IMT reasoned that international law is not the product of statutes enacted in the traditional or domestic sense, because at the time no world authority was empowered to enact statutes with universal application. [60] International law prior to World War I and II was the product of multipartite treaties, conventions, judicial decisions and customs, which received international acceptance or acquiescence. [61] Thus, according to the IMT, it is absurd to suggest that the *ex post facto* rule could be applied to a treaty, custom, or a common law decision of an international tribunal, or to the international acquiescence. An attempt to apply the *ex post facto* principle to judicial decisions of common international law would strangle international law's foundation.[62]

According to the IMT, true application of *nullum crimen sine lege* in international law was interpreted in *Goering, et al*.[63] The question of the application arose with reference to crimes against peace. The IMT held that,

> In the first place, it is to be observed that the maxim *nullum crimen sine lege* is not a limitation to sovereignty, but is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighboring [S]tates without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from being unjust punish him, it would be unjust if his wrong were allowed to go unpunished.[64]

Thereafter the IMT quoted distinguished statesmen and international authority, Henry L. Stimson:

> It is argued that parts of the Tribunal's Charter, written in 1945, make crimes out of what before were activities beyond the scope of national and international law. Were this an exact statement of the situation we might well be concerned, but it is not. It rests on a misconception of the whole nature of the law

[60] Nuremberg Judgment, *supra* note 31, at 974.
[61] *Id.*
[62] *Id.*
[63] *Id.* at 975.
[64] *Id.* at 974.

> of nations. International law is not a body of authoritative codes or statutes; it is the *gradual expression*, case by case, of the *moral judgments* of the civilized world. As such, it corresponds precisely to the common law of Anglo-American tradition. We can understand the law of Nuremberg only if we see it for what it is—a great new case in the book of international law, and not a formal enforcement of codified statutes . . . .[65]

Similarly, international law today is not the product of statutes, but rather multipartite treaties, conventions, judicial decisions and customs, which receive international acceptance or acquiescence. There is no world authority that is empowered to enact universal application.[66] International law is only a type of positive morality and not law because its rules are not the commands of a sovereign backed sanction. [67] International law lacks a compulsory system of dispute resolution so that neutral decision-makers play a role in the application of sanctions. To a large extent, international law functions through self-judging by victims of law violations.[68]

International law of human rights is the law of the "international community of [S]tates," made principally by treaty and by customary law, and supplemented by "general principles" that the international law of human rights absorbed from national legal systems. [69] Unlike international law generally, international human rights law did not begin with a deeply rooted basis in customary law; it was established primarily by treaty.[70]

There are two worldwide concerns with human rights law.[71] First, *universalization* brought acceptance, at least in principle and rhetoric, of the concept of individual human rights by all societies and governments and is reflected in foreign constitutions and legislations. [72] Second, *internalization* brought agreement, at least in political-legal principle and in rhetoric, that individual human rights are of "international concern" and a proper subject for diplomacy, international institutions and international law.[73]

---

[65] *Id.* at 975.
[66] Mary O'Connell & Richard Scott, The International Legal System, 15 (Foundation Press, 6th ed. 2010).
[67] *Id.*
[68] *Id.* at 16.
[69] Cleveland Henkin ET AL., Human Rights 191 (Foundation Press, 2nd ed. 2009).
[70] *Id.*
[71] *Id.* at 139.
[72] *Id.*
[73] *Id*.

UN declaration 1514 and resolutions 1515 and 1803 establish what may be described as ordering principles, intended to guide the progressive development of international law in accordance with the General Assembly's own explicit mandate under Article 13, paragraph 1 (a), the Charter of the UN which states,

> The General Assembly shall initiate studies and make recommendations for the purpose of: a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification.[74]

The declarations and subsequent resolutions are international law. However, unlike domestic law, there is no world authority empowered to enact statutes of universal application.[75] Consequently, the *ex post facto* rule, properly understood, constitutes no legal nor moral barrier to the retroactive application of 1514, 1515 and 1803. The IMT rejected traditional principles and defenses reflected in Latin maxims, which historically were valid defenses until the Nuremberg Trials.[76]

Accordingly, the ICJ should reject the *ex post facto* defense, *nullen crimen sige lege* and similar defenses that are likely to be raised by the United Kingdom. The IMT rejected the Germans *ex post facto* defense and *nullen crimen sige lege* defense, because these principles constituted no limitation upon the power of the IMT to punish acts, which is properly a violation of international law when committed.[77] Similarly, the ICJ is not required to consider the *ex post facto* defense that governs the United Kingdom.[78] Article 36 sections 1 and 2 of the *Statute of the International Court of Justice* states,

> 1. The jurisdiction of the Court comprises [of] all cases, which the parties refer to it, and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.[79]
> 2. The [S]tate parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special

[74] *See* McWhinney, *supra* note 28.
[75] Nuremberg Judgment, *supra* note 31, at 74.
[76] Cherif M. Bassiouni, *Nuremberg: Forty Years After,* 80 Soc'y Int'L Proc. 61, 61 (1986) (discussing the Tribunal's rejection of the *nullum crimen sine lege* Latin maxim).
[77] Nuremberg Judgment, *supra* note 34, at 974.
[78] European Convention on Human Rights art. 7, Sept. 22 1984.
[79] Statute Of The International Court of Justice art. 36, Jun. 26, 1945.

> agreement, in relation to any other [S]tate accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation.[80]

Consequently, the ICJ is not required to apply domestic law like the *ex post facto* principle. Although the Court may consider domestic law, it is not required to apply this law. The sources of law that the Court must apply are: international treaties and conventions in force; international customs; the general principles of law; and judicial decision and teachings of the most highly qualified publicists. [81] In short, the writings of international law academics and practitioners can constitute evidence of international law.[82] Moreover if the parties agree, the Court can decide a case *ex aequo et bono*, i.e., without limiting itself to existing rules of international law.[83]

The IMT rejected the German *nullum crimen sige lege* defense because of general principles of justice. "To assert it is unjust to punish those . . . [that] have attacked neighboring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from being unjust punish him, it would be unjust if his wrong were allowed to go unpunished."

B. Application of Retroactive International Law to Sierra Leone

i. Historical Events Leading to the Colonial Rule of Sierra Leone

As the Nuremberg law was a great new case in the book of international law, it follows that the retroactive law applied to Sierra Leone is also a great new case in the book of international law. Like the Jews, the native people and newly freed slaves of Sierra Leone were attacked through colonization without warning.

---

[80] *Id.*
[81] *International Court of Justice; How the Court Works*, International Court of Justice (Apr. 1, 2015, 2:50 PM), http://www.icj-cij.org/court/index.php?p1=1&p2=6.
[82] *Subsidiary Sources and Evidence of International Law*, International Judicial Monitor (Apr. 1, 2015, 4:00PM), http://www.judicialmonitor.org/archive_0408/generalprinciples.html.
[83] *International Court of Justice; How the Court Works*, *supra* note at 73.

British philanthropists established Sierra Leone as a colony for freed slaves during the 1700's. In 1786, a group of British philanthropist created the *Committee for Relief of the Black Poor* to address the needs of indigent people of color on the streets of London.[84] During the same time period, the British abolitionist movement gained momentum. The *Committee for Relief of the Black Poor* considered Africans as foreigners, although they were subjects of the British Crown. [85] The committee, led by Jonas Hanway, changed its focus from outdoor relief to plans for resettling the black poor overseas.[86] Members of the committee were well-connected London businessmen with philanthropic interest. [87] Nevertheless, these men believed the black poor had no future in Britain.[88]

The number of poor black men in every town and village came to the attention of businessman and botanist, Henry Smeathman.[89] In 1786, Smeathmen proposed a plan that was accepted by the *Black Poor Committee* and the British government.[90] He pledged to transport the 'troublesome Blacks back to Africa'—Sierra Leone, to be precise.[91] By doing so, he would forever remove the burden of blacks for the public.[92]

During the same time period, humanitarians like William Wilberforce and Granville Sharp believed a return to Africa would improve blacks' circumstances. [93] Repatriated settlers in Liberia and Sierra Leone were also the humanitarian's hope for spreading antislavery sentiments among indigenous African populations. Humanitarians who were influential in founding the colonies believed that establishing a free settlement on the African coast was the best way to destroy slavery.[94]

The two colonies were envisioned as new communities without slavery, the victims themselves equipped to take charge of their own lives.[95] They were to be Christian *self-governing societies* that spread Christianity to the whole of Africa.[96] In England, debate about ending

---

[84] Will Kaufman ET Al., Britain And The Americas: Culture, Politics and History 150 (Will Kaufman et al. 2005).
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *The Black Poor, The National Archives (Apr. 3, 2015, 2:45 PM), http://www.nationalarchives.gov.uk/pathways/blackhistory/work_community/poor.htm.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Nemata A. Blyden, "Back to Africa:" The Migration of New World Blacks Sierra Leone and Liberia in 18 THE ALTANTIC WORLD 22, 23 (Organization of American Historians ed., 2004).*
[94] *Id.*
[95] *Id.*
[96] *Id.* at 25.

slavery in British colonies often cited Sierra Leone as an example of the capacity of former slaves to govern themselves.[97] Proponents of emigration often cited the need to "civilize" and Christianize Africans.[98] They believed that the only way to end the slave trade was to spread Christianity in Africa.[99]

In 1792 black loyalists, from Nova Scotia settled in Sierra Leone, followed by runaway slaves from Jamaica in 1800's.[100] By this time the early utopian aspects of the project were abandoned, and Freetown was administered by the Sierra Leone Company (formerly known as St. George Company), which minted coins and built a fort.[101] Sierra Leone was restructured several times because of an uneasy collaboration between philanthropists, antislavery activists and self-emancipating former slaves.[102]

