Was Quashing the Maji-Maji Uprising Genocide? An Evaluation of Germany's Conduct through the Lens of International Criminal Law

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Recently, political actors in Tanzania have demanded compensation from Germany for colonial atrocities against various ethnic and religious groups during the Maji-Maji uprising (1905–1907). By analyzing first-hand archival records from Germany and Tanzania, this article examines whether German actions constitute genocide according to the Genocide Convention or the International Criminal Tribunals' jurisprudence. The authors find strong evidence to support a claim of genocide, and assess the viability of potential compensation claims against Germany; they conclude, however, that such claims would meet significant obstacles due to the concept of state immunity for sovereign actions under international customary law, as well as case law of the International Court of Justice.

In early 2017, the National Assembly of Tanzania demanded an apology and compensation from Germany for "colonial atrocities." The country's minister of defense, Dr. Hussein Mwinyi, assured Parliament of his readiness to negotiate compensation with his German counterpart;[1] however, when Germany's minister of foreign affairs, Heiko Maas, visited Tanzania a year later, both ministers declared that they found other ways to address this past.[2] The Tanzanian Assembly's resolution had stopped short of calling the colonial atrocities, committed by German troops during the Maji-Maji uprising (1905–1907), a genocide. Some scholars, however, have done so, and have reviewed the appropriateness of the label in in the context of Germany's colonial policy and the quashing of the insurrection in particular.[3] Influenced by the public's and the media's growing eagerness to assess past colonial atrocities through the lens of the relatively modern concept of genocide, researchers of international law, genocide studies, and memory politics have submitted an ever increasing volume of historical evidence and narratives to test the definition and concept of genocide.[4] Some also have problematized the tensions between the law and historiography.[5] Genocide claims (legal and public) can distort the process of dealing with difficult histories[6] by exacerbating academic and public debates about the past, thus limiting the realm of the historian and broadening the field of the judge.[7] Very often, the concept of genocide, when applied to older real-world cases, is undefined, flexible, or tailored to explain why a certain event was genocidal. Often it invokes the 1948 Convention for the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), the meaning and scope of which have been interpreted and broadened by the jurisprudence of international courts and tribunals.

Here we take a different approach, by presenting a brief history of German colonialism in East Africa, analyzing the atrocities committed there during the quashing of the Maji-Maji uprising, and then summarizing the character of the violations that took place. In our conclusion, we

doi:https://doi.org/10.1093/hgs/dcab032
Holocaust and Genocide Studies 35, no. 2 (Fall 2021): 235–249

assess the evidence from published and unpublished sources in light of the most current concepts of genocide. These concepts include not only the Genocide Convention's definition, but also landmark judgements and decisions by international criminal tribunals, most notably the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR).

German Colonialism in East Africa

German colonialism in Africa began primarily as a private endeavor, driven by audacious, and often ruthless, traders. Initially signing agreements with warlords and the leaders of local ethnic groups, they then lobbied the government for control over the territories they believed they had secured for the German Empire (*Kaiserreich*). Under Chancellor Otto von Bismarck the Empire was reluctant to acquiesce to these traders. State engagement in colonial adventures occurred only after entrepreneurs—intending to privatize the profits and leave the state the costs of providing security and diplomatic shelter—intensively lobbied Bismarck.[8] Though colonialism proved profitable for some private investors, it became a subsidy-devouring undertaking for the state.[9] Even today there is no consensus as to why the state continued its colonial operations, whether it be ideology,[10] a desire to divert public attention away from domestic conflicts,[11] a reaction to the social and political challenges of modern capitalism,[12] or anxiety over the spread of globalization.[13]

In the second half of 1884, the German explorer and adventurer Carl Peters, who had studied British colonialism and promoted a colonialist agenda in Germany, arrived in Zanzibar. He travelled first to the Usagara region of Tanganyika and then further into Uganda, negotiating several treaties with local leaders without the consent of the German government. His ruthless behavior towards the native population triggered a scandal in the German press.[14] In 1890, the German government decided to take over administration of the colonies, which German traders and travelers had secured. The colonies' legal status was never clearly established; they were neither part of Germany proper, nor regarded as foreign countries. To reduce the cost of administration, governance rested on a few German officers with substantial unchecked power, who recruited African and Arab fighters (called Askari) to suppress resistance on the ground. Abuse of power was rampant in this system, and provoked rather than prevented resistance. By the end of the nineteenth century, German troops had brutally quashed the uprising of the Wahehe.[15]

German expansion came at a time of war and forced migration in East Africa, triggered by the breakdown of several polities, the shift of the slave trade from the West to the East Coast, and the interference of powerful Arab warlords and traders. The breakdown of the Zulu Kingdom sent shockwaves across the continent, and after the assassination of King Shaka, its internal conflicts displaced thousands of people, some of whom escaped the turmoil to southern Tanganyika, where they established new polities.[16]

Before the 1905 Maji-Maji uprising, Germany lacked effective control over the territory of Tanganyika.[17] Though the German government operated several coastal ports, and some isolated trading centers in the interior, colonial power rested on indirect rule and the recruitment of local mercenaries, who killed and looted under the command of German officers. Some of these Askari came from inside the colony, while others were recruited from neighboring countries and other German colonies. The Askari system prevented solidarity between the German mercenaries and the local population, while at the same time stimulating hatred between different ethnic groups. The administration was comprised of native representatives in small settlements. These representatives

were called "Jumben," but were under the control of German-appointed "Akiden," who were very often foreign to the local communities and of Arab descent. With the help of these two groups, the German administration extracted taxes and issued orders, imposing economic conditions that often caused even more resistance and protest among local populations.[18]

The Germans imposed foreign rule, collected taxes, introduced boundaries between land plots, and made reluctant tax payers perform forced labor. Because it was primarily African soldiers who exercised violence against the population, oppression became associated with the Askari rather than the Germans. This left a legacy of interethnic conflict even after the German troops, having committed atrocities, exited the region. In addition, the Askari committed the most heinous cruelties, often acting without orders—but under the indifferent eyes of German officers.

