

FRANCE’S OVERDUE DEBT TO HAITI

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In 1825, in exchange for formal recognition of statehood, France coerced Haiti to pay a 150 million-franc “indemnity” to compensate former plantation owners for the loss of their slaves. Although the Haitian people view this “Independence Debt” as a grave injustice, there has not been a precise definition of the specific laws France violated and the subsequent legal claims stemming from those violations. In this paper, the authors argue that France breached customary international law by (1) violating the good faith requirements under pacta sunt servanda and (2) demanding unacceptable compensation in exchange for recognition. While Haiti may bring both claims before the International Court of Justice (the “ICJ”), which has jurisdiction over breaches of customary international law, procedural obstacles exist regarding the ICJ’s jurisdictional requirement of consent and the common law doctrine of laches. Despite these legal challenges, the authors argue that seeking legal redress in the ICJ may still prove valuable because it affords Haiti the opportunity to (1) hold France liable for its legal violations, and (2) lay out the facts and arguments for its case in the public arena.

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I. INTRODUCTION

Once referred to as the “Pearl of the Antilles,” Saint Domingue outproduced the entire Spanish empire in the Americas.¹ The “envy of every other European nation,” Saint Domingue was both France’s wealthiest colony and the most lucrative colony in the world, furnishing two-thirds of France’s overseas trade, employing one thousand ships and fifteen thousand French sailors.² In August 1791, the enslaved population of Saint Domingue rebelled against Napoleon Bonaparte’s forces, resulting in a brutal, twelve-year civil war.³ On January 1, 1804, Jean-Jacques Dessalines, a formerly enslaved war general, declared the nation independent and renamed the country Haiti.⁴ This event marked the first successful slave rebellion in the Americas.⁵

Although Haiti declared independence in 1804, it faced a complicated path to recognition in the following decades.⁶ For example, France continued to regard Haiti as simply an unruly colony and attempted to reinstitute slavery.⁷ Under the threat of a heavily-armed French naval fleet in the Port-au-Prince harbor, Haiti and France reached an agreement in 1825: France would recognize Haiti in exchange for discounted commercial docking rights and, most

1. *Remember Haiti: Economy*, JOHN CARTER BROWN LIBR., https://www.brown.edu/Facilities/John_Carter_Brown_Library/exhibitions/remember_haiti/economy.php (last visited Aug. 7, 2021).

2. *A Revolution in Haiti*, SLAVE RESISTANCE: A CARIBBEAN STUDY, U. MIAMI https://scholar.library.miami.edu/slaves/san_domingo_revolution/revolution.html (last visited Aug. 7, 2021).

3. John Henley, *Haiti: A Long Descent to Hell*, GUARDIAN (Jan. 14, 2010, 2:00 PM), <https://www.theguardian.com/world/2010/jan/14/haiti-history-earthquake-disaster>.

4. Claudia Sutherland, *Haitian Revolution (1791-1804)*, BLACKPAST (July 16, 2007), <https://www.blackpast.org/global-african-history/haitian-revolution-1791-1804/>.

5. David P. Geggus, *Preface to THE IMPACT OF THE HAITIAN REVOLUTION IN THE ATLANTIC WORLD* ix, ix (David P. Geggus ed., 2020).

6. Liliana Obregón, *Empire, Racial Capitalism and International Law: The Case of Unmitted Haiti and the Recognition of Debt*, 31 LEIDEN J. INT’L.L. 597, 604–12 (2018).

7. *Id.* at 604.

egregiously, 150 million francs as compensation to former French plantation owners (the Independence Debt).⁸ The Independence Debt is a lasting injustice against Haiti with which French leaders continue to reckon amid renewed calls for compensation.⁹ While the ethics of the Debt are clear, the legal claims against France are more complicated,¹⁰ in part because Haiti paid off the debt in 1947 without repudiating the agreement.¹¹ Notwithstanding the challenges it may face in seeking legal redress, this paper argues that Haiti should still bring claims to the International Court of Justice (ICJ or the Court) asserting that France violated customary international law by imposing the Independence Debt.