In 1808 Sierra Leone officially became a British Crown Colony when land possessed by the Sierra Leone Company was transferred to the Crown.[103] The British acquired Sierra Leone through a series of legislative acts including the British Native Authority Ordinance and the Berlin Conference, similar to Nazi German tactics during the holocaust.[104] The Berlin Conference of 1884-1885, regulated colonization and trade in Africa during the imperialism period. The European powers divided Africa into artificial States that lacked any cultural, linguistic, or ethnic coherence.[105] The Berlin Conference in particular, did not provide a framework for future negotiations nor did it provide a voice for the people of Sierra Leone pertaining to the partitioning of their homelands.[106] Though the Berlin Conference did not initiate European colonization of Sierra Leone, it did legitimize and formalize the process.[107]

The British government along with several other European nations sought to safeguard their commercial interests in Africa.[108] What

---

[97] *Id*. at 26.
[98] *Id*.
[99] *Id.*
[100] *Id.* at 24.
[101] Isaac Land, *"On the Founding of Sierra Leone, 1787-1808."* Branch: Britain Representation and Nineteenth-Century History, http://www.branchcollective.org/?ps_articles=isaac-land-on-the-foundings-of-sierra-leone-1787-1808.
[102] Id.
[103] Id.
[104] Kenneth Little, The Mende of Sierra Leone 37 (Routledge. 4th ed. 2002).
[105] Berlin Conference of 1884-1885, http://www.newworldencyclopedia.org/entry/Berlin_Conference_of_1884-85 (last visited Apr. 17, 2015.
[106] Henry Louis Gates Jr., *Berlin Conference of 1884-1885 in* Encyclopedia of Africa (Oxford University Press, 2010).
[107] *Id.*
[108] *Id*.

ultimately resulted was a hodgepodge of geometric boundaries that divide Africa into fifty irregular countries.[109] The new map of the continent was superimposed over the one thousand indigenous cultures and regions of Africa.[110] Thus new countries, as Sierra Leone, lacked rhyme or reason, divided coherent groups of people and merged disparate groups. [111]

According to the British administration governing the territory, Sierra Leoneans were incapable of independently running the country. [112]

The backwardness of the continent precluded any consideration of independence, but it was widely felt some autonomy and recognition should nevertheless be given to the social and political institutions, which the people knew and felt to be their own. Indirect rule was thus the native administration side of a major body of British thought about Britain's responsibility as colonial.[113]

The perceived *backwardness* of the continent led colonial powers to believe that African countries were not self-sufficient. Thus, African countries, as Sierra Leone, were in dire need of indirect governance.

ii. Sierra Leone's Right to Self-Governance Made Impossible

After sixteen years of independence, the British stripped Sierra Leoneans of their way of life through laws and treaties that made autonomy impossible. These treaties and laws were similar to the anti-Jewish policies of the Third Reich. During the first six years of Hitler's dictatorship, the municipal government adopted hundred of laws, decrees, directives, guidelines, and regulations that increasingly restricted the civil and human rights of the German Jews.[114] Comparably, the British imposed its rule and eliminated Sierra Leonean independence through the Native Authority Ordinance. The Native Authority Ordinance is a series

---

[109] Mangovo Ngoyo, *Africa Nations and Territory Identity: The dismantlement of African Land and the artificial construction of the 1872 Colonial Africa c. -1960 c.,* Federation of Free States of Africa (Apr. 1, 2015, 2:00PM), http://www.africafederation.net/Berlin_1885.htm.

[110] *Id.*

[111] *Id.*

[112] The British administration favored a policy of "indirect rule" whereby they relied on slightly reorganized indigenous institutions to implement colonial policies and maintain order. Rulers who had been "kings" and "queens" became instead "paramount chiefs," some of them appointed by the administration, and then forced into a subordinate relationship. This allowed the crown to organize labor forces for timber cutting or mining, to grow cash crops for export, or to send work expeditions to plantations as far away as the Congo. Sierra Leoneans did not passively accept such manipulations.

[113] Erik K. Ching, Historical Problems of Imperial Africa 134 (Robert O. Collins et al. eds., 1994).

[114] Examples of Antisemitic Legislation 1933-1939, Holocaust Encyclopedia (Mar. 4, 2015, 10:30PM), http://www.ushmm.org/wlc/en/article.php?ModuleId=10007459.

of articles, which sanctioned direct interference and control by British government officers.[115] In taking over Sierra Leone, the British chose to control it through the chiefs.[116] The chiefs were appointed and governed by the British Governor.[117] It is clear that the authority of the British Governor exceeded that of mere advisors.[118] With regards to policy, the governor's reigned supreme. Matters on the disposal of revenue, the issuing of rules and order, and the appointment and dismissal of subordinate officials were subject not only to his guidance but were open to direct intervention if he judged it necessary.[119]

Furthermore, the Governor could remove an uncooperative chief with the hope that the chief would accept the limitation and serve under them without a deep sense of grievance.[120] Such a removal occurred during the Hut Tax War of 1898.[121] Chief, Bai Bureh refused to pay the hut tax imposed by the British under the belief that Sierra Leoneans were not required to pay a land tax to foreigners.[122] As a result, the British stripped him of his title as chief and issued a warrant for his arrest.[123] The political order that once governed the tribes of Sierra Leone no longer existed. Tribes in Sierra Leone were forced to abandon the former ways of life and remain subject to British rule.

The people of Sierra Leone like the Jews of Nazi Germany were attacked without warning. The attack on Sierra Leone was civil in nature and the attack on the Jews was criminal; yet the results were the same, deprivation of life, land, and liberty. Although some scholars may argue the Nazi atrocities outweigh British control in Sierra Leone, retroactivity is not based upon the atrocity but upon whether any doctrine precludes retroactive application in an international court where justice is in question.

C. Violations of Human Rights Are Immoral

The ruling of the Nuremberg trials memorialized the recognition of "crimes against humanity" as customary international law.[124]

---

[115] *See* LITTLE, *supra* note 35, at 137.
[116] *Id*. at 202.
[117] *Id*. at 136.
[118] *Id.*
[119] *Id.*
[120] *Id*. at 137.
[121] Arthur Abraham, *Bai Bureh, The British, and the Hut Tax War*, 7 B.U. J. AFR. STUD. 99, 99 (1974).
[122] *Id.* at 100.
[123] *Id.*
[124] Gwynn Skinner, *Nuremberg's Legacy Continues: The Nuremberg Trials' Influence on Human Rights Litigation in U.S. Courts under the Alien Tort Statute*, 71 ALB L. REV 335, 335-336 (2008) (discussing the impact the Nuremberg Trials have on international law).

According to the IMT, C.C., Law 10 is not limited to punishing those who violate the laws and customs of war; furthermore, the violation of the laws and customs of war are not the only offenses recognized by common international law. [125] The force of circumstance, worldwide interdependence, and moral pressure of public opinion resulted in international recognition that certain crimes against humanity, as the ones committed by Nazi authority, constituted a violation of common international law.[126]

For the first time, a major trial was conducted on an international stage, based solely on the newly created naturalistic philosophy of the separation of legality from morality.[127] The IMT primarily relied on moral reasoning rather than legal reasoning to convict the Nazi offenders. The defendants attempted to shift the focus from universal, objective principles—morality, the rule of law, legality, and justice—to the amorphous subjective legal labyrinth of criminal jurisdiction, superior orders, acts of state, *ex post facto*, *nullum crimen sige lege*, and legal positivism. [128] The IMT reasoned that international concern over commission of crimes against humanity greatly intensified prior to the Nuremberg trials, and was not a recent phenomenon.[129] Consequently, "States are allowed to interfere in the name of international law if 'humanity rights' are violated to the detriment of any single race."[130]

The court cited several occasions when States interceded on the behalf of others subjected to immoral rule. The United Kingdom, France and Russia intervened to end atrocities in the Greco Turkish warfare in 1827. [131] President Van Buren intervened with the Sultan of Turkey in1840 on behalf of the persecuted Jews of Damascus and Rhodes.[132] The French intervened by force to stop religious atrocities in Lebanon in 1861. [133] Several nations protested the governments of Russia and Romania following pogroms, the organized persecution of Jews. [134] Comparably, in 1827 the United States, Germany, and five other powers

---

[125] Nuremberg Judgment, *supra* note 31, at 979.
[126] *Id.*
[127] Ellis Washington, *The Nuremberg Trials: The Death of The Rule of Law (In International Law)*, 49 Loy. L. REV. 471, 494 (2003) (discussing the use of morality rather than law by the Nuremberg Tribunal).
[128] *Id.* at 59.
[129] Nuremberg Judgment, *supra* note 31, at 981.
[130] *Id.* at 982.
[131] Lass F. Oppenheim, *International Law: A Treatise* 229 (Lass F. Oppenheim 2nd ed. 1905).
[132] Elmer Plischke, *U.S. Department of State: A Reference of History* 153-154 (Elmer Plischke, 1999).
[133] Norman Bentwich, *The League of Nations and Racial Persecution in Germany*, 19 Transactions of the Grotius Society 75 (1933).
[134] *Id.*

protested Romania; and in 1915, the German Government joined in a remonstrant to Turkey on account of similar persecutions of Armenians.[135] In 1902 American Secretary of State, John Hay, addressed Romania "in the name of humanity" against Jewish persecution saying, "This government cannot be a tacit party to such international wrongs."[136] In the aftermath of the massacres of Russia in 1903, President Roosevelt stated,

> Nevertheless there are occasional crimes committed on so vast a scale and such peculiar horror as to make us doubt whether it is not our manifest *duty* to endeavor at lest to show our disapproval of the deed and our sympathy with those who have suffered by it. The case must be *extreme* in which such a course is *justifiable*. . . . The cases in which we could interfere by force of arms as we interfered to put a stop to intolerable condition in Cuba are necessarily very few. . . .[137]

Concerning the American intervention in Cuba in 1898, the IMT referenced President McKinley, who stated,

> First, in the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country, belonging to another nation, and therefore none of our business. It is specially *our* duty, for it is right at our door.[138]

The IMT held that the rights of humanitarian intervention, on behalf of the rights of man trampled upon by a State in a manner shocking the sense of man, was long considered to form part of the recognized law of nations.[139] The question of whether such atrocities constituted technical violation of laws and customs of war did not bar prosecution.[140] The acts

