REPARATION IN INTERNATIONAL LAW:

A CASE FOR COLONIAL AFRICA:

A DISSERTATION PRESENTED IN

PARTIAL FULFILLMENT OF THE REQUIREMENT

FOR THE DEGREE OF BACHELOR

OF LAWS AT THE UNIVERSITY OF NAIROBI.

Presented by:

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NAIROBI. AUGUST, 1992

DEDICATION

TO NIGERIAN CHIEF BASHORUM M.K ABIOLA

AND

ALL THOSE FROM THE AFRICAN

CONTINENT AND THE BLACK DIASPORA

WHO AGITATE FOR REPARATIONS.

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ACKNOWLEDGEMENTS:

I would like to express my gratitude to the following people, without whose help, this piece of work would have been impossible to write.

Special thanks to GATHERU MERCY, for her guidance, useful ideas and advice, as my supervisor, throughout the writing of this dissertation.

I am equally grateful to the librarians, American Cultural centre and the librarians of the United nations Information centre in Nairobi.

I am deeply indebted to both my parents, for all that they have done to see that i complete all my studies at the University of Nairobi.

My sincere thanks to **Lucy Kahonge** who has laboriously typed this dissertation.

Lastly, i cannot forget to thank all those people who gave me 'bits' and 'pieces'of information and advice, throughout the writing of this dissertation.

ABBREVIATIONS

1. A.J.I.L _ American Journal Of International Law.
2. B.Y.B.I.L _ British Yearbook of International Law.
3. C.J.T.L _ Coloumbia Journal of Trans_national Law.
4. E.A.L.R _ East African Law Reports.
5. G.A _ General Assembly.
6. I.C.J _ International Court Of Justice.
7. I.C.J Rep. _ International Court Of Justice Reports Of Judgement,Advisory Opinion and Orders.
8. M.G.R _ Military Government Regulations.
9. O.A.U _ Organization Of African Unity.
10. O.M.G.U.S _ Office Of Military Government United States Zone.
11. P.C.I.J _ Permanent Court Of International Justice.
12. R.I.A.A _ Reports Of International Arbitral Award.
13. S.Y.B.I.L _ Soviet Yearbook Of International Law.
14. U.N _ United Nations.
15. U.N.G.A _ United Nations General Assembly.

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INTRODUCTION.

In a rare departure from tradition, the just concluded 27th Organization for Africa Unity (O.A.U), the African head of state adopted a declaration on reparations for slave trade and the aftermath of the trade in Africas development. The declaration mandated the Secretary general to institute a thorough study of the effects of slavery on the continent and the black diaspora to review the issue before the next O.A.U summit.

To the minds of the many people the declaration threw open an issue that evokes bitter memories of racism and its effects on Africas socio-economic development over the last four hundred years and the west's moral obligations to restitute and repair centuries of human and material exploitation, plunder and rape of Africa peoples.

In light of the above, the writer wishes to pursue the possibility of Africa's reparation and compensation by the west.

Often when most writers start writing any literature related to colonialism, they do so with bitterness and aggression. This is shown by the language they use in passing the massage. A blame should not be laid on them due to the understanding of what colonialism was and its effect. I will try a polite, sober and reasoned literature relating to the legal possibility of reparation for the effect of colonialism and slavery.

The international law related to reparation is made complex by the terminologies. Garcia in his book says.

> **"The problem (of terminology) has thus inevitably contributed to a considerable degree, to the confusion prevailing in the matter, for the use of different terms and expressions has led to individual and at times capricious interpretation of substantive issues.(1)**

Reparation constitutes reparation Stricto Sensu and satisfaction.Satisfaction has been used to mean firstly, to designate a pecuniary identification demanded or granted solely as reparation for the injuries sustained by the private individuals. Secondly satisfaction has been

used to describe all reparation measures claimed or accorded in respect to a given claim.

Reparation Stricto Sensu entails restitution in kind (restitution in integrum)and compensation or pecuniary damages. Restitution in kind is the repair of property which had been taken away from the claimant state. On the other hand compensation (damages) is the payment of a wrong done.

The first chapter will trace the history of the international law of reparation. Particularly it will be shown how the outbreak of the first and second world wars, contributed to the mushrooming of international law of reparation. The chapter will go further to discuss the general principles of reparation in international law.

For clarification of the argument for reparation for colonialism and slavery of Africa, the dissertation will in chapter two relate colonialism and slavery with the international law of the time. The injustice of international law of that time will be shown in this chapter.

Chapter three will justify the reparation for colonial Africa . This will touch on the Locus Standi of the African case. This will concern the plunder and rape of the African continent through expropriation of African surplus to the west, and slavery. To give more weight of the justification this chapter will indicate the relevant precendents which have been set on the issue of reparation.

FOOTNOTE: INTRODUCTION

1. GARCIA F.V - Recent codification of the law of state responsibility for injuries to Alliens. P 81

CHAPTER 1.

ANALYSIS OF PRINCIPLES OF REPARATION IN INTERNATIONAL LAW.

Definition and meaning

The law relating to reparation is complicated and made more sophisticated by the fact that there is always problem of terminology.Garcia writes

> **"The problem [of terminology]has thus inevitably contributed to a considerable degree,to the confusion prevailing in the matter ,for the use of different terms and expressions has led to individual,and at times capricious interpretation of substantive issues"1**

If is in view of the above that a good understanding of such terminologies is needed,in order to understand the international law of reparation.

Reparation in its broadest sense includes reparation stricto sensu and "satisfaction".Reparation stricto sensu includes restitution in kind [restitution in integrum] and compensation or pecuniary damages.

"Satisfaction" has been used by authors in two different forms.First to designate a pecuniary indemnification demanded or granted solely as reparation measures claimed or accorded in respect of a given claim.2 I will not talk about satisfaction in detail because it doesn't concern my area of study.

My main concern in this dissertation is reparation stricto sensu.As i indicated earlier,this entails restitution in kind [restitution in integrum] and compensation or pecuniary damages.Restitution in kind can be termed as the repair of the same property which had been taken away from the claimant state.On the other hand compensation [damages]can be taken to have the same meaning as in municipal law.That is,to pay for a wrong done.

Restitution in kind always inapplicable to practical situations because in most cases the property in question is never in existence,therefore,international tribunals rely an damages[compensation].Garcia says:

"When restitution in kind is not possible for material or legal reasons,or when it is not in itself sufficient to repair all the consequences of the act or omission imputable to the state,the payment of an indemnity is appropriate either in lieu of or as a supplement to restitution."3

The nature and scope of damages"in international law is that,compensation is not only made for the injury inflicted,but also for the consequences connected with such injury,provided are proves such consequences.Garcia argues.

> **"While restitution merely restores the property or right of which the alien in question has been deprived,an indemnity [damage]is intended to compensate him for all the consequences of the act or omission contrary to international law"**

He goes further to say that

> **"In this sense reparation is not confined to the damnum emergens,but may also be made for the luctrum cessans and other injuries consequential on the original injury or on the act by which it was caused,provided that the necessary causual connexion can be proved."4**

The above argument has a practical application to colonial Africa.Africa could sue the West for reparation in form of damages [indemnity] for the former's injury by the latter.

Most writers think that it is illogical to follow and keep such distinctions in reparation as stricto sensu and "Satisfaction.Anziloti acknowledges,in this regard,the fact that in all forms of reparation:

> **".....There is invariable an element of satisfaction and an element of reparation,the idea of punishing the wrongful act and that of making good the damage sustained,what varies is,rather,the relative proportion of the two elements."6**

I wish to point out that i will use the ideology of the aforementioned jurists.I believe the difference between reparation proper and satisfaction as indicated by some writers has got no substantial consequence.In my argument for reparation of colonial Africa,the term restitution,compensation,damages, indemnity will be used to mean reparation.

After sorting out the problem of terminology it is proper to now define

reparation.Many jurists have admitted that in the literature considerable confusion prevails about reparation in the meaning of the word as used in international law.This has very remarkable practical consequences.

There are jurists who treat restitution in international law as a legal category identical with restitution in civil law.One of such proponents is Erich Kanefmann. According to him restitution [reparation] both in international and civil law would be an integrum restitutio,the preliminary condition of which is not a delict.Professor Kaufmanns explanation tallies with the concept of reparation prescribed by the provisions of the hague convention.

"Release from requisition of property which could be seized under Article 53 of the connection in times of war"7

In my opinion professor Kaufmann's definition is inadequate.He compares municipal with international reparation.I think it is incorrect to group the two together since in municipal restitution,only the material loss is considered,while on the other hand in international restitution,it is both moral and material loss.

Another jurist ,who in my view defines reparation correctly,is Istvan vasarlely.He argues that restitution in the sense of the term as used in international law is aimed at the reparation of the effects of a proceeding that was unlawful under International law.8 This is in conformity with Anzilotti who terms reparation to include the restitution of all international wrongs both those committed under the law of peace and those committed under the law of war.9

To sum up the definitions given by different jurists,one can pinpoint some similar elements.It can correctly be said that the legal purpose of reparation in international law is that in every case,the restitution of a situation which would have subsisted if the wrongful act had not been committed.

I now turn to explain the duty to make reparation in international law.If is a principle

of international law that reparation must be made in full for the injury caused by an act or omission contrary to international law.This principle is defined in a declaration of the permanent court of international justice.It declared:

> **"The essential principle contained in the actual nation of an illegal act a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals is that reparation must,as for as possible,wipe out all consequences of the illegal act and re-establish,the situation which would, in all probability have existed if that act had not been committed."10**

This fact is frequently stated in international case law.Thus in the opinion of the court in the lusitania case,it was stated that:

> **The remedy must be commensurate with the injury received ...The compensation must be adequate and balance as near as may be the injury suffered."11**

From the above one would be correct to argue that from traditional doctrine and practice there is an international legal duty to make reparation for the injury occasioned.This duty is on the state which violated an international obligation.This was also reflected in the judgement in Charzow factory case,in which the former permanent count of international justice stated that:

> **"If is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form."12**

In another development in the same case the court reiterated the same view in different words.