The conflicts in German East Africa broke out when the Germans started to replace the "hut," or household, tax with a head tax in order to increase the colony's profitability. The new tax forced native workers to produce surpluses in order to pay the taxes. Those who failed to meet these increased obligations were sent to work on communal plantations, mostly cotton, a popular and profit-yielding cash crop in East Africa. This system allowed the colony to produce surpluses that it could sell on the world market, making it economically sustainable from the perspective of the mainland. Like other German colonies (Cameroon, Togo, and German South-West Africa), East Africa had a trade deficit with the mainland and required subsidies.[19]

The Maji-Maji uprising began as a rebellion against Arab traders and cotton plantation owners in the Malumbi Hills of the southeastern coast.[20] Usually the insurgents would first uproot the cotton plants, and then raid farmhouses or office buildings. A cult-like religious movement united disparate fighters and warring groups, allowing individual fighters to overcome the free-riding dilemma and the German Askaris' supremacy in weaponry.[21] As Iliffe has shown, though the religious component was strong, tribal organizations were weak. The raids transformed gradually into a peasants' revolt as the violence progressed into the interior.[22]

Numerous scholars have offered different explanations as to how the violence spread from the Southeast to the interior. Some see events as a sequence of separate regional uprisings.[23] Others point to participants taking advantage of an opportunity to settle accounts with the Germans, or avenge long-standing and territorial grudges against neighboring groups.[24] In the aftermath of Tanzania's struggle for independence and debates about colonialism, authors increasingly interpreted the Maji-Maji uprising as "an example of the African struggle against colonialism," or an "explosion of African hatred against European rule,"[25] presenting it as a unitary anticolonial movement without internal divisions.[26] Regional micro-studies, on the other hand, have exposed older tensions between groups and inside tribes.[27] Many of the groups that fought against the *Schutztruppe* (colonial army) were also fighting each other, and the Schutztruppe's use of Askari from different ethnic groups only intensified existing antagonisms. Other groups too saw the uprising as an opportunity to rid themselves of their constraints or simply to rob their neighbors.[28]

Once the Maji-Maji war had broken out and the Germans decided to quash it, war crimes were the rule rather than the exception. One of the first crimes was the murder of Bishop Cassian Spiess in Kilwa. He had ignored the local authorities' warnings, and a mob killed him together with two priests and two nuns while the group was on their way from Kilwa. Word about the insurgents' success in killing such influential people spread across the country, encouraging others to join the uprising.[29] The bishop had carried weapons which the local administration had given him, advising him to stay at home. He had also been denied Askari support, but witnesses testified that he had

made his status as a non-combatant clear in his conversation with the crowd. The crowd killed him regardless. As a result of the many attacks, clerics armed themselves to fight back. Missionary stations became deserted or fortified, and priests turned into combatants.[30]

The first attacks came as a complete surprise to the Germans, who immediately launched large-scale recruitment of Askari, even including fighters from Germany's Pacific colonies.[31] Insurgents attacked and killed not only Germans, but also other Europeans, Askari, Indians, Arabs, and Black traders on the coast. The difference between civilians and combatants became blurred—Germans attacked both groups indiscriminately, and insurgents assaulted Askari, as well as missionaries and traders.[32]

At its height, roughly twenty different ethnic groups allied against the German troops, but many others used the insurgency to settle accounts with their neighbors or to side with the German Askari. Even the Wahehe, against whom the German Schutztruppe had launched a scorched earth policy eight years earlier, sided with the Germans. They abducted women and children in order to prevent them from aiding hostile warriors in the bush, killed prisoners of war, looted villages, destroyed crops, and tortured surrendering enemies to extort intelligence.[33]

Schutztruppen commander Theodor von Hirsch, the former station chief of Mpapua, wrote a diary in which he admitted that he felt "like a murderer, arsonist, and slave trader," but did nothing to stop the atrocities, and even paid his warriors a lump sum for decapitated heads.[34] He was not alone. Fighters on all sides of the conflict tended not to only kill individual combatants, but entire villages. They destroyed food and crops to weaken support for their enemies, leaving civilians without any means to survive. Reports from the local administration to the governor did not hide these facts. "A lot of crops were destroyed by us. Food shortage is not excluded," wrote the head of the Lindi district to the governor. The head of the German administration in Lindi wondered whether the locals would be able to pay the fee the governor had imposed on the villages that had joined the insurrection, because "Their huts and stocks are destroyed."[35] In a message to Berlin, General Ludwig Glatzel in Dar es Salam described the actions of a Navy officer who had "attacked and destroyed a village."[36] Even after insurgents surrendered, the Germans typically executed them (especially local leaders) after cursory "courts martial."[37]

When the dust on the numerous battlefields settled, the Maji-Maji uprising ended in a three-year long mass starvation that devastated a large part of the southern territory. Young mothers were unable to feed their new-born babies, and infant mortality rose dramatically. Southern Usagara was entirely depopulated by 1906, in Ulanga 25 percent of the women had become unable to become pregnant. The Germans incurred only a handful of casualties—fifteen White soldiers, 389 Askaris, and sixty-six porters.[38] Additionally, the war facilitated the spread of trypanosomiasis (sleeping sickness), because the flies followed animal migration into depopulated regions. Official German records estimated the number of Maji-Maji casualties at 75,000[39]; Kamana Gwassa concludes that there were in fact 250,000 to 300,000[40]; Tanja Bührer gives a figure of 250,000, which includes those who died from disease and starvation.[41] Demographic consequences were starkly visible in Tabora, whose district officer claimed that the local population had fallen almost by half. Based on tax estimations, he calculated that the region's 750,000 to one million inhabitants had declined to 500,000.[42] The missions in Tabora lamented the emigration of the male workforce to the coastal area, which caused problems for remaining family members, the missionaries' work, and agriculture.[43]

The Quashing of the Maji-Maji Uprising in the Light of International Law

After the Congo Conference of 1884 to 1885,[44] and the ratification of the Congo Act,[45] Germany gained control of Tanganyika, securing its governance over the following years. At the beginning of the twentieth century, ethnic groups in German East Africa were not protected under international humanitarian law, even though the Maji-Maji fighters met the criteria for combatants according to the International Convention on the Laws and Customs of War on Land (later the Hague II Convention of 1899)[46] they openly carried weapons, wore distinct emblems, and reported to commanders. Though Germany had not ratified the Hague II Convention, it can be argued that the Maji Maji fighters were, according to the Martens Clause,[47] entitled to the Convention's protection if they operated "in accordance with the laws and customs of war." Given that the insurrectionists were unfamiliar with those European "laws and customs" of war, they did not always uphold analogous standards, and often committed (from the perspective of the Hague II Convention) war crimes. Their actions, however, did not exempt German soldiers and the Askaris from their obligation to uphold the Convention, at least with respect to those Maji-Maji fighters that followed the basic norms of European warfare.