---

[135] *Id.*
[136] Antonio A. Cassese Et AL, International Criminal Law: Cases and Commentary 165 (Guido Acquaviva et al. 1st ed. 2011).
[137] Theodore Roosevelt, Presidential Addresses and State Papers of Theodore Roosevelt 179 (Albert Shaw, 1905).
[138] Gabrielle K. McDonald, Substantive and Procedural Aspects of International Criminal Law 259 (Gabrielle K. McDonald & Olivia Swaak-Goldman, 1st ed. 2000).
[139] Nuremberg Judgment, *supra* note 31, at 982.
[140] *Id.*

were of such wickedness and so clearly imperiled the peace of the world that they were deemed to be violations of international law.[141]

As an illustration of crimes against humanity under C.C. Law 10, which international repercussion was recognized as a violation of common international law, the IMT cited "genocide" as defined by the General Assembly of the UN. The resolution provides,

> Genocide is a denial of the right of existence of entire human groups, as homicide is a denial of the right to live of individual human being; such denial of the right of existence shocks the conscience of mankind results in great losses to humanity in the form of cultural and other contributions represented by its groups and is *contrary to moral law* and to aims of the United Nations.[142]

Though the UN General Assembly was not an international legislature at the time, it was the most authoritative organ in existence for the interpretation of world opinion.[143] The IMT found the UN's recognition of genocide, as an international crime, so persuasive that it approved and adopted its conclusion.[144] The IMT concluded that there is "no injustice to persons tried for such crimes [Nazi war crimes]. [Such persons] are chargeable with knowledge that such acts were wrong and punishable when committed."[145]

D. Morality at Nuremberg

According to C.C. Law 10, crimes against humanity are atrocities and offences including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhuman acts committed against any civilian population, or persecutions on political, racial or religious grounds whether in violation of domestic laws of the country where perpetrated.[146]

The Nuremberg Charter represents the first time that crimes against humanity were established in positive law.[147] The IMT rejected the defendants *nullen crimen sine lege* defense and used positive law to

---

[141] *Id.*
[142] *Id.* at 983.
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.* at XIV.
[147] Cherif Bassiouni, *Crimes Against Humanity,* Crimes of War (Mar. 1 2015, 2:20PM), http://www.crimesofwar.org/a-z-guide/crimes-against-humanity/.

justify retroactive application of C.C. Law 10.[148] Critics of the Nuremberg trials argue the IMT overstepped its boundaries by retroactively applying law:

> The antagonism to ex post facto laws is not based on a lawyer's prejudice encased in a Latin maxim... To allow retroactive legislation is to disparage the principle of constitutional limitation. It is to abandon what is usually regarded as one of the essential values at the core of our democratic faith.[149]

Robert Jackson, chief prosecutor at Nuremberg, asserted that nations have a right to develop, retroactively, newer and stronger international law; however, the strongest justifications for the Nuremberg trials are moral.[150] The IMT used morality, rather than simply law to demand punishment of those responsible for the atrocities that included the slaughter of six million Jews.[151] Rather than merely serving as political show trials, the Nuremberg proceedings established victory for the "rule of morality," which evolved to the "rule of law."[152] Justice Jackson rational for prosecuting the Nazi war criminals rested, ultimately, not on legal but moral grounds.[153]

The precedents established by Nuremberg created a foundation for universal ethics.[154] Prior to the Nuremberg trials, international law developed slowly. The use or ethics in Nuremberg started the process of codifying prohibitions against grave injustices.[155] Military tribunals and international governments created thereafter refined these moral rules and transformed them into laws, which govern international legal bodies such as the UN, the European Union and the African Union.[156]

i. The UN Declares Colonization Is a Denial of Fundamental Human Rights: Resolution 1514

---

[148] Thomas W. Simon, The Laws of Genocide: Prescriptions for a Just World 22 (Thomas Simon, 1st ed. 2007).
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *See* Simon *supra* note 50.
[155] *Id.*
[156] *Id.*

On 14 December 1960 the UN General Assembly adopted resolution 1514(XV), the *Declaration on the Granting of Independence to Colonial Countries and Peoples*.[157] The resolution declared that:

> 1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
> 2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
> 3. All armed action or repressive measures of all kinds directed against dependent peoples shall enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
> 4. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.[158]

The General Assembly, like the IMT, relied heavily on moral rhetoric to substantiate its adoption of resolution 1514:[159]

> Conscious of the need for the creation of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion...The General Assembly recognizing that the people of the world ardently desire

---

[157] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.
[158] *Id.*
[159] *Id.*

> the end of colonialism in all its manifestations, convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the universal peace.[160]

During the promulgation of resolution 1514, the United States sought to establish equal rules for colonies and trusteeships, while the British vehemently opposed them.[161] Resolution 1514 eventually passed with an overwhelming majority. Eighty-nine States voted yes, none of the States voted no and nine States abstained.[162] Five out of the nine (Belgium, France, Portugal, Spain and the United Kingdom) abstentions were from States that held the largest percentage of colonial territory. Ironically, three of the four States (France, the United States and the United Kingdom) that abstained were IMT of judges who believed that the rights of humanitarian intervention was long considered to form part of recognized law of nations.[163]

The United Kingdom, which was the largest formal empire in the world during its peak, abstained.[164] According to British Foreign Secretary, Sir Alec Douglas-Home, the United Kingdom abstained from resolution 1514 because of paragraphs 3 and 5:[165]

> 3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
> 5. Immediate steps shall be taken, in Trust and Non-self Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in

---

[160] *Id.*
[161] Mihai M. Ticu, Where International Law Stops 6 (Aug. 12, 2012) (unpublished Master Thesis, Utrecht University) (on file with author).
[162] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.
[163] Nuremberg Judgment, *supra* note 31, at 982.
[164] The British Empire, http://www.britishempire.co.uk (last visited Apr. 1, 2015).
[165]PRO CAB 129/107/53, *See* Ticu, *supra* note 50 at 8.

> order to enable them to enjoy complete independence and freedom. [166]

The British Foreign Secretary believed "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the UN."[167] The United Kingdom claimed that compulsory application of the trusteeship system to existing colonies would amount to interference with the internal affairs of each member state and warned the committee against confusing independence with liberty: [168]

> What the dependent peoples wanted was an increasing measure of self-government; independence would come, if at all, by natural development. Giving independence to *all* colonies would be dangerous for world peace and security.[169]

The United Kingdom was unable to persuade other States to vote against the resolution. The final vote indicated that the General Assembly agreed to the terms and conditions of resolution 1514. The United Kingdom did not fully come to recognize the wrongs of colonization until 2013.

ii. United Kingdom Settles Colonization Dispute with Kenya

On June 6, 2013, for the first time in history, British Foreign Secretary William Hague apologized on behalf of the British government for its colonial wrongdoings.[170] The apology came after Foreign Secretary Hague announced that a settlement was reached between the United Kingdom and Kenyan victims. [171] Foreign Secretary Hague expressed "sincere regret" for torture and abuse committed by British colonial officers against Kenyans in the 1950's. [172] He also announced that the Kenyans would receive a compensation package worth £19.9 million,

---

[166] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.
[167] *See* Ticu, *supra* note 50 at 8.
[168] 10 UNCIO 440. "British subjects, including the prime minister of New Zealand, insisted that dominion status in the British Commonwealth was far finer than independence", Gilchrist 1945, p. 989. *See* Ticu *supra* note 50.
[169] *Id.*
[170] *Britain's Imperial Apology*, World Policy Blog (Mar. 23, 2015, 5:00AM), http://www.worldpolicy.org/blog/2013/06/06/britains-imperial-apology.
[171] *Id.*
[172] *Id.*

allotted to 5,200 Kenyan victims.[173] This payment marks the settlement of a landmark legal case initiated in 2009 by a group of Kenyans who suffered during British colonial rule. [174]

The United Kingdom colonized Kenya between 1901 and 1960.[175] British settlers, who came to Kenya because of its resources and comfortable climate, forced indigenous farmers and herders into marginal land holding or made them work on European-owned farms and plantations.[176]

During the 1950's there was a rebellion against colonial rule.[177] According to Marytn Day, counsel for the Kenyans,

These crimes were committed by British colonial officials and have gone unrecognized and unpunished for decades. They included castration, rape and repeated violence of the worst kind. Although they occurred many years ago the physical and mental scars remain.[178]

Though the Kenyans were victorious in this settlement, the apology was bittersweet. It was made before an almost-empty House of Commons, because eight months prior, a majority of its members affirmed the British Government "had nothing to apologize for, and that it was willing to face down its former colonial subject in court."[179] In addition, while Foreign Secretary Hague expressed "sincere regret," he simultaneously downplayed British colonization:

> We continue to deny liability on behalf of the government . . . for the actions of the colonial administration . . . we do not believe that this settlement establishes precedent.[180]

Though the United Kingdom denied liability, the official apology by the Foreign Secretary indicates that the British recognized colonization was wrong. Further, the mere fact that the United Kingdom opt for a settlement indicates that the Kenyan claim has legal merit, even if it occurred prior to resolution 1514. Moreover, the apology and

---

[173] Press Association, *UK to Compensate Kenya's Mau Mau Torture Victims*, The Guardian, Jun. 6, 2013, http://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture.

[174] *Id.*

[175] Tabora Johnson & Tim McEnroe, *Resisting British Colonialism in Kenya,* Hofstra U. 1, 1 (2014), http://people.hofstra.edu/alan_j_singer/CoursePacks/ResistingBritishColonialisminKenya.pdf.

[176] *Id.*

[177] *Id.*

[178] *See* Press Association, *supra* note 55.