First, Section II examines the procedural hurdles to ICJ jurisdiction, namely consent and the doctrine of laches. Section III then examines Haiti's legal claims against France, specifically whether France violated the good faith requirements under *pacta sunt servanda*. Section III also examines whether France's demands for compensation, in exchange for recognition, violated customary international law. Section IV concludes that France (1) most likely violated its good faith requirements, and that (2) France's excessive exactions violated Haiti's right to recognition.

II. PROCEDURAL CHALLENGES: JURISDICTION AND THE

8. *Id.* at 610. This is about \$21 billion in present-day U.S. dollars. Dan Sperling, *In 1825, Haiti Paid France \$21 Billion To Preserve Its Independence—Time For France To Pay It Back*, FORBES (Dec. 6, 2017, 6:10 PM), <https://www.forbes.com/sites/realspin/2017/12/06/in-1825-haiti-gained-independence-from-france-for-21-billion-its-time-for-france-to-pay-it-back/>.

9. *See, e.g.*, Matthieu Jublin, *French President's Debt Comment in Haiti Reopens Old Wounds About Slave Trade*, VICE (May 12, 2015, 2:00 PM), <https://www.vice.com/en/article/nem8a7/french-presidents-debt-comment-in-haiti-reopens-old-wounds-about-slave-trade> (“During his speech, Hollande spoke about the decolonization and evoked France’s ‘debt’ to Haiti — once France’s most prosperous colony.”).

10. *See, e.g.*, Austin Hart, *The Haitian Independence Debt: A Memorandum to the Haitian Government*, SSRN (Mar. 30, 2021), <https://papers.ssrn.com/abstract=3796331> (describing the Independence Debt as a “source of comment and controversy for nearly two decades”); Mandy Boltax, Thomas Boulger & Tyler Miller, *The Haitian Independence Debt: A Case for Restitution*, SSRN (Mar. 9, 2021), <https://papers.ssrn.com/abstract=3798802> (exploring whether the “moral injustice of the Haitian independence debt rises to level of illegality.”).

11. Marlene Daut, *When France Extorted Haiti - the Greatest Heist in History*, CONVERSATION (June 30, 2020, 8:18 AM), <https://theconversation.com/when-france-extorted-haiti-the-greatest-heist-in-history-137949>.

DOCTRINE OF LACHES

This section addresses two procedural obstacles that Haiti will face in bringing suit against France: jurisdiction and the doctrine of laches. The first subsection explores the ICJ's jurisdictional requirement of consent and the challenges Haiti will face obtaining France's consent. The second subsection explores laches and how Haiti may use equitable tolling to prevent its claim from being time-barred.

A. *Jurisdictional Barrier: France's consent to the ICJ*

Haiti's first procedural obstacle concerns the need for France to consent to the ICJ's contentious jurisdiction.¹² Article 36 of the ICJ Statute provides that the Court has jurisdiction over cases that parties refer to it or where ICJ jurisdiction is specifically provided for in the Charter of the United Nations or other treaties.¹³ States may also make declarations agreeing to jurisdiction of the Court in a variety of international legal disputes with states who have also made such declarations, an arrangement known as compulsory jurisdiction.¹⁴ Because the Court can only exercise jurisdiction over a dispute if the disputing states recognize the ICJ's jurisdiction or if both parties agree to refer the matter to the Court, the jurisdiction of the ICJ is based on state consent.¹⁵

12. See *Jurisdiction*, INT'L. CT. JUST., <https://www.icj-cij.org/en/jurisdiction> (last visited Aug. 4, 2021) (describing the Court's jurisdiction as twofold: advisory jurisdiction and jurisdiction in contentious cases).

13. Statute of the International Court of Justice art. 36(1), June 26, 1945, 3 Bevans 1179, 59 Stat. 1055, T.S. No. 993, *entered into force* Oct. 24, 1945. ("The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.")

14. *Id.* at art. 36(2).

