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## Redress for Historical Injustices: Haiti's Claim for the Restitution of post-Independence Payments to France

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# Redress for Historical Injustices: Haiti's Claim for the Restitution of post- Independence Payments to France

Günther Handl\*

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## I. INTRODUCTION

One of the more notable themes of our times is the remarkable increase in the demand — both within domestic societies and at the international level — for the redress of social, economic and other related consequences associated with historical injustices.<sup>1</sup> At the international level, especially in a North-South context, claims related to slavery<sup>2</sup> and the Transatlantic slave trade,<sup>3</sup> as well as other colonial-era atrocities,<sup>4</sup> have acquired special prominence. While these demands tend to vary in terms of their specific objectives, they usually seek an acknowledgement of the moral, if not legal wrongfulness of the incriminated conduct concerned.<sup>5</sup> Frequently, these

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<sup>1</sup> For preceding assessments of this theme, *see generally* Dinah Shelton, *The World of Atonement: Reparations for Historical Injustices*, 50 NETH. INT'L L. REV. 289 (2003); *see also* Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?* 19 B. C. THIRD WORLD L. J. 429 (1998). Apart from the horrors of slavery, the slave trade and colonialism, whose specific implications will be discussed in detail below, this phenomenon of seeking to hold responsible states legally accountable extends also to the mistreatment of indigenous populations, the discrimination of minorities and even the degradation of the global environment, specifically the endangerment of the planet's climate stability. Regarding the latter, *see, e.g.*, Nina Lakhani, *Rich countries with high greenhouse gas emissions could be \$170tn in reparations*, THE GUARDIAN (June 5, 2023, 1:02 PM), <https://www.theguardian.com/environment/2023/jun/05/climate-change-carbon-budget-emissions-payment-usa-uk-germany>.

<sup>2</sup> For a review of the status of the reparations debate, *see* Olivette Otele, *More Than Money: The Logic of Slavery Reparations*, THE GUARDIAN (March 31, 2023, 4:00 PM), <https://www.theguardian.com/news/ng-interactive/2023/mar/31/more-than-money-the-logic-of-slavery-reparations>.

<sup>3</sup> *See, e.g.*, Asha Wilkis, *Trillions owed in reparations for Transatlantic Slavery — report*, JAMAICA GLEANER (June 9, 2023, 1:26 AM), <https://jamaicagleaner.com/article/lead-stories/20230609/trillions-reparations>.

<sup>4</sup> Examples in point include Germany's campaign of genocide against the Herero and Nama between 1904 and 1907 in what was then German Southwest Africa; and Japan's use of "comfort women," a system of sexual slavery, in Korea (and elsewhere) before and during World War II. *See generally* Shelton, *supra* note 1, at 316-19.

<sup>5</sup> *See, e.g.*, CARICOM Ten Point Plan for Reparatory Justice, CARICOM, <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/> (last visited August 28, 2023) (calling on European governments to follow an outlined "path

inter-state level claims are couched in terms of “reparations,” although not necessarily in a technical legal sense.<sup>6</sup> Nevertheless, they always amount to the assertion of a right to what might be referred to as “reparatory justice.”<sup>7</sup> In this surging wave of international representations for redress, Haiti’s claim for the restitution of post-independence payments to France, stands out not only because of the monetary amount in issue is relatively “precise and well-documented,”<sup>8</sup> but also, and more importantly, because of the solid international legal basis on which it rests.

There is no need to dwell in detail on the well-known facts that gave rise to the Haitian government’s campaign in 2003 advancing

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to reconciliation, truth, and justice for VICTIMS AND THEIR DESCENDANTS,” ranging from “full formal apology” to “debt cancellation”).

<sup>6</sup> I.e., denoting a state’s legal obligation to undo the consequences of its internationally wrongful act. *See* Art. 34 of the Articles on the Responsibility of States for Internationally Wrongful Acts [ARSIWA], UN G.A. Res. 56/83, Annex, 28 January 2002 (“Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination . . .”).

<sup>7</sup> *See, e.g.*, CARICOM Reparations Committee, *10-Point Reparation Plan*, <https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/> (last visited Aug. 28th, 2023) (asserting that “victims and descendants of . . . [crimes against humanity] have a legal right to reparatory justice, and that those who have committed these crimes, and those who have been enriched by the proceeds of these crimes, have a reparatory case to answer”). *See also* Visit to Belgium: Rep. of the Working Group of Experts on People of African Descent, Rep. of the H.R.C., U.N. Doc. A/HRC/42/59/Add.1 (August 14, 2019) (presenting the findings of the Working Group of Experts on People of African Descent outlining the current legal, institutional and policy framework in the country and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent).

<sup>8</sup> PETER HALLWARD, *DAMMING THE FLOOD: HAITI AND THE POLITICS OF CONTAINMENT* 227 (2007). Note, however, elsewhere efforts to assess the economic benefits derived from slavery, hence the measure of possible compensation due. A case in point is the Netherlands. *See generally*, Markus Balkenhol, *Het Nederlandse koloniale slavernijverleden en zijn doorwerkingen*, STAAT & SLAVERNIJ (2023) [The Dutch Colonial Slavery Past and its Effects] (surveying how the Dutch state and its predecessors were involved in the colonial slavery past, as well as how administrators and entrepreneurs in the metropolis and in the colonized societies received economic benefit derived from the institution of slavery).

its claim for restitution.<sup>9</sup> Rather, it should be briefly noted that following Haiti's successful rebellion and declaration of independence from France in 1804, the former colonial master, in 1825, forced upon its ex-colony an arrangement, pursuant to the terms of a Royal Ordinance of April 17, 1825, whereunder it formally recognized Haiti's status as an independent nation in exchange for an exorbitant sum of money and a 50% reduction of customs duties on all imported French goods.<sup>10</sup> It is unclear what France's grand design, if any, might have been in imposing this deal.<sup>11</sup> It is evident, however, that the terms of the Royal Ordinance were undeniably harsh and ultimately devastating for Haiti: The amount of indemnity demanded – 150 million gold francs -- was pegged to the gross income generated in pre-independent Haiti, the size of income in turn being a direct function of an economy based on slave labor.<sup>12</sup> As a result, Haiti was forced into adopting a rural code that maintained a country-wide system of servitude resembling pre-independence conditions of slavery. Still, the country proved unable to generate sufficient funds to meet its annual payment obligations beyond a first installment of 30 million francs. And although in 1838 France agreed to reduce the indemnity to 60 million francs, Haiti had to take out massive loans from French bankers, at extremely unfavorable terms, whose repayment created a secondary decades-long financial burden now being referred to as Haiti's double debt.<sup>13</sup> The net result was (as the French King's envoy, Baron Mackau, accurately had predicted) that Haiti, although now fully recognized as independent

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<sup>9</sup> For an excellent recent account of the Haitian claims issue, see Catherine Porter et al., *The Ransom: The Root of Haiti's Misery: Reparations to Enslavers*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html>. See also JEAN-FRANÇOIS BRIÈRE, *HAÏTI ET LA FRANCE 1804-1848: LE RÊVE BRISÉ* (2008); ALEX DUPUY, *RETHINKING THE HAITIAN REVOLUTION: SLAVERY, INDEPENDENCE, AND THE STRUGGLE FOR RECOGNITION* (2019).

<sup>10</sup> See generally *Haiti 'Ransom' Project*, N.Y. TIMES, <https://www.nytimes.com/spotlight/haiti> (last visited Dec. 4, 2023).

<sup>11</sup> France might have intended to simply extract a maximum amount of compensation for its losses, punish the rebellious ex-colony, or ruin Haiti's economy and thereby force the ex-colony's return into the metropolitan fold.

<sup>12</sup> See Lazaro Gamio et al., *The Ransom: Haiti's Lost Billions* (May 20, 2022), <https://www.nytimes.com/interactive/2022/05/20/world/americas/enslaved-haiti-debt-timeline.html>.

<sup>13</sup> See *id.*

and sovereign, became “a highly profitable and costless province of France.”<sup>14</sup> Conversely, for the obligated party, the Republic of Haiti, the 1825 Arrangement proved to be a major factor in the decline of its long-term prospects as an economically, politically, and socially viable entity.<sup>15</sup> When President Aristide raised the matter of the “French debt” in April 2003,<sup>16</sup> France quickly rejected the Haitian government’s demand as unfounded in international law,<sup>17</sup> as legally being without merit.<sup>18</sup> The French government has essentially maintained this position ever since.<sup>19</sup>

It is the purpose of this article to challenge the validity of this characterization and to document the intrinsic merits of an international legal claim related to Haiti’s independence debt, if and when the Government of Haiti might be able and willing again to raise the matter internationally. Specifically, by highlighting the idiosyncratic nature of Haiti’s claim for restitution the article will show that its legal basis is stronger, its prospects for successful vindication

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<sup>14</sup> Porter et al., *supra* note 9.

<sup>15</sup> Certainly, the 1825 indemnity agreement’s deleterious net effect on Haitian society poses inherently complex evidentiary issues. Nevertheless, the cause-effect relationship appears well established and documented. *See generally id.* at 2-5. As Hallward notes, “[n]o single act of imperial coercion made as dramatic a contribution to Haitian underdevelopment.” *See HALLWARD, supra* note 8, at 226. *See also* Francis Saint-Hubert, *Le prix de l’indépendance d’Haïti, en dollars d’aujourd’hui* (2003)(unpublished manuscript) (on file with the author).