[179] *Id.*

[180] *See* Britain's Imperial Apology, *supra* note 54.

compensation package implies that the United Kingdom's recognition of its immoral act committed against the Kenyan victims.

iii. Other Nations Settle Colonial Disputes with Their Former Colonial Ruler

Though the compensation and apology was laudable, the British-Kenya settlement was not the first of its kind. After World War II, several German leaders were brought before the IMT to legally atone for their war crimes.[181] Financial penance followed, and the first major reparations deal between Germany and Israel was signed in 1952 for slave labor and the persecution of the Jews.[182] Colonial powers, particularly the United Kingdom, largely escaped such scrutiny.[183] However, in the last decade, former colonial subjects and their descendants brought several judicial claims.

In rare cases, financial reparation followed, such as the 2011 case in which the Dutch government was ordered to compensate those affected by the 1947 Rawagede massacre in Indonesia.[184] In other cases, the result is an apology, as demonstrated in 2004 when Germany apologized to Namibia (formerly Southwest Africa) for the colonial genocide, which killed 65,000 Herero people.[185] In that case, the Germans accepted their historic and moral responsibility and the guilt incurred by Germans at that time."[186] Although Germany gave no financial compensation to victims, it promised aid in land reform.[187] Another case involving an apology occurred on August 2, 2010 when Japan apologized to South Korea for its brutal colonial rule.[188] More recently, fourteen Caribbean islands are bringing suit against Britain, Holland and France for slavery reparations.[189] Though those cases are pending, there are Caribbean countries already receiving reparations.[190] Sierra Leone too deserves reparations for its brutal past.

---

[181] Nicholas Balabkins, *West Germany's Role in The Israeli Economy: The Views of Mr. F. E Shinnar*, Bd. 124 H. 2., 403, 403-406 (1968).
[182] *Id.*
[183] *See* Britain's Imperial Apology, *supra* note 54.
[184] *Id.*
[185] Andrew Meldrum, *German Minister Says Sorry for Genocide in Namibia*, The Guardian, Aug. 15, 2004, http://www.theguardian.com/world/2004/aug/16/germany.andrewmeldrum.
[186] *Id.*
[187] *Id.*
[188] Martin Fackler, *Japan Apologizes to South Korea on Colonization*, The New York Times, Aug. 10, 2010, http://www.nytimes.com/2010/08/11/world/asia/11japan.html?_r=1.
[189] *14 Caribbean Nations sue European Countries for Slavery Reparations,* Al Jazeera, Sep. 27, 2013, http://america.aljazeera.com/articles/2013/9/27/14-caribbean-nationssueeuropeancountriesforreparationsoverslaver.html.
[190] *Id.*

iv. The People of Sierra Leone Also Deserve a Colonial Settlement

Sierra Leoneans endured abuses by British colonizers during the United Kingdom's occupation of Sierra Leone. In the first half of 1800's, official reports from the Sierra Leone on the *Hut Tax War of 1898* explain, "due to the refusal of one Chief, Bai Burah to pay the hut tax, an insurrection broke out in the Protectorate . . . all evidence indicates that Bai Bureh was not the originator of the war."[191] In 1896, a protectorate was unilaterally and fraudulently proclaimed of the colony of Sierra Leone.[192] Chiefs and people received the proclamations with misgivings, and a plethora of petitions were signed against many of the ordinance provisions.[193] The most common request was to rescind the tax imposed on homes. Only one of twenty-four chiefs signed one petition of the proposed ordinances; the lack of local support clearly demonstrates that the new way of life would eventually destroy Sierra Leone's fabric of society.[194]

Despite the insurrection, Governor Cardew, a British officer, proceeded to collect tax.[195] He used force to suppress some chiefs and the local people who resisted the tax.[196] After Bai Bureh initiated the tax boycott, Governor Cardew convinced District Commissioner Sharpe to capture Bai Bureh. Nevertheless, after several failed attempts to capture Bai Bureh, Sharpe opened fire on a group of people at Romani initiating the Hut Tax War.[197] This war was one of many atrocities faced by Sierra Leoneans when under colonial rule. Thus, if the British are unwilling to compensate Sierra Leone for its colonial atrocities imposed by the British government, Sierra Leone is able to go before the ICJ for the retroactive application of 1514.

2.5 RETROACTIVE APPLICATION OF 1514 IN ICJ

---

[191] *See* ABRAHAM, *supra* note 111, at 99.
[192] *Id*. at 102.
[193] *Id*.
[194] *Id*.
[195] Frederic Cardew served as the British Governor of Sierra Leone between 1894 and 1897. Governor Cardew, who came to Freetown in March 1894, was tasked with establishing a Protectorate administration. His chief difficulty was financial. As such, some sort of direct taxation seemed, to Governor Cardew, unavoidable. Between 1851 and 1872, house, land and road taxes had been levied in the Colony; but these and provisions for exacting forced labour on the roads from defaulters, had been bitterly resented by many Creoles, J. D. Hargreaves, *The Establishment of the Sierra Leone Protectorate and the Insurrection of 1898*, 12, No. 1. 56, 61 (1956).
[196] *See* ABRAHAM, *supra* note 111, at 99.
[197] *Id*.

In June 1945, the UN established the ICJ. The ICJ is the principal judicial organ of the UN.[198] The court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinion on legal questions referred to it by the UN organs and specialized agencies.[199] The Court is composed of fifteen judges, who are elected for terms of office for nine years by the UN General Assembly and the Security Council.[200]

Since 1960, the ICJ produced two advisory opinions regarding resolution 1514: the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276(1970) and,* Advisory Opinion ruling on *Western Sahara*.[201] As such, interpretation of resolution 1514 is limited to information expressly stated in the opinion. In Namibia the court was of the opinion,

> 1. That, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus part put an end to its occupation of the territory.
> 2. That State Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and that invalidity of its acts on behalf or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of, or lending support or assistance to such presence or administration.
> 3. That is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in action which has been taken by the United Nations with regard to Namibia.[202]

---

[198] *The Court*, International Court of Justice (Apr. 2, 2015, 3:05 PM), http://www.icj-cij.org/court/index.php?p1=1.
[199] *Id*.
[200] *Id*.
[201] *See* McWhinney, *supra* note 28.
[202] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 78 (June 21).

A. Legal Consequences for States of the Continued Presence of South Africa in Namibia Notwithstanding Security Resolution 276 (1970)

The advisory opinion emanated from the UN Security Council, which decided to submit it by resolution 284. Resolution 284 consisted of a request that the ICJ determine "the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Resolution 276(1970)."[203]

Namibia was colonized in the 1800's.[204] Germany acquired Namibia, formerly Southwest Africa, in the Zanzibar Treaty of 1890.[205] The arrangement between the United Kingdom and Germany defined their respective spheres of influence in eastern Africa.[206] The Treaty provided for Germany's cession to the United Kingdom of its claims to the Zanzibar Protectorate and for the United Kingdom's assent to Germany's acquiring the Caprivi Strip, a narrow strip belonging to present-day Namibia, north of what is now Botswana, which gave German South West Africa access to Zambezi River.[207]

After the defeat of Germany in World War I, its African possessions were distributed amongst the victorious allied powers under the authority of Article 22 of the Covenant of the League of Nations.[208] Consequently, South Africa occupied German South West Africa (now Namibia).[209] The League of Nations officially became the United Nations on October 24, 1945, when the UN Charter was ratified by China, France, the Soviet Union, the United Kingdom and the United States and by the majority of signatories.[210] Thereafter, the Security Council adopted various resolutions, including resolution 276 (1970), declaring the continued presence of South Africa in Namibia to be illegal.[211]

The court held South Africa responsible for having created and maintained the situation in Namibia; thus, South Africa should withdraw

---

[203] S.C. Res. 284, ¶ 4, U.N. Doc. S/RES/ 284 (July 29, 1970).
[204] *Mandate: Legal of Nations*, Encyclopedia Britannica (Feb. 1, 2015, 1:00 PM), http://www.britannica.com/EBchecked/topic/361608/mandate.
[205] *Zanzibar Treaty*, Encyclopedia Britannica (Feb. 1, 2015, 2:00 PM), http://www.britannica.com/EBchecked/topic/655832/Zanzibar-Treaty.
[206] *Id*.
[207] *Id*.
[208] *Mandate: Legal of Nations*, Encyclopedia Britannica (Feb. 1, 2015, 1:00 PM), http://www.britannica.com/EBchecked/topic/361608/mandate.
[209] *Namibia: South African Mandate (1915-1945)*, Electoral Instituted for Sustainable Democracy in Africa (Apr. 1, 2015, 5:13 PM), http://www.content.eisa.org.za/old-page/namibia-south-african-mandate-1915-1945.
[210] *History of the United Nations*, United Nations (April 2, 2015, 2:35 PM), http://www.un.org/en/aboutun/history/.
[211] *Id*.

from the territory.[212] According to the court, by occupying the territory without a title, South Africa incurs international responsibility arising from violation of an international obligation.[213] South Africa also remains accountable for any violations of the rights of the people of Namibia, or of its obligations under international law towards other States in respect to exercise of its powers in relations to the territory.[214]

Declaration 1514 was at the core of the Security Council and the General Assembly's legislative initiatives that provided a legal basis for the ICJ's opinion concerning Namibia.[215] The court stressed that binding determination made by a competent organ of the UN, to the effect that a situation is illegal, cannot remain without consequence.[216] The court recognized that the mandate, which placed German territories under the administration of a League of Nations territory, was terminated by the decision of the UN in which a supervisory authority was vested.[217]

In 1966, the General Assembly adopted *UN Resolution 2145 (XXI),* which terminated South Africa's possession of Namibia.[218] Resolution 2145 was adopted after the mandate (1924); nevertheless, the court held,

South Africa is accountable for violations of the rights of people of Namibia or of its obligation to Namibia under international law towards other States in respect to the exercise of its sovereign power in relation to Namibia.[219]

The court retroactively applied international law and held South Africa liable for international human rights violations.[220] Furthermore, the court did not place limitations on whether South Africa is responsible for human rights violations before or after UN Resolution 2145. Accordingly, South Africa is liable for human rights violations that occurred in Namibia before and after the Resolution 2145.[221] In addition to holding South Africa accountable for human rights violations that occurred before UN Resolution 2145, the court also held UN-member States and non-member States have responsibility towards Namibia. UN-member States are under obligation to recognize the illegality and