15. See, e.g., S. Gozie Ogbodo, *An Overview of the Challenges Facing the International Court of Justice in the 21st Century*, 18 ANN. SURV. INT'L & COMP. L. 93, 102 (2012) (identifying obstacles to the ICJ's legitimacy, noting that a form of consent "must . . . serve as a prerequisite for the exercise of the Court's jurisdiction."). See also *Contentious Jurisdiction*, INT'L. CT. JUST., <https://www.icj-cij.org/en/contentious-jurisdiction> (last visited Aug. 4, 2021) ("No State can therefore be a party to proceedings before the Court unless it has in some manner or other consented thereto."); *Basis of the Court's Jurisdiction*, INT'L. CT. JUST., <https://www.icj-cij.org/en/basis-of-jurisdiction> (last visited Aug. 7, 2021) ("In the following eight cases, the Court found that it could not allow an application in which it was acknowledged that the opposing party did not accept its jurisdiction: *Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America v. Hungary)* (*United States of America v. USSR*); *Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia)*; *Antarctica (United Kingdom v. Argentina)* (*United Kingdom v. Chile*); *Aerial Incident of 7 October 1952 (United States of*

In seeking compensation for the Independence Debt, the ICJ would have jurisdiction over Haiti because Haiti has recognized the Court's compulsory jurisdiction and would presumably voluntarily submit its claim.¹⁶ However, France has not consented to ICJ jurisdiction, posing a significant jurisdictional barrier to adjudication by the Court.¹⁷

While France's lack of consent poses a barrier to suit, Haiti may proceed if France consents through *forum prorogatum*.¹⁸ *Forum prorogatum* is the notion that even if a state has not recognized the jurisdiction of a tribunal at the time an application is filed, the state may subsequently consent to jurisdiction and enable the tribunal to entertain the case.¹⁹ Although obtaining jurisdiction through *forum prorogatum* is rare, France is currently the only State to have previously agreed to *forum prorogatum*.²⁰ Therefore, there is a possibility that Haiti can overcome this jurisdictional hurdle by obtaining France's consent through *forum prorogatum*.

B. Making a Case for Laches

Another potential procedural barrier is that under the common law doctrine of laches, France would likely argue that, under equitable principles, Haiti's "stale claim" should be barred "due to the passage

America v. USSR); Aerial Incident of 4 September 1954 (*United States of America v. USSR*); and Aerial Incident of 7 November 1954 (*United States of America v. USSR*)."

16. See INTERNATIONAL COURT OF JUSTICE HANDBOOK 42, <https://www.icj-cij.org/public/files/publications/handbook-of-the-court-en.pdf> (last updated Dec. 31, 2018) (listing Haiti as one of the states that recognizes compulsory jurisdiction of the ICJ).

17. See *id.* (excluding France from the list of states recognizing compulsory jurisdiction).

18. *Id.* at 35. (defining *forum prorogatum*, which allows the consent of the respondent state to be inferred from its conduct in relation to the Court or in relation to the applicant State. The element of consent must be either explicit or clearly deduced from the relevant conduct of a State).

19. *Basis of the Court's Jurisdiction*, INT'L. CT. JUST., <https://www.icj-cij.org/en/basis-of-jurisdiction> (last visited Aug. 7, 2021).

20. Diarra Dime-Labille, Legal Advisor of Fr. to the United Nations, Statement in the Security Council: France Attaches Paramount Importance to the International Court of Justice (Dec. 18, 2020) (transcript available at <https://onu.delegfrance.org/france-attaches-paramount-importance-to-the-international-court-of-justice>) ("France is also, to date, the only State to have agreed in practice the procedure for accepting a request made by another State, also known as *forum prorogatum*."); INTERNATIONAL COURT OF JUSTICE HANDBOOK, *supra* note 16, at 36 ("There have been only two instances where a State against which an application has been filed has accepted such an invitation: *Certain Criminal Proceedings in France (Republic of the Congo v. France)*; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*.").

of time.”²¹ Laches is a valid affirmative defense in an ICJ proceeding because, pursuant to Article 38 of the ICJ Statute, the ICJ “shall apply the general principles of law recognized by civilized nations.”²² The doctrine of laches is considered such a general principle of law.²³ However, France’s defense may fail because applying “an equitable principle as an established ‘rule’ of international law is hardly a settled issue” and “the precise scope of the laches doctrine is an even less settled question.”²⁴

