

# Echoes from the Past: The Annihilation of the Hereros in Erstwhile and Contemporary International Law – War Crime or Genocide?

*Daniel Friday Atidoga, PhD<sup>1</sup>, & Ojonigwu Atidoga.<sup>2</sup>*

<sup>1</sup>*Professor of law, Prince Abubakar Audu University, Anyigba, Kogi State, Nigeria. Corresponding author. Email: dr.atidoga@gmail.com*

<sup>2</sup>*Lecturer, Faculty of Law, Prince Abubakar Audu University, Anyigba, Kogi State, Nigeria. Email: ojonigwuatidoga@gmail.com*

## **Abstract:**

The Herero Massacre of 1904-1908, perpetrated by German colonial forces in South-West Africa, stands as one of the most brutal episodes of colonial violence in history. This research examines the massacre through historical, legal, and contemporary lenses, aiming to assess its classification as a war crime or genocide and its impact on international law. The study analyzes the systematic campaign of extermination against the Herero people, including General von Trotha's explicit extermination order and the use of concentration camps. Findings indicate that while the massacre predates the formal definition of genocide, it aligns closely with contemporary understandings of both genocide and war crimes. The research also explores the ongoing implications of the massacre, including debates about state responsibility for historical injustices and calls for reparations. The Herero case has significantly influenced the evolution of international law regarding colonial atrocities and continues to shape discussions about postcolonial justice. The study concludes that the Herero Massacre not only represents a historical tragedy but also poses ongoing challenges to our understanding of justice, responsibility, and the enduring impacts of colonial violence.

**Keywords:** Genocide, German colonialism, Herero Massacre, international law, war crimes

**Published:** 12<sup>th</sup>/August/2024

**Suggested Citation:** D.F. Atidoga, & O. Atidoga (2024), 'Echoes from the Past: The Annihilation of the Hereros in Erstwhile and Contemporary International Law - War Crimes or Genocide?' *East. Af. JLP&G*. Vol. 1. No.1. pp. 1-32

**Peer Reviewed**

This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).



## **1. Introduction**

The late 19th and early 20th centuries witnessed a surge in European colonial expansion, with devastating consequences for indigenous populations across Africa. One of the most harrowing episodes of this era was the systematic annihilation of the Herero people in German South-West Africa, present-day Namibia, between 1904 and 1908.<sup>1</sup> This tragic event, often referred to as the Herero Genocide, stands as a dark chapter in colonial history and raises critical questions about the nature of war crimes, genocide, and international law. The German colonial administration's brutal suppression of the Herero uprising, culminating in General Lothar von Trotha's extermination order, resulted in the deaths of an estimated 65,000 to 80,000 Herero people, or about 80 % of the entire Herero population.<sup>2</sup>

This systematic campaign of violence, starvation, and forced labor camps not only decimated the Herero but also targeted other indigenous groups, including the Nama people.<sup>3</sup> Despite the scale and brutality of these atrocities, the Herero Genocide remained largely overlooked in international discourse for many decades. It was not until the late 20th century that scholars and legal experts began to reassess this historical event within the framework of evolving international law.<sup>4</sup> This renewed attention has sparked debates about whether the actions of the German colonial forces constitute war crimes, genocide, or both, and what implications this classification might have for contemporary international law and justice.

This research aims to examine the Herero massacre through the lens of international law, exploring its classification as either a war crime or genocide, or potentially both. By analyzing the historical context, the role of key figures such as General von Trotha, and the legal frameworks of both war crimes and genocide, this study seeks to contribute to the ongoing dialogue about colonial atrocities and their place in

---

<sup>1</sup> Erichsen, Casper, and David Olusoga. *The Kaiser's Holocaust: Germany's forgotten genocide and the colonial roots of Nazism*. Faber & Faber, 2010. p. 1

<sup>2</sup> Zimmerer, Jürgen, Joachim Zeller, and Edward Neather. "Genocide in German South-West Africa: The Colonial War (1904-1908) in Namibia and its Aftermath." (Monmouth, Wales: Merlin Press, 2008), p. 41, <https://cir.nii.ac.jp/crid/1130000796150882688>

<sup>3</sup> Cooper, Allan D. "Reparations for the Herero Genocide: Defining the limits of international litigation." *African Affairs* 106.422 (2007): 113-126, p. 113

<sup>4</sup> Anderson, Rachel. "Redressing colonial genocide under international law: the Hereros' Cause of action against Germany." *Calif. L. Rev.* 93 (2005): 1155, p. 1158

international law. Furthermore, it will consider the implications of this historical event for current discussions on reparations and compensation for the Herero people, as well as its broader significance in shaping our understanding of state responsibility for historical injustices.

This paper will examine the Herero Massacre through several key lenses. First, it will provide a detailed historical context, exploring German colonial policy in Herero land and the events of the Herero Uprising and its brutal suppression. The paper will then analyze the massacre itself, including the role of General von Trotha and the scale and methods of annihilation employed. A legal framework and analysis section will follow, examining the massacre through the perspectives of war crimes and genocide, considering both the legal standards of the time and contemporary international law. The paper will also offer a comparative analysis, situating the Herero Massacre within the broader context of colonial atrocities and exploring its impact on the development of international law. Finally, the contemporary implications of the massacre will be discussed, including debates surrounding state responsibility for historical injustices, calls for reparations and compensation for the Herero people, and the ongoing influence of this case on current international law and colonial legacy disputes. Through this comprehensive examination, the paper aims to provide a detailed understanding of the Herero Massacre and its enduring significance in legal and historical discourses.

## **2. Historical context and German colonial policy in Herero land**

### **2.1 Overview of German colonialism in South-West Africa**

The German colonial presence in South-West Africa, now known as Namibia, began in the late 19th century as part of the broader European "Scramble for Africa." In 1884, Germany officially declared South-West Africa a protectorate, marking the beginning of its colonial rule in the region.<sup>5</sup> The colonization of South-West Africa was driven by several factors, including economic interests, geopolitical competition, and prevailing racist ideologies of the time. Germany sought new markets for its industrial products and sources of raw materials, with South-West Africa being particularly rich in minerals, especially diamonds, which were discovered in 1908.<sup>6</sup> The acquisition of

---

<sup>5</sup> Erichsen and David, (n.1), p. 35

<sup>6</sup> Zimmerer and Zeller, (n.2), p. 19

colonies was also seen as a mark of national prestige and power. As a late entrant to the colonial race, Germany was eager to establish its place among other European powers.<sup>7</sup> Additionally, the prevailing Social Darwinist ideologies of the time justified colonization as a "civilizing mission" to bring European culture and Christianity to what were perceived as "primitive" peoples.<sup>8</sup>

The German colonial administration in South-West Africa was characterized by a hierarchical structure that placed German settlers at the top, followed by other European immigrants, with indigenous African populations at the bottom. This racial hierarchy was enforced through various legal and social mechanisms, including land appropriation, labor exploitation, and restrictions on movement and rights for indigenous peoples.<sup>9</sup> The German approach to colonization in South-West Africa was influenced by the concept of "Lebensraum" (living space), which would later become a central tenet of Nazi ideology. This concept justified the displacement and subjugation of indigenous populations to make room for German settlers.<sup>10</sup> The German colonial administration implemented several policies that had profound impacts on the indigenous populations, particularly the Herero.