> **"If is a principle of international law,and even a general conception of law,that any breach of engagement involves an obligation to make reparation."13**

Before looking at the origin and development of international law of reparation,it would be of help to mention briefly injuries which pave way to reparation.

Injury can either be caused to the state"directly"through one of its organs or component elements[i.e public property,public officials,states honour or dignity] or injury caused "indirectly "through its nationals[i.e aliens].14

1:2 ORIGIN AND HISTORICAL DEVELOPMENT.

The history of reparations in international law goes back to the early middle ages particularly on the appearance of Rousseau.During that time,it was a fundamental principle

of warfare that on the arena of military operations private property had to be respected.If was forbidden with some exceptions to either confiscate or involve if without necessity into military operations.15 only the Anglo-Saxon nations which did not accept the Rousseau principle without reservation.In this Anglo Saxon conception,which became dormant,all states were considered to be authorised to take discriminatory measures on their own territory as regards enemy property.During this time the concept of reparation under war law covered only the restoration of property that had been taken away at the beginning or during the war.16

The next step in the development of reparation was the hague conference initiated by the Russian government in 1907.The powers participating in this second Hague conference endeavoured to make warfare in all respects more " humanitarian" and, therefore drew a sharp line between the combatant and non combatant population.These powers tried to withdraw from the war the persons and property belonging to the non-combatant population.The hague conference declared in the Article concerning "laws and customs of war on land"that.

> **"In additions to the prohibitions provided by special conventions,it is especially forbidden--to destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war."17**

The development of the concept of reparation in international law is further codified by the treaties terminating the world war 1 and 2.The treaties terminating world war 1 did not only tacitly acknowledge the international legality of the discriminatory measures applied in connexion with the private property of enemy subjects,but they explicitly codified it as a rule of international law.The trianon peace treaty lay down that:

> **"As between the allied and associated power and their nationals on the are hand and nationals of the former kingdom of Hungary on the one hand and the allied and associated powers and their nationals on the other,all the exceptional war measures,or measures of transfer or acts done or to be done or to be done in execution of such measures as defined in paragraph 1 and 3 of the annex here to**

shall be considered as final and binding upon persons except as regards the reservation laid down in the present treaty"18

As a matter of fact,the trianon peace treaty was giving birth to what can be presently called war indemnity.The nationals of the Allied and Associated powers suffered loss in the world war 1,not by reason of a discriminatory measure, but as a direct consequence of the hostilities or military operations.These losses were however,not put in the same category as the claims that could individually be put in for restitution by private persons, through the medium of their governments,but into the category of the claims for reparations raised by victorious states against the vanquished states.These types of reparations in form of war indemnity became one of the modes of reparation in present international law.19

Coming to world war II,with the wake of fascism,the Allied movement was forced to instal an international military tribunal for individual retaliation against the crimes committed including the crimes of removal of property by force or one hand and an the other to lay down rules with regard to reparation between states for the removal of public and private property by force.20

The occupying powers of Germany,namely Soviet Union,united states,Great Britain and France,were the ones responsible for the laying down of the aforementioned rules in regard to reparation.To do that representatives of the four Great powers formed what was known as the Allied control council.This council,owing to the unconditional surrender,represented simultaneously the victorious powers and the defeated Germany.It[council] defined the new notion of reparation to the military governments of the various zones of occupation.The definition had a binding force primarily for the united nations represented by the Great powers and for Germany.

From the foregoing it is noted that world war II had the greatest impact in the final development of reparation rules.The world was so shaken by the illegalities and cruelties of

the German occupation during the war,that special rules and proceedings had to be drawn up for the reparation of the removal of property.These rules became some of the basis of the principles of reparation in international law.I now turn to look at such principles,

1.3 PRINCIPLES OF REPARATION IN INTERNATIONAL LAW.

The question to be asked at this stage is whether apart from imposing the duty to make reparation [as we have seen]general international law has full defined principles and criteria for determining the nature and extent of reparation.

If is very difficult to find any authority or codified rules prepared to give an affirmative answer.General international law certainly does not provide any principles,criteria or methods for determining a priori how reparation is to be made for the injury caused by wrongful act or omission or where applicable,for the very violation of the rule of international law which gives rise to the responsibility of the state.

Many writers,however,refer to"the general principles of law recognized by civilized nations,"21 regarding them as the source of rules applicable in the matter of reparation.These general principles recognised by civilized nations together with international treaties and international customs form the present law in reparation.The statute of permanent court of international justice laid down that:

"In addition to the international conventions,and the international customs,the court would apply the general principles in reparation recognized by the civilized nations"22

As a result,for a claim in reparation to hold water,it has to be in correspondence with the fundamental legal principles.Below 1 will talk about such principles.

[a] The public_ international law principle.

If is general principle of reparation that the claims to the returning of the property

have to be enforced on the ground of the public international law principle reparation is a duty of public international law.

The fact that behind the claim of public international that the state would act in the protection of a civil law claim,an behalf of the owner,the legal basis to the claim of reparation in international law is in every case an injury of public international law.One can correctly conclude that in the majority of cases,civil law claims stand resolutely behind the action of the state.This however,only establishes the claim of public international law and does not transform it into a claim of civil law.

This principle that reparation takes the form of public international law,is expressed both in the rules of law issued by the Allies in Germany and in Austria,and the peace treaties concluded with the satelite state.24 More so this principle is expressed in the international legislative measures taken by the neutrals which were also based on that principle when the criteria of reparation were established by the latter in agreement with the Allies.

[b] The principle of territoriality.

To understand this principle we have to go back to the examples of Germany and Axis power protocol of reparation.In the Hungarian treaty the parties resolved that:

> **"Hungary shall return ---property removed from the territory of any of the united nations."25**

The reparation concerns,of course,the property removed from the territory of the united nations by the vanquished Axis powers [satelite states] that signed the peace treaty.

This principle of territoriality in application to reparation can be summed up as restitution of the property removed from the claimant state irrespective of who is in its possession.This means the aggressor is liable to repair the property:

> **".....Irrespective of any subsequent transaction by which the present holder of any such property has secured possession."26**

This principle stresses the absolute character of the legal duty of restitution.In relation

to reparation,after world war 11,it meant that,it was irrelevant whether the removed property found on the territory of the Axis powers was in the possession of the direct acquired or of his successor and whether it had been acquired,according to the municipal law,in good or bad faith.27

[c] Force or duress.

Force or duress should be understood not from the point of view of civil law [municipal law]but public international law,In other words a proof of force or duress as required under municipal law does not apply in international law.

The removal of property by "force and duress"has an interpretation in international law.This interpretation was given in the london declaration.

> **"The Allies were entitled for reparation for any acquisition of rights that took place in occupied territory,whether carried out by way of open looting plunder or by way of transaction apparently legal in form.[emphasis mine]"28**

Hence force and duress as explained after world war 11 covered the physical and legal duress the looting theft larceny and all other forms of dispossession.If went further to cover acquisitions based on requisitions or on the orders or regulations of the military and occupation authorities.Therefore,apart from the property removed by the open force or threats all property removed by the open force or threats,all property rights and interests are likewise subject to reparation that were acquired apparently lawfully,however by force or duress.

> **"[Duress covers]--cases where property was taken away ostensibly with the consent of the lawful owner or holder,and indeed ,cases where,to all appearances,due consideration was give.It must however,be patent from the circumstances of the case that the consent of owner or holder had been obtained by misrepresentation or threats"29**

[d] The principle of identification and the irrelevance of the ownership.

This principle is closely related to the principle of territoriality which resolves that reparation is a duty independent of the person of the injured owner and is fulfilled in favour

of the injured country.This principle of identification states that only the property which is identifiable on the territory of the state concerned can be reparated.The rationale behind such is that of establishing whether the object claimed is identical with the one claimed by the interested[claimant] state as having been removed by force or duress from her territory.

The claimant state is legally allowed ,according to international law,to search and identify its property in any state involved.As a foresaid,the rules of reparation do not attach any importance to the identify of the legitimate owner on the occupied territory.An example of the basic order concerning reparation after the second world war is shown.

"[a] Claims may be submitted in a form which sets forth as much as possible of the following data:

1:Description of item claimed for restitution.
2:Maximum available identification data such as a factory serial number,specification and any special marks or characteristic of the item.
3:Last known location of claimed items within claimant county prior to removal to Germany and appropriate data of such removal.
4:Last known location of claimed item in Germany
5:Last known resident of claimant country who was owner or custodian of claimed item prior to its coming into control of the enemy within the territory of claimant country.
6:Whether or not the property was in existence at the time the occupation of the claimant country began.
[b] Each claim must include a statement setting forth so far as possible,the fact and circumstances surrounding the removal of the claimed item from the territory of the claimant country"30

The burden of identifying the property and of proving ownership rests on the claimant government.This was so argued in the Hungarian peace treaty.31 This has remained the rule under international law,hence the principle of identification.

CONCLUSION.

In this chapter 1 have tried to explain and define reparation.This 1 have done by first identifying the problem of terminology in reparation.It has been indicated that reparation can either be in the form of reparation Stricto sensu or "satisfaction".However I have shown that most writers don't differentiate between these two.And that is thew fashion i have adapted in my dissertation.

It is shown that most jurists define reparation to include restitution of the effects of a proceeding or injury that was unlawful under international law.It is also indicated that there exists a principle of international law that there is a duty to make reparation in full for the injury caused by an act or omission contrary to international law.