Indeed, long before the Maji-Maji uprising, Germany had signed the Red Cross Convention of 1864,[48] which obliged its armed forces to spare wounded enemy combatants.[49] One could therefore argue that this constituted international "customary" law.[50] But while legal continuity extends from the German Empire, whose troops conducted the war in Tanganyika, to today's Federal Republic of Germany, no such continuity connects the ethnic groups that took part in the Maji-Maji uprising to the Republic of Tanzania today. Therefore, Germany bears responsibility as a state for the crimes that occurred during its colonial rule, but present-day Tanzania cannot claim to represent the ethnic groups who suffered as a result of the uprising. By the same token, of course, Tanzania cannot be held responsible for atrocities or war crimes committed by indigenous fighters during the Maji-Maji uprising.

These arguments help to gauge state responsibility for atrocities committed during the Maji-Maji uprising, but they do not establish whether the atrocities committed by German officers and Askaris, and the policy of the Kaiserreich in German East Africa, qualify as genocidal under today's legal definitions. Though these actors violated the Red Cross and Hague Conventions that applied to Germany between 1905 and 1907, do they fulfil the requirements of today's International Criminal Law's concept of genocide?

Quashing the Maji-Maji Uprising under International Criminal Law

The precursor to the Genocide Convention, UN General Assembly Resolution 96 (I) of 1946, noted that, historically, "many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part" (p. 189). This framing clearly referred to a wide range of historical episodes beyond the Holocaust. The Genocide Convention narrowed down the UN Resolution of 1946 by referring only to four protected groups (racial, national, ethnic, or religious groups), while leaving aside "political" or any other groups. There is a clear indication in the *travaux préparatoires* (official record of negotiation) of the Genocide Convention that many states (not the majority) had reservations about the list of protected groups. Those states that opposed the inclusion of political groups argued that political groups are relatively fluid and not as stable as racial groups.[51] Given the Convention's definition of protected groups, determining which of the various warring groups during the Maji-Maji war would actually deserve the Convention's

protection is a tricky issue. Neither the records, nor the memoirs of the main perpetrators, tell us which group or groups the German government intended to destroy, whether in whole or in part. The Germans hardly ever distinguished ethnic groups, or, as they more commonly referred to them, "tribes," and usually wrote about "Negroes" (Neger) and "Blacks" (Schwarze) who either were on their side or against them. But these categorizations do not fit the Genocide Convention's definition of racial, national, ethnic, or religious groups. An additional issue complicating the application of the Genocide Convention to the Maji-Maji uprising, is that neither "Blacks" nor "Negroes" are objectively existing groups; Massai, Ngoni, and Wahehe, however, are. Since 1946, however, international jurisprudence has shifted away from a static view of the four-protected-groups, allowing for a more flexible definition.

Although the international community (and individual states) have had several opportunities since the adoption of the Genocide Convention to amend the "protected groups" definition, the major international instruments (ICTY Statute, ICTR Statute, Rome Statute of the ICC) and the domestic laws of several states simply incorporated the definition of "genocide" in the Genocide Convention. It was the ICTR's landmark decision of 1998 on genocide in *Prosecutor v. Akayesu* which opened the door for a more flexible understanding. In *Akayesu*, the ICTR acknowledged that protected groups other than these four may exist. For a new group to be protected, however, it must have *similar qualities* to the groups explicitly protected, most importantly, it must be "stable and permanent."[52] The ICTR also construed the concept of a "national group" as "a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties."[53] This construction has since been accepted by the ICTY with few substantive changes, confirming, again, the view that even relatively "creative" or "activist" international judges were not willing to depart from the basic definition of genocide.[54] As for other protected groups, the ICTR followed the mainstream definition in *Akayesu*: an "ethnic group is generally defined as a group whose members share a common language or culture."[55] Furthermore, it defined a racial group as one "based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors."[56] Finally, in terms of the definition of a religious group, the ICTR Trial Chamber held that this group was one "whose members share the same religion, denomination or mode of worship."[57]

A notable aspect of post-*Akayesu* jurisprudence was developed by the ICTY in *Jelisić* to address whether a protected group needs to exist objectively or only in the mind of perpetrators. This is especially relevant for the context of German East Africa during the Maji-Maji uprising, because a plethora of ethnic and religious groups existed even though the Germans perceived only one. They were persecuted because their oppressors saw them as one homogeneous and stable group with "specific" features and characteristics, which in return served as a justification for their persecution. Therefore, applying *Akayesu* and *Jelisić* to the Maji-Maji uprising arguably makes these groups victims under the Genocide Convention.

In *Jelisić*, the ICTY supported such an interpretation, and held that the existence of a national or ethnic group can be judged from the perspective of the perpetrators. If the perpetrator believes that a group existed, then its members should be protected per the letter and the spirit of the Genocide Convention. This subjectivist approach was in fact followed by the ICTR in cases such as *Kajelijeli*[58] and *Semanza*.[59] This makes for a more fluid notion of "protected groups," even though the four categories of 1948 remain intact. If we apply the Genocide Convention and recent international jurisprudence retrospectively, then objectively differing groups in East Africa must be regarded as

retroactively protected because the Germans saw them as one hostile entity obstructing their rule in Tanganyika, and they did not deserve mercy because of their alleged inferiority. Still, this conclusion stems from international jurisprudence, but it does not yet prove that their treatment amounted to genocide.