One of the most significant was the systematic seizure of land from the Herero and other indigenous groups. By 1903, German settlers, despite being a small minority, owned over 55 % of the most fertile land in the territory.<sup>11</sup> This policy severely disrupted the traditional pastoral lifestyle of the Herero, who relied on vast grazing lands for their cattle. The colonial administration also introduced forced labor systems, including the notorious "contract labor" system. This system effectively indentured indigenous workers to German employers, often under harsh conditions and for minimal compensation.<sup>12</sup> Legal discrimination was another key aspect of German colonial policy, with the authorities

---

<sup>7</sup> Conrad, Sebastian. *German colonialism: A short history*. Cambridge University Press, 2011, p. 23

<sup>8</sup> Lindner, Ulrike. *Koloniale Begegnungen: Deutschland und Großbritannien als Imperialmächte in Afrika 1880-1914*. Vol. 10. Campus Verlag, 2011, p. 45

<sup>9</sup> Zimmerer, Jürgen. "Colonial Genocide and the Holocaust: Towards an Archeology of Genocide." *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, edited by A. Dirk Moses, Berghahn Books, 2008, p. 323

<sup>10</sup> Madley, Benjamin. "From Africa to Auschwitz: How German South West Africa Incubated Ideas and Methods adopted and developed by the Nazis in Eastern Europe." *European History Quarterly* 35.3 (2005), p. 432

<sup>11</sup> Erichsen and David, (n.1), p. 71

<sup>12</sup> Zimmerer and Zeller, (n.2), p. 54

implementing a dual legal system that privileged European settlers over indigenous populations. This included restrictions on movement, property ownership, and civil rights for indigenous people.<sup>13</sup>

Cultural suppression was also a significant feature of German colonial policy. The authorities aimed to suppress indigenous cultural practices and impose German language and customs. Missionaries played a significant role in this cultural transformation, often working in tandem with colonial authorities.<sup>14</sup> Economically, the colony was seen primarily as a source of raw materials and a market for German goods. This led to the development of an extractive economy that primarily benefited the colonial power at the expense of indigenous populations.<sup>15</sup>

The implementation of these policies created increasing tensions between the German colonial administration and the indigenous populations, particularly the Herero. The erosion of traditional power structures, loss of land, and economic hardships fueled growing resentment among the Herero people. By the early 1900s, the situation had become increasingly volatile. The Herero, under the leadership of Samuel Maharero, began to organize resistance against German rule. This mounting tension would eventually erupt into an open conflict in 1904, marking the beginning of what would become known as the Herero Uprising.<sup>16</sup>

## **2.2 The Herero Uprising and its suppression**

The Herero Uprising, which began in January 1904, was a direct response to the oppressive German colonial policies and the increasing marginalization of the Herero people. The immediate trigger for the uprising was a dispute over land rights and cattle theft, but it was underpinned by years of growing resentment towards German rule.<sup>17</sup> On 12<sup>th</sup> January 1904, Herero forces, led by Samuel Maharero, launched coordinated attacks

---

<sup>13</sup> Krüger, Gesine. *Kriegsbewältigung und Geschichtsbewußtsein: Realität, Deutung und Verarbeitung des deutschen Kolonialkriegs in Namibia 1904 bis 1907*. Vandenhoeck & Ruprecht, 1999, p. 87

<sup>14</sup> Gewalt, Jan-Bart. *Herero Heroes: a socio-political history of the Herero of Namibia, 1890-1923*. Ohio State University Press, 1999, p. 141

<sup>15</sup> Helmut, Bley. *South-West Africa under German Rule 1894-1914*. Diss. 1968, p. 132

<sup>16</sup> Drechsler, Horst, and Bernd Zöllner. "Let us Die Fighting: The Struggle of the Herero and Nama Against German Imperialism (1884-1915)." (London: Zed Press, 1980), p. 132, <https://cir.nii.ac.jp/crid/1130282270017108992>.

<sup>17</sup> Gewalt, (n. 14), p. 141

on German settlements, farms, and outposts across central Namibia. These attacks resulted in the deaths of approximately 123 German settlers, including women and children.<sup>18</sup> In the initial stages of the uprising, the Herero forces were successful in driving German settlers from their lands and pushing back the small German colonial force. This early success emboldened other indigenous groups, including the Nama, who joined the rebellion later in 1904.<sup>19</sup>

The German Empire responded by sending reinforcements under the command of General Lothar von Trotha, who arrived in June 1904. Von Trotha brought with him a more aggressive and ruthless approach to suppressing the uprising.<sup>20</sup> The decisive engagement of the uprising occurred at the Battle of Waterberg in August 1904. The German forces, equipped with superior weaponry including artillery and machine guns, decisively defeated the Herero forces.<sup>21</sup> Following the Battle of Waterberg, General von Trotha issued his infamous extermination order (Vernichtungsbefehl) on 2<sup>nd</sup> October 1904. This order declared that all Herero people, including women and children, were to be driven from German territory or killed.<sup>22</sup> This marked a turning point in German colonial policy, shifting from a strategy of subjugation to one of annihilation.

The methods employed in this suppression were brutal and systematic. German forces pursued the retreating Herero into the Omaheke Desert, preventing access to water sources and effectively condemning thousands to death by thirst and starvation.<sup>23</sup> Those Herero who survived the desert crossing or surrendered were rounded up and placed in concentration camps, euphemistically called "collection points" (Sammellager). These camps, including the notorious Shark Island camp, were characterized by horrific conditions, forced labor, and high mortality rates.<sup>24</sup>

Survivors in the camps were subjected to brutal forced labor regimes, often working on projects such as railway construction. The harsh conditions and inadequate

---

<sup>18</sup> Erichsen and David, (n.1), p. 138

<sup>19</sup> Zimmerer and Zeller, (n.2), p. 71

<sup>20</sup> Hull, Isabel V. *Absolute Destruction: Military Culture and The Practices of War in Imperial Germany*. Cornell University Press, 2019, p. 9

<sup>21</sup> Bridgman, Jon M. *The Revolt of the Hereros*. Vol. 30. Univ of California Press, 2022, p. 112

<sup>22</sup> Zimmerer, (n. 9), p. 323

<sup>23</sup> Erichsen, Casper W. "The Angel of Death Has Descended Violently Among Them": Concentration Camps and Prisoners-Of-War in Namibia, 1904-08. No. 79. African Studies Centre, 2005, p. 47

<sup>24</sup> Erichsen and David, (n.1), p. 211

food and medical care led to numerous deaths.<sup>25</sup> Some camps even became sites for pseudo-scientific racial experiments. Dr. Eugen Fischer conducted studies on prisoners, including children, which later influenced Nazi racial theories.<sup>26</sup> The German authorities systematically destroyed Herero cultural sites, confiscated cattle - the foundation of Herero wealth and social structure, and banned traditional practices and languages.<sup>27</sup> This cultural destruction was part of a broader effort to eradicate Herero identity and resistance.

The aftermath of the uprising and its suppression had far-reaching consequences. By 1908, the Herero population had been reduced from an estimated 80,000 to approximately 15,000. Some historians estimate that up to 80 % of the Herero population perished.<sup>28</sup> This near-annihilation led to the complete disruption of their traditional social and economic structures. Survivors were left landless and impoverished.<sup>29</sup> The German colonial administration used the uprising as a pretext to confiscate all remaining Herero lands, redistributing them to German settlers.<sup>30</sup> This further entrenched the unequal land distribution that would have lasting impacts on Namibian society. The events of 1904-1908 left a lasting traumatic legacy among the Herero people, affecting subsequent generations and shaping Namibian national identity.<sup>31</sup> While these events generated some controversy in Germany and internationally, the full extent of the atrocities remained largely unknown or ignored by the wider world for many decades.<sup>32</sup>

### **3. The Herero Massacre**

The Herero Massacre, which unfolded between 1904 and 1908, stands as one of the most brutal episodes in colonial history. This tragic event was characterized by systematic violence, forced displacement, and deliberate starvation of the Herero people by German colonial forces in what was then German South-West Africa, now Namibia.