In this chapter i have also endeavoured to trace the origin and development of reparation in international law. It has been argued that the trace of reparation goes back into the middle ages, particularly with the coming of Rousseau. From Rousseau time some developments are seen in the hague conference in 1907, then the treaties concluded after the end of the first and second world wars.

In the last bit of the dissertation, the writer has discussed the principle of reparation in international law. It is shown that the present international law of reparation comes from international norms and customs together with the general principles of law recognised by the civilized Nations.

FOOTNOTES: CHAPTER 1.

1. GARCIA F.V - Recent condition of the law of State Responsibility for injuries to Aliens; Oceana,1974 P. 81

2. J.B SCOTT - The international responsibility of a state; Budapest, 1921 P.444

3. SUPRA; note 1 at 101

4. IBID.

5. REITZER,L. - La reparation comme consequence de lacte illicite en droit international;Paris, 1938 P.425 (Quoted from Istran Vasarhelyl - Restitution In international law, Budapest 1964 P. 11)

6. KAUFMANN E - Die volkerrechtlichen Grundlagen und Grenzen der restitutionen; Tubingen, 1949, 1 Heft

7. The Hague convention of 1907; LAWRENCE T.J - Documents Illustrative of international law; Michigan P. 18

8. ISTAVAN VASARHELYL - Restitution in international law ; Budapest, 1964 P.10

9. ANZILOTTI - Carso di divitto Internationale; 4th ed, 1955 vol. 1, Berlin.

10. Reports on Parmanent court of International justice series A No. 17 P. 47

11. Reports of international Arbitral Awards vol. 7 P.35

12. P.C.I.J series A No. 9 P.21

13. Ibid. P.29

14.MOORE , E - A Digested of international law; vol.6 P. 864, Newyork

15. ROUSSEAU - Du contract social; P.15 Paris

16. Ibid.

17.Haugue conference 1907 - Article 23 para. 9 (Quoted from ISTVAN VASARHELY - Restitution in international law; P.52)

18. Trianon peace treaty - para. s Article 232. GRENVILLE J.A The major International Treaties; Methuen & co. ltd P.46

19. SUPRA; note 8 at P.11

20. Ibid. P.81.

21. Statute of Permanent court of international justice Article 28.

22. Ibid.

23. SUPRA; note 8 P.168.

24. Allied control council directives and the peace treaties concluded after the second world war established that a claim for reparation should be based on grounds of public International law but not civil law .

25. "Hungazrian peace treaty" Appendix 1 Article 24. GRENVILLE J.A - The major International Treaties; Metheun & co.ltd P.45

26 Ibid. para. 2

27 MARTIN, A. - "The Paris Peace Treaties". British Yearbook; 1947 P.278

28. "The london Declarations of 5th Jan. 1943, MGR 19- 1001" (Quoted in ISTVAN VASARHELYL - Restitution in International Law; Budapest P.88

29 Para a. of MGR 19- 1002 (found in Supra note 27)

30. Ibid.

CHAPTER II

LINKAGES OF INTERNATIONAL LAW AND COLONIALISM: A HISTORICAL ASSESSMENT.

2.1 Colonialism and international law

Since the core of the dissertation is to argue for reparation of colonial Africa, the history of colonialism and the international law applicable by then is necessary. The Chapter will go further to show that, the argument that colonialism was 'legally' imposed on Africa is incorrect. By so doing a claim for reparation will have a proper foundation.

The subject of colonialism is widely discussed as a wide affair occupying much time for both the United Nations and the Organization of African Unity. The concise Oxford Dictionary defines colonialism as an alleged policy of exploitation of backward or weak people.(1) The main characteristics of colonialism are the differences in race, colour and power between the colonists and the colonized and the subjugation of the latter to those of the former.

The notion about international law during the periods of pre_colonialism and colonialism exemplify the weakness and the injustice of the system. international law was only used for benefit of the Europeans.(2) It can be said that,at that time international law was passive to the relation between Europeans and non_Europeans.

The slave trade before the coming of colonialism played a very important role in the colonization of Africa. During the slave trade,provided a European power deemed it necessary and was able to use superior force, it deprived the Africans of lands that were suitable for the settlement of their own population. In such areas as well as others, Africans were the agents for exploitation of the natural resources of that piece of land (which the Europeans occupied)in the continent. Where Africans proved uncooperative,they were dealt

with in ways ranging from extermination, bribery,conquest,deceit and coercian.

The major legal technique for the imposition of colonialism was the denial of sovereignty to Africans (3). The Europeans completely disregarded the ability of non_European states to possess sovereignty. The pope's **inter_caetare** Bull of 1493 completely disregarded the ability of non_European peoples.(4) As such the Europeans went on with the process of colonization on the premise that, since the Africans had no sovereignty , occupying their lands did not contradict any principle of international law. The question to be posed here is whether the Africans possessed any sovereignty?

(5)Bodin maintained that non_Europeans possessed sovereignty. He indicated that international law was derived from natural law and was applicable to all men. The principle of sovereignty, therefore had universal application. In indicating African sovereighty by then Grotius wrote:

> **"(Infidel) rulers, though,heathen, are legitimate rulers, where the people live under a monarchical or democratic regime. They are not to be deprived of thier sovereignty over their possession because of their unbelief, since sovereignty is a matter of devine law, which cannot annul positive law."**

He insisted

> **"It is heresy to believe that infidels are not masters of their own property, consequently, to take from them their possession on account of their religious belief is no less theft and robbery than it would be in the case of christians."(6)**

But in contrast to the foregoing argument of these jurists, by the end of the 19th century Africa was regarded as **terrae nullius** which a European state could occupy. This became a "rule of international law" as understood and propounded by the Europeans.(7)

It is argued that Africans possessed sovereignty before colonialism. African political communities varied from states like Yorubaland, the Fulani kingdom and the Ashanti kingdom, to small communities with recognised leaders who were either hereditary elected or the oldest men. They observed certain norms of conduct in their external and internal relations. The point to note is that they did not possess sufficient might to withstand the

onslaught of the europeans who were thus unable to ignore or deny their sovereignty.(8)

There were various ways used in regard to the aquisition of Africa. First settlement was used as a means of aquisition. Territories were annexed to clear the population for European settlement. Examples of wars wagged to annex Africa were the Zulu ,Kaffir,Ashanti and maji maji to mention but afew.

Secondly, there was the inter_European bilateral treaties. Since Africans were denied international personality their future was decided by those bilateral treaties. The recognition by European states of the exclusive rights of one of them over a territory proved a sufficient title in international law. The Berlin treaty was one of such bilateral treaties. A lot of criticism has been written on the unfairness/unequal character of the Berlin Treaty. It has been seen as an oppressive act of the Europeans over Africans.Judge Ammoun reffered to it in the **Namibian case**

> **"It was a monstrous blunder and a flagrant injustice to consider Africa South of Sahara as terrae nullius."(9)**

Although the Europeans purported to raise their methods in the realms of international law,the immoral,inhuman and unjust basis of such law is hardly disputable. In Awolowo's view, the Europeans came to Africa for:

> **"the acquisition of ppersonal wealth by any means, and the consequent enrichment of the motherland."(10)**

International law,as it can be evident from above, was for the benefit of the Europeans. International tribunals found that some rules used to justify colonialism and oppression were discriminatory. As a result such tribunals were willing to declare revolts against oppression as legal.In the **Naulilaa incident** (11) knowledge of the worst crime against humanity and of cruel suppression in 1944 came before an international tribunal. The tribunal found and decided that

> **"the German aggressionwas in itself, likely to cause trouble among indegenous population and it was in the natural order of things, that the negroes who had**

been suppressed .... should make use of the opprtunity to revolt"(12)

2.2 Treatie's between west and African kings

Treaties were concluded between the Europeans on one hand and African kings and chiefs on the other. The chiefs were forced to surrender their sovereignty or to "request " for European protection. there were cases where protections were bought but frequently at a trifling cost.

The legal effect given by the Europeans to such treaties depended on the legal status they were prepared to concede to African kings and chiefs. In their view Africans were primitive tribes whose kings and chiefs were not sovereign in the proper sense of the word.

Treaties entered with them were not international treaties governed by the rule **pacta sunt servanda** such treaties were only binding in the European conscience and could either be ignored or enforced at will. Farlow J. in **ole Njogo** (13) case said

> **"I agree with the view expressed by respondents that it imposed moral obligations on both the contracting parties; these however are not cognisable in a court of law."**

This notion(above) complemented the dogma that international law governed the relation between European christian princes and not those outside their racial or religious group.

The issue of inequality with regard to the international law applicable can further be seen in the protest of King Jaja of Opobo. Before signing a treaty of protection he was bold enough to ask for the definition of the term "protection". The reply from consul Hemett of the Niger coast protectorate was

> **"the queen does not want to take your country or your markets .....she undertakes to extend her gracious favour and protection, which will leave your country still under your government."**

When the king subsequently claimed that his rights under the treaty were infringed, the British colonists redefined the word protection as

> **"The promotion of welfare of natives of all these territories taken as a whole in ensuing the peaceful development of trade and facilitated their intercourse with**

Europeans. It is not to be permitted that any chief, who may happen to occupy a territory on the coast should obstruct this policy in order to benefit"(14)

From the above it could be seen how unfair the treaties used to be under the control of the Europeans. As defective as the treaties were, they were preferred as evidence of title to oral evidence, as indicated in the **island of Lamu** (15) case.

Other treaties imposed on the African kings were the "free trade" treaties such were like the treaty of August,1887 with King Jaja of Opobo.More so Ochijeh,the Artah ofIgora,was forced to open the Niger to the British without payment of any duties,tolls or customs whatever.

These commercial treaties became a legal antity for the exploitation and theft,the **quid pro quo** for the valuable materials were shamingly incommensurate.Lord Lugard once confessed;" I have known valuable concession purchased by the present of an old pair of boots."(16) It is worth noting that inequality in benefit **per se** is not a ground for invalidity ,but the vast differences in value supports a finding that the treaties were unequal.