Despite the dominant conception of genocide as a mass atrocity, the legal definition does not require proof of large-scale killings. Whether one views it in qualitative or quantitative terms, the intention must be to destroy at least a substantial part of a protected group.[60] Not even murder is necessary to obtain a legal ruling of genocide. The definition includes the concept of "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." It is therefore not necessary to directly murder an entire group. If an organization, an army, or a state organ creates conditions designed (regardless of whether they succeed) to destroy an ethnic, religious, national, or racial group partly or entirely, they may be found guilty of genocide. The criminal intent under the Genocide Convention does not need to be directed towards killing all or a large portion of that group's members: it is enough if the perpetrator intends to destroy the group (for example) through torture and "causing bodily harm" to its members.[61] The crucial requirement is that the ultimate victim must be the protected group, which the perpetrator seeks to destroy as a group.[62]

The weakness of the influence that the German commanders exercised over their Askari troops does not exonerate the former from responsibility—at least not as long as they effectively controlled their soldiers in the field, or could punish them after the fact. Under the concept of "command responsibility," a commander has a duty to make use of information about crimes committed by his soldiers, if such information is available to him. If he does nothing, fails to prevent a subsequent crime (despite having the power to do so) or punish the perpetrators afterwards, he is either guilty of neglect or of the crime itself.[63] German commanders might not have ordered crimes, and they may, in many cases, not even have known about the atrocities their Askari committed, but they had the duty to punish them upon gaining knowledge of their deeds. German commanders did punish Askari, frequently and harshly, but hardly ever for atrocities they had committed. Usually, German officers meted out punishment for lack of loyalty, for ignoring orders, or for errors in battle. Cruelty to civilians, killing wounded or surrendered enemy fighters, and destroying homesteads without any military significance, were not crimes that merited punishment. While this testifies to German commanders' responsibility for atrocities and their unwillingness to punish them (thus constituting the basis for possible war crimes liability), it does not necessarily denote specifically genocidal intent.

The practice of scorched earth policies in the colony cannot be attributed to one central order, but rather resulted from several initiatives by commanders in German East Africa, or from the escalation of violence.[64] Because there is no evidence of local commanders being punished by their superiors, one could argue that the upper echelons of the German command were unaware of the atrocities; however, their lack of knowledge would not exonerate them, just like the absence of orders from above would not absolve them of guilt. While there is no direct evidence of a genocidal *mens rea* among the German commanders at any level, circumstantial evidence suggests that the German administration wanted not only to destroy members of hostile ethnic groups, but also the groups as a whole by depriving them of their elites and leadership. In November 1905, von Götzen issued an order regulating the duties to be imposed on surrendering insurgent groups and villages. The first condition was the surrender of local leaders and those whom the German authorities referred to as "the wizards" (i.e. those who spread the Maji-Maji cult).[65] The order to the commanders in the field

does not contain any explicit order to kill them, but from the entirety of the records one may conclude that they were to be executed. This was likely intended to deprive these ethnic groups of their traditional leaders. A problem, however, lies in the order's justification: von Götzen did not order the killing of insurgent leaders because he wanted to deprive these groups of their hierarchies in order to destroy them, but because he wanted to punish these leaders for their participation in the uprising. Groups which had stayed away from the Maji-Maji were not targeted. Despite all their racist disdain for the natives, the predominant criterion for targeting leaders was not race, but participation in the uprising. Yet for the local peoples, the result was the same: the war led to the extinction of "a whole generation," according to Seeberg, "whose members had learned to think in categories which exceeded the horizon of their own tribe."[66] Many groups lost their traditional rulers and their very existence fell into peril after the destruction of their villages, crops, and livestock. The Germans also "forcibly transferred" some groups to other parts of the country—punishable today as a war crime (if against belligerents) or crime against humanity (if against a civilian population).[67]

German records provide many examples of how the reprisal killings of leaders undermined these groups' internal hierarchies, cohesion, and customs, which in turn enabled conflicts within groups. The elimination of native leaders helped the Germans strengthen their grip on local communities. A report from Tabora shows that locals tended to challenge their new leaders more, often by inviting German administrators to intervene. This undermined these new leaders' authority, while creating conflict in these communities.[68] In light of these records, the Germans might well have succeeded in destroying some groups "as such" (per the Rome Statute of the International Criminal Court), but the records do not show the necessary criminal intent.

Within the administrative and archival records of the Maji-Maji uprising, there survives no proof that the Germans directly incited genocide or issued an order to exterminate a particular ethnic group. The ICTY's jurisprudence about Srebrenica in 1995, however, especially the trial and appeals judgments in *Krstić*,[69] permit one to infer genocidal intent from "culpable acts."[70] In this case the judges concluded from the accused's orders to deport women and children from Srebrenica while ordering the execution of men and boys (regardless of whether they had been combatants or civilians) that he intended to destroy the national group of Bosnian Muslims "in part," and that this "part" was significant enough to have impacted the viability of the entire group.[71] They based their ruling partly on their understanding of the patriarchal character of Bosnian Muslim society, in which men are crucial for the survival of the group.[72] The same can be said of German retribution in Tanganyika. Just as the Bosnian Serb forces did not persecute Bosnian Muslims who allied with them against other Bosnian Muslims, ninety years earlier the Germans did not attack communities and leaders who lent them support. And, just like the boys and men in Srebrenica, the male leaders of the ethnic groups of Tanganyika that rebelled were crucial for the survival of those groups: their death left a lasting impact.[73] German commanders were aware, as well, of the impact of their scorched earth policy on the groups they suppressed. This policy and the Germans' tendency to attack the civilian population through starvation to force combatants to surrender, constituted the "culpable acts," which testified to their "genocidal intent."

In October 1905, Hauptmann Curt von Wangenheim presented the scorched earth strategy as a means of ending partisan warfare by starvation: "If the still remaining food is consumed and people's homes are destroyed and they lose the possibility to cultivate new fields because we conduct continuous raids, then they will have to give up their resistance."[74] Even some missionaries joined the calls to fight the insurgents through starvation.[75] Subsequently, the German troops destroyed

fields and crops so widely that they endangered their own food supplies. It is worth bearing in mind that von Götzen justified the strategy of starving the enemy not only by military exigency, but by pointing to the "inferiority" of the enemy.[76]

Conclusion

If the German command's strategy was to destroy entire settlements (crops, harvests, and food), kill civilians along with combatants, coerce the surrender of entire groups through deliberate starvation, and to intentionally deprive ethnic groups of the leadership that was crucial to their survival—then Germany's conduct in East Africa deserves the label of genocide. The scale of the atrocities and the number of victims relative to the population in Tanganyika was much larger than in Srebrenica; we have seen, however, under the Genocide Convention and international law the quantitative versus qualitative aspects are not determinative, as long as the impact of the conduct was substantial for the group in question. In neither Srebrenica nor Tanganyika can we point to any explicit order to prove genocidal intent, but in both cases that intent can be inferred from the perpetrators' actions.