---

[212] *Id.* at 80.
[213] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276, *supra* note 62, at 192.
[214] *Id.*
[215] *See* McWhinney, *supra* note 28, at 2.
[216] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276, *supra* note 192, at 80.
[217] *Id.* at 79.
[218] *Id.*
[219] *Id.* at 80
[220] *Id.*
[221] *Id.*

invalidity of South's Africa's continued presence in Namibia.[222] According to the court, member States are to refrain from lending support or any form of assistance to South Africa with reference to its occupation of Namibia.[223] Furthermore, member States are under obligation to abstain from entering into economic and other forms of relations with South Africa on behalf of concerning Namibia, which may entrench its authority over the territory.[224]

As for non-member States, the court held that Articles 24 and 25 of the Charter do not bind them, but under resolution 276 (1970), they should give assistance in the action taken by the UN with regard to Namibia.[225] It follows that no State should enter into relations with South Africa concerning Namibia or expect the UN or its members to recognize the validity or effects of any such relationship.[226] The mandate was terminated by a decision of the international organization in which the supervisory authority was vested, thus non-member States must act accordingly.[227]

The court was adamant about condemning South Africa's presence in Namibia and expressly held South Africa is liable for *all* human rights violations that occurred during or after UN resolution 2145.[228] Similarly, the IMT held Nazi war criminals responsible for war crimes and the principle *nullen crimen sige lege*, when properly understood and applied, constitutes no legal or moral barrier to *Nuremberg*.[229]

i. Application of 1514 to Sierra Leone

The holding in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* coupled with *Nuremberg*, demonstrate that retroactive legislation does receive complete recognition in international law.[230] Consequently, States that commit human rights violations may be held accountable regardless of when the resolution condemning the act took place. Since UN resolution 1514 identifies colonization as a denial of fundamental human rights, the United Kingdom, like South Africa, is accountable before the ICJ for the

---

[222] *Id*.
[223] *Id*.
[224] *Id*.
[225] *Id*.
[226] *Id*.
[227] *Id*.
[228] *Id*.
[229] Nuremberg Judgment, *supra* note 31, at 967.
[230] *Id*.

colonization of Sierra Leone, even though colonization occurred before resolution 1514 was adopted.[231]

Like Namibia, Sierra Leone was colonized in the 1800's.[232] Much like the Zanzibar Treaty, British procurement of Sierra Leone, violates UN Resolution 1514, because the subjection of people to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, contrary to the Charter of the UN.[233] Accordingly, the United Kingdom is liable for international human rights violations that occurred in the territory of Sierra Leone before the adoption of Resolution 1514. Moreover, the United Kingdom violated Resolutions 1515, 1804, 3201, 3203, and 3281, subsequent resolutions that demonstrate the purpose of resolution 1514 by providing an inevitable legal linkage between self-determination and its goal of decolonization.[234] Just as South Africa is liable for *all* of its human rights violations in Namibia, so is the United Kingdom liable for all human right violations that occurred in Sierra Leone prior to and after the adoption of Resolution 1514.

As noted previously, the natives of Sierra Leone and former slaves were stripped of sovereignty without regard to previously established tribal systems of government. During British colonization of Sierra Leone, the people were denied the right to dispose of their own wealth and natural resources, a direct violation of UN Resolution 1515.

Resolution 1514, the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the UN and is an impediment to the promotion of world peace and co-operation.[235] Though the General Assembly adopted Resolution 1514 after Sierra Leone was colonized by Britain, Resolution 2145 was also adopted after South Africa was mandated to leave Namibia. Nevertheless, the ICJ held that liability is not limited to a particular time frame.[236] Therefore, as pertaining to

---

[231] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.

[232] *German South West Africa*, Encyclopedia Britannica (Apr. 4, 2015, 10:00PM), http://www.britannica.com/EBchecked/topic/230970/German-South-West-Africa.

[233] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.

[234] *See* McWhinney, *supra* note 28 at 3.

[235] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.

[236] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276, *supra* note 192, at 80.

Sierra Leone, retroactive application of Resolution 1514 is not barred. The United Kingdom is liable for colonization of Sierra Leone.[237]

B. Western Sahara Advisory Opinion of 16 October 1975

In the *Western Sahara Advisory Opinion*, the court settled the three-way dispute over the territory between Spain, Morocco and Western Sahara (Modern day Mauritania).[238] Spain alleged its occupation of the territory was valid under the legal concept of *terra nullius*, "land belonging to nobody."[239] In law, "occupation" was a means of peaceably acquiring sovereignty over territory otherwise than by cession or succession; it was a cardinal condition of a valid "occupation" that the territory should be *terra nullius*.[240] According to the State practice of that period, territories inhabited by tribes or peoples having a social and political organization were not regarded as *terrae nullius*. Under such structure, sovereignty was not gained through occupation, but through agreements with local rulers.[241] Morocco also asserted legal ties between Western Sahara and validated "legal ties" according to resolution 3292. [242] Resolution 3292 provided the ICJ with authority to give an advisory opinion on the following questions:

1. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius)*?
2. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?

In the case of Spain, evidence showed (a) that at the time of colonization Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them; (b) that Spain did not believe it was establishing its sovereignty over *terra nullius;* therefore, the *Order of 26 December 1884*, which the King of Spain alleged formed a basis of agreements entered into with local chiefs or tribes, was invalid. [243]

---

[237] Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 26.
[238] Western Sahara, Advisory Opinion, 1975 I.C.J. 100 (October 16).
[239] *Id*. at 101.
[240] *Id*.
[241] *Id*.
[242] I*d*. at 102.
[243] *Id*. at 102

Consequently, the court held Western Sahara was not a territory belonging to *no one* (*terra nullius*) during the colonization of Spain.[244]

Sierra Leone became a colonial territory of a western European country in the late 1800's. The *Treaty of 1807* marked the end of independent colonial ventures like the "Colony of Freedom" and the joint-stock venture the Sierra Leone Company that provided the former slaves with means of obtaining wealth.[245] The treaty was signed at a point in time (July 1807) when the British Government was largely in control of the Sierra Leone Company, and resolved to take full control on January 1, 1808.[246] The task of colony building and administration were now deemed to be the job of the British Crown and British Government, and ultimately the emerging British Crown.[247] What is clear from the *Treaty of 1807* is the Colony of freed slaves' right to the peninsula cession, was superseded by conquest, which means the British Crown ruled Sierra Leone with firm unchallenged grip.[248]

i. Application of the Western Sahara Advisory Opinion to Sierra Leone

Like Western Sahara, Sierra Leone was socially organized in tribes under chiefs competent to represent them.[249] Accordingly the British, like Spain did not come to obtain the territory under the legal concept of *terra nullius*, cession or succession. The court in *Western Sahara Advisory Opinion* found no legal ties between Western Sahara and Spain.[250] Though the court found legal ties between Morocco and Western Sahara, Morocco did not display effective and exclusive State activity in Western Sahara. Accordingly, Morocco did not have territorial sovereignty.[251]

In Sierra Leone's case, the United Kingdom, like Morocco, did not possess territorial sovereignty in Sierra Leone.[252] Though the government had legal ties to the territory of Sierra Leone, like Morocco, those ties did not amount to possession and uninterrupted exercise of authority that would warrant occupation. Much like Morocco, evidence of British authority is limited to the allegiance of some chiefdoms, taxes, and acts of military resistance to foreign penetration and recognition of treaties.

---

[244] *Id.*
[245] Tcho M. Caulker, *The African-British Long Eighteenth Century: An Analysis of African-British Long Century* 46 (Tcho M. Caulker, 2009).
[246] *Id.*
[247] *Id.*
[248] *Id.* at 47.
[249] *Id.* at 47.
[250] Western Sahara Advisory Opinion, *supra* note 230, at 102.
[251] *Id.*
[252] *Id.*

According to historian Joe Ali, the Temne people of Sierra Leone relinquished all ties to the United Kingdom rule following the *Treaty of 1807*:

> After a fierce struggle the company's forces gained the upper hand and went on the offensive. Many Temne settlements were destroyed and King Tom[Chief of Temne] fled.[253]

After defeat, the Temne signed a peace treaty with the British, by which they renounced all claims to the land.[254] The people of Temne expressed further discontentment with British authority in the Hut Tax War of 1898. As noted earlier, under the leadership of Chief Bai Bureh, the Temne people resisted British authority and allegiance.[255] The action by the native people in 1807 and 1898 indicates the native chiefdoms intended to have no legal ties to the United Kingdom and any that existed were forced upon them.

Appropriately, neither the internal nor international acts relied upon by the United Kingdom reveal international recognition of legal ties or territorial sovereignty between the United Kingdom and Sierra Leone. Just as the *Western Sahara Advisory Opinion* concluded that colonizers had no legal ties to Western Sahara, so also the United Kingdom did not have any legal ties to Sierra Leone.

PART II
BRITISH COLONIZATION OF SIERRA LEONE DEROGATES FROM THE HIGHEST FORM OF INTERNATIONAL LAW (JUS COGENS)

3. THE RIGHT TO SELF DETERMINATION: A NORM OF JUS COGENS

After resolution 1514 was adopted in 1960, the UN General Assembly adopted a series of resolutions over the next twenty-five years that furthered anti-colonial sentiments declared in resolution 1514. The resolutions are as follows: resolution 1515 (XZ) of 15 December 1960, on the sovereign right of States to dispose of their own wealth and natural resources; resolution 1803 (XVII) of 14 December 1962, on States' permanent sovereignty over those natural resources; resolution 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, the Declaration on the Establishment of a New International Economic Order; and resolution 3281 on 12

---

[253] *See* CAULKER, *supra* note 235 at 48.
[254] *Id*.
[255] *See* ABRAHAM, *supra* note 111, at 101.