Going back to the 14th century it can be shown that a protectorate was a form of a contract between two states.The protectorate (protected) state to trade or give a consideration for the benefit of the protector in return for protection.The protected state retained control of its affairs as in the treaties of the 14th century between Geneva and France and Spain; between Andora and France;and between Danzig and Poland.

In contrast to this ,the colonists in Africa used the protectorate to achieve their own ends,irrespective of what the treaties provided.Lord Denning said in the **Nyali case** (18)

"Although the jurisdiction of the crown in the protectorate is in law limited jurisdiction , nevertheless the limits may be extended indefinately so as to embrace almost the whole field of government...The courts themselves will not examine the treaty or ground under which the crown acquired jurisdiction."

This stand has been followed by many courts which handled cases concerning.the construction of a certian treaty ,involving the West and the African leaders.It was so

followed in the **Maasai case**(19) whereby the Europeans had breached a treaty.

As can be seen from the foregoing,neither international law nor british municipal law could give any remedy for a breach of treaty entered between the African kings and the British officials.Might was right in dealing with African peoples and yet this provided the foundation on which colonialism was built.

In general the treaties concluded with African Kings and chiefs fall within the category of unequal treaties.As shown above,they were defective in many respects.There is strong support in the socialist and in the Non-aligned states for the invalidity of unequal treaties.(20) Judge Huber said in the **island of Palmas case** (21)that treaties with indigenous rulers were not:"treaties or conventions capable of creating rights and obligations such as may,in international law,arise out of treaties."

2.3 International law and African National Liberation movements

Colonialism was imposed using means ranging from trickery to duress and force. With the wake of liberation movements, the Europeans used all possible means to suppress the same .Differences exist as to the legal status of the force in a colonial war either by the colonizer or by the colonized .Whereas some hold such use of force to be a mattter of international concern, others insist that it falls within the domestic jurisdiction of a state. The practice of international institutions and of states and the opinions of eminent jurists show that colonial wars were a matter of international concern.

The United Nations (22) seek to limit the permissible use of force by states in their international relations to:

(a) Self defence

(b) Under article 107 of the charter against an enemy of the victorious Allied powers of the second World War and as a result of it.

(c) Under the authorization of the security council in an enforcement action.

The charter of the U.N provides in section 2(4) that, use of force is discouraged against a territorial intergrity or political independence of a state. Such prohibition does not affect use of force by a state to quell an internal rebellion. This, though ,is qualified if an internal rebellion is rooted in a matter of international concern. It cease to be a matter of domestic jurisdiction **Pro tanto**. Once a matter becomes one of treaty obligation, it is to that extent removed from the state's exclusive domestic jurisdiction. (23) As such colonial wars between the colonizers and the National liberation movements were not domestic issues. They were wars recognized by international law. It follows therefore,that, the rules of law regarding war and use of force are applicable to the colonial wars.

Apart from the U.N Charter, as we have seen, recognizing(impliedly) "colonial wars" as an international concern there are other international institution which have indicated colonial wars as of international concern. Two of these institutions were the conference of Afro_Asian, (24)held in Conakny 1964; and the partna declaration of Teachers of International law in India and Napel (25) (1970). Both these conferences have indicated in their declarations that the colonial people have a right to revolt and such armed struggle has an International character as per the principles of international law.

More so a number of scholars have emphasized the fact that the liberation movements should be accorded international recognition. Such scholars are usually eminent in the non_colonizing powers. Hanna Bokor Szego recognizes the legitimacy of liberation movements in international law. He argues that the forcible action by the colonial powers against the colonial people can be termed as acts of aggression in regard to article 2(4).(26)

The internationality of the liberation movements was also recognized by the international courts.Judge Ammon in the international court of justice in the **Namibia case**

said

".....the conscious action of peoples themselves,engaged in a determined struggle against colonialism was an element of general practice, accepted as law under Article 38(1)(b) of the statute of the world court(27).

Lastly, the General Assembly of the U.N has recognized that the liberation movements had international character. In are of its resolution it declared the freedom fighters as prisoners of war under international law.(28) Although we can argue that the U.N resolutions are not binding,with some exceptions they reflect,the views of the great majority of states and as such persuasive.

From the foregoing discussion it is noted that a conflict within a state (like colonial wars) assumes an international concern,as one that affects a **Jus Cogens** rule of international law (e.g self determination and non_aggression) for other states have a legal interest in it. Hence the liberation movements were recognized internationally.

The question to be posed here is whether the colonizer's wars were legal as per international law since colonial wars have international character.Article 2(4) forbids the use of force in any other manner inconsistent with the purposes of the U.N such purposes include:

"(a) the development of friendly relations among nations on the basis of respect for the principle of equal rights and self determination of people.
(b) the achievement of international cooperation in the promotion of human rights on the basis of non_discrimination."(29)

Colonialism is contrary to the above principles of self determination and non_discrimination.Hence such use of force was contrary to the purpose of the U.N . Portugal could not plead the use of force basing her argument under any of the heads of section 2 of the charter. This is because it could not claim to be protecting its integrity. The breaking of a colony from the colonising state does not contravene the integrity of such colonizing power.

CONCLUSION

In this chapter the writer indicated how international law was applied during colonial era. This is in aid of deducing the illegality of colonialism, so as to have a starting point in launching the locus standi for Africa reparation.

In this chapter i have explained the background of colonialism and the rules used to "legalise it". It has been shown that such rules were not only unilateral but non_binding to both the Europeans and the Africans.

As pertains the treaties concluded by the African kings and the Europeans, it has been shown how unequal and bilateral they were. It has been submitted that such treaties lie under unequal treaties and consequently invalid.

Lastly, the chapter discusses the liberation movements. These liberation movements did not lie under the domestic jurisdiction but were of international concern. The wars wagged by the colonizers to suppress the liberation movements were illegal as per the international law applicable.

To sum it all, it can correctly be said that, judging from practice of international institutions and states ,from eminent jurists and judicial opinions and views of religious and other organizations, the conclusion is inevitable that colonialism is not only illegal but immoral and that support for freedom fighters is both legal and moral under international Law.

FOOTNOTES:CHAPTER II

1.Concise Oxford Dictionary P.215

2. UMOZURIKE _ International Law and colonialism In Africa; Nwamife 1979 P.17

3.The classical definition of sovereignty was given by judge Hubber in the island of palmas case as follows: " Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exckusion of any other state, the functions of a state."

(22 A.J.I.L. 1928, 875)

4. Supra note 2 p.19

5. BODIN -De La Republica(1576) P.37

6. R. HUGGINS -Conflict Of Interest; London, 1965 Section 1 7. Treaty of Berlin, chapter vi-GRENVILLE, Major International Treaties; Methuen & Co. Ltd P.440

8. S. P. SINHA - New Nations and the Law of Nations; Leyden 1967, chapter 1.

9. I.C.J. Reports 1971 p.86.

10. O. AWOLOWO -The People's Republic; Ibadan, 1968 P.54.

11. 2 R.I.A.A. 1928 p.1012.

12. IBID

13. Ole Njogo- v. A. G., E.A. P.L.R. (1913-14) P.114.

14. ANENE -Southern Nigeria; Ibadan P.66.

15. HERTSLET -Map of Africa by Treaty; London 1967 Vol.3 P.891.

16. "Treaty Making in Africa", Geographical Journal 1 (Jan-June 1893) P.53.

17. T. BATTY -"Protectorate and Madate"; B.Y.I.L. (1921-22)

P.109-114

18. (1955) I ALL ELR P. 646.

19. E.A.L.R.P. Vol.v (1913-14) P.70.

20. A. N. TALALAYER- "Unequal Treaties,a mode of prolonging the colonial Dependence of New States of Asia and Africa";SOVIET Y.I.L. 1961 P.156.

21. 2 R.I.A.A. 858.

22. H. WALDOCK -General Course In Public International Law, Leyden 1962 P.233.

23. P.C.I.J. Series B No.4 [National Decree of Tunis and Morocco (1923)]

24. J. F. ENGERS -"The United Nations Travel and Identity Document of Namibia"; 65(3) A.J.I.L. 1971 P.571.

25. Ibid P.583-4.

26. H. BOKOR-SZEGO -New States and International Law; Budapest 1970 P.37.

27. I.C.J. Reports (1971) P.74.

28. Resolution 2396 of 2nd Dec. 1968 -U.N. Resolutions Yearbook.

29. U.N. Chapter Article 2- International Court of Justice: Chapter of the U.N., Statutes and rule of Court; and other documents: 2nd ed [hagne] 1947 P.18

CHAPTER III

A CASE FOR REPATRIATION MADE OUT

Development in human society is a many sided process, laying development on the basis of a person, it implies increased skill and capacity, freedom, creativity self discipline, responsibility and well being.

It has been proven that once two societies of different sorts come into prolonged and effective contact, the rate and character of change taking place in both is seriously affected. Two general rules can be observed to apply in such cases. Firstly the weaker of the two societies is bound to be adversely affected, and the bigger the gap between the two societies concerned, the more detrimental are the consequences. (1): A case example is America, when European capitalism came into contact with indigenous huntig society of America, and the caribbean , the letter were virtually exterminated.

Secondly , assuming the society which is weak survive, then it can resume to it's own independent development only if it proceeds to a level higher than that of the economy which had previously dominated it. (2): Precise examples of this second rule are found in the experiences of Soviet Union , China and korea.

China and Korea were in the stage of rearing feudalism when they were colonised by the capitalist power of Europe and Japan. Russia was not legally colonised but in the feudal stage the Russian economy was subjugated by the western European capitalism. In all these cases Socialism was a pre-requisite in breaking capitalism. Only the rapid tempo of socialist development could make amends for the period of subjugation when growth was misdirected and retarded.