Today the question of criminal liability for genocide in Tanganyika has no legal-technical relevance, because during the Maji-Maji uprising the very concept of genocide was unknown to all parties in the conflict. In legal terms, the issue of war crimes is more relevant, because the Red Cross Convention and the Hague II Convention were in force at the time and obliged the Germans (and their antagonists) to spare wounded fighters, accept the latter's surrender, treat prisoners of war humanely, and spare the civilian population. Because the Federal Republic of Germany acknowledges legal continuity with the German Empire, it bears legal responsibility for the Kaiserreich's actions. On the other hand, there is no legal continuity between the various ethnic groups of German East Africa and today's Republic of Tanzania. Therefore, the issue cuts both ways: Tanzania cannot be held accountable for these groups' violations of the Hague II Convention, but it also cannot lodge lawsuits against Germany on their behalf. Moreover, no current international court or tribunal wields the necessary jurisdiction over crimes and compensation claims for deeds that took place more than a hundred years ago. Plaintiffs from Tanzania could sue the German government, but in both German and Tanzanian domestic courts Germany would enjoy immunity for sovereign actions (*actiones jure imperii*). The current position of the International Court of Justice seems to be that past war-like campaigns fall under state sovereignty, even if such actions were accompanied by war crimes or crimes against humanity.[77]

Despite all these qualifications, the issue of genocide still has important political, diplomatic, and moral implications in the context of larger debates about colonialism, its long-term consequences, and compensation claims frequently aired in the United Nations. The transnational spill-over effects that impact the former colonial center should not be underestimated. For decades, the moral and political condemnation of colonialism has met resistance from important pressure groups in the colonial centers. These are still active in countries whose colonies gained independence relatively late, like Portugal, France, or the United Kingdom. Germany lost its colonies after World War I, and today lobby groups opposing a critical confrontation with the colonial past are almost non-existent there. Instead, Herero and Nama victim groups enjoy considerable support from German civil society, the media, and political parties. There is no principled opposition against compensation claims, and the only controversial topic in the current bilateral negotiations between Namibia and Germany is the amount of the compensation the latter is to pay. The question of whether Germany's colonial policy was genocidal is legally just as obsolete in the Namibian case

as it is in the Tanzanian one. Nevertheless, the genocide label has figured strongly in convincing the German public of the moral claims of the Herero and Nama, and helped clear obstacles to the current negotiations. It therefore seems likely that a convincing legal argument about the genocidal character of the suppression of the Maji-Maji uprising would have similar consequences for Tanzanian compensation claims and German domestic politics.

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Funding

Research for this article was sponsored by the National Science Centre, Poland (NCN grant no. 2015/19/B/HS3/02497 "A history of Rwanda") and by the Ministry of Science and Higher Education in Poland under the 2019–2022 program "'Regional Initiative of Excellence,' project number 012/RID/2018/19."

Notes

1. The first attempts to sue Germany for colonial atrocities took place in 2006: "Justice for Maji-Maji," *The East African*, February 27, 2006; Thilo Thielke, "Aus der Nummer kommt Deutschland nicht mehr heraus," *Spiegel Geschichte*, March 8, 2017, https://www.spiegel.de/geschichte/kolonialismus-in-tansania-aus-der-nummer-kommt-deutschland-nicht-heraus-a-1137502.html (accessed February 8, 2021).

2. "Tansania will keine Entschädigung von Deutschland," *Frankfurter Allgemeine Zeitung*, May 4, 2018, https://www.faz.net/aktuell/politik/tansania-will-keine-entschaedigung-von-deutschland-15573196.html (accessed February 8, 2021); "Tansania will keine Entschädigung von Deutschland für deutsche Kolonialzeit," *Süddeutsche Zeitung*, May 4, 2018, https://www.sueddeutsche.de/politik/international-tansania-will-keine-entschaedigung-fuer-deutsche-kolonialzeit-dpa.urn-newsml-dpa-com-20090101-180503-99-162347 (accessed April 29, 2021).

3. For example, Dominik J. Schaller, "Genocide in German Southwest Africa and German East Africa," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, ed. Dirk A. Moses (New York: Berghahn Books, 2009), 234–96; Klaus Bachmann, *Genocidal Empires: German Colonialism in Africa and the Third Reich* (Berlin: Peter Lang, 2019), 163–75.

4. The massacres against the Armenian population in the late Ottoman Empire and the German colonial atrocities against Nama and Herero in South-West Africa are very often subject to such analyses. See, for example, Raymond Kévorkian, *The Armenian Genocide: A Complete History* (London: Bloomsbury, 2011); Vahakn N. Dadrian, "Genocide as a problem of national and international law: The World War I Armenian case and its contemporary legal ramifications," *Yale Journal of International Law* 14, no. 2 (1989): 221–334; and Bachmann, *Genocidal Empires*. Recently the criteria of the Genocide Convention were also used to analyze massacres in California; see Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873* (New Haven, CT: Yale University Press, 2016).

5. Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge, UK: Cambridge University Press, 2011), 24–48.

6. David Bargueno, "Cash for Genocide: The Politics of Memory in the Herero Case for Reparations," *Holocaust and Genocide Studies* 26, no. 3 (2012): 394–424.

7. Klaus Bachmann and Christian Garuka, "Introduction," in *Criminalizing History: Legal Restrictions on Statements and Interpretations of the Past in Germany, Poland, Rwanda, Turkey and Ukraine*, ed. Klaus Bachmann and Christian Garuka (Berlin: Peter Lang International, 2020), 15–22.

8. Winfried Baumgart, "Bismarck und der deutsche Kolonialerwerb," in *Die Deutschen und ihre Kolonien*, ed. Horst Gründer and Hermann Hiery (Berlin-Brandenburg: Bebra, 2017), 45–64.