December of 1974, the Charter of Economic Rights and Duties of States. [256]

Declaration 1514's subsequent history elevated its juridical status to the rank of imperative principles of international law *(jus cogens).*[257] As such, Declaration 1514 is binding on the UN authoritative interpretation of the Charter's norms and is now part of general international law.[258] *Jus cogens*, literally meaning "compelling law," is a technical term given to those norms of general international law that are held to be hierarchically superior.[259] The doctrine of international *jus cogens* is heavily influenced by natural law concepts, which maintain that States cannot be absolutely free in establishing their contractual relations. States were obliged to respect certain fundamental principles deeply rooted in the international community.[260] The power of a State to enter into treaties is quashed when the treaty derogates from a customary norm of *jus cogens.*[261] Accordingly, *jus cogens* are rules that correlate to the fundamental norms of international public policy that must not be altered unless a subsequent norm of the same standard is established. So, *jus cogens* are hierarchically superior when compared to other ordinary rules of international law. [262] Therefore, rules contrary to the principle of *jus cogens* may be regarded as void, since the rules oppose fundamental norms of international public policy.

The principle of *jus cogens* was integrated to the UN when the General Assembly adopted the Vienna Convention on the Law of Treaties.[263] According to Article 53 of the Convention,

A treaty is void, if at the time of its conclusion it conflicts with a peremptory norm of general international law. For the purpose of the

---

[256] Concerned Action for Economic Development of Less Developed Countries, G.A. Res. 1515 (XV), U.N.Doc. A/RES/1515 (Dec. 15, 1960), Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII) U.N.Doc. A/RES/1803 (Dec. 14, 1962), Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201 (S-VI), U.N.Doc. A/RES/S-6/3201 (May. 7, 1974), Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3202 (S-VI), U.N.Doc. A/RES/S-VI/3202 (May. 1, 1974), Charter of Economic Rights and Duties of States, G.A.Res. 3281 (XXIX), U.N.Doc. A/RES/XIXX/3281 (Dec. 12, 1974).

[257] *See* McWhinney, *supra* note 28. at 2.

[258] *Id*.

[259] Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under The U.N. Charter*, 3 Santa Clara J. Int'L 72, 73 (2005) (discussing jus cogens as superior international law).

[260] Gennady M. Danilenko, *International Jus Cogens: Issues of Law-Making*, 2 Eur. J. Int'L 42, 44 (1991) (discussing influence of natural law on jus cogens).

[261] David Kennedy, International Legal Structures 25 (David Kennedy, 1987).

[262] *See* Hossain, *supra* note 249.

[263] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, Mar. 21, 1985, Doc. A/CONF.129/15.

present convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of [S]tates as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. [264]

In short, a treaty is no longer an international legal document, if at the time of enactment it conflicts with the norms of *jus cogens,* which are peremptory in nature. The Convention provides four criteria for a norm to be *jus cogens*: (1) status as norm of general international law; (2) acceptance by the international community of States as a whole; (3) immunity from derogation; and (4) modifiable only be a new norm having the same status. The United Kingdom was one of forty-three parties that ratified the convention on July 20, 1991.[265]

Resolution 1514 and the subsequent acts achieved the status of *jus cogens*. There are several important factors that prove self-determination is a custom of *jus cogens,* including Article 1(2) of the UN Charter as well as Article 1 of the two 1966 Covenants.[266] According to the Article I of the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR):

> All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[267]

Thus, Sierra Leone had the right to self-determination when United Kingdom colonized it. The ICJ also played an important role in the development of self-determination as a custom of *jus cogens.* Numerous cases discussed the principal, adding weight to self-determination as a norm and exploring its application. For example, in the *Case Concerning East Timor* (*Portugal v Australia*) the ICJ found that self-determination is an obligation *erga omnes,* towards all.[268] In furtherance of the self-determination obligation, the ICJ in the *Western Sahara Advisory Opinion* held,

> The decolonization process envisaged by the General Assembly is one, which will respect the right of the

---

[264] *Id*.
[265] *Id*.
[266] U.N. Charter art. 1, para. 2. ICESCR (n 37).
[267] International Covenant on Economic, Social and Cultural Rights, G.A. Res.2200A (XXI), U.N.DoC A/RES/2200 (XXI) (Jan. 3, 1976).
[268] Case Concerning East Timor (Portugal v Australia), Advisory Opinion, 1995 I.C.J. 102 (June 30).

> population of Western Sahara to determine their future political status by their own expressed will. The right to self-determination . . . leaves the General Assembly a measure of discretion with respect to the form and procedures by which it is to be realized. [269]

In that case, the ICJ recognized that the colonizers' invasion was a breach of self-determination, a precedent established by UN legislation. The precedent set by both the UN and the ICJ, fundamentally shape how self-determination operates as a right and thus solidified it as *jus cogens*. Since self-determination achieved the status of *jus cogens*, resolution 1514 also achieved the status of *jus cogens*. Consequently, the United Kingdom's colonization of Sierra Leone violated *jus cogens*—the highest form of international law.

PART III
REMEDIAL COLONIZATION MEASURES FOR SIERRA LEONE

4. RESTORATIVE JUSTICE

Restorative justice as a remedy for international wrongs is a recent phenomenon. The emergence of restorative justice is an alternative model to Western, court-based criminal justice.[270] The Western criminal justice system features principles of objectivity and consistency, in that an impartial judge or jury deliberates a case on the basis of all available evidence and applies the law based on its text, accepted interpretation, and common practice.[271] Since the crime is considered the domain of the state, there is only a limited role for victims and offenders to the present their side of the story.[272] In the 1970's, out of frustration with the formal court- based justice system, practitioners began to experiment with alternative practices and ideas. [273] There is no consensus among restorative justice practitioners and scholars on a definition. However, according to Dr. Paul McCold, founding faculty member of the International Institute for Restorative Practices,

---

[269] Western Sahara Advisory Opinion, *supra* note 230, at 102.
[270] Michael Wenzel ET AL., *Retributive and Restorative Justice*, 32 L. & HUM. BEHAV. 375, 375 (2008).
[271] *Id*. at 376.
[272] *Id*. at 377.
[273] *Id*.

> Restorative justice is a process involving the direct stakeholders in determining how best to repair the harm done by offending behavior.[274]

Violations of laws take many forms, ranging from the most heinous crimes to trivial breaches of norms.[275] Whatever the natures of the transgression, victims are not only deprived of something due to them (life, property, respect, etc.), but also law or norm is violated. [276] Consequently, on occasion when it is possible to return what was lost or undo the harm, the fact remains that a rule-violation occurred.[277] The wrongdoing itself, if intentional and blameworthy, is an injustice that victims and observers believe should be addressed in addition to restitution for the victim's loss. [278]

A. Application to Sierra Leone

As mentioned before, Sierra Leone is one of the poorest countries in the world.[279] Disastrous governance over decades and mismanagement of the country's diamond resources accelerated Sierra Leone's downward spiral into poverty.[280] The government, whether democratic, one party or a military junta, primarily consisted of elites enriching themselves and their patronage with little effort to use the country's resources for the good of its people.[281] As such, Sierra Leone failed to fulfill the functions of a normal state, including providing services and security to its citizens.[282]

The presence of diamonds greatly exacerbated the competition for resources within the country, strengthening the power and autonomy of various traditional chiefs, political cliques and clans (including several powerful Lebanese families) and armed militias, which presidents sought to manipulate and control.[283] Each of these factors contributed to Sierra Leone's downfall; however, political corruption and manipulation of the countries resources began when the British violated international law by colonizing Sierra Leone.

---

[274] Paul McCold ET. AL. Restorative Justice Theory Validation, in Restorative Justice: Theoretical Foundations 110 (Weitekamp & Kerner eds., 2002).
[275] *See* WENZAL, *supra* 260 at 376.
[276] *Id*.
[277] *Id*.
[278] *Id*.
[279] *About Sierra Leone*, United Nations Development Programme in Sierra Leone (Apr. 1, 2015), http://www.sl.undp.org/content/sierraleone/en/home/countryinfo.html.
[280] Carol Lancaster, *We Fall Down and Get Up: State Failure, Democracy and Development in Sierra Leone*, in Center for Global Development Essay 1, 3 (2007).
[281] *Id*.
[282] *Id*.
[283] *Id*.

The United Kingdom violated international law when it declared Sierra Leone a crown colony and suppressed Sierra Leone's right to self-determination in 1808. Colonial governing officials in Sierra Leone were the first recognized governing body to exploit the nation's resources in complete disregard for human rights for personal gain. Consequently, during the decolonization era, Sierra Leonean political officials followed the corrupt pattern established by the British. As such, though Sierra Leone achieved independence, the people were once again subject to human rights violations by the government for the benefit of political elites. Instead of breaking the trend of political corruption established by the British, Sierra Leonean officials continued exploiting the country's resources at the expense of the well-being of the people.

Typically, British exploitation of the country was validated by an act. For example, in 1927, the British government enacted the *Mineral Ordinance*, which vested control of all minerals in the Crown.[284] In justifying its position towards mineral exploitation, the colonial government maintained,

> That it was better placed to negotiate mining concession with corporate entities rather than traditional leaders—paramount chiefs and their subordinates. [285]

Traditional leaders were not involved in negotiations for industrial diamond concessions.[286] In 1931 the colonial government, like the Sierra Leone government of 1970, granted select mining rights to foreign investors. *Ordinance 22 of 1935* granted the Consolidated African Selection Trust (hereinafter CAST) exclusive prospective and mining rights.[287] CAST is a subsidiary of the Selection Trust Group with shares held by De Beers Consolidated Miners Limited of South Africa.[288] The United Kingdom's monopoly of the Sierra Leone diamond mines contradicted the initial mission of Sierra Leone as a s*elf-governing society* and violated UN resolution 1515 which states,

> Bearing in mind its resolution 1515 (XV) of 15 December 1960, in which it recommended that the

---

[284] Ayodele S. Wilson, Diamonds, a Resource Curse? the Case of Kono District in Sierra Leone, (Apr. 15, 2015) (published at Michigan State University).
[285] *Id.*
[286] *Id.*
[287] *Id.*
[288] *Id.*

> sovereign right of every State to dispose of its wealth and its natural resources should be respected.