---

<sup>25</sup> Zimmerer and Zeller, (n.2), p. 84

<sup>26</sup> Madley, (n. 10), p. 437

<sup>27</sup> Gewalt, (n. 14), p. 191

<sup>28</sup> Cooper, (n. 3), p. 113

<sup>29</sup> Zimmerer, (n. 9), p. 328

<sup>30</sup> Bley, (n.15), p. 150

<sup>31</sup> Kössler, Reinhart, and Henning Melber. "The Colonial Genocide in Namibia: Consequences for A Memory Culture Today from A German Perspective." *Ufahamu: A Journal of African Studies* 30.2-3 (2004), p. 27

<sup>32</sup> Anderson, (n.4), p. 1158

The massacre was a direct consequence of the German response to the Herero Uprising, which began in January 1904 as a rebellion against oppressive colonial policies.<sup>33</sup> The uprising, initially successful in driving out German settlers and pushing back colonial forces, prompted a severe and disproportionate response from the German Empire. The arrival of General Lothar von Trotha in June 1904 marked a turning point in the conflict, shifting the German approach from suppression to extermination.<sup>34</sup> The Battle of Waterberg in August 1904 was the decisive engagement that set the stage for the subsequent massacre. After decisively defeating the Herero forces with superior weaponry, including artillery and machine guns, the German forces under von Trotha's command embarked on a campaign of annihilation.<sup>35</sup>

The massacre that followed was not merely a byproduct of warfare but a deliberate policy aimed at the destruction of the Herero as a people. This intent was most clearly articulated in General von Trotha's infamous extermination order (Vernichtungsbefehl) issued on 2<sup>nd</sup> October 1904. This order explicitly called for the death or expulsion of all Herero, including women and children, from German territory.<sup>36</sup> The implementation of this order marked the transition from a colonial war to a genocide, as the German forces systematically pursued the destruction of the Herero people. The methods employed in this campaign of annihilation were diverse and ruthless. German forces drove the Herero into the inhospitable Omaheke Desert, deliberately preventing access to water sources.

This strategy effectively condemned thousands to death by thirst and starvation.<sup>37</sup> Those who survived the desert crossing or surrendered were not spared but instead were rounded up and placed in concentration camps, euphemistically termed "collection points" (Sammellager). These camps, including the notorious Shark Island camp, became sites of further atrocities, characterized by forced labor, starvation, and medical experimentation.<sup>38</sup> While the Herero Massacre represents a stark example of colonial violence in Africa, it is important to note that such atrocities were not confined to the

---

<sup>33</sup> Erichsen and David, (n.1), p. 138

<sup>34</sup> Hull, (n. 20), p. 9

<sup>35</sup> Bridgman, (n. 21), p. 112

<sup>36</sup> Zimmerer, (n. 9), p. 323

<sup>37</sup> Erichsen, (n. 23), p. 47

<sup>38</sup> Erichsen and David, (n.1), p. 211



African continent during this period. The Armenian Genocide, which began in 1915,<sup>39</sup> and the later Holocaust in Europe demonstrate that extreme violence and genocidal practices were also perpetrated within and between European and Near Eastern societies.<sup>40</sup>

### **3.1 The role of General Von Trotha**

General Lothar von Trotha played a pivotal role in the Herero Massacre, embodying the most extreme and ruthless aspects of German colonial policy. Appointed by Kaiser Wilhelm II to suppress the Herero uprising, von Trotha arrived in German South-West Africa in June 1904 with a reputation for brutality, having previously suppressed rebellions in German East Africa and China.<sup>41</sup> His approach to the conflict was shaped by a combination of racist ideology, military doctrine, and a belief in the necessity of total war against indigenous populations. Von Trotha's strategy went beyond military defeat of the Herero; it aimed at their complete destruction as a people. This intent was clearly articulated in his infamous extermination order of 2<sup>nd</sup> October 1904, which stated that: "Within the German borders every Herero, with or without a gun, with or without cattle, will be shot. I will no longer accept women and children; I will drive them back to their people or I will let them be shot at".<sup>42</sup>

This order, which effectively condemned the entire Herero population to death, was a clear manifestation of genocidal intent. The general's tactics were characterized by extreme violence and a disregard for the lives of non-combatants. After the Battle of Waterberg, where German forces decisively defeated the Herero, von Trotha ordered his troops to pursue the fleeing Herero into the Omaheke Desert. He deliberately sealed off water sources, knowing that this would lead to the death of thousands by thirst and starvation.<sup>43</sup> This tactic was not merely a military strategy but a deliberate act of extermination. Von Trotha's role in the massacre extended beyond military operations. He was instrumental in establishing the concentration camp system in the colony, where captured Herero were subjected to forced labor, starvation, and medical experiments.<sup>44</sup>

---

<sup>39</sup> Atidoga, Daniel F. "Genocide and Human Rights Violations: An Examination of the Armenian Genocide." *Human Rights Review* a Publication of the Department of Public Law ABU Zaria, vol. 2, no. 2, 2011, pp. 68-72

<sup>40</sup> Kuper, Leo. *Genocide: Its political use in the twentieth century*. Yale University Press, 1981. p. 52

<sup>41</sup> Hull, (n. 20), p. 9

<sup>42</sup> Zimmerer & Zeller, (n. 2), p. 73

<sup>43</sup> Erichsen, (n. 23), p. 47

<sup>44</sup> Erichsen and David, (n. 1), p. 211

His policies also targeted the cultural and social fabric of Herero society, aiming to destroy their identity and way of life.

The general's actions were controversial even in his own time. Some officials in the German government, including Chancellor Bernhard von Bülow, criticized the extermination order as too extreme. However, von Trotha enjoyed the support of Kaiser Wilhelm II and continued his campaign of annihilation until he was recalled in November 1905.<sup>45</sup> Even after his departure, the policies he had put in place continued to devastate the Herero population. Von Trotha's role in the Herero Massacre has been the subject of much historical analysis and debate. Some scholars argue that he was simply implementing the logical extension of German colonial policy, while others see his actions as an extreme manifestation of personal ruthlessness and racist ideology. Regardless of the interpretation, it is clear that von Trotha was the primary architect of the genocidal campaign against the Herero, and his actions had catastrophic consequences for the indigenous population of German South-West Africa.

### **3.2 Scale and methods of annihilation**

The scale and methods of annihilation employed against the Herero were staggering in their immediate impact and had far-reaching consequences that reverberated through generations. Before the uprising in 1904, the Herero population was estimated at around 80,000. By 1908, this number had been reduced to approximately 15,000, representing a loss of up to 80% of the entire Herero population.<sup>46</sup> This dramatic reduction was the result of a systematic campaign of extermination that went beyond physical killing to include economic, social, and cultural annihilation. The methods employed in this campaign were diverse and ruthless.

Following the Battle of Waterberg in August 1904, German forces under von Trotha's command pursued the retreating Herero into the Omaheke Desert. This pursuit was not merely a military tactic but a deliberate strategy of extermination. German soldiers were ordered to shoot any Herero on sight, regardless of age or gender, and to

---

<sup>45</sup> Drechsler, (n. 16), p. 157

<sup>46</sup> Cooper, (n. 3), p. 113

prevent access to water sources.<sup>47</sup> This policy effectively turned the desert into a death trap, with thousands of Herero men, women, and children dying of thirst and starvation. Those who survived the desert crossing or surrendered faced a different but equally grim fate in concentration camps, euphemistically called "collection points" (Sammellager). These camps, including the infamous Shark Island camp, became sites of further atrocities. Prisoners were subjected to forced labor, starvation rations, and horrific living conditions that led to high mortality rates.<sup>48</sup> The camps also became sites of pseudo-scientific racial experiments conducted by researchers like Dr. Eugen Fischer, who later influenced Nazi racial theories.<sup>49</sup>

The German authorities also targeted the economic foundation of Herero society. The Herero were primarily a pastoral people, with their wealth and social structure centered around their cattle herds. German forces systematically confiscated or killed Herero cattle, not only as a means of sustenance for their troops but also as a way to destroy the foundation of Herero society. By 1908, the Herero had lost an estimated 50,000 cattle, effectively eradicating their traditional way of life.<sup>50</sup> Cultural annihilation was another key method employed. The German administration systematically destroyed Herero cultural sites, banned traditional practices and languages, and implemented policies of forced assimilation. The use of the Herero language was discouraged or outrightly banned in many contexts, and traditional religious practices were suppressed in favor of Christianity.<sup>51</sup>

The German authorities also disrupted Herero social structures by targeting leadership, killing or imprisoning chiefs and other community leaders. This strategy was designed to break down the traditional hierarchies and decision-making processes within Herero society, making it more difficult for the community to organize resistance or maintain their cultural practices.<sup>52</sup> The scale of the annihilation was further magnified by the German authorities' efforts to cover up the extent of their actions. Many documents

---

<sup>47</sup> Erichsen, (n. 23), p. 47

<sup>48</sup> Erichsen and David, (n. 1), p. 211

<sup>49</sup> Madley, (n. 10), p. 437

<sup>50</sup> Werner, Wolfgang, and Basler Afrika Bibliographien. "No one will become rich: economy and society in the Herero reserves in Namibia, 1915-1946." (Basel, Switzerland: P. Schlettwein Publishing, 1998), p. 43, <https://cir.nii.ac.jp/crid/11300000797912247680>.