9. Winfried Speitkamp, "Die deutschen Kolonien in Afrika," in *Die Deutschen und ihre Kolonien*, Horst and Hiery, 65–88.

10. In the *Kaiserreich* and the Weimar Republic, the radical left often claimed that colonialism was a derivative of a capitalist and imperialist agenda. Communist opponents of colonial expansion later took up the topic in their anti-imperialist writings; see Horst Drechsler, *Aufstände in Südwestafrika: Der Kampf der Herero und Nama 1904 bis 1907 gegen die deutsche Kolonialherrschaft* (Berlin: Dietz, 1984).

11. The moderate left in the *Kaiserreich* (the Social-Democrats and their organ, the *Vorwärts*), often claimed colonialism's main purpose was to channel the class struggle and the social tensions of industrialization and urbanization in Germany into an imperialist agenda; see Horst Gründer, *Geschichte der deutschen Kolonien* (Paderborn, Germany: UTB, 2012), 32.

12. Bachmann, *Genocidal Empires*, 30–32.

13. Ulrike Lindner, "Transimperiale Orientierung und Wissenstransfer: Deutscher Kolonialismus im internationalen Kontext" in *Deutscher Kolonialismus, Fragmente seiner Geschichte und Gegenwart*, ed. Deutschen Historischen Museum (Berlin: Katalog zur Ausstellung im Deutschen Historischen Museum Berlin im Frühjahr, 2017), 84–91.

14. Martin Reuss, "The Disgrace and Fall of Carl Peters: Morality, Politics, and Staatsräson in the Time of Wilhelm II," *Central European History* 14, no. 2 (1981): 110–41.

15. Jan-Bart Gewald, "Colonial Warfare: Hehe and World War I, the Wars Besides Maji Maji in South-Western Tanzania," *African Historical Review* 40, no. 2 (2008): 1–27; and Patrick M. Redmond, "Maji Maji in Ungoni: A Reappraisal of Existing Historiography," *The International Journal of African Historical Studies* 8, no. 3 (1975): 407–24. The Hehe uprising (the German labelled the group Wahehe) was a series of battles between 1891 and 1894 in and around the Iringa region of Tanganyika, which took place between the warriors of the Hehe ethnic group, a strongly militarized kingdom under King Mkwawa. After several clashes, which the Hehe won, the German colonial troops managed to destroy much of the Hehe military force and encircle King Mkwawa in Mlambalasi, where he shot himself to avoid capture by the Germans.

16. The rise of the internal tensions in the Zulu kingdom between 1815 and 1840 triggered the displacement of several million people in Southern Africa, and embroiled large parts of the region in warfare, resulting in starvation and approximately one million victims of violence. The episode has become known as the Mfecane and was subject to several controversies in South African historiography. See Jan Visagie, "Migration and the societies north of the Gariep River," in *A History of South Africa: From the Distant Past to the Present day*, ed. Fransjohan Pretorius (Pretoria: Protea Book House, 2014), 105–24.

17. Today's Tanzania consists of two main parts, continental Tanganyika and the island of Zanzibar, which does not play any role in this article. During the Maji-Maji war, Zanzibar was a British protectorate and therefore not affected by the violence. We also exclude Rwanda and Burundi (then called Ruanda and Urundi) from this article's focus. Both countries belonged to German East Africa and were administered from Daressalam, but the Maji-Maji uprising did not take place in those territories.

18. Karl-Martin Seeberg, *Der Maji-Maji Krieg gegen die deutsche Kolonialherrschaft: Historische Ursprünge nationaler Identität in Tansania* (Berlin: Dietrich Reimer, 1989), 54–57.

19. *Jahresbericht über die Entwicklung der deutschen Schutzgebiete in Afrika und der Südsee im Jahre 1904–05* (Berlin: Königliche Hofbuchhandlung, 1906), 22–30; and *Jahresbericht über die Entwicklung der deutschen Schutzgebiete in Afrika und der Südsee im Jahre 1905–06* (Berlin: Königliche Hofbuchhandlung, 1907), 23–40.

20. Jamie Monson, "Relocating Maji Maji: The Politics of Alliance and Authority in the Southern Highlands of Tanzania, 1870–1918," *Journal of African History* 39, no. 1 (1998): 95–120.

21. The free riding dilemma is a concept from game theory and theories of public goods. Here it describes the individual fighter's dilemma, whether he should confront the enemy and—aware of this enemy's technological superiority—risk to fight and die, or leave it to his fellow fighters to take this risk, and survive. The dilemma can be overcome by force (for example by officers staying behind and shooting reluctant soldiers) or by a concept, which reduces the perceived risk. The invulnerability claim of the Maji-Maji cult, for example, suggested that fighters were immune from German bullets.

22. John Iliffe, "The Organization of the Maji Maji Rebellion," *The Journal of African History* 8, no. 3 (1967): 495–512; Mwita Akiri, "Magical Water versus Bullets: The Maji Maji Uprising as a Religious Movement," *African Journal for Transformational Scholarship* 3 (2017): 31–39. Akiri sees Maji-Maji as a purely religious movement.

23. Patrick M. Redmond, "Maji Maji in Ungoni," 407–10.

24. See, for example Redmond, "Maji Maji in Ungoni," 407–24.

25. John Iliffe, *A Modern History of Tanganyika* (Cambridge, UK: Cambridge University Press, 1979), 168.

26. Sengulo Albert Msellemu, "Common Motives of Africa's Anti-Colonial Resistance in 1890–1960," *Social Evolution and History* 12, no. 2 (2013): 143–55.

27. Redmond, "Maji Maji in Ungoni," 407–409. Redmond quotes from a plethora of such regional and often unpublished studies; Felicitas Becker, "Traders, 'Big Men' and Prophets: Political Continuity and Crisis in the Maji Maji Rebellion in Southeast Tanzania," *The Journal of African History* 45, no. 1 (2004): 1–22; see also the different interpretations in Juhani Koponen, "A Second Special Issue on the Maji Maji War," *Tanzania Zamani: A Journal of Historical Research & Writing* 7, no. 1 (2010).