Considering that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States.[289]

The territory that British philanthropist envisioned as a self-governing community that would spread Christianity to Africa developed into a British governed diamond-producing colony.[290]

Manipulation of the diamond industry at the expense of human rights began in 1935, twenty-six years before Sierra Leone became independent. Consequently, during decolonization, Sierra Leone political officials adopted corrupt practices implemented by the British colonial authority during colonization. For example, in 1970, Prime Minister Siake Stevens allowed Jamil Said Mohammed, a businessman of mixed Sierra Leonean-Lebanese heritage and Siaka Stevens' close business associates, to buy 12% of the government's mining shares without any open bidding process.[291] In effect, Jamil Mohammed controlled 6.12% of the entire company's shares.[292] Corrupt practices as such led to the civil war of 1991. Thus, the civil war was merely a symptom of British corruption that began in 1808. Like the Ebola virus that devastated West Africa in 2014, corruption gradually weakened Sierra Leone's infrastructure between 1808 and 1991.[293]

5. CONCLUSION

The problem of corruption in Sierra Leone is multifaceted and requires multiple approaches including restorative justice. Historically, the international community primarily focused on the symptoms of corruption in Sierra Leone, (i.e., the civil war) rather than the country itself or the cause of corruption, colonization. As a result, efforts to reconcile Sierra Leone's corrupt past failed. In order for Sierra Leone to rise from the ashes of corruption, the international community must first acknowledge that the United Kingdom violated international human rights law by colonizing Sierra Leone and exploiting the nation's resources. The United Kingdom must then take responsibility for *all*

---

[289] Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII) U.N.Doc. A/RES/1803 (Dec. 14, 1962),
[290] *See* BLYDEN, *supra* note 33, at 26.
[291] *See* KARGBO *supra* note 6.
[292] *Id*.
[293] Ebola Virus Disease, *World Health Organization* (Apr. 4, 2015), http://www.who.int/mediacentre/factsheets/fs103/en/.

human rights violations it subjected the people of Sierra Leone, as South Africa did in Namibia. For no matter the nature of the transgression, victims of Sierra Leone were deprived of life, liberty and respect. This deprivation is a violation of resolution 1514.

Retroactive implementation of resolution 1514 against the United Kingdom will not solve each problem in Sierra Leone. However, reconciling the historical injustices will lay the foundation for accountability and growth. For example in the aftermath of apartheid in South Africa, Truth and Reconciliation Commissions (hereinafter TRC) were established to investigate gross human rights violations that were committed from 1960 to 1994.[294] The TRC was empowered to grant amnesty to state and liberal movement perpetrators who confessed their crimes truthfully and completely to the commission.[295] South Africa's transition from apartheid to democracy with minimal bloodshed and political stability is widely hailed as one of the most successful transformations in the world.[296] Currently, South Africa is one of the most diverse and wealthiest countries on the continent.[297] South Africa successfully overcame apartheid only after reconciling the past by recognizing the historical injustices of apartheid.

Sierra Leone, like South Africa, has a corrupt history that began with colonization. In order for Sierra Leone to overcome corrupt governance, poverty and the civil war, that divided the country, the international community must address the root cause of the problem,

---

[294] James L. Gibson, *The Truth about Truth and Reconciliation in South Africa*, 26 Int'l POL. SCI. REV. 341, 341 (2005).
Apartheid was a system of legally enforced racial segregation in South Africa between 1948 and 1990. The National Party that controlled the government formalized and expanded segregationist policies that had existed less formally under colonial rule. Institutionalized racism stripped South African blacks of their civil and political rights and instituted segregated education, health care, and all other public services, only providing inferior standards for blacks and other non-Afrikaans. Internal resistance was met with police brutality, administrative detention, torture, and limitations on freedom of expression. Opposition groups, such as the African National Congress (ANC) and other movements, were banned and were violently repressed. After a series of international sanctions – and the end of the Cold War – a mostly peaceful transition from the Apartheid system started with a series of negotiations between the government party and the ANC between 1990 and 1993. Democratic elections were held in 1994, and an interim constitution was passed.
[295] Truth Commission: South Africa, http://www.usip.org/publications/truth-commission-south-africa (last visited Apr. 1, 2014).
[296] James L. Gibson, *The Truth about Truth and Reconciliation in South Africa*, 26 Int'l POL. SCI. REV. 341, 341 (2005).
[297] Max Fisher, *A Revealing Map of the World's Most and Least Ethically Diverse Countries,* The Washington Post, May. 16, 2013, http://www.washingtonpost.com/blogs/worldviews/wp/2013/05/16/a-revealing-map-of-the-worlds-most-and-least-ethnically-diverse-countries/, Africa's new Number One, http://www.economist.com/news/leaders/21600685-nigerias-suddenly-supersized-economy-indeed-wonder-so-are-its-still-huge (last visited Apr. 4, 2015).

which stemmed from British colonization in 1808. By holding the United Kingdom accountable for injustices of colonization in Sierra Leone, the ICJ will uphold international law while simultaneously initiating effective reconciliatory measures that cultivate growth in Sierra Leone.

Precedent established by the ICJ in *Legal Consequences for States of the Continued Presence of South Africa in Namibia* and the *Western Sahara Advisory Opinion* indicate that the court has standing to hear a human rights case brought by Sierra Leone against the United Kingdom for colonization in violation of resolution 1514. British colonization of Sierra Leone violated international law and created a pattern of corrupt practices that still plague the country more than 200 years after the British first arrived. Therefore Sierra Leone, with support from the international community, should initiate action against the United Kingdom for violating resolution 1514, a peremptory norm of *jus cogens*.

BIBLIOGRAPHY

1. BOOKS

Antonio A. Cassese Et AL, International Criminal Law: Cases and Commentary 165 (Guido Acquaviva et al. 1st ed. 2011).

Cherif M. Bassiouni, *Nuremberg: Forty Years After,* 80 Soc'y Int'L Proc. 61, 61 (1986) (discussing the Tribunal's rejection of the *nullum crimen sine lege* Latin maxim).

David Kennedy, International Legal Structures 25 (David Kennedy, 1987).

Elmer Plischke, *U.S. Department of State: A Reference of History* 153-154 (Elmer Plischke, 1999).

Erik K. Ching, Historical Problems of Imperial Africa 134 (Robert O. Collins et al. eds., 1994).

Gabrielle K. McDonald, Substantive and Procedural Aspects of International Criminal Law 259 (Gabrielle K. McDonald & Olivia Swaak-Goldman, 1st ed. 2000).

Henry Louis Gates Jr., *Berlin Conference of 1884-1885 in* Encyclopedia of Africa (Oxford University Press, 2010).

Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under The U.N. Charter*, 3 Santa Clara J. Int'L 72, 73 (2005) (discussing jus cogens as superior international law).

Kenneth Little, The Mende of Sierra Leone 37 (Routledge. 4th ed. 2002).

Lass F. Oppenheim, *International Law: A Treatise* 229 (Lass F. Oppenheim 2nd ed. 1905).

Mary O'Connell & Richard Scott, The International Legal System, 15 (Foundation Press, 6th ed. 2010).

Nemata A. Blyden, *"Back to Africa:" The Migration of New World Blacks Sierra Leone and Liberia in* 18 THE ALTANTIC WORLD 22, 23 (Organization of American Historians ed., 2004).

Norman Bentwich, *The League of Nations and Racial Persecution in Germany*, 19 Transactions of the Grotius Society 75 (1933).

Michael Wenzel ET Al., *Retributive and Restorative Justice*, 32 L. & HUM. BEHAV. 375, 375 (2008).

Paul McCold ET. AL. Restorative Justice Theory Validation, in Restorative Justice: Theoretical Foundations 110 (Weitekamp & Kerner eds., 2002)

R.W. Cooper, The Nuremberg Trial 3-4 (London Penguin Books, 1947).

Tcho M. Caulker, *The African-British Long Eighteenth Century: An Analysis of African-British Long Century* 46 (Tcho M. Caulker, 2009).

Theodore Roosevelt, Presidential Addresses and State Papers of Theodore Roosevelt 179 (Albert Shaw, 1905).

Thomas W. Simon, The Laws of Genocide: Prescriptions for a Just World 22 (Thomas Simon, 1st ed. 2007).

Will Kaufman ET Al., Britain And The Americas: Culture, Politics and History 150 (Will Kaufman et al. 2005).

2. SCHOLARLY ARTICLES / JOURNALS

Arthur Abraham, *Bai Bureh, The British, and the Hut Tax War*, 7 B.U. J. AFR. STUD. 99, 99 (1974).

Ayodele S. Wilson, Diamonds, a Resource Curse? the Case of Kono District in Sierra Leone, (Apr. 15, 2015) (published at Michigan State University).

Carol Lancaster, *We Fall Down and Get Up: State Failure, Democracy and Development in Sierra Leone*, in Center for Global Development Essay 1, 3 (2007).

Ian, Smillie. "Getting to the Heart of the Matter: Sierra Leone, Diamonds, And Human Security." *Social Justice* 27.4 (82), Neoliberalism, Militarism, And Armed Conflict (2000): 24. *JSTOR*. Web. 08 Apr. 2015.

Isaac Land, *"On the Founding of Sierra Leone, 1787-1808."* Branch: Britain Representation and Nineteenth-Century History, http://www.branchcollective.org/?ps_articles=isaac-land-on-the-foundings-of-sierra-leone-1787-1808.

J. D. Hargreaves, *The Establishment of the Sierra Leone Protectorate and the Insurrection of 1898*, 12, No. 1. 56, 61 (1956)

Josephe Kargbo, "The Mining sector and growth in Sierra Leone: Lessons for the future", *in* Johnson, O.E.G. (ed.). *Economic challenges and policy issues in early 21st century Sierra Leone*. International (February 13, 2015), http://www.theigc.org/wp-content/uploads/2012/03/Johnson-Ed.-2012-.pdf.