<sup>16</sup> *See, e.g., HALLWARD, supra* note 8, at 226-232.

<sup>17</sup> *See* Rapport au Ministre des affaires étrangères, M. Dominique de Villepin, du Comité indépendant de réflexion et de propositions sur les relations Franco-Haïtiennes, Janvier 2004 [Report to the Minister of Foreign Affairs, Mr. Dominique de Villepin, of the Independent Committee for Reflection and Proposals on Franco-Haitian Relations, January 2004] [hereinafter Villepin Report], 14 (“Le droit international ne résout pas tout. Et ce n’est pas parce qu’une question est très improprement posée qu’on ne puisse y déchiffrer, en deuxième analyse, un sentiment légitime d’injustice, ou l’expression biaisée d’une demande justifiée de reconnaissance.”).

<sup>18</sup> In short, it rejected squarely the idea that France might have a legal – as against a moral – obligation towards Haiti, that the issue was one of *legal reparation* rather than simply one of *international solidarity* with Haiti. *See id.* at 15-16.

<sup>19</sup> *See, e.g., id.*, “Hollande’s vow to settle ‘debt’ to Haiti sparks confusion,” May 12, 2015, at <https://www.france24.com/en/20150512-hollande-vow-haiti-debt-france-settle-slavery-confusion>: “French President François Hollande had some explaining to do after vowing Sunday to ‘settle the debt’ France owes to Haiti, with aides rushing to clarify that the debt referred to was a moral one and did not involve any financial compensation.”

therefore also more promising compared to the claims of most other countries presently seeking redress for historical injustices associated with slavery or colonialism.

## II. THE FRANCO-HAITIAN “ARRANGEMENT” OF 1825 AS AN INSTRUMENT GOVERNED BY PUBLIC INTERNATIONAL LAW

A government of Haiti claim related to the “French debt” intrinsically raises questions of public international law. This conclusion follows from the fact that France’s stipulation of the terms of the deal were presented by way of ultimatum in the 1825 Royal Ordinance, and Haiti’s acceptance thereof, represented a transaction governed by international law. Although the Royal Ordinance per se is a document unilaterally drawn up by France, it contained a conditional offer whose acceptance by the government of Haiti entails an undertaking binding upon both sides, not under the laws of France or of Haiti, but under international law. In other words, the legal mechanism through which Haiti’s sovereign independence was thus being formally recognized is an international agreement whose validity *ab initio*, termination, etc., must be determined in accordance with principles of international law, and specifically, the law of treaties.

It would be understandable, yet unpersuasive, if France were to attempt to characterize the 1825 arrangement as the settlement, at the intra-national level, of a dispute between mother-country and colonial territory, a situation that by the legal standards of the time would have put it outside the purview of international law and within the domestic jurisdiction of France. After all, at the beginning of the 19<sup>th</sup> century – not entirely unlike today – recognition by other states was not considered constitutive of the emergence of territories as new sovereign states.<sup>20</sup> Rather, recognition tended to be viewed as merely confirming that fact, once it was established that a former colony had effectively separated from the former motherland.<sup>21</sup> In

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<sup>20</sup> See HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 12-25 (1947) (analyzing the British and U.S. Government recognition practices during the early 19<sup>th</sup> century). See also Jochen Abr. Frowein, *Recognition*, 4 ENCYCLOPEDIA OF PUB. INT’L. LAW 33, 34 (2000).

<sup>21</sup> For example, the British government’s formal decision to recognize the independence of South American countries from Spain in the 1820s was guided by

other words, by entering into the indemnity arrangement – 21 years after the declaration of Haitian independence – France simply acknowledged the *fait accompli* of Haiti's successful rebellion, its existence over the previous years as a separate and independent sovereign entity. Legally speaking then, the 1825 arrangement was intended to be, and did in fact become, binding under international law upon both countries, once Haiti accepted France's conditional offer. In short, the Franco-Haitian arrangement represents an international agreement (henceforth "1825 Agreement") governed by international law. This means in turn that all questions related to the two countries' undertakings and responsibilities in respect of post-independence payments must be assessed in terms of the international law of treaties, not of domestic constitutional or contract law.

### III. THE 1825 AGREEMENT IN LIGHT OF CONTEMPORANEOUS INTERNATIONAL LEGAL STANDARDS

#### A. *France's Threat of the Use of Force as a Key Factor in Haiti's Acceptance of the 1825 Agreement*

There is little room for doubt that France's offer of formal recognition of full independence was accompanied by a barely veiled threat of the use of force against the ex-colony to re-establish French sovereignty over and slavery in the island.<sup>22</sup> Many historians and commentators would accept this view of the situation then facing the Haitian government.<sup>23</sup> For example, Thomas Madiou speaks of Haiti's evident choice between war with France or acceptance of the

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essentially two considerations: effective de-facto separation of the colony from the motherland and the new entities' reasonable prospect of stability. *See, e.g.*, HL Deb (15 March 1824) (10) Col. 974. In line with these parameters, France itself had recognized the independence of the United States of America on February 6, 1778, well before the Paris Peace Treaty of September 3, 1783, by which Great Britain formally recognized the United States as an independent nation. Indeed, on December 17, 1777, right after a decisive defeat of the British in the battle at Saratoga, the French foreign minister had officially acknowledged the United States as an independent nation.

<sup>22</sup> *See* Porter et al., *supra* note 9, at 6 (discussing Napoleon's earlier military campaign against Haiti, which was inspired by the same objectives, including the restoration of slavery).

<sup>23</sup> *See, e.g.*, DUPUY, *supra* note 9, at 93 (summarizing these voices, although Dupuy himself espouses a different view).

Royal Ordinance.<sup>24</sup> On the other hand, Alex Dupuy, for one, argues that rather than the fear of war, it was “the property question,” the preservation of the property rights of the new Haitian bourgeoisie that had replaced the former colonial planter class, that drove President Boyer to accept the French offer.<sup>25</sup> Some commentators have pointed to – largely *ex-post facto* emerging – evidence suggesting that in 1825 France may have lacked the actual capacity to reconquer the island, or even make a plausible threat thereof, thereby questioning the Haitian government’s motives in accepting the deal.<sup>26</sup> Whatever the exact reason or mix of motives that might explain the Haitian government’s acceptance, there is no denying the overtly coercive context and manner in which the French ordinance had been presented to Haiti.<sup>27</sup> This fact is, of course, of special significance from an international legal perspective as it calls into doubt the very validity of the 1825 Agreement.

Today, coercion against a state party to a treaty by the threat or use of force would constitute a violation of international law.<sup>28</sup>

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<sup>24</sup> See 6 THOMAS MADIOU, *HISTOIRE D’HAÏTI: 1819 - 1826* (1988). *Id.* at 460 (noting with regards to Baron Mackau’s representations vis-a-vis President Boyer: “[c]es explications étaient un ultimatum surdoré de termes polis et délicats: c’était l’acceptation de l’ordonnance ou la guerre.”).

<sup>25</sup> See DUPUY, *supra* note 9, at 95-97, 130-31.

<sup>26</sup> See, e.g., Frédérique Beauvois, Historian, Panel I at the University of Miami Inter-American Law Review Symposium: Haiti: Reparations & Restitution (March 24, 2023).

<sup>27</sup> Even Dupuy is forced to acknowledge that despite modern scholars’ access to key archives (which provides the benefit of hindsight), the exact reasons for Haiti’s acceptance remain uncertain. See Alex Dupuy, Panelist, Panel I at the University of Miami Inter-American Law Review Symposium: Haiti: Reparations & Restitutions (March 24, 2023). Dupuy downplays the causal relationship between France’s overt act of coercion in 1825, including the threat of Haiti’s reconquest and the re-enslavement of its population, and Haiti’s payment of indemnity, by pointing to the fact that the Haitian government on its own initiative in 1824 had made an offer to compensate the former French colonial property owners, whose terms mostly mirrored the stipulations of the 1825 Royal Ordinance. However, this narrative hardly disproves the fact of France’s then latent threat to Haiti’s survival as an independent state, which, of course, was the principal reason for the Haitian government’s offer in the first place.

<sup>28</sup> See Vienna Convention on the Law of Treaties art. 52, opened for signature May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980) [hereinafter VCLT] (“A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied

However, this rule aimed at preventing such “imposed treaties” did not become part of general international law until the 20<sup>th</sup> century, more specifically upon entry into force of the Covenant of the League of Nations, the Briand-Kellogg Pact of 1928, and, in particular, the United Nations Charter, which eventually outlawed the threat or use of force in international relations.<sup>29</sup> Consistent with the principle of intertemporal law,<sup>30</sup> this rule against imposing treaties does not operate retroactively to invalidate the conclusion of treaties done at a time when the use or threat of force against a state party was still permissible.<sup>31</sup> Nevertheless, a strong case can be made for the 1825 Agreement’s invalidity *ab initio* notwithstanding the principle of intertemporal law.