<sup>51</sup> Gewalt, (n. 14), p. 191., Kössler & Melber, (n. 31), p. 25

<sup>52</sup> Gewalt, Ibid.

were destroyed, and official reports often downplayed the number of Herero deaths. This deliberate obfuscation made it difficult to accurately assess the full scale of the massacre for many years and complicated later efforts at historical reckoning.<sup>53</sup>

The methods used in the Herero Massacre were not only brutal but also pioneering in their systematic nature. Some scholars argue that the techniques developed in this colonial context, including the use of concentration camps and pseudo-scientific racial theories, foreshadowed later atrocities in Europe, particularly the Holocaust.<sup>54</sup> In recent years, there has been growing recognition of the need to address the historical injustices stemming from the Herero Massacre.

This has led to discussions about reparations and formal apologies from the German government. These ongoing debates highlight the enduring impact of the massacre and its methods, demonstrating how the scale of this historical atrocity continues to shape contemporary international relations and discussions of historical justice.<sup>55</sup> The scale and methods of annihilation employed in the Herero Massacre represent one of the most extreme manifestations of colonial violence in history. The combination of direct killing, forced displacement, concentration camps, economic devastation, and cultural destruction nearly succeeded in wiping out an entire people. The legacy of this genocide continues to resonate in Namibia and beyond, shaping discussions about colonial atrocities, historical justice, and the evolution of international law regarding war crimes and genocide.

#### **4. Legal framework and analysis**

The legal analysis of the Herero Massacre requires an examination of the international legal framework that existed in the early 20th century, as well as an understanding of how international law has evolved since then, particularly in relation to war crimes and genocide. This analysis is crucial for contextualizing the events that occurred in German South-West Africa and for assessing their legal implications both at the time and now. The Herero Massacre occurred during a period when international law was still in its formative stages, particularly with regard to the conduct of colonial powers

---

<sup>53</sup> Erichsen and David, (n. 1), p. 250

<sup>54</sup> Madley, (n.10), p. 430

<sup>55</sup> Bargueño, David. "Cash for genocide? The Politics of Memory in The Herero Case for Reparations." *Holocaust And Genocide Studies* 26.3 (2012): 394-424, p. 400

and the protection of indigenous populations. The legal framework of the time was largely based on European concepts of sovereignty and civilization, which often justified or overlooked colonial atrocities.<sup>56</sup> However, even within this context, there were emerging principles and customs that would later form the basis for more comprehensive laws governing armed conflicts and the treatment of civilian populations.

To fully understand the legal implications of the Herero Massacre, it is necessary to examine the state of international law at the turn of the 20th century, trace its evolution in response to such atrocities, and then apply these legal concepts to specific events that occurred in German South-West Africa. This analysis will not only shed light on the legal status of the Herero Massacre but also contribute to ongoing discussions about historical justice, reparations, and the responsibility of states for colonial-era crimes.

In the following subsections, we will explore the international legal landscape of the early 20th century, examine how international law has evolved in its treatment of war crimes and genocide, and then apply these legal frameworks to the Herero Massacre. This analysis will provide a comprehensive legal perspective on one of the most tragic episodes of colonial history, offering insights into its classification as either a war crime, genocide, or both.

#### **4.1 International law in the early 20th century**

At the turn of the 20th century, international law was still in a relatively nascent state, particularly concerning the regulation of armed conflicts and the protection of civilian populations. The legal framework that existed was primarily based on European concepts of sovereignty and civilization, which often served to legitimize colonial expansion and the subjugation of indigenous peoples.<sup>57</sup> This Eurocentric approach to international law created a system that often failed to adequately address or prevent atrocities committed by colonial powers against indigenous populations.

The primary sources of international law during this period were customary international law, bilateral treaties, and a limited number of multilateral conventions. The Hague Conventions of 1899 and 1907 are principally focused on stopping warring parties

---

<sup>56</sup> Zimmerer & Zeller, (n. 2), p. 27

<sup>57</sup> Ibid., p. 29

from using tools and systems of warfare that will cause excessive harm and wanton destruction. They laid down laws and norms, establishing principles for the conduct of hostilities and the treatment of prisoners of war. However, these conventions were primarily focused on conflicts between "civilized" nations and did not explicitly address colonial conflicts or the treatment of indigenous populations.<sup>58</sup>

The concept of state sovereignty was paramount in international law of the early 20th century. This principle often shielded colonial powers from external interference or criticism regarding their treatment of colonized peoples. The prevailing legal doctrine of the time considered colonial territories as part of the sovereign domain of the colonizing power, giving them wide latitude in their governance and exploitation of these territories.<sup>59</sup> Moreover, the international legal system of the time was built on a hierarchical understanding of civilization, with European nations at the top. This hierarchy was reflected in legal concepts such as the "standard of civilization," which was used to determine whether a political entity could be considered a full subject of international law. Indigenous societies, including the Herero, were often deemed to fall short of this standard, effectively excluding them from the protections and rights afforded by international law.<sup>60</sup>

Despite these limitations, there were emerging principles in international law that would later form the basis for more comprehensive protections. The principle of humanity in warfare, for instance, was gaining recognition. This principle, which called for the mitigation of unnecessary suffering in armed conflicts, was reflected in some documents. The Lieber Code of 1863 and the St. Petersburg Declaration of 1868 recognized territorial sovereignty of nations. However, the application of these principles to colonial conflicts remained limited and inconsistent.<sup>61</sup>

It is important to note that while formal international law provided little protection for colonized peoples, there was growing criticism of colonial atrocities within Europe.<sup>62</sup> Humanitarian concerns, often voiced by missionaries and some politicians, began to

---

<sup>58</sup> Hull, (n. 20), p. 132

<sup>59</sup> Bley, (n. 15), p. 22

<sup>60</sup> Gewalt, (n. 14), p. 31

<sup>61</sup> Drechsler, (n. 16), p. 132

<sup>62</sup> Ibid

challenge the prevailing legal and moral justifications for colonial violence. The public outcry in Germany over the treatment of the Herero, which led to the recall of General von Trotha, is an example of this emerging humanitarian sentiment.<sup>63</sup>

#### **4.2 Evolution of international law on war crimes and genocide**

The evolution of international law regarding war crimes and genocide has been significantly influenced by the atrocities committed during the colonial era and the two World Wars. This development represents a fundamental shift in international legal paradigm, moving from a system that primarily regulated relations between states to one that also addresses the rights and protections of individuals and groups.<sup>64</sup> The concept of war crimes, while not entirely new at the beginning of the 20th century, gained more precise definition and broader application in the aftermath of World War I. The Treaty of Versailles in 1919 included provisions for prosecution of individuals for violations of the laws and customs of war.<sup>65</sup> Although these provisions were not fully implemented, they laid the groundwork for future developments in international criminal law.