Michael Biddiss, *The Nuremberg Trial: Two Exercises in Judgment*, 16 J. CONT .HIST 597, 597 (1981).

Mangovo Ngoyo, *Africa Nations and Territory Identity: The dismantlement of African Land and the artificial construction of the 1872 Colonial Africa c. -1960 c.,* Federation of Free States of Africa (Apr. 1, 2015, 2:00PM), http://www.africafederation.net/Berlin_1885.htm.

Nicholas Balabkins, *West Germany's Role in The Israeli Economy: The Views of Mr. F. E Shinnar*, Bd. 124 H. 2., 403, 403-406 (1968).

Tabora Johnson & Tim McEnroe, *Resisting British Colonialism in Kenya,* Hofstra U. 1, 1 (2014), http://people.hofstra.edu/alan_j_singer/CoursePacks/ResistingBritishColonialisminKenya.pdf.

3. LAW REVIEW JOURNALS

Beth V. Shaack, *Crimen Sine Lege: Judicial Lawmaking At The Intersection of Law and Morals*, 97 Geo. L.J. 119 125-132 (2008) (discussing the nullum crimen sine lege latin maxim in international law)

Ellis Washington, *The Nuremberg Trials: The Death of The Rule of Law (In International Law)*, 49 Loy. L. REV. 471, 494 (2003) (discussing the use of morality rather than law by the Nuremberg Tribunal).

Gennady M. Danilenko, *International Jus Cogens: Issues of Law-Making*, 2 Eur. J. Int'L 42, 44 (1991) (discussing influence of natural law on jus cogens).

Gwynn Skinner, *Nuremberg's Legacy Continues: The Nuremberg Trials' Influence on Human Rights Litigation in U.S. Courts under the Alien Tort Statute*, 71 ALB L. REV 335, 335-336 (2008) (discussing the impact the Nuremberg Trials have on international law).

James L. Gibson, *The Truth about Truth and Reconciliation in South Africa*, 26 Int'l POL. SCI. REV. 341, 341 (2005).

4. THESES / DISSERTATIONS

Mihai M. Ticu, Where International Law Stops 6 (Aug. 12, 2012) (unpublished Master Thesis, Utrecht University) (on file with author).

5. REPORT AND PUBLICATIONS OF NGO'S PROFESSIONAL ASSOCIATIONS AND ACADEMIC SEMINAR PROCEEDINGS

2014 Ebola Outbreak in West Africa – Case Counts, http://www.cdc.gov/vhf/ebola/outbreaks/2014-west-africa/case-counts.html (last visited MAR. 12, 2015).

Ebola Virus Disease, *World Health Organization* (Apr. 4, 2015), http://www.who.int/mediacentre/factsheets/fs103/en/.

V. Human Rights Abuses Committed By ECOMOG, Sierra Leone Defense Forces, and Police, (MAR. 10, 2015), http://www.hrw.org/reports/1999/sierra/SIERLE99-04.htm.

6. CONVENTIONS

European Convention on Human Rights art.7, Sept. 22 1984.

7. DOMESTIC LAWS

United Kingdom

Sierra Leone Independence Act 1961, c.16, s.9

United States
Weaver v. Graham, 450 U.S. 24, 35 (1981).

8. INTERNATIONAL LAW

International Humanitarian Law

Statute Of The International Court of Justice art. 36, Jun. 26, 1945.

International Criminal Law

Agreements for the Prosecution and Punishment of Major War Criminals of the European Axis; London Agreement of 1945, Apr. 8, 1945.

Control Council Law No. 10, Dec. 20, 1945.

Judgment, 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945-1 OCTOBER 1946, at 955 (1948) [hereinafter Nuremberg Judgment].

Charter

U.N. Charter art. 1, para. 2.

UN General Assembly – Resolutions

Charter of Economic Rights and Duties of States, G.A.Res. 3281 (XXIX), U.N.Doc. A/RES/XIXX/3281 (Dec. 12, 1974).

Concerned Action for Economic Development of Less Developed Countries, G.A. Res. 1515 (XV), U.N.Doc. A/RES/1515 (Dec. 15, 1960)

Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201 (S-VI), U.N.Doc. A/RES/S-6/3201 (May. 7, 1974)

Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N.Doc. A/RES/1514 (Dec. 14, 1960).

International Covenant on Economic, Social and Cultural Rights, G.A. Res.2200A (XXI), U.N.DoC A/RES/2200 (XXI) (Jan. 3, 1976).

Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII) U.N.Doc. A/RES/1803 (Dec. 14, 1962)

Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3202 (S-VI), U.N.Doc. A/RES/S-VI/3202 (May. 1, 1974)

UN Security Council – Resolutions

S.C. Res. 1132, ¶ 2, U.N. Doc. S/RES/1132 (OCT. 8, 1997)

S.C. Res. 284, ¶ 4, U.N. Doc. S/RES/ 284 (July 29, 1970).

9. VARIOUS UN OR OHCHR DOCUMENTS AND REPORTS (NO UN DOC NUMBER)

About Sierra Leone, www.sl.undp.org, http://www.sl.undp.org/content/sierraleone/en/home/countryinfo.html (last visit April 1, 2014).

Declaration of German Atrocities, Nov. 1, 1943.

International Court of Justice; How the Court Works, International Court of Justice (Apr. 1, 2015, 2:50 PM), http://www.icj-cij.org/court/index.php?p1=1&p2=6.

Sierra Leone – UNOMSIL, UN.org, http://www.un.org/en/peacekeeping/missions/past/unomsil/UnomsilB.htm (last visited MAR. 10, 2015).

Memorandum from Professor Edward McWhinney on the Declaration on the Granting of Independence to Colonial Countries and Peoples (NOV. 14, 1960).

10. INTERNATIONAL CASES AND ADVISORY OPINIONS (ICJ)

Case Concerning East Timor (Portugal v Australia), Advisory Opinion, 1995 I.C.J. 102 (June 30)

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 78 (June 21).

Western Sahara, Advisory Opinion, 1975 I.C.J. 100 (October 16).

11. ENCYCLOPEDIAS

Mandate: Legal of Nations, Encyclopedia Britannica (Feb. 1, 2015, 1:00 PM), http://www.britannica.com/EBchecked/topic/361608/mandate.

German South West Africa, Encyclopedia Britannica (Apr. 4, 2015, 10:00PM), http://www.britannica.com/EBchecked/topic/230970/German-South-West-Africa.

Zanzibar Treaty, Encyclopedia Britannica (Feb. 1, 2015, 2:00 PM), http://www.britannica.com/EBchecked/topic/655832/Zanzibar-Treaty.

12. NEWSPAPERS

1961: Sierra Leone wins independence, BBC News (APR. 27, 1961), http://news.bbc.co.uk/onthisday/hi/dates/stories/april/27/newsid_2502000/2502411.stm.

Africa's new Number One, http://www.economist.com/news/leaders/21600685-nigerias-suddenly-supersized-economy-indeed-wonder-so-are-its-still-huge (last visited Apr. 4, 2015).

Andrew Meldrum, *German Minister Says Sorry for Genocide in Namibia*, The Guardian, Aug. 15, 2004, http://www.theguardian.com/world/2004/aug/16/germany.andrewmeldrum.

Britain's Imperial Apology, World Policy Blog (Mar. 23, 2015, 5:00AM), http://www.worldpolicy.org/blog/2013/06/06/britains-imperial-apology.

Martin Fackler, *Japan Apologizes to South Korea on Colonization*, The New York times, Aug. 10, 2010, http://www.nytimes.com/2010/08/11/world/asia/11japan.html?_r=1.

Max Fisher, *A Revealing Map of the World's Most and Least Ethically Diverse Countries,* The Washington Post, May. 16, 2013, http://www.washingtonpost.com/blogs/worldviews/wp/2013/05/16/a-revealing-map-of-the-worlds-most-and-least-ethnically-diverse-countries/.

Sierra Leone profile – Timeline, BBC News (March 18, 2015), http://www.bbc.co.uk/news/mobile/world-africa-14094419

13. MEDIA, ARTICLES VARIOUS

Examples of Antisemitic Legislation 1933-1939, Holocaust Encyclopedia (Mar. 4, 2015, 10:30PM), http://www.ushmm.org/wlc/en/article.php?ModuleId=10007459.

Floreana Miesen, *Blood Diamonds*, Development and Cooperation (MAY. 21, 2012, 10:30 AM), http://www.dandc.eu/en/article/blood-diamonds-fuelled-sierra-leones-civil-war.

History of the United Nations, United Nations (April 2, 2015, 2:35 PM), http://www.un.org/en/aboutun/history/.

Holocaust A Call to Conscience: 40 Questions, 40 Answers, www.projetaladin.org, http://www.projetaladin.org/holocaust/en/40-questions-40-answers/basic-questions-about-the-holocaust.html (last visited April 1, 2015).

Namibia: South African Mandate (1915-1945), Electoral Instituted for Sustainable Democracy in Africa (Apr. 1, 2015, 5:13 PM), http://www.content.eisa.org.za/old-page/namibia-south-african-mandate-1915-1945.

Nuremberg Trials, History.com, http://www.history.com/topics/world-war-ii/nuremberg-trials (last visited March 12, 2015).

Press Association, *UK to Compensate Kenya's Mau Mau Torture Victims*, The Guardian, Jun. 6, 2013, http://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture.

Subsidiary Sources and Evidence of International Law, International Judicial Monitor (Apr. 1, 2015, 4:00PM), http://www.judicialmonitor.org/archive_0408/generalprinciples.html.

The Black Poor, The National Archives (Apr. 3, 2015, 2:45 PM), http://www.nationalarchives.gov.uk/pathways/blackhistory/work_community/poor.htm

The British Empire, http://www.britishempire.co.uk (last visited Apr. 1, 2015).

The Court, International Court of Justice (Apr. 2, 2015, 3:05 PM), http://www.icj-cij.org/court/index.php?p1=1.

Truth Commission: South Africa, http://www.usip.org/publications/truth-commission-south-africa (last visited Apr. 1, 2014).