How African developed before colonialism

African , being the original home of man, was a major participant in the process in which human groups displayed an ever increasing capacity to extract a living from the natural environment. Before the advent of colonialism the African continent had a substantial degree of development.

African states were developing independently until they were taken over by the capitalist powers. Egypt was capable of producing wealth in abundance twenty six centuries ago because of mastery of many scientific natural laws and their invention of technology to irrigate , grow food and extract minerals from subsoil . (3): The art of Egypt, the Sudan and the Ethiopian was known to the rest of the wold at an early date. The verdict of the art historians on the Ife and Benin bronzes is well established. These developed in the 14th and the 15th centuries hence a show of development before the epoch of the contact with Europeans.

Before colonialism most African communities advanced in the technology Most societies tried to understand their environment. Advanced methods were used in some areas, such as terracing, crop rotation, green manuring,mixed farming and regulated swamp farming. Farmers started using iron tools notably the axe and hoe replacing wooden and stone tools.

On the side of manufacture, in Africa , there were manufactured items before the coming of the white man. Through North Africa, Europeans became familiar with a superior brand of red leather from Africa which was termed Maroccan leather. (4): Secondly, as soon as the portuguese reached the old kingdom of Congo, they sent back word on the superb local cloth made from bark and palm fibre and having a finish comparable with velvet. Yet, Africa had even better to offer.

3:2 Expatriation of African surplus under colonialism:

Capital and African wage labour were exploited and expatriated by the colonists. Colonial Africa fell within that part of the international capitalist economy from which surplus was drawn to feed the metropolitan sector. Exploitation of land and labour is essential for human social advance, but only on the assumption that the product is made available within the area where the exploitation takes place. By the colonialism it meant that there was consistent expatriation of surplus produced by African resources. Walter Rodney writes;-

> " Colonization was not merely a system of exploitation but one whose essential purpose was to repatriate the profits to the so called mother country." (5):

To start with labour was cheap in Africa,ant the amount of surplus extracted from the African labourer was great. The employer under colonialism paid an extremely small wage. This once put into comparison to the European worker after feudalism, it imputes a very law level of earning.

There were several reasons why the African worker was crudely exploited more than his European counterpart in the country. firstly the alien colonial state had a monopoly of political power after crashing all the opposition . Secondly the African working class was small very dispersed and very unstable owing to the migratory practises. Thirdly , while the capitalism was willing to exploit all workers elsewhere European capitalism in Africa had additional racial justification.

A Nigerian coal miner at Enugu earned one Shilling per day while a scottish or German coal miner could earn in an hour what the Nigerian in Enugu could earn in six days. (6):

The Europeans were able to get minerals at a very low cost. The shareholders of the mining companies were the ones who benefited most of all.They remained in Europe and North America and collected fabulous dividends every year from the gold, diamonds,

manganese, uranium e.t.c, which were brought out of the south Africa soil.

The African working class produced a less spectacular surplus for expert with regard to companies engaged in agriculture. Agricultural plantations were widespread in the North,East and South Africa,and they also appeared in West Africa to a lesser extent. Their profits depended on the incredibly low wages and harsh working conditions imposed on the African agricultural labourers and on the fact that they invested very little capital in the obtaining the land which was robbed from Africans by colonial powers and then sold to whites at nominal prices. For instance after the Kenya Highlands had been declared "crown land", the British handed over to Lord Delmare 100,000 acres of the best land at the cost of a penny per acre.

This gave rise to development in most industries of the west. For example Belgium did playa very great part in exploiting Africa especailly during the second world war. After Belguim was overrun by the germans, a government in exile was set up in London. The colonial Secretary of the exile regime admitted that;- "

"During the war the Congo was able to finance all the expenditure of the belgian government in London,including the diplomatic services as well as the cost of our armed forces in Europe and Africa, a total of #40 million." (7):

The development of Uniliver company has been brought to a large extend by the plunder of the cheap African products. Most striking of all , in the development of Unilever, had been the progress of the United Africa company. Although Unilever's "centre of gravity" lay in Europe, it's largest member (the United Africa company) was almost wholly dependent for its livelihood in the well being of West Africa.(8)

The evidence with regard to the pattern of appropriation of surplus is shown in the East African coast. There was centralization of extractive mechanism in Nairobi and the port of Mombasa . All the big firms operated from Nairobi , with important offices in Mombasa to deal with warehousing, shipping, insurance e.t.c. Up to the start of the Second

World War, the volume of trade from E.Africa was fairly small but it jumped rapidly after that. For instance value of Kenyan imports rose from #4 million in 1938 to #34 million in 1950 and #70 million in 1960. (9):

Force was some times used to make the peasants grow cash crops so that the Europeans firms within African could thrive. Tanganyika under the Germans, experienced such force. The peasant were literally being forced to grow cash crops, by the use of the outside world when Africans resorted to violence. A case in point is the outbreak of the Maji Maji wars due to the forced cultivation of the cotton. One of the Kenya white settlers Colonel Grogan put it bluntly when he said of the Kikuyu tribe;-

" We have stolen his land. Now we must steal his limbs.Compulsory labour is the corollary of our occupation of the country." (10)

From 1943 ,Britain and the U.S.A engaged in what was known as "reverse land lease." This meant that war time united states loans to Britain were paid partly by raw materials shipped from British colonies to the U. S.A. Tin and rubber from malaya were very important in that context , while Africa provided a wide rang of products both minerals and agricultural.

Justification for reparation of expatriated African surplus:

From the foregoing one can note that the African raw materials and labour were exploited and expropriated by the West. Such exploitation cannot be termed as legal under the international law as it is against the principles of international law. (11):

It is a principle of international law that reparation must be made in full for the injury caused by an act or omission contrary to international law. This principle is defined in a declaration of the permanent court of international justice.

"The essential principal contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals is that reparation must, as far as possible , wipe out all consequences of the illegal act and re-establish the

situation which would, in all probability, have existed if that act had been committed".(12) :

This fact has been frequently stated in international case law. Thus in the option of the court in the Lusitian case, it was stated that :-

"The remedy must be commensurate with the injury received. The compensation must be adequate and balance as near as may the injury suffered".(13):

The same fact was emphasised in the charzow factory case where the judge said; -

"It is a principle of international law that a breach of an engagement involves an obligation to make reparation in an adequate form."

From the above one would be correct to argue that, from traditional doctrine and practise there is an international legal duty to make reparation for an injury occasioned. This duty is on the state which violated an international obligation.

In chapter One we saw that one of the important principal of reparation in the international law of reparation is that a state should prove removal of property by force or duress. "Force or duress" should not be understood from the point of view of the civil law, but public international law. The London declaration gave an interpretation for "force or duress" under peace treaties concluded after the second world war:

"The aliens were entitled for repatriation for any acquisition of rights that took place in occupied territory, whether carried out by way of open looting, plunder or by way of transaction apparently legal in form". (emphasis mine). (14):

Hence **"force and duress as explained after the world war II covered the physical and legal duress, the looting, theft, larceny and all other forms of dispossession. Therefore a part from the property removal by the open force or threats, all property , rights and interests are likewise subject to reparation that were acquired apparently lawfully, but by force or duress.**

"[duress covers] cases where property was taken away ostensibly with the consent of the lawful owner or holder, and indeed, cases where, to all appearance, due consideration was given. If must however, be patent from the circumstances of the case that the consent of the owner or holder had been obtained by misrepresentation or threats". (15):

After the second world war , the U.S.A Britain and U.S.S.R where to take control of defected Germany and her allied power. This was among others for the purpose of effecting restitution of the property removed from United Nations by Germany. In connection with the execution of the Germany M.G.R. (Military government Regulations)

19, the memorandum issued by the O.M.G.U.S (Office of Military Government U.S Zone on June 19, 1946, does not as a rule require the verification of the individual "Force or Duress". In paragraph 3b it is provided

> " If the goods existed in the claimant state at the time of occupation, it will be presumed that force was employed in their removal and restitution will be made."

In relation to colonial Africa, it can be rightly argued that the African surplus was expropriated by" force or duress" during the colonial period. It has already been shown in this chapter how the europeans exploited the African labour and raw material using methods ranging from violence to trickery. I submit that the force and duress used by the west in exploiting Africa's is in line with the principle of force or duress in international law of reparation.

The legislation which was sometimes used by the Europeans in exploiting Africa have no place in international law of reparation. Treaty practise and other arrangements, show that victorious states usually put specific restitution of public and private property in the pre-front of their claims. Moreover, the victor should himself restore property wrongfully captured. This practice merits attention. For the principles governing restitution are often relevant in connection with the claims for losses of the property caused by peace - time legislation relating to expropriation. This shows that the act of a sovereign even in relation to property under his control, and even subject to the Lex situs imposed by him is not final and conclusive in respect to claims of restitution made in accordance with international law.

An acceptance of such principle of specific restitution was contained in the Article 238 of the treaty of versailles, and, re- emphasised in the inter Allied Declaration of January 1944 in which it stated:-

> "The governments... reserve all their rights to declare invalid any transfer of, or dealings with ,property , rights and interest of any description which are or have been situated in the territories which have come under occupation."

This warning applies whether such transfer or dealings have been taken the form of

open looting, or plumber,or of transactions apparently legal in form even when they purport to be voluntarily effected.

It has been shown in chapter One that the " public -international law principle" and principle of territoriality are among the principles of reparation of international law. It is a general principle of reparation that the claims to the returning of the property have to be enforced on the ground of the public international law principle. That is reparation is a duty of the public international law.

The principle of territoriality in application to reparation can be summed up as restitution of the property removed from the claimant state irrespective of who is in its possession. This means the aggressor is liable to repair the property.