The atrocities committed during World War II, particularly the Holocaust, led to a seismic shift in international law. The Nuremberg and Tokyo trials following the war marked the first time that individuals were held accountable for war crimes and crimes against humanity on an international scale. These trials established important legal principles, including the notion that individuals could be held criminally responsible for actions taken on behalf of a state.<sup>66</sup> Before its eventual maturation and bifurcation from crimes against humanity into a distinct legal genre, the facts which today constitute genocide were regarded as crimes against humanity.<sup>67</sup> The concept of genocide, which is particularly relevant to the Herero Massacre, was first legally defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. This convention, drafted in response to the Holocaust, defined genocide as acts committed

---

<sup>63</sup> Erichsen and David, (n. 1), p. 149

<sup>64</sup> Atidoga, Daniel F. "From Impunity to Accountability; Individual Criminal Responsibility in International Law; A Historical Survey" *Human Rights Review* a Publication of the Department of Public Law ABU Zaria (2010) Vol. 1, pp. 199-200

<sup>65</sup> Cooper, (n. 3), p. 115

<sup>66</sup> Anderson, (n. 4), p. 1161

<sup>67</sup> Amade Robert Amana. "An Anatomy of Crimes against Humanity" *Elizade University Law Journal*, Vol .5, 2022, pp 219-237

with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.<sup>68</sup> The recognition of genocide as a distinct crime under international law represented a crucial development in the protection of vulnerable groups.<sup>69</sup>

The Geneva Conventions of 1949 and their Additional Protocols further codified the laws of war, expanding protections for civilians and prisoners of war.<sup>70</sup> These conventions, which form the core of international humanitarian law, explicitly prohibit actions such as willful killing, torture, and inhumane treatment of protected persons during armed conflicts.<sup>71</sup> The latter half of the 20th century saw the development of customary international law norms that further strengthened the prohibitions against war crimes and genocide.<sup>72</sup> These norms, recognized by the International Court of Justice, establish that the prohibition of genocide is a peremptory norm of international law (*jus cogens*) from which no derogation is permitted.<sup>73</sup>

The establishment of ad hoc international criminal tribunals for the former Yugoslavia<sup>74</sup> and Rwanda<sup>75</sup> in the 1990s, and the creation of the permanent International Criminal Court (ICC) in 2002<sup>76</sup> represented major advancements in the enforcement of international criminal law. These institutions have played a crucial role in developing jurisprudence on war crimes and genocide, clarifying definitions and establishing precedents for prosecution.<sup>77</sup> Another significant development has been the growing recognition of the principle of universal jurisdiction for certain international crimes, including genocide and war crimes.<sup>78</sup> This principle allows national courts to prosecute

---

<sup>68</sup> Article 2, Convention for The Prevention and Punishment of Crime of Genocide 1948

<sup>69</sup> Erichsen and David, (n. 1), p. 252

<sup>70</sup> Article 3 Common to the Geneva Conventions of 12 August 1949

<sup>71</sup> Zimmerer & Zeller, (n. 2), p. 49

<sup>72</sup> Atidoga, (n. 64), P.

<sup>73</sup> Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43.

<sup>74</sup> UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), 25 May 1993.

<sup>75</sup> UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), 8 November 1994.

<sup>76</sup> Rome Statute of the International Criminal Court, 17 July 1998, in force 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544.

<sup>77</sup> Melber, Henning. "How To Come to Terms with The Past: Re-Visiting the German Colonial Genocide in Namibia." *Africa Spectrum* 40.1 (2005): 139-148, p. 141

<sup>78</sup> Universal Jurisdiction Is Applicable to the Prosecution of War Crimes and The Crime of Genocide.



individuals for these crimes regardless of where they were committed or the nationality of the perpetrator or victim.<sup>79</sup> The evolution of international law has also seen a shift in the understanding of state responsibility for historical injustices. There is growing recognition that states may have ongoing obligations to address and provide remedies for past atrocities, even those committed before the development of current legal norms. This has implications for cases like the Herero Massacre, where descendants of victims seek recognition and reparations for colonial-era crimes.<sup>80</sup>

## **5. The Herero Massacre as a war crime**

While the Herero Massacre occurred in a colonial context, contemporary international law provides a framework for analyzing these events as potential war crimes. This analysis must consider both the legal standards of the early 20th century and modern interpretations of international humanitarian law. Initially, the conflict between German colonial forces and the Herero people was characterized as a non-international armed conflict within a colonial context. However, from a contemporary legal perspective, German presence in South-West Africa could be reconsidered as belligerent occupation, thereby elevating the conflict to the status of an international armed conflict.

Even by the standards of the early 20th century, certain actions taken by the German forces under General von Trotha's command appear to violate the laws and customs of war as they were understood at the time.<sup>81</sup> One of the key principles that had emerged in the laws of war by the early 20th century was the distinction between combatants and non-combatants. The indiscriminate killing of Herero civilians, including women and children, as explicitly ordered in von Trotha's extermination order, would have been considered a violation of this principle even by the standards of the time.<sup>82</sup>

Moreover, the deliberate policy of driving the Herero into the Omaheke Desert and preventing their access to water sources can be seen as a violation of the principle of humanity in warfare. This principle, which calls for the mitigation of unnecessary suffering in armed conflicts, was gaining recognition in international law, as evidenced by

---

<sup>79</sup> Madley, (n. 10), p. 432

<sup>80</sup> Bargaño, (n. 55), p. 400

<sup>81</sup> Hull, (n. 20), p. 134

<sup>82</sup> Zimmerer & Zeller, (n. 2), p. 73

documents such as the Lieber Code of 1863 and the St. Petersburg Declaration of 1868.<sup>83</sup> The treatment of Herero prisoners in concentration camps, characterized by forced labor, starvation, and medical experimentation, would likely be considered a war crime by today's standards. Even by the norms of the early 20th century, such treatment of prisoners could be seen as violating emerging principles of humane treatment.<sup>84</sup>

The Hague Convention IV of 1907, particularly Articles 42 and 43, provides a basis for understanding occupational duties.<sup>85</sup> While this convention postdates the Herero Massacre, it codified existing customary international law. Under these principles, Germany, as an occupying power, would have had obligations to restore and ensure public order and safety in the occupied territory. Furthermore, when viewed through the lens of the Geneva Conventions of 1949, particularly Common Articles 2 and 3, and the Additional Protocols of 1977, the conflict could be classified as an international armed conflict.<sup>86</sup> This classification is crucial as it determines the applicability of war crimes provisions under Article 8 of the Rome Statute of the International Criminal Court.<sup>87</sup>

The actions of German forces, including the deliberate targeting of civilians, the use of starvation as a method of warfare, and the inhumane treatment of prisoners, would likely constitute war crimes under contemporary international law. These acts violate fundamental principles of international humanitarian law, including the principle of distinction between civilians and combatants and the prohibition of methods of warfare causing unnecessary suffering.<sup>88</sup> It is important to note that both Germany and Namibia are parties to the Geneva Conventions of 1949. While these conventions cannot be applied retroactively to the Herero Massacre, they provide a framework for understanding the ongoing obligations of states, even in regard to historical atrocities.

The International Court of Justice (ICJ) has affirmed that states remain bound by international human rights treaties in respect to their conduct in occupied territories, as

---

<sup>83</sup> Drechsler, (n. 16), p. 133

<sup>84</sup> Erichsen and David, (n. 1), p. 211

<sup>85</sup> Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations

Concerning the Laws and Customs of War on Land, 18 October 1907, Arts. 42, 43.

<sup>86</sup> Geneva Conventions of 12 August 1949, Common Articles 2 and 3.

<sup>87</sup> Rome Statute of the International Criminal Court, 17 July 1998, Article 8.

<sup>88</sup> Additional Protocol I to the Geneva Conventions, 8 June 1977, Articles 48, 51, 57.

seen in the ICJ's advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.<sup>89</sup>

While the legal landscape at the time of the Herero Massacre was significantly different, contemporary international law provides robust tools for analyzing these events. The actions of German colonial forces, when viewed through the lens of modern international humanitarian law, would likely constitute war crimes, highlighting the severity of the atrocities committed against the Herero people.