Coercion of a state party to a treaty (rather than of a state’s representative, which had been deemed illegal as early as the 17<sup>th</sup> century and would render the negotiated treaty voidable) does not in and of itself provide a sufficient reason with which to impugn the validity of the 19<sup>th</sup> century Franco-Haitian indemnity agreement. However, it is the larger factual context of Haiti’s forced consent, especially the threatened consequences for the country in case its

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in the Charter of the United Nations.” While there was some sentiment in the International Law Commission (ILC) to include “any other forms of pressure, such as a threat to strangle the economy of a country,” in the concept of coercion, the ILC confined the notion to “a threat or use of force in violation of the principles of the Charter.”). *See also Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session*, 2 Y.B. INT’L L. COMM’N 246, U.N. Doc. A/CN.4/SER. A/1966/Add. 1 [hereinafter International Law Commission].

<sup>29</sup> Neither did the so-called doctrine of “unequal treaties” that was frequently invoked to challenge the validity of “imposed treaties” prior to the outlawing of the international use of force—e.g., by China vis-a-vis the Soviet Union in relation to territorial concessions made during the 19<sup>th</sup> century—gain international legal currency.

<sup>30</sup> *See* *Island of Palmas (U.S v. Neth.)*, Decision on Award, 2 R.I.A.A. 829, 845 (Perm. Ct. Arb. 1928) (“[A] juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.”).

<sup>31</sup> However, any continuous effects of an act deemed legal at the time of its commission but illegal today, would be exempted from the principle of intertemporal law. The Institute of Int’l Law Res., *The Intertemporal Problem in Public International Law*, at 539 (Aug. 11, 1975) (“[A]ny rule which relates to the continuous effects of a legal act shall apply to effects produced while the rule is in force, even if the act has been performed prior to the entry into force of the rule.”).

government rejected the French proposal, that acquire legal significance. Specifically, the case for finding the 1825 Agreement violative of international legal precepts rests on France's threat of force to compel its former colony to pay "a staggering sum of reparations" or accept war whose avowed purpose was to reconquer the ex-colony and to "put Haitians back into bondage."<sup>32</sup> It is this aspect of the threat of the use of force – France's willingness to restore conditions of slavery in its former colony despite the latter having gained independence and formally abolished slavery – that renders the Franco-Haitian Agreement of 1825 a morally repugnant legal instrument incapable of creating binding legal obligations for the coerced party.

*B. "Immoral Obligations" as the Impermissible Object of a Treaty*

Today, it is, of course, generally accepted that treaties that run afoul of *ius cogens* – offenses "to justice and all human dignities" in 19<sup>th</sup> century parlance – are void.<sup>33</sup> Such treaties, we understand, typically seek to realize objectives that are specifically outlawed by international law because fundamentally at odds with the international *ordre public*.<sup>34</sup> Additionally, treaties that are forced upon a state under threat of sanctions whose imposition is fundamentally incompatible with the international public order are today equally incapable of creating legally binding obligations among the parties. That said, states' basic discretion to enter into treaties irrespective of whether their objectives were reprehensible, was circumscribed already well before the general prohibition of the threat of the use of

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<sup>32</sup> As noted, with a French naval fleet off Haiti's coast, the Haitian government was confronted with an unenviable choice between submission to France, implying the restoration of the status quo ante or the payment of a huge ransom to its former colonial masters. See Porter et al., *supra* note 9, at 2.

<sup>33</sup> See VCLT, *supra* note 28, art. 53. ("A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.")

<sup>34</sup> For a discussion of present-day scenarios, see, e.g., International Law Commission, *supra* note 28, at 248.

force took root in the 20<sup>th</sup> century. Specifically, there is substantial support in the early 19<sup>th</sup> century for the notion that the method of persuasion employed by the imposing state, the purpose and consequences of the imposed treaty, as well as the treaty's underlying rationale were factors capable of rendering the instrument invalid.

It is true that the existence of contemporaneous normative expectations to this effect can be traced only through reliance on what today would be called “subsidiary means for the determination of the rules of [international] law.”<sup>35</sup> For evidence of state practice – a critical evidentiary prong of international normativity in modern times – is, understandably, difficult to come by.<sup>36</sup> However, the principle of intertemporal law holds also implications for ascertaining both the sufficiency and authority of evidence regarding the law of nations. Thus, unlike a modern perspective on sources of international law, as exemplified, for example, by Article 38 of the Statute of the International Court of Justice,<sup>37</sup> in the 18<sup>th</sup> and early 19<sup>th</sup> centuries, the writings of eminent writers such as Heffter, Wolff and de Vattel carried decisive authority as “sources and evidences” of international law. Thus, international lawyers espousing a natural law perspective would argue that freedom of consent was an essential condition of a treaty's validity. Some, among them Emmerich de Vattel, one of the 18<sup>th</sup> century “fathers” of international law, would consider treaties of peace as an exception to this general rule. However, while adhering to this position, even de Vattel admitted that it was possible to conceive of treaties of peace so fundamentally unjust and immoral as to call into doubt the very validity of the treaty concerned: “If ever the plea of constraint may be alleged, it is against an act which does not deserve the name of a treaty of peace, – against a forced submission to conditions which are equally *offensive to justice and all the duties of humanity*.”<sup>38</sup> Similarly, August Wilhelm Heffter, the 19<sup>th</sup> century German international lawyer, emphasized

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<sup>35</sup> See Statute of the International Court of Justice, art. 38, ¶ 1.

<sup>36</sup> Given that at the time the means of gathering and compiling evidence of relevant practice of states were clearly more limited.

<sup>37</sup> See Statute of the International Court of Justice, art. 38, ¶ 1. The Statute ranks “the teachings of the most highly qualified publicists” among the “subsidiary means for the determination of the rules of [international] law.”

<sup>38</sup> EMER DE VATTEL, *THE LAW OF NATIONS OR PRINCIPLES OF THE LAW OF NATURE APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS* 445 (1883) (emphasis added).

the inherent invalidity of any international agreement that offends the international *ordre public*. Among examples of such treaties, he specifically mentioned a state's undertaking to introduce or maintain a system of slavery.<sup>39</sup>

Towards the end of the 19<sup>th</sup> century, against the background of natural law theories' diminished influence on international law, the view had reasserted itself that treaties were binding irrespective of whether the consent of a party was "tainted" by coercion or other factors. However, even during the heyday of legal positivism, some of the most eminent international scholars, such as Dionisio Anzilotti, expressed the contrary view, denying that a treaty fundamentally incompatible with the international public order could be valid under international law.<sup>40</sup> By the same token, during the 1930s, Judge Schücking, in his separate opinion in the *Oscar Chinn Case* makes the same point when he emphasizes that the Permanent Court of International Justice "would never . . . apply a convention the terms of which were contrary to public morality."<sup>41</sup> Similarly, Professor Alfred Verdross writing in 1937 notes that international law prohibits states from concluding treaties *contra bonos mores*.<sup>42</sup> Treaties concluded in violation of this principle, he postulates, are null and void.<sup>43</sup> It is, as Oppenheim notes, "a customarily recognised

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<sup>39</sup> See AUGUST WILHELM HEFFTER, *DAS EUROPÄISCHE VÖLKERRECHT DER GEGENWART* 147-48 (1844).

<sup>40</sup> See 1 DIONISIO ANZILOTTI, *LEHRBUCH DES VÖLKERRECHTS* 257 (1929). Of course, even during its heyday, legal positivism never completely displaced natural law thinking. In any event, in international law, natural law thinking experienced a general revival in the twentieth century and especially after World War II. See, e.g., Joseph L. Kunz, *Natural-Law Thinking in the Modern Science of International Law*, 55 AM. J. INT'L L. 951, 953 (1961).

<sup>41</sup> Oscar Chinn (Gr. Brit. v. Belg.), Judgment, 1934 P.C.I.J. (ser. A/B) No. 63, at 150 (December 12).

<sup>42</sup> See Alfred von Verdross, *Forbidden Treaties in International Law*, 37 AM. J. INT'L L. 571, 572 (1937).

<sup>43</sup> *Id.* at 572-73. Of related—though not direct—relevance to the present discussion is the fact that recognition in international law of the invalidity of a treaty on account of its fundamental inconsistency with public order principles has been paralleled from on as early as at the turn of the 19<sup>th</sup> century by a gradual emerging consensus among states that the simple fact of coercion against a state party would invalidate a treaty. Thus, apart from the special case of the Hague Convention on the Limitation of Force for the Recovery of Contract Debts of October 18, 1907 (special because of the limited and conditional proscription of the use of force it laid down), it was the United States, which, for the first time, in 1915, challenged

rule of the Law of Nations that immoral obligations cannot be the object of an international treaty.”<sup>44</sup>

In sum, while the evidentiary basis directly grounded in state practice itself remains admittedly limited, relevant international legal standards contemporaneous with the Franco-Haitian agreement of 1825 can be inferred from the opinions of the most highly qualified writers of the age: First, in case of a coercion of a state party the principle of *pacta sunt servanda* – expressing the traditional respect for the sanctity of treaties– could be set aside to redress a treaty’s perceived injustice and unfairness. Second, this approach to determining a treaty’s validity might be subject to an exception regarding peace treaties in relation to which the international community’s overriding interest in bringing hostilities to an end would warrant recognition of the treaty’s validity notwithstanding the coercion involved. Third, this “peace treaty exception” in turn, however, would be subject to another, crucial exception: In certain circumstances, i.e., when its terms, its “contextual setting” or underlying *causa* would appear to grossly offend basic notions of natural justice, even a peace treaty would be viewed as legally void.<sup>45</sup>

*C. France’s Threat to Re-Enslave the Haitian Population as a Violation of 19<sup>th</sup> Century International Law*

In evaluating the international legal validity of the 1825 Agreement, the critical fact is not, France’s threat of the use of force per se, but rather the threat of force for an odious purpose – to re-enslave Haiti’s population. Measured against this yardstick, the 1825 Agreement appears offensive to contemporary international community standards, therefore its validity doubtful, given that social and legal perspectives on both the trade in slaves and slavery itself underwent radical change from the beginning of the 19<sup>th</sup> century. One of the

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the validity of a series of agreements between China and Japan on account of the threat of military force used by the latter against the former. See Stuart S. Malawer, *Imposed Treaties in International Law*, 7 CAL. WESTERN INT’L L.J. 1, 25-26 (1976).