> "Irrespective of any subsequent transaction by which the present holder of any such property has secured possession".(16):

After the second wold war there was restitution by European Ex_enemy states . Specific restitution is provided for by the treaties of peace with Italy, Romania Bulgaria, Hungary and Finland These five treaties state that such states accept the principles of the U.N declaration of the 5th January 1943, and shall return, in the shortest possible time, property removed from the territory of any of the United Nations. These treaties go further to state that the obligation to make restitution applies to all identifiable property which was present in the respective sates. All the identifiable property removed from the United Nations was to be restituted;-

> "Irrespective of any subsequent transactions by which the present holder of any such property has secured possession".(17)

Among the many international disputes concerning reparation, restitution is done irrespectively of the state possessing the identified property. In the case of the taken from African in form of African raw materials and labour, restitution, submit should be done in form of compensation. This is due to the fact that very few of the properties taken during

the colonial period can be identified in their original form. As a result of this factor Africa may claim compensation instead of restitution in natura.

It is a principle of reparation in international law that compensation can be made or damaged. Pursuant to dispositions of the allied authorities in Germany, to the provision of Paris peace Treaties and the Bonn treaty , the injured state could claim compensation instead of restitution in natura (restitution in the technical sense) if the goods were consumed up, consumed ,lost or destroyed.18

The last principle in the international law of reparation is the principle of identification. It provides that only the property which is identifiable on the state concerned can be reparated. the rationale behind such is that of establishing whether the object claimed is identical with the one claimed by the interest (claimant) state as the having been removed by force or by duress from her territory.

The claimant state is legally allowed by international law to search and identify its property in any state involved.

The exploited surplus raw materials and labour from colonial Africa can be easily identified. This may in the part of Labour, be identified through the history of slavery and colonialism, say the existence of blacks in America and other parts of the world. On the other hand the identification of materials taken from Africa can be found in the western countries.

However, as pointed out earlier a large part of Africa's claim would be compensation, since most of the exploited properties were being used by the Europeans for their development. this leaves little to be identified.

Instance of reparation of property in the public international law:

Among the many international disputes concerning requisitioned property after the first

world war, were those which arose between the states and defeated powers. These were settled on the basis of the traditional rules governing restitution and compensation .(19) Particularly it was laid down by the permanent court of international justice in the Chorzon Factory case between Germany and Poland that;-

> " Reparation must as far as possible wipe out all the consequences of the illegal act and re -establish the situation which would in all probably ,have existed if this act had not been committed."(20)

The traditional and the objective standards of international conduct towards aliens property was expounded by fachiri in 1919 in the following words:-

> "If a state expropriates the physical property of an alien without the payment of full compensation it commits a wrong".(21)

The confiscations by the National- socialist regime in Germany of Jewish property were part of a deliberate policy of racial discrimination. Many of these confiscations were accompanied by violence or by threats of violence to owners. As a result of the peace treaties and the allied occupation legislation, measures of restitution and reparation have been taken in Germany, for the benefit of foreigners and stateless persons, and even to the new state of Israel which did not come int existence until after the defeat of Germany.(22) After world war I Hungary was made to pay to the Allied and Associated governments what they had taken a way from the United Nations.

This was provided in the Treaty of Trianon.

> "Hungary shall effect, in accordance with the procedure laid down by the reparation commission restitution in cash taken a way seized or sequestrated and also restitution of animals, objects of every nature and securities taken away seized or sequestrated."(23)

One of the Allied war aims, constantly repeated during the war , was to was to assure to the victims of the Nazis restitution of their property stolen, confiscated, or taken under duress, and compensation for loss of liberty, health profession, and other forms of injury. After the unconditional surrender of Germany, the four Allied powers, by joint declaration of 5th June 1945 assumed supreme authority with respect to Germany, including all

powers possessed by Germany.

The legislation concerning restitution and compensation to victims of the Nazis was required because the National - socialist regime had, on the one hand, violated in an unparalleled way fundamental principles of natural law and on the right of man in relation to its own subjects and on the other hand had violated during the war in relation to the peoples of the occupied countries the accepted rules of the international law concerning the rights of a military occupant.

In another development in November 1949, two months after becoming the first chancellor of the federal Republic of Germany, Kamrad Adenaver declared his government willingness to make restitution to the Jewish victims of Nazism. Former West Germany signed its first international commitment to pay reparations and indemnification to individual Jews, to the state of Israel, and to the Jewish communities around the world. Apart from the claims of the individual survivors and the separate governmental negotiations, the claims conference sought a sum of $500 million as recompense for plundered jewish assets for which no heirs could be traced.(24)

More recently when Iraq invaded Kuwait, there was destruction and plunder of property and that of other states having business in Kuwait. This ranged from the Oil fields and companies to libraries. Kuwait libraries were left empty and without any valuable materials. The United Nations ,which vowed to make the invaders pay for the damage they wrought, has started to squeeze Iraq. On May 20th, 1991 the United Nations security council set up the U. N. compensation Fund and endorsed a complicated procedure for weighing over 100,000 claims from around the world. The compensation fund comes from a United Nation's tax on Iraq's oil revenues.(25)

The above mentioned precedents on reparation emphasises the fact that there is an

international duty for reparation of every international wrong. The west is bound to compensate the African continent for it's role in the underdevelopment and exploitation of the continent.

3:3 **Slave Trade (impact)**

To talk about trade in slaves is to refer to the shipment of the captives from Africa to other parts of the world where they were to live and work as the property of Europeans. The titles given by the Europeans to books as the Arab slave trade , should not mislead people. The shipment were all by Europeans. to markets controlled by the Europeans and this was in the interest of Europeans capitalism. It was only in the East African coast and Sudan where slaves were slaves were sold and purchased by Arabs hence the title Arab slave trade.

It is argued that an African became a slave once he reached a society where he worked as a slave. before that ,he was first a free man and the captive. The process by which captive were obtained on African soil was not trade a tall. It was through warfare, trickery, banditry and kidnapping. At the end of the day when one tries to rationalise the effect of European slave trading on the African continent, it is important to note that one is measuring the effect of social violence rather than trade in any normal sense of the word.

A lot of African slaves were ferried across the ocean. Some died enroute. In average according to the latest research, a staggering 140 Million slaves were ferried across the ocean, not to mention the ones who died enroute.(26)

As a result of this there was lack of labour in the African societies to develop their land. Added to this is the fact that the Europeans captured the Youth between 15-35 years old, which is the active age in human society. The violence and warfare involved in the slave trading meant that a lot of activities were to go uncontrolled. development came to a stand

still. The is indicated by the fact that in the 19th century all the Europeans powers indicated their awareness of the fact that the activities of the connected with producing captives were inconsistent with other economic pursuits. Britain in particular, at this time wanted Africans to collect palm produce and rubber and to grow agricultural crops for export instead of slaves. Most of Europeans countries started discouraging slavery when it contradicted with their interests the 17th century. For example the Portuguese and Dutch actually discouraged slave trade on the gold coast for they recognised that it would be incompatible with Gold trade.

Such an awareness of the Europeans, proves the point that slavery and its associated practises was a major hindrance to the development of African continent. This is from the point of view of slavery leading to lack of enough labour in Africa. and the fact that the slavery per-se discouraged development.(27) In promoting the slave trade, Europeans deployed those techniques and principles of international lawyer wrote that the slave trade was once considered not only a law but desirable branch of commerce, participation in which made the objects of wars, negotiations and treaties between European states.(28) In the Antelope case the U.S supreme court found that since Europe and America had embarked on the slave trade for two centuries without opposition and without censure,no jurist could hold that it was illegal or that those who engaged in it might be punished or deprived of their property (slaves) . this line of argument doesn't hold water because the treaties were only entered by interested parties and hence opposition could not arise.

As circumstances changed, what was legal gradually became condemned. The church took the lead and then the law followed. In the English case of Sommerseff- v. Steward.(29) The court reviewed the ancient authorities on the slave trade and slavery. Mansfield C. J. said;-

> " The state of slavery is of such a nature , that it is incapable of being introduced on any reasons,moral or political, but only by positive law.Whatever inconvenience, therefore may follow from this decision , cannot say that this case is allowed or approved by the law of England and therefore the black [slave] must be discouraged."(30)

In insurance cases brought before Manifield C.J, he treated slaves thrown overboard or killed while forcefully demanding freedom as mere chattels for which damages were payable and as cases of homicide.

The parties to the congress of Vienna dubbed the slave trade as being repugnant to the principles of humanity and Universal morality, and bound themselves to eradicate it. As a final conclusion, the General Act of the Brussels conference Relative to the African slave Trade 1890 (31). Reaffirmed that Reaffirmed that the slave trade was illegal in international law, and made specific stipulations for its abolition. This included the intensification of colonial administration, the construction of armed posts for the suppression of trade, the improvement of communications and restrictions in the sale of fire arms and ammunition.

In a bid to eradicate slavery a temporary slavery commission was appointed by the league council in 1924.This led to the slavery convention of 1926, which for the first time defined both the slave trade and slavery . Any practise which came under such definition was prohibited under international law. The convention provided:-

> "Slavery is the status or condition of a person over whom any or all of his powers attaching to the right of ownership are exercised , the slave trade includes all acts involved in the capture , acquisition or disposal of a person with intent to reduce him to slavery, all acts involved in the acquisition of a slave with a view to selling or exchanging him, all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and in general, every act of trade or transport in slaves."(32)

The charter of the U.N provides in general for respect of human rights. Article 4 in particular provides the no one shall be held in slavery or servitude slavery and slave trade shall be prohibited in all their forms.

The foregoing has an indication that slavery was /is illegal, it was only made "legal" by the West so that they could exploit Africa. The profits that accrued from slave trade where so enormous as to form part of the foundation for the prosperity of the western world.

Justification foe the reparation of slave trade.