Furthermore, Haiti could utilize concepts of equitable tolling and estoppel to persuade the ICJ on fairness grounds that its claims should not be time barred because it was previously unable to seek legal redress in a timely manner.²⁵ For example, because “a legal climate conducive to bringing claims for redress of historical wrongs did not exist until the 1990s” after the United States brought claims against Nazi war crimes – Haiti could argue that this inhospitable legal climate left it unable to previously raise its claims.²⁶ Additionally, France continued to impose control over Haiti until well after Haiti paid the Independence Debt. For example, France helped overthrow the Haitian government in 2003 after the Haitian government demanded reparations for the Independence Debt.²⁷ France’s continuous economic and geopolitical pressure have restricted Haiti’s ability to freely bring a claim, further supporting the argument that equitable tolling should prevent the

21. Ashraf Ray Ibrahim, *The Doctrine of Laches in International Law*, 83 VA. L. REV. 647, 647 (1997) (“The doctrine of laches . . . is an equitable principle barring a stale claim due to the passage of time.”).

22. Statute of the International Court of Justice, *supra* note 13, at art. 38(1)(c) (“The Court . . . shall apply the general principles of law recognized by civilized nations.”).

23. See *General Principles of Law*, INT’L. LEGAL RES. TUTORIAL, https://law.duke.edu/ilrt/cust_law_10.htm (last visited Feb. 20, 2021) (“Examples of these general principles of law are laches, good faith, res judicata, and the impartiality of judges. International tribunals rely on these principles when they cannot find authority in other sources of international law.”).

24. Ibrahim, *supra* note 21, at 649.

25. See Anthony D. Phillips, *Haiti’s Independence Debt and Prospects for Restitution*, INST. FOR JUSTICE & DEMOCRACY IN HAITI, May 2009, at 29, http://ijdh.org/wordpress/wp-content/uploads/2009/11/Haiti_RestitutionClaimArticlePhillips05-09.pdf (discussing well-established exceptions to the statutes of limitations, such as equitable estoppel, which is particularly relevant in historical restitution cases).

26. *Id.* at 32.

27. See Kim Willsher, *France Urged to Repay Haiti Billions Paid for its Independence*, GUARDIAN (Aug. 15, 2010), <https://www.theguardian.com/world/2010/aug/15/france-haiti-independence-debt> (explaining the connection between demands for reparations and France’s critical role in overthrowing Haiti’s government).

doctrine of laches from barring Haiti's claim. Therefore, Haiti could plausibly defeat France's laches defense through equitable tolling.

III. CUSTOMARY INTERNATIONAL LAW

Having examined the procedural aspects of Haiti's potential claim, this section explores the substantive legal claims that Haiti may raise against France, specifically that France, by demanding what amounted to an extortion of Haiti, breached (1) *pacta sunt servanda* of the Second Treaty of Paris; and (2) the state practice of recognition.

A. *France Likely Violated Pacta Sunt Servanda*

France likely breached *pacta sunt servanda* because the Independence Debt is inapposite to the 'object and purpose' of the Second Treaty of Paris (the Paris Treaty or the Treaty). *Pacta sunt servanda*, a principle of customary international law,²⁸ requires that states fulfill their treaty obligations in good faith.²⁹ Upon a treaty's entry into force, *pacta sunt servanda* "requires not only that states implement what has been provided for by a rule . . . , but also that they refrain from acts that could defeat the object and purpose of such a rule."³⁰ In other words, a state party not only violates *pacta sunt servanda* when its conduct is inconsistent with the black letter obligations of a treaty, but also when its conduct is inconsistent with the spirit, object, or purpose of a treaty. While some scholars have described the 'object and purpose' of a treaty as an enigmatic concept, it broadly refers to a "treaty's essential goals," or the essence of the treaty.³¹ Thus, 'object and purpose' reinforces the "interpretative principle that a treaty's text should be interpreted to reflect the goals embodied in the document as a whole," not

28. *Pacta Sunt Servanda*, INT'L JUD. MONITOR (Sept. 2008), http://www.judicialmonitor.org/archive_0908/generalprinciples.html ("State practice over the centuries has recognized the fundamental significance of *pacta sunt servanda* as a principle or rule of international law.").

29. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 321 (AM. LAW INST. 1987) ("Every international agreement in force is binding upon the parties to it and must be performed by them in good faith."); Igor I. Lukashuk, *The Principle Pacta Sunt Servanda and the Nature of Obligation Under International Law*, 83 AM. J. INT'L. L. 513, 513 (1989) ("The principle that treaty obligations must be fulfilled in good faith is one aspect of the fundamental rule that requires all subjects of international law to exercise in good faith their rights and duties under that law.").