<sup>44</sup> LASSA OPPENHEIM, 1 INTERNATIONAL LAW: A TREATISE 896 (Hersch Lauterpacht ed., 8th ed. 1954).

<sup>45</sup> To be sure, the acts legally formalizing Haiti’s independence from France do not constitute a peace treaty in the formal, technical sense. However, even if the 1825 Agreement could be functionally assimilated to being a peace treaty, it would be subject to this exception.

first international signposts of this change is the Treaty of Paris of 1814 in which Britain and France undertook to jointly work towards the universal abolition of the slave trade.<sup>46</sup> In the Declaration of February 8, 1815 relative to the Universal Abolition of the Slave Trade, the Vienna Congress characterized the slave trade as having “been considered by just and enlightened men of all ages as repugnant to the principles of humanity and universal morality” and “a scourge which has so long desolated Africa, degraded Europe, and afflicted humanity.”<sup>47</sup> The signatories then declare their:

“sincere desire of concurring in the most prompt and effectual execution of this measure [the abolition of the slave trade], by all the means at their disposal; and of acting in the employment of these means, with all the zeal and perseverance which is due to so great and noble a cause.”<sup>48</sup>

While not legally binding, the Declaration’s official condemnation of slavery nevertheless was “a true milestone.”<sup>49</sup> Following Vienna, at the Congresses of Aix-la-Chapelle in 1818 and of Verona in 1822, the plenipotentiaries of the great powers, Great Britain, Austria, France, Prussia and Russia, reiterated the solemn commitment made in the Vienna Declaration and promised to “secure and accelerate the complete and final abolition” of the slave trade.<sup>50</sup> In the following decades Great Britain, in particular, through a series of bilateral treaties sought to extend the prohibition of the slave

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<sup>46</sup> See Art. I of the Agreement, dated May 30, 1814, reproduced in EDWARD HERTSLET, 1 THE MAP OF EUROPE SHOWING THE VARIOUS POLITICAL AND TERRITORIAL CHANGES WHICH HAVE TAKEN PLACE SINCE THE GENERAL PEACE OF 1814, at 20-21 (1875).

<sup>47</sup> Declaration of the Powers, on the Abolition of the Slave Trade, of the 8<sup>th</sup> February, 1815, reproduced in LEWIS HERTSLET, 1 A COMPLETE COLLECTION OF THE TREATIES AND CONVENTIONS, AND RECIPROCAL REGULATIONS, AT PRESENT SUBSISTING BETWEEN GREAT BRITAIN AND FOREIGN POWERS 11 (1840).

<sup>48</sup> *Id.* at 13. France was, of course, a signatory of the Declaration. For context, see generally Jerome Reich, *The Slave Trade at the Congress of Vienna--A Study in English Public Opinion*, 53 J. NEGRO HIST. 129 (1968).

<sup>49</sup> Thomas Fitschen, *Vienna Congress (1815)*, in THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Anne Peters ed., 2015) 678, 681.

<sup>50</sup> *Id.* at 695-96.

trade.<sup>51</sup> It might be noted in this context that the United States had adopted legislation to restrict the slave trade involving the U.S. as early as 1794,<sup>52</sup> and banned the importation of slaves into the U.S. by 1808.<sup>53</sup> By 1819 it had authorized the removal of any person subjected to the slave trade that had come within the jurisdiction of the United States as a result of the interdiction of such trade by U.S. armed vessels, to beyond the limits of the U.S., and specifically their return to Africa.<sup>54</sup> Finally, by 1820 the United States had begun to equate sea-borne slave trade with piracy and punish any such trader accordingly.<sup>55</sup>

At the same time, states had begun to abolish slavery at home, beginning with England in 1772 (extending abolition to all British Imperial possessions in 1833); and France in 1791 (extending abolition to the colonies in 1794, but reestablishing colonial slavery in 1802, finally ending it in 1848).<sup>56</sup> In Prussia, the Stein-Hardenburg Reforms of 1807 ended serfdom. Austria abolished serfdom in 1811, while Chile and Spain abolished slavery that same year. Slavery in Central America was abolished in 1824. Bolivia ended slavery in 1826; Mexico in 1829. Vermont, the first state in the United States to do so, ended slavery in 1777, to be followed by Pennsylvania which adopted a gradual emancipation law in 1780.<sup>57</sup> In short, by 1825, among the Great Powers of the time only Russia continued an unlimited system of serfdom/slavery; whereas many of the newly independent countries of Latin American had already jettisoned slavery. Finally, by the 1880's, at the time of the Berlin (1884-85) and Brussels Conferences (1890), slavery as well as slave trade had become generally recognized as incompatible with the international

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<sup>51</sup> See also Treaty between Great Britain, Austria, France, Prussia, and Russia for the suppression of the African Slave Trade, 13 July 1841, Austria-Fr.-Gr. Brit.-Prussia-Russ., 30 BSP 269 (1842).

<sup>52</sup> See Slave Trade Act of 1794, Pub. L. No. 3-11, 1 Stat. 347.

<sup>53</sup> See Act Prohibiting Importation of Slaves, Pub. L. No. 9-22, 2 Stat. 426 (1807).

<sup>54</sup> See Act of Mar. 3, 1819, Pub. L. No. 15-101, 3 Stat. 532.

<sup>55</sup> See Piracy Suppression Act of 1819, Pub. L. No. 15-77, 3 Stat. 510.

<sup>56</sup> See generally Myres S. McDougal et al., Human Rights and World Public Order 482-495 (2d. 2018).

<sup>57</sup> July 2, 1777: Vermont Officially Abolished Slavery, ZINN EDUC. PROJECT, <https://www.zinnedproject.org/news/tdih/vermont-abolishedslavery/#:~:text=On%20July%20%2C%201777%2C%20Vermont,state%20in%20the%20United%20States> (last visited Dec. 3, 2023).

public order and as conduct simply unbecoming civilized nations.<sup>58</sup> For example, under the Berlin Conference's General Act of February 26, 1885, the contracting parties, including France, agreed to "help in suppressing slavery, and especially the Slave Trade" in the territories over which they exercise sovereign rights or influence.<sup>59</sup> Although this provision ostensibly covered only African territories, it must be seen as reflecting a general, geographically unlimited consensus among states regarding the international illegality of slavery.<sup>60</sup>

As such, it appears a fair summary, that, first, by the end of the 19<sup>th</sup> century, at the latest, the prohibition of slavery had emerged as a new fundamental prohibition of international law.<sup>61</sup> Second, the international prohibition of the slave trade, as the first deliberate step towards outlawing slavery itself, was generally established by the middle of the 19<sup>th</sup> century, although for most countries the prohibition was in place much earlier as a result of applicable bilateral or multilateral treaties. Third, the emerging early 19<sup>th</sup> century sea change in public opinion about slavery and the slave trade had been accompanied by growing opposition to the further territorial expansion of slavery. Indeed, in terms of the evolution of relevant international normative concepts, the notion that the spread of slavery had to be stopped is, logically speaking, a precursor to the international consensus to curtail and eliminate the slave trade that started to take hold from the time of the Congress of Vienna of 1814-15. Therefore, whereas the *abolition* in law of existing forms of slavery – the most difficult and controversial objective of the 19<sup>th</sup> century anti-slavery movement – was not achieved before the end of the century, the *new creation* or *re-establishment* of a system of slavery in a territory that had freed itself of slavery can be considered to have been generally unacceptable by the time international legal restrictions were first being imposed multilaterally on slave trading

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<sup>58</sup> See generally *The Berlin Conference (1885)*, VANCOUVER ISLAND UNIV., <https://web.viu.ca/davies/H479B.Imperialism.Nationalism/BerlinConference.1885.htm> (last visited Dec. 3, 2023).

<sup>59</sup> *Id.*

<sup>60</sup> See 1 GEORG DAHM, VÖLKERRECHT 440 (1958).

<sup>61</sup> However, it was not until 1926 that states, in a first global legal instrument, the League of Nations Slavery Convention, undertook to eliminate slavery, the slave trade, and forced labor in their territories.

itself. If by this reasoning the emergence of a legal prohibition for states to expand the reach of slavery transnationally can be affirmed by 1825, the writings of “the most highly qualified publicists” might suggest an even earlier date.<sup>62</sup> Therefore, whatever that exact date might be, by the third decade of the 19<sup>th</sup> century, any arrangement, such as the 1825 Agreement, that aimed at the forceful re-introduction of slavery, would have been seen as running afoul of not only the moral but also legal sentiments of nations.