It is elsewhere mentioned in this chapter that prove of "force or duress" is a principle in the international law of reparation. As per the above discussion on slavery it is shown that the Europeans acquired slaves by means ranging from force to trickery. As a result such qualifies for reparation of slave trade.

Africa would claim compensation due to slave trade on the two grounds. Firstly, the slaves ferried across the ocean may be taken as a loss of property. If the African slave could not have been expropriated, Africa could not have been deprived such labour. To this extent the claim for Africa would not be restitution in "Natura" but for compensation due to the loss of labour. This will be in line with the principle of reparation that, as state has aright to claim compensation where the property in issue has been used or damaged.

Secondly the African continent can claim compensation due to the underdevelopment caused by the slavery. It has been shown how the level of development went down due to the effect of slavery.(33)

Gimbel in his book has been criticised by writers in his description of the reparation accruing to claimant states after the second world war. One of such writers is William T. Golden(34) he argues that Gimbels explanation of what should be reparated after the second world war was complete. He says that Gimbel should have made reference to the Nazi inhumanity and the cost of blood and treasure to the defenders in the war.

He goes further to point out that such reparation should include Germany industry's

ruthless exploitation of slave labour from concentration camps and foreign countries (for example by the Daimer Benz, manufacturers of mercedes Benz automobiles). He says that the reparation should have included the value of the worldly goods expropriated from millions of Jewish and christian concentration camp's victims and the billions of dollars equivalent of the tribute levied against occupied European countries.

3:4 General underdevelopment due to colonialism

(i) literature and art

Africa has suffered incalculable cultural and literature banditry. Due to the British colonialists all the ancient manuscripts written indecipherable urography was taken away from the coast of East Africa. During the second world war , a lot of Library and museum looting was occasioned. Italy under Mussolimi ransacked North Africa and took the booty to Italy.

The mute pieces of Sculpture which were African art and books laying in museums of London in specific and the west as a whole, form part of Africa's demand for reparation.

Reparation and compensation for culture has been precedented. When Hitler's Germany finally gave in to the might of the United Allies forces, most Western European countries and the Soviet Union looted Germany's libraries and cultural houses. Though the soviet Union was not bound by any international law it has returned the literature and cultural booty to former East Germany, and Europe did the same to west Germany.

A binding precedent under international law is seen in the trianon Treaty in which Hungary was to make restitution to the Allied and Associated powers in respect of:-

> "...all records, documents,objects of iniquity and art, and all scientific and bibliographical materials taken away from the invaded territories"(35).

The treaty goes to provide that specific restitution was to be made for:-

> "....all the records, documents and historical materials possessed by direct bearing

on the history of the preceded territory".(36)

The Arbitration Agreement Treaty made by portugal with Finance, Britain and spain regarding the properties of religious bodies expropriated at the time portuguese revolution, indicate that restitution has to made for artistic works removed from a claimant state. The Agreement provided for a tribunal of arbitration within the framework of the permanent court of Arbitration. By the Award dated 2nd september 1920, compensation was given in respect of some of the properties seized, and restitution was made in respect of other movable and immovable property.(37).

Brutality and inhuman treatment of Africans

After the outbreak of the first and second world wars Africans were '"recruited", in large numbers to fight in the wars. African soldiers were less skilled and hence they were in a high risk of loosing their lives.

France was the colonial power that secured the greatest number of soldiers from Africa. In 1912 conscription of African soldiers into the French army was pursued on large scale.During the 1914 - 18 war, 200, 000 soldiers were "recruited" in French West Africa, through the use of methods reminiscent of slave hunting.

These "French" soldiers served against the Germans in Togo, Cameroon, as well as the Europe itself. On the European battlefields, an estimated 25,000 French African soldiers lost their lives, and many more returned badly injured, for they were used as cannon fodder in the European wars.

Many writers have argued for reparation and compensation for human treatment and brutal killings. After the second world war there has been arguments for the Nazi inhumanity and Germany industry's ruthless exploitation of slave labour from concentration camps.(38). After the Allies occupied German, legislations were passed concerning compensation. such legislations applied not only to those who were German subjects, but also

to the Allied and other foreign nationals who were forced by the Nazis, in violation of the laws of war, to participate in the German war machine.They claimed for the loss of liberty and loss of health, and the heirs of those who perished claimed for loss of life. This part of legislation is in substance a sanction applied through international action for grave violations of international law by the former Government of Germany, for which the German state was responsible under international law.

One can rightly argue that all the African's who recruited to the European armies to fight in the first and second world wars, were forced to do the same. They ended up loosing their lived which had the consequence of depriving Africa the labour necessary for development. As already pointed out, in the international law of reparation, the legislations passed by any occupying power are rendered invalid for the sake of restitution. In relation to colonial Africa, all the legislations passed for the sake of recruiting Africans were void.It follows from this that Africa should be compensated for loss of life inhumanity and underdeveloped caused by such recruitment.

(iii) **The African liberation movements.**

The colonial wars between the colonizers and the colonised have been regarded as having an international outlook or concern.

In it's preamble, the charter of U.N enjoins that armed force shall not be used, save in the common interest; Article 2

(4) condemns the use of force or threat therefore of states against the territorial integrity or political independence of any state or any manner inconsistent with the purpose of U. N. Though this prohibition of the force to quell an internal rebellion.(39). This is qualified if an internat concern is rooted in a matter of international concern, then, it ceases to be a

matter of domestic jurisdiction pro - fanto. Once a matter becomes one of treaty obligation, it is to that extent removed from the states exclusive domestic jurisdiction.

Although the African libration movements can be termed as internal rebellion, they involve matters of international concern. As a result the liberation wars cease to be matters of domestic jurisdiction but of international concern. Although the charter provisions relate to a state's international dealing principally, they also regulate matters that would otherwise fall within domestic jurisdiction but for treaty obligations, Such as human rights entrenched in the charter. Article 2 (4) also forbids the use of force in any manner inconsistent with the purpose of the U. N. These purposes include:- 1. The development of friendly relations among nations on the basis of respect for the principle of equal rights and self determination of people.

2. The achievement of international co-operation in promotion of human right on the basis of non discrimination.

Colonialism is contrary to the principle of self determination and non discrimination, and the use of force to perpetrate it is an illegal use of force contrary to "the purpose of the U. N".

Portugal could not plead the use of force in quelling the liberation movements to the satisfaction of any of the above permissible heads. It could not claim that it was protecting it was protecting its territorial integrity. The break - away of colony doesn't contravene the integrity of the colonising state.

From the forgoing it is clear that the colonial wars are governed by international law and consequently should be regulated by international law. In international law of reparation, it is an established principle that the aggressive state is made to pay reparation in the form of war indemnity, for damages occasioned in the war.

Article 161 of the Treaty of trianon, Germany and her allies were made responsible on the ground of general principle, according to which these countries were bound to make reparation;-

> ".... for causing the loss and damage to which the Allied and associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Austria- Hungary and her allies" .

In the case of colonial Africa, reparation should be made for all the losses incurred due to such of colonial wars. A lot of property and lives were lost during the liberation struggles. Such losses call for compensation in form of war indemnity.

Conclusion

The colonization of Africa lasted for just 70 years in most parts of the continent. That is an extremely short time period within the context of Universal historical development. Yet, it was precisely in those years that in other parts of the world the rate of change was greater than ever before. Capitalist countries revolutionized their technology to enter the nuclear age. Meanwhile, socialism was inaugurated, lighting Semi feudal, semi capitalist Russia to a level of sustainable economic growth. Socialism did the same for China and North Korea.

It is against these decisive changes that event in Africa have to be measured. To mark time or even to move slowly while others leap forward is virtually equivalent to going backwards.

The rape and plunder of the African continent by the west during colonialism is legally tenable. If Africa were to take the west to an international court, then it would have a strong case against the west.

Africa's locus standi is evidenced in the Exploitation of the African Surplus which was to be expropriated to the west. A lot of raw materials, cheap and forced labour were utilised by the Europeans for their development. Quoting figures from a number of European countries' archives, over 25 million African slaves died enroute to the slave markets of Europe and America, and more died and perished on the arrival or shortly thereafter.

By the time the slave trade ended closer to a million slaves had perished. Such a number added to the 140 million African slaves who were ferried across the oceans into the decespora as slaves, leads to quite a substantial exploitation and plunder of African labour.

According to Nigerian chief Bashorun m.k Aboila , one of the chief prominent for reparations, the west owes Africa a mind boggling 130 trillion u.s dollar in terms of lost materials, products, and manpower.

The bottomline is the question;-

"what would have been as Britain's level of Development. Had millions of them been put to work as slaves outside their homelands and their materials expropriated over a period of the four centuries?"

The principles of international law of reparation are in conformity with the acts of the colonialist in exploiting colonial Africa. This gives a right to reparation of the African continent due to its exploitation by the west.

FOOTNOTES : CHAPTER III

1: RAGNAR NURKE - Problems of capital formation in underdeveloped countries Dheli P.38

2: Ibid

3: CASELY J.E - African Nationalists; Hayford, 1922 p. 49

4: HENRI LABOURET _ Africa Before the White man; Newmann p. 58

5: WALTER RODNEY - How Europe underdeveloped Africa; Heinman P. 48

6: Ibid

7: P. JALEE - The Pillage of the Third World, stockdale p. 48

8: Supra note 5 p. 200

9: Ibid p. 171

10: Ibid p. 173

11: In chapter two it is shown how colonialsm was illegal under international law and consequently all its activities (consequences) were illegal.

12 : Reports on permanent court of international Justice series A No. 17 p.47

13: Reports of international Arbitral Awards Vol VII p.35.

14: Declaration of 5th January 1943 M G R 19-1001 (found in ISLVAN VASRHELYL - Restitution international law, Budapest p.81

15: Para. a of M G R 19 - 1002 - MARTIN .A. "The paris Peace treaties "; British Year book VOL. 24 1947.