30. Lukashuk, *supra* note 29, at 515.

31. Compare Isabelle Buffard & Karl Zemanek, *The "Object and Purpose" of a Treaty: An Enigma?*, 3 AUSTRIAN REV. INT'L & EUR. L. 311 (1998), and David S. Jonas & Thomas N. Saunders, *The Object and Purpose of a Treaty: Three Interpretive Methods*, 43 VAND. J. TRANSNAT'L L. 565, 567 (2010) ("Broadly speaking, it refers to a treaty's essential goals . . . the essence of a treaty.").

of its individual parts.³² Therefore, in order to determine whether France violated *pacta sunt servanda*, this paper will seek to define the object and purpose of the Second Treaty of Paris.

Ten years before demanding the Independence Debt, France signed the Paris Treaty, pledging, with respect to the slave trade, to take the “most effectual measures for the entire and definitive abolition of a commerce so odious, and so strongly condemned by the laws of religion and of nature.”³³ Despite the distinction between the slave trade and slavery, the social and political developments surrounding the signing of the Treaty demonstrate that the Treaty’s underlying object and purpose was to recognize the evils of slavery and begin the process of eradicating the practice.³⁴ Other conditions that brought about the Second Treaty of Paris, namely the Congress of Vienna³⁵ and the Declaration Relative to the Universal Abolition of the Slave Trade³⁶ help fully clarify the object and purpose of the Second Treaty of Paris as well as corroborate France’s awareness of the Treaty’s object and purpose: the vehement condemnation of the slave trade as inhumane and inconsistent with the practices of civilized nations. Therefore, any action taken by France that further perpetuates slavery constitutes a violation of the object and purpose of the Treaty. France’s action demanding

32. Jonas & Saunders, *supra* note 31, at 608. (“In this context, object and purpose is used to reinforce the interpretive principle that a treaty’s text should be interpreted to reflect the goals embodied in the document as a whole.”).

33. Second Treaty of Paris, France–Great Britain, Additional art. on the slave trade, Nov. 20, 1815, <https://www.napoleon-empire.com/official-texts/treaty-of-paris-1815.php> (last visited Mar 1, 2021) [hereinafter Second Treaty of Paris].

34. See *Historical Context: Abolishing the Trans-Atlantic Slave Trade, Voyage of the Echo: The Trials of an Illegal Trans-Atlantic Slave Ship*, LOWCOUNTRY DIG. HISTORY INITIATIVE, <http://ldhi.library.cofc.edu/exhibits/show/voyage-of-the-echo-the-trials/historical-context—abolishing-t> (last visited Mar. 1, 2021) (explaining how the movement to abolish the slave trade became prominent in Europe and the United States during the early 19th century when civil society began adopting Enlightenment-era ideals of human dignity).

35. Thomas Weller, *Vienna, 1815: First International Condemnation of the Slave Trade*, ONLINE ATLAS ON THE HIST. OF HUMANITARIANISM & HUM. RTS. (Dec. 2015), <https://hr-atlas.ieg-mainz.de/articles/weller-vienna> (“In this Vienna declaration they proclaimed the Atlantic slave trade to be “repugnant to the principles of humanity and universal morality.”); Jerome Reich, *The Slave Trade at the Congress of Vienna—A Study in English Public Opinion*, 53 J. AFR. AM. HIST. 129, 135 (1968) (“While French public opinion during this time wasn’t prepared for immediate abolition, the French representatives agreed that France would “cooperate to the best of her ability to persuade Spain and Portugal to abolish or restrict their trade in slaves.”).