#### IV. THE INTERNATIONAL LEGAL CONSEQUENCES OF THE 1825 AGREEMENT’S NULLITY

Throughout the period during which Haiti effected indemnity payments to France and related monetary transfers to French banks – even at the height of positivist legal thinking – an international treaty would more likely than not be considered invalid if its terms or underlying *causa* violated the international community’s *ordre public*. The simple, universal truth, as Lord McNair reminds us in his classic study of the law of treaties, is that:

“[i]n every civilized society there are some rules of law and some principles or morality which individuals are not permitted by law to ignore or to modify by their agreements . . . . The society of States – which acknowledges obedience to the rules of international law – forms no exception to the principles stated above . . . .”<sup>63</sup>

Clearly, because of its inconsistency with public morality and natural justice, the 1825 Agreement falls into this category of suspect agreements, its validity open to doubt already at the time of its imposition. However, even if the international legal proscription of the re-introduction of slavery were to be deemed to be of later date, the 1825 Agreement would qualify *ex-post facto* as a violation of

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<sup>62</sup> See, e.g., *supra* text at notes 38-39.

<sup>63</sup> ARNOLD DUNCAN MCNAIR, *THE LAW OF TREATIES* 214 (1961) (“The maxim *modus et conventio vincunt legem* does not apply to imperative provisions of the law or of public policy; *pacta, quae contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere, indubitati juris est . . .*”) (footnote omitted).

public international law, hence as null and void from its beginning.<sup>64</sup> For, to borrow from a modern principle informing Article 64 of the Vienna Convention on the Law of Treaties (VCLT) but equally applicable in the French debt context, in case of a conflict between an existing treaty and a newly emerging *contra bonos mores* standard, the treaty becomes void and terminates.<sup>65</sup> In other words, towards the end of the 19<sup>th</sup> century at the latest, when practices of slavery, and a fortiori attempts at re-enslavement would have been considered clear violations of public international law, Haiti's payments thus would have been recognized as monetary transfers without cause given the 1825 Agreement's nullity.<sup>66</sup> Moreover, the revision of the 1825 Agreement's terms in 1838<sup>67</sup> could not right the wrong inherent in the original Franco-Haitian indemnity arrangement, nor cure its invalidity. Self-evidently, the relationship between the 1825 and the 1838 agreements is one of principal and subsidiary instruments, respectively. Therefore, even if it could be shown that the revised 1838 Agreement itself was not internationally invalid, its subordinate relationship to the tainted 1825 Agreement inevitably

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<sup>64</sup> The 1825 Agreement violated what in today's legal parlance would be called *jus cogens*. The International Law Commission characterizes the prohibition of crimes against humanity, which includes slavery, as a peremptory norm of general international law (*jus cogens*). See, e.g., art. 2 subsection (g) of the draft articles on prevention and punishment of crimes against humanity in Int'l Law Comm'n, Rep. on the Work of Its Sixty-Fourth Session, U.N. Doc. A/74/10, at 12 (2019). Former art. 19 of the ILC draft Articles on State Responsibility, refers to the prohibition of slavery as among obligations "so essential for the protection of fundamental interests of the international community that their breach [is] recognized as a crime by that community as a whole."

<sup>65</sup> VCLT, *supra* note 28, art. 64 ("If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.").

<sup>66</sup> ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 258 (2000) ("The invalidity of a treaty is rooted in the invalidity of the *consent* of a party to be bound. If it is a bilateral treaty, it will be void *ab initio* and its provisions will never have had legal force (Article 69(1))." See also VCLT, *supra* note 28, art. 69, ¶ 1.

<sup>67</sup> The 1838 revision, part of a series of agreements between the two countries, reduced the amount owed to 60 million francs. See François Blancpain & Bernard Gainot, *Les négociations des traités de 1838*, 16 LA RÉVOLUTION FRANÇAISE 75, 81 (2019).

affects its own validity.<sup>68</sup> In other words, as a matter of law, the later agreement could not retroactively extinguish the fact of France's original illegal conduct, i.e., the threat of re-enslaving the Haitian population, entailing the 1825 Agreement's invalidity.<sup>69</sup>

Today, whenever a treaty is null and void *ab initio*, its parties are obliged to "eliminate as far as possible the consequences of any act performed in reliance on" the treaty provision violative of *jus cogens*.<sup>70</sup> Of course, in the present context of Haiti's claim for restitution, no provision of the 1825 Agreement itself could be said to be in conflict with a rule of international law, let alone a 19<sup>th</sup> century equivalent of a peremptory norm of international law. Rather, as shown above, it is its context, France's act of compelling Haiti's consent by threatening reconquest and re-enslavement, that renders the Agreement internationally abhorrent. This means therefore that Haiti in seeking restitution of post-independence payments from France cannot simply invoke a technical violation of a peremptory norm of international law.<sup>71</sup>

Instead, Haiti's claim for restitution rests on the fact that payments in pursuance of an agreement void from the beginning requires the payee to effect the restitution of all the benefits unjustly obtained.<sup>72</sup> The VLCT spells out key considerations relevant *mutatis mutandis* to the claim at hand. First, as a basic rule, acts performed in good faith under an invalid treaty are not themselves rendered unlawful.<sup>73</sup> Therefore, a benefit received could not give rise to a recognizable claim for restitution under the treaty itself, nor under the law of state responsibility for internationally wrongful acts.

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<sup>68</sup> While the 1838 revision brought about a reduction in the debt owed and eased the mode of payment, it did not change in any way the fact that the 1825 Agreement lacked an internationally acceptable *causa*.

<sup>69</sup> As to the separate issue of whether Haiti's apparent failure, over time, to challenge the indemnity payment scheme, might be taken to suggest that she is now precluded from asserting a claim of restitution, see *infra* § 5.

<sup>70</sup> See VCLT, *supra* note 28, art. 71, ¶ 1(a).

<sup>71</sup> Both Articles 53 and 71 of the VCLT bear on the objective of a treaty as violating *jus cogens*, rather than on the conditions under which the treaty is concluded—the basis for impugning the 1825 Agreement—as conflicting with a peremptory norm of international law.

<sup>72</sup> See generally Christoph H. Schreuer, *Unjust Enrichment in International Law*, 22 AM. J. COMP. L. 281 (1974).

<sup>73</sup> See VCLT, *supra* note 28, art. 69, ¶ 2(b) (reflecting the traditional customary legal position on the matter of a treaty's "simple" invalidity).

However, paragraph 2(a) of Article 69 of the VCLT also recognizes each party's right to require the other "to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed."<sup>74</sup> Moreover, paragraph 3 of Article 69 expressly precludes a State to which an act of illegal coercion can be imputed from benefiting from any of the provisions of paragraph 2.<sup>75</sup> Of course, these provisions of the VCLT are of a modern, 20<sup>th</sup> century origin. However, this fact does not diminish their relevance to determining the appropriate present-day legal remedy in response to the invalidity of an early 19<sup>th</sup> century agreement. Indeed, 19<sup>th</sup> century international law would have recognized a very similar type of redress: The party responsible for forcing a treaty on the other party in violation of fundamental principles of international morality and justice, would be responsible to restore the situation to the status *quo ante*, and whenever not possible, to pay restitution for the benefits obtained under the treaty.<sup>76</sup> In sum, France as the financial beneficiary of the 1825 Agreement that must be considered void *ab initio* owes a duty of restitution to the Republic of Haiti.<sup>77</sup>

## V. ISSUES REGARDING THE ADMISSIBILITY OF A HAITIAN GOVERNMENT CLAIM FOR RESTITUTION

### A. *Basic Observations*

Probably the most difficult obstacle that Haiti would be facing in pursuing an international claim of restitution against France relates to its admissibility. The problem is accentuated by the fact that, as far as we know, Haiti did not articulate any claim of restitution until 2003, in other words long after it reportedly had paid off its

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<sup>74</sup> *Id.* at art. 69, ¶ 2(b).

<sup>75</sup> *Id.* at art. 69, ¶ 3.

<sup>76</sup> *See, e.g.*, 1 CHRISTIAN WOLFF, INSTITUTIONS DU DROIT DE LA NATURE ET DES GENS 152 (1772).

<sup>77</sup> It ought to be noted that the concept of *restitutio in integrum* refers more to "techniques to effect the restitution of unjustly gained benefits" rather than to a valid title to damages. *See* Christoph Schreuer, *Unjust Enrichment*, 4 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1243, 1244 (2000).

debts.<sup>78</sup> After all, “*time itself is an unwritten statute of repose.*”<sup>79</sup> This adage applies equally to the vindication of domestic legal claims and the presentation of international claims. Clearly, the longer the passage of time between the conclusion of a bilateral agreement whose validity is irreparably tainted and the assertion of a related international claim of restitution on grounds of the agreement’s invalidity *ab initio*, the more likely it will be that the claim may be found inadmissible. Nevertheless, international practice, including relevant decisions of international tribunals and courts, suggests that a prospective Haitian claim would be admissible internationally notwithstanding any time-related concerns.