## **6. The Herero Massacre as genocide**

The classification of the Herero Massacre as genocide requires a careful analysis that considers both the historical context of the events and the evolving legal definition of genocide. While the term "genocide" was not coined until 1944 by Raphael Lemkin, and the legal definition was not established until the 1948 Genocide Convention,<sup>90</sup> many scholars argue that the actions taken against the Herero people meet the criteria for genocide as we understand it today. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.<sup>91</sup>

These acts include killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.<sup>92</sup> When examining the Herero Massacre through this lens, several aspects of the German colonial forces' actions align closely with this definition. The explicit goal of annihilation, as stated in General von Trotha's infamous extermination order, provides clear evidence of intent to destroy the Herero as a group. The order, which stated that "within the German borders every Herero, with or without a

---

<sup>89</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136.

<sup>90</sup> Article 2, Genocide Convention, 1948

<sup>91</sup> Ibid.

<sup>92</sup> Erichsen and David, (n. 1), p. 252

gun, with or without cattle, will be shot," leaves little doubt about the genocidal intent behind German actions.<sup>93</sup>

The methods employed in the massacre further support its classification as genocide. The systematic killing of Herero men, women, and children; the deliberate policy of driving survivors into the Omaheke Desert with the knowledge that this would lead to death by thirst and starvation; and the establishment of concentration camps where Herero prisoners were subjected to forced labor, starvation, and medical experimentation all align with the acts enumerated in the Genocide Convention.<sup>94</sup> Moreover, the German colonial authorities' actions went beyond physical extermination to include measures that can be interpreted as attempts to destroy the Herero as a cultural and social group. The systematic destruction of Herero cultural sites, the banning of traditional practices and languages, and the disruption of Herero social structures through the targeting of leadership all contributed to the cultural genocide of the Herero people.<sup>95</sup>

The scale of the massacre also supports its classification as genocide. Historical estimates suggest that up to 80% of the Herero population perished as a result of the German military campaign, representing a devastation of the group that goes far beyond the casualties typically associated with warfare.<sup>96</sup> Some scholars argue that the Herero Massacre not only meets the criteria for genocide but also served as a precursor to later genocides, particularly the Holocaust. They point to similarities in ideology, methods, and the use of concentration camps as evidence of a continuity in German colonial and Nazi policies.<sup>97</sup>

However, it's important to note that the retroactive application of the term "genocide" to events that occurred before its legal definition has not gone without controversy. Some scholars argue that it is anachronistic to apply modern legal concepts to historical events, while others contend that the fundamental nature of the crime transcends its formal legal definition.<sup>98</sup> Despite these debates, there is growing

---

<sup>93</sup> Zimmerer & Zeller, (n. 2), p. 73

<sup>94</sup> Erichsen, (n. 23), p. 47

<sup>95</sup> Gewalt, (n. 14), p. 191

<sup>96</sup> Cooper, (n. 3), p. 113

<sup>97</sup> Madley, (n. 10), p. 430

<sup>98</sup> Anderson, (n. 4), p. 1158

recognition among scholars and some governments that the Herero Massacre constitutes an early example of genocide. In 2015, the German government officially recognized the events as genocide, marking a significant shift in the official stance on this historical atrocity.<sup>99</sup>

While the Herero Massacre predates the formal legal definition of genocide, a careful analysis of the events reveals that they align closely with our contemporary understanding of the crime. The explicit intent to destroy the Herero as a group, the systematic nature of the killing and cultural destruction, and the devastating impact on the Herero population all support the classification of these events as genocide. This recognition not only provides a more accurate historical understanding of the atrocities committed but also contributes to ongoing discussions about historical justice, reparations, and the long-term impacts of colonial violence.

## **7. Comparative analysis**

The Herero Massacre, while a distinct and horrific event in its own right, must be understood within the broader context of colonial atrocities and their impact on the development of international law. This comparative analysis aims to situate the Herero Massacre among other colonial atrocities and examine its unique and shared characteristics. Furthermore, it will explore how this event, along with other colonial crimes, has influenced the evolution of international law, particularly in areas related to human rights, war crimes, and genocide.

### **7.1 The Herero Massacre in the context of other colonial atrocities**

The Herero Massacre, occurring at the dawn of the 20th century, stands as a stark example of the extreme violence that characterized European colonialism. However, it was far from an isolated incident. Throughout the 19th and early 20th centuries, colonial powers engaged in numerous acts of violence and oppression against indigenous populations across the globe. One of the most notable parallels to the Herero Massacre can be found in the Belgian Congo Free State under King Leopold II. From 1885 to 1908, the Congo was subjected to a brutal regime that resulted in the deaths of millions of Congolese. Like the German authorities in South-West Africa, the Belgian colonial

---

<sup>99</sup> Bargueño, (n. 55), p. 400

administration employed tactics of extreme violence, forced labor, and systematic exploitation. The use of mutilation as punishment, the implementation of draconian rubber quotas, and the deliberate destruction of villages and crops led to a demographic catastrophe comparable to that experienced by the Herero.<sup>100</sup>

Another relevant comparison can be drawn with the British suppression of the Mau Mau uprising in Kenya from 1952 to 1960. While occurring later than the Herero Massacre, the British response to the Mau Mau rebellion shared certain characteristics with German actions in South-West Africa. The British authorities employed concentration camps, forced labor, and systematic violence against the Kikuyu people. However, the scale and intent of the British actions differed from the German extermination campaign against the Herero.<sup>101</sup>

The French conquest of Algeria, spanning from 1830 to 1903, provides another point of comparison. The French employed tactics of collective punishment, land expropriation, and cultural suppression that bear similarities to the German approach in South-West Africa. The concept of the "razzia," or punitive expedition, used by the French in Algeria, shares characteristics with the German Schutztruppe's campaigns against the Herero.<sup>102</sup> While these colonial atrocities share certain characteristics with the Herero Massacre, the latter stands out in several ways. The explicit extermination order issued by General von Trotha, which called for the annihilation of the entire Herero people, including women and children, represents a level of genocidal intent that was rare even in the context of colonial violence. The systematic nature of the German campaign, which combined military action, forced displacement, and concentration camps, foreshadowed tactics that would later be employed in 20th-century genocides.<sup>103</sup>

Moreover, the Herero Massacre is notable for its devastating effectiveness. The near-annihilation of the Herero people, with population losses estimated at up to 80%, represents one of the most complete destructions of an indigenous group in the colonial era.<sup>104</sup> This level of demographic collapse is comparable to that experienced by some

---

<sup>100</sup> Erichsen and David, (n. 1), p. 273

<sup>101</sup> Anderson, (n. 4), p. 1172

<sup>102</sup> Zimmerer & Zeller, (n. 2), p. 58

<sup>103</sup> Madley, (n. 10), p. 437

<sup>104</sup> Cooper, (n. 3), p. 113

Native American populations following European contact, but it occurred in a much shorter timeframe and as a result of more direct and intentional actions.

The use of concentration camps in the Herero Massacre also merits special attention in a comparative context. While other colonial powers employed various forms of internment and forced labor, the German camps in South-West Africa, particularly the notorious Shark Island camp, were characterized by exceptionally high mortality rates and were sites of medical experimentation. These camps have been seen by some scholars as precursors to the concentration camp system later developed by the Nazi regime.<sup>105</sup> Another distinguishing feature of the Herero Massacre was its occurrence at a time when international norms regarding warfare were beginning to evolve.

The Hague Conventions of 1899 and 1907, while primarily focused on conflicts between "civilized" nations, had established certain principles of humane warfare. The German actions in South-West Africa, particularly the deliberate targeting of civilians and the use of methods designed to cause unnecessary suffering, stood in stark contrast to these emerging norms.<sup>106</sup> It's also important to note that the Herero Massacre occurred in the context of German colonialism, which was characterized by a particularly aggressive and racist ideology. The concept of *Lebensraum*, or "living space," which would later play a crucial role in Nazi expansionist policies, had its roots in German colonial thinking. This ideological backdrop distinguishes the Herero Massacre from some other colonial atrocities and links it more directly to later 20th-century genocides.<sup>107</sup>

## **8. Impact on the development of international law**

The Herero Massacre, along with other colonial atrocities, has had a significant impact on the development of international law, particularly in areas related to human rights, war crimes, and genocide. While the full legal implications of these events were not immediately recognized, they have contributed to the evolution of international legal norms and mechanisms over the past century.