36. Randall Lesaffer, *Vienna and the Abolition of the Slave Trade*, OXFORD PUB. INT’L L., <https://opil.ouplaw.com/page/498> (“The Declaration was signed by the seven leading powers of the anti-Napoleonic coalition . . . as well as France” and condemned the slave trade as “repugnant to the principles of humanity and universal morality.”).

payment for formerly enslaved persons through the Independence Debt is precisely this type of violation because it is akin to perpetuating the evils of exchanging human lives for profit. By continuing to view slaves as property, France defeated the object and purpose of the Treaty and thereby violated *pacta sunt servanda*.³⁷

Haiti may bring a claim under *pacta sunt servanda* even though it was not a signatory to the Second Treaty of Paris. Under the widely recognized principal of *pacta tertiis nec nocent nec prosunt*, a treaty may not impose obligations on, or confer rights to, a state which is not a party to the treaty.³⁸ However, an exception to *pacta tertiis nec nocent nec prosunt* exists “if a treaty contains a stipulation which is expressly for the benefit of a State that is not a party or a signatory to the treaty.” In that case, “such a State is entitled to claim the benefit of the stipulation so long as the stipulation remains in force between the parties to the treaty.”³⁹

In order for the exception to apply and for a non-signatory to be entitled to the benefit of a treaty provision, two conditions must be met: (1) the parties to the treaty must have intended the provision in question to accord a right to the State or to a group of states to which the state belongs; and (2) the assent of the beneficiary state to the provision.⁴⁰ Generally, assent is presumed to exist unless the state expressly disclaims the benefit.⁴¹

As previously discussed, the slave trade provision in the Second Treaty of Paris was intended to acknowledge the inhumanity of slavery.⁴² Therefore, all states in which slavery existed fell within the ‘group’ of intended beneficiaries. At the time of the signing of the Treaty, not only did slavery exist in Haiti, but the status of slavery itself was in dispute.⁴³ Clearly, Haiti falls into the group of intended beneficiary states. Because there is no evidence that Haiti disclaimed the benefit of the slave trade provision of the Treaty, Haiti presumably has ‘assented’ to the benefits conferred by the Treaty. Because Haiti meets both requirements of the beneficiary exception, it is entitled both to benefit from the slave trade provision and to enforce France’s breach of the provision.

37. Lukashuk, *supra* note 29, at 513–18.

38. Malgosia Fitzmaurice, *Third Parties and the Law of Treaties*, 6 MAX PLANCK Y.B. UNITED NATIONS. L. 37, 38–9 (2002).

39. *Id.* at 38 n.1.

40. *Id.* at 47–49.

41. *Id.* at 47–48.

42. See *supra* text accompanying notes 33–37.

43. See Obregón, *supra* note 6, at 604–12 (describing the path to the eventual 1825 agreement).

B. *France Demanded Egregious Payment in Exchange for Recognition*

Haiti can claim that France breached customary international law because France's demand of payment from Haiti amounted to a denial of Haiti's 'right to recognition.' In order to raise this claim, Haiti must show that the 'right to recognition' is customary international law.⁴⁴ To prove that the right to recognition is customary international law, Haiti must prove that the right (1) is followed as a "general practice," and that the right (2) is *opinio juris* (accepted as law).⁴⁵ The first component is an objective inquiry and asks whether international actors have followed the rule, and whether the practice is "consistent and sufficiently widespread."⁴⁶ The second component is a subjective inquiry and asks why international actors engage in a particular practice.⁴⁷ If international actors observe the practice out of a sense of legal obligation, then *opinion juris* is satisfied, and the practice is deemed customary international law.⁴⁸ However, if states instead observe the practice out of "courtesy, neighborliness, or expediency," then the practice is not customary international law.⁴⁹

The next section will set forth to prove that the right to recognition was customary international law because the rule was (1) followed as general state practice and (2) flowed from a sense of legal obligation creating a duty for France to recognize Haiti. However, because France did not satisfy its duty and instead violated Haiti's right to recognition as a result of its extraordinary demands, it is likely that France breached customary international law.

1. *Objective Inquiry: State Practice*

In order to meet the first prong of customary international law, state practice must be (1) virtually uniform and (2) extensive.⁵⁰ The

44. Statute of the International Court of Justice, *supra* note 13, at art. 38(1) ("The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: . . . international custom, as evidence of a general practice accepted as law.").

45. DAVID J. BEDERMAN & CHIMENE I. KEITNER, INTERNATIONAL LAW FRAMEWORKS (CONCEPTS AND INSIGHTS) 18–19 (4th ed. 2016).

46. *Id.* at 18.

47. *Id.*

48. *Id.* at 18–19.