At the outset it must be acknowledged that Haiti’s claim for restitution does not benefit from the rule exempting *jus cogens* violations from being time-barred, although *prima facie*, Haiti’s claim might seem to escape altogether the problem of extinctive prescription. After all, prescription does not operate in relation to claims involving what today would be called *ius cogens* violations.<sup>80</sup> The mere passage of time, indeed even of extended periods of time, would be incapable of rendering a claim inadmissible as long as it involves the allegation of a violation of a fundamental principle of

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<sup>78</sup> According to the New York Times, Haiti’s double debt, including interest and late fees, was technically paid off by 1888. See Gamio et al., *supra* note 12. Blancpain & Gainot, *supra* note 67, at 82, suggest 1883, whereas Saint-Hubert, *supra* note 15, suggests 1893 as the year when France finally acknowledged that the debt had been paid in full. However, there is some evidence that Haiti may actually have continued to make payments on bonds related to the indemnity obligations as late as the 1960’s.

<sup>79</sup> Ann Eulogia Garcia Cadiz (Loretta G. Barberie) v. Venezuela, (U.S./Venez.), Decision on Award, 29 R.I.A.A. 293, 293 (Perm. Ct. Arb. 2012).

<sup>80</sup> Under international law, claims involving violations of fundamental international public order principles are not subject to extinctive prescription. A notable illustration of this principle is the non-applicability of the statute of limitations to war crimes. The International Law Commission in its commentary to article 45 of ARSIWA, which addresses a State’s loss of its right to invoke another State’s responsibility as a result of a waiver or acquiescence on the part of the former, recognizes an express exemption for the admissibility of claims based on *jus cogens* violations. See art. 45, para. 4, Int’l Law Comm’n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 122 (2001) [hereinafter Int’l Law Comm’n]. As noted, Haiti’s claim for restitution is not based on an internationally wrongful act on the part of France, thus the ARSIWA provisions are not directly on point. They do, however, provide useful basic guidance as regards the admissibility of international claims generally.

international justice or fairness. However, as explained before, Haiti's claim vis-à-vis France is one of "simple" restitution. Although it is related to the threat of re-storing slavery in Haiti, hence to a fundamental violation of the international public order, it is not a claim for any tortuous or internationally wrongful conduct attributable to France, but rather for the return of a sum of money paid without cause. Therefore, it does not benefit from the above special exemption. This also means, however, that Haiti's claim for restitution must pass muster in accordance with international legal concepts traditionally employed to assess whether a state must be deemed to have lost a right or claim.

There is no denying that, historically, these concepts – waiver, acquiesce and extinctive prescription<sup>81</sup> – have been applied in international legal claim settings in overlapping,<sup>82</sup> sometimes confusing fashion, with barely any evidence to suggest that it might be necessary, or indeed possible to always distinguish between them.<sup>83</sup> What is common to all of them, at any rate, is the idea that in certain circumstances, as a matter of international fairness and justice, a state must, by reason of its very own conduct, be deemed to have forfeited the right or claim concerned. Specifically as regards Haiti's case, the question might be framed as to whether the country "validly acquiesced in the lapse of the claim."<sup>84</sup> Or, to put it differently, whether France as the opposing State, might have to establish, that Haiti's decade-long failure to raise a claim for restitution amounts to a

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<sup>81</sup> See, e.g., Christian J. Tams, *Waiver, Acquiescence and Extinctive Prescription*, MANUEL DE LA RESPONSABILITÉ INTERNATIONALE 1035 (2009).

<sup>82</sup> See *Report of the International Law Commission to the General Assembly*, 18 U.N. GAOR Supp. No. 9, at 239, U.N. Doc. A/CN.4/191 (1966) ("The Commission noted that in municipal systems of law this principle has its own particular manifestations reflecting technical features of the particular system. It felt that these technical features of the principle in municipal law might not necessarily be appropriate for the application of the principle in international law. For this reason, it preferred to avoid the use of such municipal law terms as 'estoppel.'").

<sup>83</sup> See generally Tams, *supra* note 81, at 1045-46 (correctly criticizing the utility of attempts to distinguish between implied waiver and acquiesce). See also *Delimitation of the Maritime Boundary in the Gulf of Maine (Can./U.S.)*, Judgement, 1984 I.C.J. Rep. 246, 304-05 ¶¶ 129-130 (October 12).

<sup>84</sup> This formulation, taken from art. 45(b) of the ARSIWA, while specifically addressing the right to invoke state responsibility, would equally cover any unjust enrichment claim.

“clear and unequivocal representation”<sup>85</sup> that Haiti did not consider itself entitled to the restitution of the money transferred.<sup>86</sup> Unquestionably, Haiti’s delay in presenting its claim is a critical factor.<sup>87</sup> Yet, as will be shown below, it is by no means certain that Haiti’s conduct or position in the matter of restitution can be taken as an unequivocal signal to this effect.

As regards these separate international legal manifestations of a state’s loss of claim or right, it is true that, beyond waiver and acquiescence, the ARSIWA themselves do not refer to extinctive prescription. And indeed, it is also true that the latter has been considered redundant, given that it overlaps significantly with acquiescence and estoppel.<sup>88</sup> Moreover, questions might be raised as to whether the principle is even part and parcel of international law. Some earlier international practice tended to downplay the effect in international law of the lapse of time on the validity of international claims.<sup>89</sup> Evidence of this kind had led some commentators to deny

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<sup>85</sup> Payment of Various Serbian Loans Issued in France (Fr. v. Serb-Croat-Slovene State), Judgment, 1929 P.C.I.J. (ser. A) No. 20, at 39.

<sup>86</sup> Moreover, if France invoked an estoppel argument, it would have to prove that in relying on this representation, either Haiti gained a benefit or, conversely, France suffered a detriment. This burden of proof cannot possibly be discharged. Here, however, while France derived a huge benefit from the indemnity arrangement, Haiti simply avoided the greater of two evils. While some might consider this a relative “benefit,” it is obvious that, overall, Haiti suffered tremendous hardship in consequence of the indemnity payments forced upon it and whose very legal justification it was not able or willing to challenge until most recently.

<sup>87</sup> The International Law Commission emphasized that a mere lapse in time is not enough to constitute acquiescence, and the conduct of the injured state is considered. As such, the “determining criterion for the lapse of a claim” is whether the injured state did everything it reasonably could to maintain its claim. Int’l Law Comm’n, *supra* note 80, at 122.

<sup>88</sup> See Tams, *supra* note 81, at 1047.

<sup>89</sup> See, e.g., the United States of America v. the United Mexican States, 2 AM. J. INT’L L. 893, 898-902 (1908); Alsop Claim (U.S. v. Chile), 11 R.I.A.A. 349, 370 (Perm. Ct. Arb. 1911) (“The principle of the limitation of actions does not, in our opinion, operate as between states.”); Cook v. Mex., 4 R.I.A.A. 213, 213 (Perm. Ct. Arb. 1927). Similarly, in relation to mid-19th century claims of compensation against Chile, the U.S. took the position that “[t]here is no statute of limitation as to international claims, nor is there any presumption of payment or settlement from the lapse of twenty years. Governments are presumed always be ready to do justice, and whether a claim be a day or a century old, [if] it is well founded, every principle of natural equity, of sound morals, requires it to be paid.” Letter from Mr. Craleé to Mr. Crump (Oct. 30, 1844) in 6 JOHN BASSET MOORE, A DIGEST

categorically the applicability of extinctive prescription to international legal claims.<sup>90</sup> However, more recent incidents of international practice clearly support the opposite conclusion:<sup>91</sup> Extinctive prescription is, as the Iran-U.S. Claims Tribunal simply noted, “an established principle of public international law.”<sup>92</sup> These incidents of practice might lack the requisite uniformity to permit the conclusion that extinctive prescription is part of customary international law. But it is equally true that the concept is a general principle of law, hence directly relevant to the admissibility of international claims.<sup>93</sup> Finally, it is undeniable that extinctive prescription has been the subject matter of extensive international litigation as well as intense debate among international lawyers.<sup>94</sup> As a result, its

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OF INTERNATIONAL LAW 1, 1003 (John Basset Moore ed., 1906); *contra* Williams v. Venez., 29 R.I.A.A. 279, 281 (Perm. Ct. Arb. 1885); Gentini Case, 10 R.I.A.A. 551, 558 (Perm. Ct. Arb. 1903) (referring to the principle of prescription as founded in equity and applicable as much to private claims under national law as to inter-state claims under international law).

<sup>90</sup> See, e.g., PAUL GUGGENHEIM, TRAITÉ DE DROIT INTERNATIONAL, 303 n.1 (1st ed. 1967) (“Il n’y a aucune décision judiciaire ou arbitral favorable à la prescription libératoire.”); *contra* BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 1, 374 (2006) (dismissing opposition to extinctive prescription and concluding that prescription is necessarily incorporated into the international legal order).

<sup>91</sup> See, e.g., IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 506-07 (5th ed. 1998); see *infra* notes 87–103.

<sup>92</sup> Iran Nat’l Airlines Co. v. U.S., Case No. 335-B9-2, Certified Award ¶ 13 (Iran-U.S. Cl. Trib. 1987), <https://jusmundi.com/en/document/decision/en-iran-national-airlines-company-v-the-government-of-the-united-states-of-america-award-award-no-335-b9-2-monday-30th-november-1987>; see also Ambatielos Claim, (U.K v. Greece), 12 R.I.A.A. 87, 103 (Perm. Ct. Arb. 1956) (noting that it is “generally admitted that the principle of extinctive prescription applies to the right to bring an action before an international tribunal”).