One of the most significant impacts of the Herero Massacre on international law has been its contribution to the development of the concept of genocide. While the term

---

<sup>105</sup> Erichsen and David, (n. 1), p. 211

<sup>106</sup> Hull, (n. 20), p. 134

<sup>107</sup> Zimmerer & Zeller, (n. 2), p. 27

"genocide" was not coined until 1944 by Raphael Lemkin, the events in German South-West Africa have been retrospectively recognized as an early example of this crime. The systematic nature of the German campaign against the Herero, with its explicit intent to destroy an entire ethnic group, helped shape understanding of what constitutes genocidal actions.<sup>108</sup>

The Herero Massacre, along with other colonial atrocities, has also influenced the evolution of laws regarding war crimes. The actions of the German forces, particularly their treatment of civilians and prisoners, violated emerging norms of warfare as codified in the Hague Conventions. These violations, while not prosecuted at the time, contributed to the growing body of customary international law regarding the conduct of armed conflicts. The principle of distinction between combatants and civilians, and the prohibition of methods of warfare causing unnecessary suffering, both of which were flagrantly violated in the Herero Massacre, have become cornerstones of international humanitarian law.<sup>109</sup>

Furthermore, the Herero Massacre has played a role in shaping legal discourse around state responsibility for historical injustices. The ongoing debates about German responsibility and potential reparations for the Herero people have contributed to evolving norms regarding the obligations of states to address and provide remedies for past atrocities. This has implications not only for colonial-era crimes but also for more recent human rights violations.<sup>110</sup>

The use of concentration camps and forced labor during the Herero Massacre has also influenced legal thinking about crimes against humanity. While this legal concept was not fully developed until the Nuremberg trials following World War II, the systematic abuses perpetrated in the camps in German South-West Africa foreshadowed many of the elements that would later be included in the definition of crimes against humanity.<sup>111</sup>

The Herero Massacre has also contributed to the development of legal norms regarding cultural genocide. The German colonial authorities' efforts to destroy Herero cultural sites, ban traditional practices, and disrupt social structures have informed

---

<sup>108</sup> Anderson, (n. 2), p. 1158

<sup>109</sup> Hull, (n. 20), p. 132

<sup>110</sup> Bargeño, (n. 55), p. 400

<sup>111</sup> Erichsen and David, (n. 1), p. 252



discussions about the scope of genocidal acts beyond physical killing. This has influenced interpretations of the Genocide Convention and debates about whether cultural destruction should be explicitly included in the legal definition of genocide.<sup>112</sup>

Moreover, the Herero Massacre and similar colonial atrocities have played a role in challenging the Eurocentric foundations of international law. The failure of the international legal system of the early 20th century to prevent or punish such acts has led to critiques of the discriminatory nature of early international law and calls for a more inclusive global legal order. This has contributed to the gradual expansion of international law to more fully recognize and protect the rights of all peoples, regardless of their level of "civilization" as defined by European powers.<sup>113</sup>

While the full legal implications of the Herero Massacre were not immediately apparent, its impact on the development of international law has been significant. From contributing to the conceptualization of genocide and war crimes to influencing debates about state responsibility and cultural rights, the events continue to shape legal discourse and practice in the 21st century. As international law continues to evolve, the lessons drawn from the Herero Massacre and other colonial atrocities remain relevant in efforts to prevent and punish mass atrocities and to address historical injustices.

## **9. Contemporary implications**

The Herero Massacre, despite occurring over a century ago, continues to have significant contemporary implications. These implications span various domains, including international law, diplomatic relations, and ongoing debates about historical justice and reparations. The events in German South-West Africa have become a focal point for discussions about how nations should address their colonial pasts and what responsibilities they bear for historical atrocities. This is an exploration of the contemporary implications of the Herero Massacre, focusing on state responsibility for historical injustices, the ongoing debate about reparations and compensation for the Herero people, and the influence of this case on current international law and colonial legacy disputes.

---

<sup>112</sup> Gewald, (n. 14), p. 191

<sup>113</sup> Zimmerer & Zeller, (n. 2), p. 49

### **9.1 State Responsibility for historical injustices**

The question of state responsibility for historical injustices has gained increased attention in recent years, with the Herero Massacre serving as a prominent case study. This debate has been significantly influenced by contemporary developments in international law, particularly through the work of the International Law Commission (ILC) and the jurisprudence of the International Court of Justice (ICJ). The ILC's Articles on Responsibility of States for Internationally Wrongful Acts (2001) have provided a framework for understanding state responsibility in international law.<sup>114</sup>

While these articles are not retroactively applicable, they help to understand how modern international law views state obligations for wrongful acts, including historical injustices. In the context of the Herero Massacre, an interesting question arises: could Namibia, as the successor state to the territory where the atrocities occurred, invoke the responsibility of Germany before the ICJ for breaches of international law? Both Germany and Namibia are members of the United Nations and parties to relevant international conventions, including the Geneva Conventions of 1949 and the Genocide Convention of 1948,<sup>115 116</sup>

Recent ICJ jurisprudence has clarified the ability of states to bring cases concerning alleged violations of erga omnes obligations. In *The Gambia v. Myanmar* case (2022), the ICJ affirmed that any state party to the Genocide Convention can invoke the responsibility of another state party for alleged breach of obligations under the Convention, based on the principle of erga omnes partes.<sup>117</sup> If the Herero Massacre were to happen in modern times, the possibility of other states bringing an action against Germany would not be ruled out. Moreover, the *South Africa v. Israel* case (2024) further reinforced the concept of state responsibility for actions in occupied territories.<sup>118</sup> While

---

<sup>114</sup> International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, 2001.

<sup>115</sup> Geneva Conventions of 12 August 1949.

<sup>116</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

<sup>117</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 257

<sup>118</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*South Africa v. Israel*), Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024.

these cases deal with more recent events, they establish principles that could be relevant to discussions of historical colonial atrocities.

The evolution of international law in this area challenges traditional notions of state succession and the temporal limits of legal responsibility. It suggests that modern states may bear ongoing obligations to address and provide remedies for past atrocities, even those committed before the development of current legal norms. However, it's important to note that courts have historically been reluctant to open a floodgate of claims for historical redress. The application of contemporary legal standards to historical events remains a complex and contentious issue.

The Herero case thus sits at the intersection of evolving legal norms and the practical challenges of addressing historical injustices.

While the full legal implications of state responsibility for the Herero Massacre remain debated, recent developments in international law provide new frameworks for understanding and potentially addressing such historical injustices. The ongoing discussions surrounding the Herero case continue to contribute to the evolution of international legal norms regarding state responsibility for colonial-era atrocities.

## **9.2 Reparations and compensation for the Herero people**

The debate over reparations and compensation for the Herero people has taken various forms, including legal actions and appeals to international principles. This ongoing discussion reflects the complex challenges of addressing historical injustices in a contemporary context. In recent years, the Herero people have made attempts to seek redress through legal channels, including before the courts of the United States of America. Two notable cases are *The Hereros v. Deutsche Bank AG* (2004) and *The Hereros v. Deutsche Afrika-Linien GMBLT & Co* (2007).<sup>119</sup>

In these cases, the Herero sought compensation from German companies that allegedly profited from the colonial exploitation and genocide. While these cases were ultimately unsuccessful due to jurisdictional issues and the statute of limitations, they

---

<sup>119</sup> Sarkin-Hughes, Jeremy. "Reparations for Gross Human Rights Violations: The Case of the Herero of Namibia." *Human Rights Quarterly*, vol. 31, no. 3, 2009, pp. 697-723.

brought international attention to the Herero's claims and highlighted the legal challenges in pursuing reparations for historical atrocities.