16: Hungarian Peace Treaty; Appendix 1 Article 24 Para 2.

(GRENVILLE J. A -The major international Treaties; Methuen & co Ltd p. 46)

17: WORTLEY B. A. - Expropriation in public international law, Tenbury p.81

18: ISTVAN VASARHELYL - Restitution in international law; budapest p. 172

19: See the following cases decided by the P.C. I .J; German settlers in Poland (series B No. 6 1923); Treatment of Polish nationals in Danzing (Series A/B No.44 1932) and Minority schools in Albania (series A/B no. 64 1935)

20: P.C.I.J Series A no. 7 (1926) p.4

21: Supra note 17 p.64

22: British Year book Vol. 10 (1929) p.32 at 35

23: "Trianon Treaty" article 168 (Found in Supra note 16p.49)

24: RONALD W. ZWEIG - Germany Reparations and the Jewish world; History of the claims conference; Boulder, colo 1987 p.198.

25: Business week /June 10, 1991 p.39.

26: Nation Newspaper, June 23, 1991 p.7

27: H. WHEATLEY - Elements of international law scientia, part II p.20

28: WHEATSON'S Reports Vol. 10 p. 66

29: (1772) English Rwports K.B Vol: 98 p. 499

30: Ibid p. 150

31: UMOZURIKE. U - International law and colonialism in Africa; Enugu, P. 11

32: Leage of Nations Treaty series vol.9 P.253

33: JOHN GIMBEL - Science Technology and Reparations: exploition and

plunder in post war Germany; stanford, 1990 p.280

34: Political science Quarterly p. 668 vol. 105 (1990)

35: Supra note 23 article 175

36: Ibid article 177

37: The text of Treaty found in R.I.A.A Vol 1 P.9; A.J VOl.XV p.99

38: Supra note 34

39: H. WALDOCK - General course in Public international law; scientitia 1962 p. 233

40: Supra note 26.

CHAPTER IV.

RECOMMENDATION AND CONCLUSION.

RECOMMENDATION

Are this short-cuts to economic development for the underdeveloped economies.? This question has occupied the attention of interested parties during the last three decades. These include university lecturers, international economists, the United Nations and its agencies, the Organization for Africans Unity, planning agencies, economic ministers etc. Many international conferences under the various sponsorship have been held during this period and volumes of resolutions, guidelines, learned documents and these have been published. The end result has been negative. The developing countries continue to remain underdeveloped only getting worse in relation to the developed countries.

Most bourgeois economists admit that the gap between the developed and underdeveloped countries is becoming larger day after another. However they do not give historical explanation of such a fact nor do they accept that there is a relationship of exploitation. Instead what most of them try to do is to put a biblical exploitation of the whole paradox.

"For unto every one that hath shall be given, and ha shall have abundance; but from that hath shall nt be taken away that which he hath."

This is in my view a very crude and unscholarly way of explaining a phenomena. The interpretation that underdevelopment is a God's creation is emphasised because of racist trend of European teachings. This is in line with the argument that the advancement of Europeans is due to their inherent superiority while the underdevelopment of Africa is due to the generic backwardness of the race of black Africa.

The question to be passed is what has brought about such underdevelopment of the

African continent. Is it inherent in the very nature of underdevelopment that makes development such an impossible task.? Among the many prescriptions that have been offered e.g cultural, social, psychological,even economic none has produced any encouraging results. I submit that a thorough determination of when and where underdevelopment came about, may solve the paradox and reparation made for such underdevelopment.

Historical materialism says that to know the present we must look into the past and to know the future we must look into the past and the present. By looking at what colonialism was and its effect, one can be able to answer the question why there is underdevelopment in Africa.

Is Africa not underdeveloped now because it has been colonised in the past.? There is no other explanation to the fact that practically the whole of the underdeveloped world has been colonised either directly or indirectly by the western powers.

It has taken long for the issue of reparation for pre - colonial and colonial Africa's plunder and exploitation to be raised in the international scene. The reason behind that , in my view , is that most African countries have been busy trying to "take off" from the aftermath of colonialism. However it is encouraging to learn that Africans have realised that, part of its backwardness has been caused by slavery and colonialism.

The organization for African Unity, has for the first time addressed itself to the question of reparation. It has downed into the organisation that the underdevelopment of Africa has been caused by the plunder and rape of the continent by the western powers during colonialism.

In what can be termed as a rare departure from tradition in the just concluded 27th Organisation for African Unity, the Africans head of states adopted a declaration on reparations for slave trade and the aftermath of the trade in Africa's development. The

declaration mandated the secretary - general to institute a thorough study of the effects of slavery on the African continent, set up a committee from the continent and the black diaspora to review the issue before the next O.A.U summit.

To the minds of many people the declaration threw open an issue that evokes bitter memories of racism and its effect on Africa's socio-economic development over the last four hundred years and the west's both legal and moral obligation to restitute and repair centuries of human and material exploitation, plunder and rape of Africa peoples. But the point here is not a moralistic one but an overly material in view of the crippling debt burden that Africa owes the western world, a staggering 270 billion U.S dollars.

In the last century, German and its allies have had to pay reparations for their role in the first and second world wars, in particular to the Jewish people who lost over six million U.S dollar during the second world war , while Japan has had to woo its Asian neighbours with grants in a bid to make amend for human and economic plunder of the countries during the war. In the 1980's the Americans compensated Japan for their role in putting Japanese in the concentration camps.

Much recently Iraq has had to pay for its aggression against Kuwait in the gulf war with the backing of the United Nations resolutions. Iraq and germany's cases offer legal and political precedents if not a moral platform from which Africa should pursue its matters.

If reparation were right for Germany and its allies, and Iraq (aggression) then the West is guilty of centuries old acts of aggression avert and covert against Africa and has to pay reparations.

The notion about international law during the pre-colonial and colonial periods exemplify the weakness and the injustice of the system. International law was only being used for the benefit of the europeans. It was passive to the relations between Europeans and non-

Europeans.

The present international law is required to regulate the relations between all peoples, weak or strong, Europeans or non-Europeans. It must thus lend itself to a dynamic development having justice, equality and human rights for all as its goal. The rested interests of the exploiters and the racists may be affected but the greater good of all lies in that it is the only way all human beings, nations will feel equal. The united Nations has ushered a new era in international relations, an error in which fundamental human rights,reparations and compensation by aggressive nations; international co-operation in the solution of world problems and maintenance of peace and security are some of the matters of international concern.

I humbly summit that a modern international law of colonialism, must, therefore, be directed towards redressing the exploitation of Africa by the west. I owe no apologies for my forthright condemnation of a system that was inhuman and immoral, that it was perpetrated by Europeans against Africans and it won tolerance but not approbation. The facts of colonialism have been distorted by the west,the native has been portrayed as having everything to gain through contact with the Europeans who succeeded in creating nation out of tribes.

From the a foregoing it will be right to assert that the west should be taken to an international court to answer claims of reparation from the African continent. Africa's case revolves on the loss and damage due to slave trade; the expatriation of African surplus to the west during colonialism; the cultural and literary banditry by the west; colonialism perse and to some extent neo-colonialism; and lastly the skewed terms of trade with the west.

I strongly feel that the issue of reparations for colonialism and slavery deserves articulation and is legally tenable.

CONCLUSION.

There is no room for doubt that the restitution duty in the technical sense of the term only comes into existence after the establishment of the identity of the removed property. The injured state may only claim compensation instead of restitution in natura if the goods were used up, consumed, lost or destroyed after the identification.

This duty of restitution in natura and compensation arises out of a general international delinquency committed by a state which did not meet its liabilities based on international law and thereby injured another state in its interests.

The general principles recognized by civilized nations together with international treaties and customs for the present law of reparation in international law. These principles may be classified as:

(i) Claims to the returning of the property or compensation must be enforced on the ground of public international law.

(ii) The principle of territoriality. This states that restitution should be done of all the property removed from the claimant state irrespective of who is in its possession.

(iii) Restitution is done where property was removed by force or duress.

(iv) The principle of identification and the irrelevance of ownership. The property reparated is the one which can be identifiable in the territory of the states concerned.

I have discussed the relation of colonialism and international applicable at the time. Knowledge of such relationship will help in laying a background for reparation of colonial Africa and slavery. It is shown that the beginning of modern colonialism in Africa is traced back to the European trade in African slaves. While profits boomed, international law did nothing to protect Africans who were pitiful victims of inhuman though profitable business.

Legal techniques were developed for colonialism. The Africans were deemed to have no

sovereignty because they were, by European standards, uncivilized and primitive. The treaties the Europeans concluded with African kings and chiefs had no legal effect but could be produced as evidence of occupation. Where cunning or persuasion failed, force could be used, without the restraining influence of international law, which was, in any case, for the benefit of the Europeans exclusively.

The conquest and annexation of Ethiopia was a rude reminder of whom international law served. Aggression was planned and executed against Ethiopia, a league member, by Italy, but no state could protest on this while it was against the law of the league of nations.

The locus standi for Africa's case is drawn from the consequences of colonialism and slavery. Quite apart from the moral aspect and the immense suffering that it caused, the European slave trade was economically totally irrational from the view point of African development and can be legally tenable in international law.

During the colonial era a lot of African surplus was expropriated to the western world. These ranged from cheap and forced labour to the exploitation of raw materials. Among the claim for reparation is the damages incurred during the colonial wars fought between the colonizers and the African liberation movements. Such Argument for reparation is justified by the fact that colonial wars had an international concern.

In the bottom line is that such an exploitation of the African continent during colonialism and the effects of slavery call for reparation and compensation for the African continent. There has been precedents for reparation, namely, after the first and second world wars, and after the gulf war.

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