<sup>93</sup> See FRANCIS WHARTON, WHARTON’ INTERNATIONAL LAW DIGEST, reprinted in MOORE, note 93, at 1005 (“[S]tatutes of limitation are simply formal expressions of a great principle of peace which is at the foundation not only of our common law, but of all other systems of civilized jurisprudence.”); L’institute de Droit International, *Résolution Concernant la Prescription Libératoire en Droit International Public*, at 1 (July 31, 1925) (referring to practical considerations of order, stability and peace as the reasons for the applicability of extinctive prescription as a general principle of law).

<sup>94</sup> See generally KAJ HOBÉR, EXTINGTIVE PRESCRIPTION AND APPLICABLE LAW IN INTERSTATE ARBITRATION (Nils Jareborg, ed., 88th ed. 2001); Jan Wouters &

specific operational implications are well established, thereby rendering the concept particularly useful in assessing Haiti's claim.

The effect of the principle of prescription is not to bar automatically the international claim concerned. Rather, it activates a presumption of acquiescence in the loss or abandonment of the claim. Clearly, any such presumption is context dependent. In the final analysis, in international law, as Charles de Visscher emphasized, "[l]a considération du temps écoulé n'a donc ici qu'une valeur relative. . . ." <sup>95</sup> The relativity of the weight to be accorded to the lapse of time and the concomitant need for the trier of a case to approach each situation from an individual perspective, was expressly confirmed by the International Court of Justice in the *Certain Phosphates in Nauru* case.

"The Court recognizes that, even in the absence of any applicable treaty provision, delay on the part of the claimant State may render an application inadmissible. It notes, however, that international law does not lay down any specific time limit in that regard. It is therefore for the Court to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible."<sup>96</sup>

While the international decision-maker enjoys a very wide margin of appreciation in assessing the circumstances of each individual claim, the jurisprudence of international courts and tribunals nevertheless reveals several factors whose presence has been endorsed consistently as indispensable to a finding that a particular claim would be time-barred.<sup>97</sup> Thus, the application of the principle of prescription: presupposes – at least *prima facie* -- the *simultaneous*

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Sten Verhoeven, *Prescription* (2008), in THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Anne Peters ed., 2021).

<sup>95</sup> Charles Visscher, *Le prescription extinctive des réclamations internationales d'origine privée (claims)*, in HOMMAGE D'UNE GÉNÉRATION DE JURISTES DU PRÉSIDENT BASDEVANT 523, 530 (A. Pedone ed., 1960).

<sup>96</sup> *Certain Phosphate Lands in Nauru* (Nauru v. Aus.), Judgment, 1992 I.C.J. Rep. 240, 253-54, ¶ 32 (June 26).

<sup>97</sup> See *Ambatielos*, 12 R.I.A.A. at 103 (referring to the "unfettered discretion of the international tribunal").

existence of four criteria, *viz.* (a) unreasonable delay in the presentation of the claim, (b) imputability of the delay to the negligence of the claimant, (c) absence of a record of facts and (d) the respondent must be placed at a disadvantage in establishing his defense.<sup>98</sup>

These criteria simply reflect the fact that the application of prescription, both at domestic and international legal levels, is rooted in considerations of justice and equity that primarily aim at protecting a defendant or respondent State against undue evidentiary problems in answering a claim as a result of the lapse of time, as well as, at promoting the public interest in the settlement of disputes.<sup>99</sup> A lapse of considerable time between an event that gives rise to a claim under international law and the assertion of that claim internationally, thus triggers a presumption that the claim is ill-founded.<sup>100</sup> Or, as Bin Cheng puts it, that “the long lapse of time inevitably destroys or obscures the evidence of the facts and, consequently . . . places the other party in a disadvantageous position.”<sup>101</sup> However, for this presumption to hold, the delay in the assertion/presentation of the claim must be attributable to the claimant state, and, specifically, involve its negligence.<sup>102</sup>

Therefore, a first conclusion must be that there can be no prescription where the facts bearing on the claim are not disputed.<sup>103</sup> As Ralston, umpire, put it in the *Tagliaferro* case: “When the reason for the rule of prescription ceases, the rule ceases . . . .”<sup>104</sup> Second, if a state is deemed to have knowledge – actual or constructive – of the existence of a potential international dispute or claim, it will be presumed to possess also adequate documentation and records, so as

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<sup>98</sup> HOBÉR, *supra* note 94, at 285.

<sup>99</sup> Gentini Case, 10 R.I.A.A. 551, 558 (Perm. Ct. Arb. 1903).

<sup>100</sup> See *Stevenson* (Gr. Brit. v. Venez.), 9 R.I.A.A. 385, 386 (Perm. Ct. Arb. 1903); *Williams v. Venez.*, 29 R.I.A.A. 279, 281 (Perm. Ct. Arb. 1885).

<sup>101</sup> CHENG, *supra* note 90, at 380 (“[F]or if it had not previously been warned of the existence of the claim, it would probably not have accumulated and preserved the evidence necessary for its defen[s]e.”); see also *Williams*, 29 R.I.A.A. at 290 (characterizing “the causeless withholding of a claim against a [S]tate until . . . the witnesses to the transaction are dead, vouchers are lost, and thereby the means of defense essentially curtailed . . . “ as an impairment of the right to defend against a claim).

<sup>102</sup> See, e.g., *Williams*, 29 R.I.A.A. at 290.

<sup>103</sup> *Id.* at 292 (“Conceded that a claim ‘is well-founded,’ there would seem to be no occasion for prescriptive . . . evidence in regard to it.”).

<sup>104</sup> *Tagliaferro* (It. v. Venez.), 10 R.I.A.A. 592, 593 (Perm. Ct. Arb. 1903).

to not be at a disadvantage by any late assertion or filing of the claim. Thus, again in the *Tagliaferro* case, the umpire after affirming that the authorities of the respondent State “knew at all times of the wrongdoing” which lay at the basis of the claim, simply concluded that, therefore, “records must exist to demonstrate the fact [of injurious conduct]” and that prescription would not operate to bar the delayed claim.<sup>105</sup> The very same rationale led the International Court of Justice (ICJ) to reject Australia’s objection to the admissibility of Nauru’s claim on account of allegedly prejudicial effects of the lapse of time on Australia’s ability to marshal necessary documentation in support of its defense. The Court noted “that given the nature of relations between Australia and Nauru, as well as the steps taken, Nauru’s Application was not rendered inadmissible by passage of time.”<sup>106</sup> The “nature of relations” and “steps taken” referred to the fact that the question of Australia’s rehabilitation of the phosphate lands in Nauru – the international claim in issue – had been discussed prior to but not settled at the time of independence; and that the issue had come up in talks between the two States a number of times thereafter.<sup>107</sup> Third, as Ralston, umpire, noted in the *Gentini* case, “. . . the period of prescription does not commence to run until the day . . . when action for . . . recovery could be had.”<sup>108</sup> Specifically, as the United States-Venezuelan Claims Commission said in the *Williams* case: “Incapacity, disability, want of legal agencies, prevention by war, well-grounded fear and the like”<sup>109</sup> – to which one might add foreign military occupation – are circumstances beyond the ability of the claimant State to control and thus preclude fault on its part, hence impede the operation of prescription. In that vein, in the *Cayuga Indians Claim* case, the arbitration tribunal found that the original claimants’ inability to raise the claim due to their being subject to “a complete and exclusive protectorate” did not bar the subsequent presentation of the claim, notwithstanding

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<sup>105</sup> *Id.*

<sup>106</sup> Certain Phosphate Lands in Nauru (Nauru v. Aus.), Judgment, 1992 I.C.J. Rep. 240, 254-55, ¶ 36.

<sup>107</sup> *Id.* at 254, ¶ 33, 36.

<sup>108</sup> *Gentini* Case, 10 R.I.A.A. 551, 553 (Perm. Ct. Arb 1903).

<sup>109</sup> *Williams v. Venez.*, 29 R.I.A.A. 279, 290 (Perm. Ct. Arb. 1885).

the passage of 83 years.<sup>110</sup> Finally, it might be noted that the public as against private law nature of the claim is a factor that the international decision-maker would probably take into account as militating against prescription.<sup>111</sup>

Thus, as regards Haiti's claim for restitution, there are several reasons why prescription is not likely to be found to apply despite the admittedly very substantial passage of time involved. To begin with, it cannot be assumed that Haitian government officials should have been aware of the possibility of making an international legal – as against a political or moral – claim for restitution until fairly recently. After all, it is the confluence of the prohibition of the threat or use of force after World War II as a universal norm of international law,<sup>112</sup> the International Law Commission's endorsement of the concept of *ius cogens* in its work on the law of treaties in the 1960s, and the resulting deeper appreciation of the inherently illegal nature of the 1825 Agreement, that informs Haiti's claim. Second, even if one were to dismiss this argument, in terms of Haiti's capacity or ability to raise the claim internationally, it would have been unreasonable to expect Haiti to press a claim for restitution while France threatened retribution for failure to pay. Moreover, the fact of U.S. occupation from 1915 to 1934, the abysmal social, economic and political conditions prevailing in the country during much of its existence, its general backwardness, and the absence of democratic governance throughout most of its history, all represent factors that a tribunal could accept as evidence of Haiti's objective inability to effectively raise the matter of restitution internationally. In sum, it is far from clear as of when a tribunal might consider prescription to

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<sup>110</sup> *Cayuga Indians Claim (U.K. v. U.S.)*, 6 R.I.A.A. 173, 189 (Perm. Ct. Arb. 1926).