The call for reparations has also been bolstered by developments in international human rights law. Of particular relevance are the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted in 2005.<sup>120</sup> These principles affirm victims' rights to seek redress and reparation for gross human rights violations, including those committed in the past. While not legally binding, these guidelines provide a framework for addressing historical injustices and have influenced discussions on the Herero case.

Germany's response to the calls for reparations has been complex and evolving. While the German government has provided development aid to Namibia, it has long resisted direct reparations to the Herero people, often citing legal and practical challenges. However, in recent years, there have been signs of a shift in this position. In 2021, Germany announced a financial aid package specifically aimed at projects in Herero and Nama communities, though it stopped short of calling this package "reparations".<sup>121</sup>

The reparations debate raises complex questions about how to quantify historical harms and what forms of compensation are appropriate. Critics of reparations argue that it's impossible to accurately calculate the damages from events that occurred over a century ago and that financial compensation cannot truly address the deep-seated impacts of genocide. Proponents, however, argue that reparations are a crucial step in acknowledging the harm done and providing tangible support for affected communities.<sup>122</sup>

The Herero case has also highlighted the challenges of determining who should receive reparations and how they should be distributed. Questions arise about whether compensation should be provided to individuals, to the Herero community as a whole, or

---

<sup>120</sup> United Nations General Assembly. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law." Resolution 60/147, 16 December 2005

<sup>121</sup> "Germany Recognises Colonial-Era Atrocities in Namibia as Genocide", (BBC News: BBC, 28 May 2021), <http://www.bbc.com/news/world-europe-57279008>.

<sup>122</sup> Cooper, (n. 3), p. 118

to the Namibian government. These debates touch on complex issues of identity, representation, and the relationship between indigenous communities and the nation-state.<sup>123</sup> Furthermore, the reparations debate extends beyond financial compensation to include other forms of redress. There have been calls for official apologies, the establishment of memorials and educational programs, and the repatriation of cultural artifacts and human remains. These non-monetary forms of reparation are seen by many as crucial elements in addressing the cultural and psychological impacts of the genocide.<sup>124</sup>

### **9.3 Influence on current international law and colonial legacy disputes**

The Herero Massacre and the subsequent debates about responsibility and reparations have had a significant influence on current international law and discussions about colonial legacies. This case has become a reference point in legal and diplomatic circles, informing approaches to addressing historical injustices and shaping evolving norms of state responsibility. One of the key areas where the Herero case has had an impact is in the development of legal norms regarding genocide. While the massacre predated the formal definition of genocide in international law, retrospective analyses of the events have contributed to expanded understandings of genocidal intent and methods.

This has implications for how other historical atrocities are evaluated and for the future application of genocide laws.<sup>125</sup> The case has also influenced debates about the temporal jurisdiction of international law. The question of whether contemporary legal standards can or should be applied to historical events remains contentious, but the Herero case has provided valuable insights into how such retrospective applications might be approached. This has relevance for other colonial legacy disputes and for the broader field of transitional justice.<sup>126</sup>

Moreover, the Herero case has contributed to the evolution of norms regarding state apologies for historical wrongs. Germany's gradual shift towards acknowledging the genocide has been closely watched by other nations grappling with their own colonial

---

<sup>123</sup> Zimmerer & Zeller, (n. 2), p. 330

<sup>124</sup> Erichsen and David, (n. 1), p. 254

<sup>125</sup> Anderson, (n. 4), p. 1163

<sup>126</sup> Cooper, (n. 3), p. 120

legacies. The case has highlighted the diplomatic and legal complexities of official apologies, including questions about their legal implications and their potential to open the door to compensation claims.<sup>127</sup>

The ongoing negotiations between Germany and Namibia regarding recognition and compensation have set potential precedents for how other colonial legacy disputes might be resolved. These negotiations have demonstrated the importance of direct dialogue with affected communities and have highlighted the challenges of balancing historical redress with current diplomatic and economic relationships.<sup>128</sup> The Herero case has also influenced discussions about cultural restitution. The return of human remains and cultural artifacts taken during the colonial period has become an important aspect of addressing historical injustices. This has implications not only for other cases of colonial plunder but also for broader debates about the repatriation of cultural heritage.<sup>129</sup>

Overall, the contemporary implications of the Herero Massacre extend far beyond the specific case of German-Namibian relations. The ongoing debates about state responsibility, reparations, and legal accountability for historical atrocities have relevance for other colonial legacy disputes around the world. As international law continues to evolve and as global society grapples with the long-term impacts of colonialism, the lessons and precedents emerging from the Herero case will likely continue to shape legal, diplomatic, and ethical discussions for years to come. The resolution of this case, whatever form it ultimately takes, will undoubtedly have significant implications for how other historical injustices are addressed in the future.

## **10. Conclusion**

The Herero Massacre stands as a dark chapter in the history of European colonialism, representing one of the most extreme manifestations of colonial violence and serving as a precursor to later 20th-century atrocities. This research has examined the events of 1904-1908 in German South-West Africa through multiple lenses, considering its historical context, legal implications, and contemporary relevance. The systematic campaign of extermination waged against the Herero people by German colonial forces,

---

<sup>127</sup> Bargueño, (n. 55), p. 403

<sup>128</sup> Zimmerer & Zeller, (n. 2), p. 332

<sup>129</sup> Erichsen and David, (n. 1), p. 255

under the command of General Lothar von Trotha, resulted in the near-annihilation of an entire ethnic group. The explicit orders to exterminate the Herero, the use of concentration camps, and the deliberate policies of starvation and forced displacement collectively paint a picture of a concerted effort to destroy not just individuals, but an entire people and their way of life.<sup>130</sup>

From a legal perspective, the Herero Massacre occupies a complex position. While it predates the formal legal definition of genocide, the events align closely with our contemporary understanding of this crime. The explicit intent to destroy the Herero as a group, the systematic nature of the killing, and the methods employed all support its classification as genocide, even if applied retrospectively. Similarly, many aspects of the German campaign violated emerging norms of warfare at the time, constituting what would today be unequivocally considered war crimes.<sup>131</sup> The massacre's impact extends far beyond its immediate historical context. It has played a significant role in shaping discussions about colonial atrocities, state responsibility for historical injustices, and the evolution of international law.

The ongoing debates about reparations and recognition have forced a reexamination of how nations confront their colonial pasts and what obligations they bear for historical wrongs.<sup>132</sup> Moreover, the Herero case has become a focal point for broader discussions about postcolonial justice and reconciliation. It raises complex questions about how to address historical injustices in a meaningful way, balancing the need for accountability with the practical challenges of providing redress for events that occurred over a century ago.<sup>133</sup>

The gradual shift in Germany's position, from initial reluctance to acknowledge the events as genocide to the recent offers of financial aid and official recognition, reflects changing global attitudes towards colonial legacies. This evolution may set important precedents for how other former colonial powers address their own historical atrocities.<sup>134</sup> However, it is clear that many challenges remain. The debate over appropriate forms of

---

<sup>130</sup> Zimmerer & Zeller, (n. 2), p. 73

<sup>131</sup> Anderson, (n. 4), p. 1163

<sup>132</sup> Bagueño, (n. 55), p. 400

<sup>133</sup> Cooper, (n. 3), p. 118

<sup>134</sup> Erichsen and David, (n. 1), p. 254

reparation, the complexities of applying contemporary legal standards to historical events, and the ongoing impact of colonial legacies on present-day inequalities all require continued attention and research.

Overall, the Herero Massacre serves as a stark reminder of the potential for extreme violence inherent in colonial ideologies and systems. Its study offers valuable insights into the nature of genocide, the evolution of international law, and the long-term consequences of colonial atrocities. As the world continues to grapple with the legacies of colonialism, the lessons drawn from the Herero case will undoubtedly play a crucial role in shaping approaches to historical justice, international law, and intercultural reconciliation. The events in German South-West Africa from 1904 to 1908 may be more than a century in the past, but their echoes continue to resonate in contemporary legal, political, and ethical debates. As such, the Herero Massacre remains not just a historical tragedy, but an ongoing challenge to our understanding of justice, responsibility, and the enduring impacts of colonial violence.