28. Tanja Bührer, *Die Kaiserliche Schutztruppe für Deutsch-Ostafrika: Koloniale Sicherheitspolitik und transkulturelle Kriegführung 1885–1918* (Munich: Oldenbourg, 2011), 229–32. The Maji-Maji cult derives its name from the word "Maji" which means water. The cult itself claimed that warriors impregnated with holy water became invulnerable from German bullets. In addition, it forbade witchcraft, looting, and taking women as prisoners, and also had a chiliastic edge, claiming that the spread of holy water would contribute to richer harvests and protect its believers from abductions. Bührer, *Die Kaiserliche Schutztruppe*, 232.

29. The Governor later investigated the murder. The respective testimonies of survivors are stored in Bundesarchiv Lichterfelde (BArch), R 1001.722.

30. "Neuste Nachrichten vom ostafrikanischen Aufstand" (unauthored report), BArch, R 1001.723.

31. BArch, R 1001.721–722 contains many records about the (often fruitless) recruitment actions. There even was an attempt to recruit 150 youths from Bougainville Island in German New Guinea. They were, however, unable to adapt to the climate in East Africa, fell ill, and were sent back. Kaiserlicher Gouverneur von Deutsch Neu Guinea an das Kaiserliche Gouvernement Daressalam, December 7, 1905, BArch, R 1001.727, p. 15.

32. Bericht des Kolonial-Wirtschaftskomitees für das Auswärtige Amt (Kolonialpolitisches Amt) über die Ursachen des Aufstandes, January 25, 1906; and Denkschrift des kaiserlichen Gouverneurs von Deutsch-Ostafrika über die Ursachen des Aufstandes daselbst, Berlin, January 30, 1906, BArch R 1001.726. The Governor wrote the second report, which Chancellor von Bühlow presented to the Reichstag.

33. Bührer, *Die Kaiserliche Schutztruppe*, 265–66.

34. Ibid., 266.

35. Ewerbeck an Gouverneur (no date), BArch, R 1001.723.

36. Telegramm aus Daressalam, Gen. Glatzel an Admiral Berlin, BArch, R 1001.723, p. 147.

37. Kaiserlicher Bezirksamtmann in Lindi an Gouverneur, September 15, 1906, BArch, R 1001.723, pp. 59–62. The report describes the district officer's personal experience from an excursion into territories where the uprising was about to be extinguished.

38. Susanne Kuß, *Deutsches Militär auf kolonialen Kriegsschauplätzen: Eskalation von Gewalt zu Beginn des 20. Jahrhunderts* (Berlin: C.H. Links, 2010), 111–12.

39. *Stenographische Berichte über die Verhandlungen des Deutschen Reichstages*, appendix 622 (Sitzung 1907–1909), p. 3693.

40. Gilbert Clement Kamana Gwassa, *The Outbreak and Development of the Maji Maji War 1905–1907* (Cologne: Rüdiger Koppe, 2005), 217.

41. Bührer, *Die Kaiserliche Schutztruppe*, 274.

42. Jahresbericht des Bezirksamtes Tabora 1908, National Archives of Tanzania, G 1/6, Jahresberichte 1908, Ssongea, Tabora, Mahenga.

43. Ibid.

44. Where European powers sought to regulate their involvement in the Congo Basin, often regarded as marking Germany's appearance as an imperial power.

45. The General Act of Berlin was signed on February 26, 1885. This agreement between the major European powers is often regarded as the decisive event that caused the so-called "Scramble for Africa." In reality, the main concern of the powers that convened in Berlin was to formalise the Scramble that *preceded* the Berlin conference, and to provide for the governance of the Congo. The latter aspect was, of course, motivated by British and German concerns to keep the Congo basin out of French hands, thus the willingness to hand the territory to King Leopold of Belgium. For a vivid description of the events leading up to the Berlin Conference, see Thomas Pakenham, *The Scramble for Africa* (London: Phoenix Press, 1991), 239–55.

46. International Committee of the Red Cross, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, October 18, 1907 (a slightly revised version of the Convention and Regulations that were adopted at the First Hague Peace Conference of 1899), https://ihl-databases.icrc.org/ihl/INTRO/195 (accessed May 28, 2021).

47. The Martens Clause was adopted as a compromise, to provide for the protection of populations and belligerents under "the protection and empire" of international law, principles of humanity, and the dictates of public conscience. The Clause can be viewed as a minimum humanitarian standard for participants in armed conflicts where at least one of the parties may not be a state actor or where other humanitarian law treaties don't apply. The Martens Clause appeared in the Preamble to the Hague Convention I (1988), reappears in Article 1 of Additional Protocol I to the Geneva Conventions, 1977, and (in abbreviated form) in the Preamble to Additional Protocol II to the Geneva Conventions, 1977. See also, Jeffrey Kahn, "'Protection and Empire': The Martens Clause, State Sovereignty, and Individual Rights," *Virginia Journal of International Law* 56, no. 1 (2016): 1–50.

48. International Committee of the Red Cross, Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, August 22, 1864, https://ihl-databases.icrc.org/ihl/INTRO/120?OpenDocument (accessed May 28, 2021).

49. Germany signed the Red Cross Convention on July 6, 1906 and ratified it on May 27, 1907.

50. The German attitude towards the Africans in their colonies was far from stable and predictable. Until Germany lost its colonies in World War I, the legal status of the colonies and its native inhabitants remained in limbo. The government regarded the colonies as part of Germany, but cut them off from the mainland by

customs tariffs and subordinated them directly under the Emperor (rather than the Reichstag's legislation). The native inhabitants were subjects of the Emperor with a hybrid legal status, but not German citizens. Conflicts among native groups were solved by their own authorities, whereas conflicts between German colonists and natives were solved by German courts. In some cases, influential natives managed to lodge court cases at courts on the German mainland (sometimes even successfully). The German attitude towards the uprisings was ambiguous, too: the government regarded it as an internal riot (not of an international character, to which the Hague conventions would apply), but sent in the (colonial) army to quash it. Had they considered it a domestic conflict, the insurgents would have enjoyed all rights under the German constitution, including the right to due process (with access to a lawyer) instead of a superficial court-martial and execution.

51. See also the discussion by Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy,* 2nd ed. (Oxford: Oxford University Press, 2001), 33–35.

52. ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4 T, Trial Judgment, September 2, 1998, para. 516: "Moreover, the Chamber considered whether the groups protected by the Genocide Convention, echoed in Article 2 of the Statute, should be limited to only the four groups expressly mentioned and whether they should not also include any group which is stable and permanent like the said four groups. In other words, the question that arises is whether it would be impossible to punish the physical destruction of a group as such under the Genocide Convention, if the said group, although stable and membership is by birth, does not meet the definition of any one of the four groups expressly protected by the Genocide Convention. In the opinion of the Chamber, it is particularly important to respect the intention of the drafters of the Genocide Convention, which according to the *travaux préparatoires*, was patently to ensure the protection of any stable and permanent group."

53. *Akayesu*, Trial Judgment, para. 512.

54. Cases following *Akayesu* on this point include ICTR, *The Prosecutor v. Rutaganda*, Case No. ICTR-96-3 T, Trial Judgment, December 6, 1999; ICTY, *The Prosecutor v. Jelisić*, Case No. IT-95-10 T, Trial Judgment, December 14, 1999.

55. *Akayesu*, Trial Judgment, para. 513.

56. Ibid., para. 514.

57. Ibid., para. 515.

58. ICTR, *The Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, December 1, 2003 (Trial Chamber) and May 23, 2005 (Appeals Chamber).

59. ICTR, *The Prosecutor v. Semanza*, Case No. ICTR-97-20 T, May 15, 2003 (Trial Chamber) and May 20, 2005 (Appeals Chamber).

60. UN International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind (1996), Commentary on Article 17 ("Genocide"), p. 45, para 8: "the intention must be to destroy a group 'in whole or in part.' It is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe. None the less the crime of genocide by its very nature requires the intention to destroy at least a substantial part of a particular group."

61. The addition "as such" was put in the Rome Statute by the Assembly of State Parties of the International Criminal Court and emphasizes the protection that the concept of genocide extends to groups.

62. Paola Gaeta, "Genocide," in *Routledge Handbook of International Criminal Law,* ed. William Schabas and Nadia Bernaz (Abington, UK: Routledge, 2013), 113.

63. The international criminal tribunals' jurisprudence about command responsibility is inconsistent regarding the dilemma between "neglect" or "responsibility for the main crime." Nevertheless, there is no doubt that lack of oversight does not exonerate a commander from his liability for crimes committed by his subordinates or others under his control. This does not mean strict liability. Furthermore, there is not a one-size-fits-all test

for command or superior responsibility. As noted by Judges Van den Wyngaert and Morrison in the *Bemba* appeal judgment by the ICC, what the law expects from commanders "depends on where they find themselves on the hierarchical ladder…. Command responsibility is not strict liability." The law should resist "the reflex of always holding the most senior commander criminally responsible, regardless of how proximate the superior-subordinate relationship actually was." Separate opinion of Judges Van den Wyngaert and Morrison, ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, June 8, 2018 (Appeals Chamber), para 36.

64. Kuß, *Deutsches Militär*, 120.

65. Befehl an die Truppenführer im Aufstandsgebiet, September 11, 1905, BArch, R 1001.724, p. 119.

66. Seeberg, *Der Maji-Maji Krieg*, 89.

67. Kuß, *Deutsches Militär*, 124.

68. Kaiserliches Bezirksamt an Kaiserliches Gouvernement in Daressalam, June 12, 1908, Jahresbericht des Bezirksamtes Tabora 1908, National Archives of Tanzania, G 1/6.

69. ICTY, *The Prosecutor v. Krstić*, Case No. IT-98-33, August 2, 2001 (Trial Judgement), April 19, 2004 (Appeals Judgement).

70. Appeals judgment in *Krstić*, para. 33 and 44.

71. The ICTY trial chambers in *Sikirica* and *Jelisić* (referred to earlier) and the ICTR in *Kayishema and Ruzindana* had specified the intent of "destroying a group in part" by demanding, this part needed to be significant enough to have an impact on the whole group. See ICTR, *The Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1 T, May 21, 1999, paras. 96–97.

72. The judges assumed that the men and boys had been killed and buried because the perpetrators had known about the Bosnian Muslims' social norms which forbade widows from remarrying and having children as long as the fate of their husband remained unknown. Appeals chamber judgment in *Krstić*, para. 28.

73. There is no evidence proving the Germans' will to eliminate groups entirely ("in whole"); there is, in fact, evidence pointing to the opposite. In an order at the end of the uprising, von Götzen encouraged his subordinates in the districts to be flexible with regard to the surrender conditions he had set out in November 1905. These conditions were not to be imposed regardless of the situation on the ground. Their objective was to re-establish the authority of the colonizing power and to extract resources from the local population, but they were not meant to incite another riot which would be contrary to the interest "of maintaining the population and its strength." Von Götzen did not want the surrender conditions to be implemented as severely as he had once formulated them. Götzen's deputy Haber summarized this message and sent it to the German Foreign Office (GFO) on July 16, 1906, BArch, R 1001.724.

74. Quoted according to Seeberg, *Der Maji-Maji Krieg*, 79. Seeberg relies on Gustav Adolf von Götzen, *Deutsch-Ostafrika im Aufstand 1905–1906* (Berlin: Dietrich Reimer, 1909), 149.

75. For example, the superintendent of the Berlin Mission, C. Schumann, wrote in an affidavit to the military outpost in Iringa (January 19, 1906): "The enemy refuses to hand himself in. He can only be overwhelmed by hunger" (BArch, R 1001.724, p. 66).

76. Seeberg, *Der Maji-Maji Krieg*, 80–82.

77. Most recently the ICJ did so in a case between Italy, Greece, and Germany. See International Court of Justice, verdict from February 3, 2012, Jurisdictional Immunities of the State (*Germany v. Italy: Greece intervening*), https://www.icj-cij.org/public/files/case-related/143/143-20120203-JUD-01-00-EN.pdf (accessed May 28, 2021). In recent decades, the scope of state immunity has been reduced by treaty law and jurisprudence, and states no longer enjoy immunity from private (trade) law actions. Furthermore, immunity in the context of human rights violations during sovereign action has also become more and more disputed. See, Hazel Fox and Philippa Webb, *The Law of State Immunity* (Oxford: Oxford University Press, 2004), 118–28; James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford: Oxford University Press, 2012), 487–502.