<sup>111</sup> See *Résolution Concernant la Prescription Libératoire en Droit International Public*, *supra* note 93, at 2, ¶ III.

<sup>112</sup> Thus, the 1907 Hague Convention Respecting the Limitation of the Employment of the Use of Force for the Recovery of Contract Debts appears by its very terms inapplicable to Haiti's post-independence indemnity payments as it covers only debts owed by one State to individual nationals of another State. Similarly, the Briand-Kellogg Pact of 1928 would not have been relevant in the present context given that Haiti did not become a party thereto, therefore would not have benefited from the terms of the treaty by which France and other States renounced war as an instrument of national policy.

have started running. But it appears likely that any such date would but a recent one.

Third, in terms of the crucial question of whether the delay in the presentation of the claim might cause undue evidentiary problems for France, specifically as regards a proper defense against Haiti's claim, it seems that the nature of the claim, as well as the historic context in which it arose are extremely well documented, certainly when compared to other claims in relation to which respondent states have successfully objected on the grounds of prescription. Indeed, a tribunal might therefore well conclude that the critical facts of the case are beyond dispute and for this reason categorically rule out the argument that Haiti's claim would have to be considered time-barred.

Finally, as justice and equity are paramount considerations for the trier of a case in determining whether prescription is to apply, it is likely that the French debt's devastating long-term implications for Haiti would persuade any tribunal to bend over backwards to accommodate the claimant. Indeed, in such a context, considerations of equity rather than protecting the respondent state against stale claims, are likely to work against the latter.<sup>113</sup>

## VI. OBSERVATIONS ON THE PROCESS OF VINDICATING HAITI'S CLAIM

The preceding pages should have demonstrated that Haiti's claim for the restitution of post-independence payments to France, unlike most present-day international demands for the redress of historical injustices, has a solid basis in international law. Although states may, at times, not shy away from resorting to domestic legal processes of another country to seek enforcement of what might amount to an international right,<sup>114</sup> given the intrinsic inter-state

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<sup>113</sup> As to the importance of equity in decisions on whether a state's claim would be barred because of a lapse of time, see *LaGrand Case (Ger. v. U.S.)*, Judgment, 2001 I.C.J Rep. 466, 486-487, ¶¶ 53-57 (June 21). In *LaGrand*, the ICJ, although critical of Germany's delay in filing the request for an interim protection order, evidently dismissed the United States' procedural argument invoking prescription on grounds of public interest and equity related to the avoidance of an imminent, irreparable prejudice.

<sup>114</sup> See, e.g., *Her Majesty the Queen v. Detroit*, 874 F.2d 332, 335 (6th Cir. 1989).

characteristics of the restitution issue, it is obvious that Haiti would seek recourse to an international tribunal or court for the settlement of its claim. However, the jurisdiction of international judicial or arbitral bodies is based on the consent of the state's parties appearing before them. In theory France and Haiti might agree ad hoc to submit the restitution issue to international adjudication. Of course, considering the French government's reluctance to date to engage meaningfully on the restitution issue, such a scenario is unlikely to materialize for the foreseeable future. Therefore, the question arises as to whether the two countries might have validly accepted the jurisdiction of an international court or tribunal, which would provide a basis for Haiti's unilateral application to the body concerned.

Unfortunately for Haiti, the picture that emerges from a review of conceivably relevant legal instruments is not encouraging. To begin with, Haiti cannot bring suit in the International Court of Justice: While Haiti itself accepts the jurisdiction of the ICJ under the so-called optional clause of the Statute of the Court, France does not.<sup>115</sup> Neither are there any relevant treaties in force as between the two countries that would permit the unilateral invocation of the ICJ. Indeed, presently there exist no "compromissory clauses" in any, even remotely relevant, treaties – bilateral or multilateral – in force between Haiti and France which would permit the unilateral recourse to an international third-party dispute settlement body. Until recently, one international treaty, the 2000 Cotonou Agreement,<sup>116</sup> might – rather exceptionally – have provided a plausible, albeit difficult pathway to international arbitration for Haiti's claim.<sup>117</sup> Alas,

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<sup>115</sup> See *Declarations recognizing the jurisdiction of the Court as Compulsory*, INTERNATIONAL COURT OF JUSTICE, <https://www.icj-cij.org/declarations> (last visited June 9, 2023).

<sup>116</sup> See generally Partnership Agreement ACP-EU, June 23, 2000 O.J. (L 317).

<sup>117</sup> The Cotonou Agreement's broad emphasis of partnership aspects, in particular the importance of "dialogue and the fulfillment of mutual obligations," of contracting parties' obligation to "refrain from any measures liable to jeopardize" the Agreement's objectives, might suggest a window of opportunity for the insertion of Haiti's concerns over its claim for restitution into the Cotonou framework of cooperation. *Id.* Arts. 8, 3. Specifically, Article 8 of the Agreement calls for a "comprehensive, balanced and deep political dialogue" among contracting States, "recognising existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement." *Id.* Art. 8. Arguably, the unsettled issue of restitution for post-independence indemnity payments undermines the realization, at bilateral level, of the

with the revision of the Cotonou Agreement in 2021<sup>118</sup> even this option has now disappeared.<sup>119</sup>

There is no denying then that any successful quest for the redress of the injustices associated with the 1825 Agreement, if or when a Haitian government takes the necessary steps, will likely be decided in a political rather than a legal backdrop. Recognition of this reality – that the restitution issue’s ultimate resolution would likely involve a political accommodation between the two parties, rather than an adjudication in a court of law or a tribunal – had all along informed the Aristide government’s approach in 2003.<sup>120</sup> At the same time, minding the interrelationship between success in the political arena and the strength of the legal arguments in support of such a settlement, the Haitian government had been fully aware of the overriding importance of setting out persuasively the legal merits of its claim.

## VII. CONCLUSION

As noted at the outset, it is the well-founded legal basis of its claim that crucially distinguishes Haiti’s situation from that of other nations seeking redress of historical injustices. In other words, while Haiti’s demand for redress unquestionably would benefit from the growing world-wide movement calling for reparations for the

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basic objectives and principles of the Cotonou Agreement. In other words, Haiti might have a colorable claim under the Agreement that France must engage in meaningful bilateral discussions about the issue of restitution, lest it be justifiably accused of violating its obligations under the Agreement. In the end, the Agreement would have provided Haiti with access to an international forum, first of a political nature, but ultimately an international arbitral tribunal proper, for the consideration of its grievances. *See id.* Arts. 15, 98.

<sup>118</sup> *See generally* Commission Proposal for a Council Decision, COM (2021) 312 final (June 11, 2021).

<sup>119</sup> The new text retains the 2000 Cotonou Agreement’s provisions regarding the partnership dialogue as well as on dispute settlement and fulfillment of obligations. However, while Article 101 envisages consultations within the ACP-EU Council of Ministers, it, crucially, eliminates a party’s right to unilaterally submit a dispute to the respective political dispute settlement bodies, and it no longer provides for recourse to formal arbitration. *See id.* On 20 July 2023, finally, the Council authorized provisional application of the EU-OACPS Partnership Agreement, as the new, post-Cotonou legal framework for the next twenty years,

<sup>120</sup> Villepin Report, *supra* note 17, at 13 (“Notons que le Président Aristide, lui-même, insiste sur ce point, en privé, ‘concertation et non confrontation.’”).

horrors of slavery and colonialism, it is also categorically different from the latter: It represents a demand for restitution, rather than reparations or reparatory justice. It thus draws on an international legal concept extant contemporaneously with the underlying conduct concerned – the payment of indemnity without valid cause – rather than an ex-post facto legal rationale that has yet to be fully developed or generally accepted.<sup>121</sup> However, notwithstanding this intrinsic advantage relative to other actual or would-be claimant states similarly demanding redress of past injuries, Haiti's way forward is a particularly difficult one. Sadly, the country's present state of quasi-anarchy makes it all but improbable that it might be able to pursue the issue of the French debt in the foreseeable future. To succeed in pressing its claim internationally, indeed, even to be able to benefit fully from international support in this matter, the country must first unite behind the restitution effort, and marshal its national political and legal assets for that singular project. Alas, such a national coming together is inconceivable without prior restoration, throughout the country, of democratic governance and the rule of law, including the respect of fundamental human rights. The long-overdue settlement of France's historic debt to Haiti, it seems, thus must await another day.

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<sup>121</sup> For more on reparations, see generally Pablo de Greiff, *Justice and Reparations*, in *THE HANDBOOK OF REPARATIONS* 451 (Pablo de Greiff ed., 2006); Olivette Otele, *The Logic of Slavery Reparations*, *THE GUARDIAN* (Mar. 31, 2023), <https://www.theguardian.com/news/ng-interactive/2023/mar/31/more-than-money-the-logic-of-slavery-reparations>.