49. *Id.*

50. North Sea Continental Shelf (Ger. v. Neth.), Judgment, 1969 I.C.J. 3, at ¶ 74 (Feb. 20). *But see* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, at ¶ 186 (June 27) ("It is not to be expected that in the practice of States the application of the rules in question should have been perfect,

relevant state practice here, the principle of recognition, is “believed to have been accepted by the preponderant practice of States.”⁵¹ For example, when former colonial territories in the Americas secured independence in the early 1800s, their governments frequently sought “recognition of their sovereign autonomy as members of the international community” from the United States and Europe because recognition from these powers legitimized new states on the world stage.⁵² The following section discusses the state practice of recognition by the United States, Great Britain, and other world powers in the early 1800s.

2. *United States’ foreign policy towards recognition: de facto control*

From 1822 to 1899, U.S. foreign policy regarding recognition emphasized “*de facto* control,” i.e., whether the newly recognized governments were in control of state affairs and represented the will of the people.⁵³ The United States was the first member of the family of nations⁵⁴ to recognize the new Hispanic states of the nineteenth

in the sense that States should have refrained, with complete consistency, from the use of force or from intervention in each other’s internal affairs.”).

51. Hersch Lauterpacht, *Recognition of States in International Law*, 53 YALE L.J. 385, 385 (1944).

52. ARNULF BECKER LORCA, MESTIZO INTERNATIONAL LAW 101 (2014). Seeking recognition from the United States and other European powers is important because “although all states may contribute to the development of a new or modified custom, they are not all equal in the process. The major states generally possess a greater significance in the establishment of customs.” *Custom*, BRITANNICA, <https://www.britannica.com/topic/international-law/Custom> (last visited Sept. 19, 2021).

53. Gregory Weeks, *Almost Jeffersonian: U.S. Recognition Policy toward Latin America*, 31 PRESIDENTIAL STUD. Q. 490, 493 (2001) (“[T]he most important consideration in extending recognition was whether the governments were in control of their new states and represented the ‘will of the nation.’”) *See also supra* at 493 n.3 (“These same principles also developed in the newly independent states. As the prominent Chilean intellectual Andres Bello wrote, ‘the other states need only discover whether the new association is in fact independent and has established an authority rules its members, represents them, and up to a point is responsible for their conduct to the world.’”) *A Bill to Authorize the Erection of a Statue of Henry Clay: Hearing on H.R. 11278 Before the Committee on Foreign Affairs*, 69th Cong. 78 (1926) (statement of Henry Clay) (quoting speech by Henry Clay regarding factors in considering *de facto* control, stating “[i]t is free—it is independent—it is sovereign. It manages the interests of the society that submits to its sway. It is capable of maintaining the relations between that society and other nations.”).

54. CHARLES G. FENWICK, INTERNATIONAL LAW 83 (1924) (“Formal membership in the family of nations appears to be an essential condition of the enjoyment by a state of legal rights and duties. While as a point of theory it is claimed by some writers that a new state, formed from among the existing civilized states, enters as of right into

century,⁵⁵ with President Monroe officially receiving the representative of Colombia in 1822, the first act of external recognition of any South American country.⁵⁶ The United States subsequently recognized the independence of Mexico,⁵⁷ Chile,⁵⁸ Buenos Aires,⁵⁹ and Peru.⁶⁰ At the President's request, a congressional committee issued statements on each of the newly recognized states, emphasizing the newly formed governments' *de facto* control.⁶¹ The United States later recognized several Central American states in 1842, Brazil in 1825, Uruguay in 1834,

the family of nations, as a practical matter, states may be in existence without being admitted to official intercourse with the members of the family of nations, so that pending such admission they have no standing before the law.”).

55. William Spence Robertson, *The United States and Spain in 1822*, 20 AM. HIST. REV. 781, 783 (1915) (“With the exception of the Portuguese monarchy seated at Rio de Janeiro, the North American republic was the first member of the family of nations to extend the hand of fellowship to the new Hispanic states.”).

56. See *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Colombia*, OFFICE OF THE HISTORIAN, DEP'T OF STATE, <https://history.state.gov/countries/colombia> (last visited Sept. 19, 2021) (summarizing how the United States recognized Colombia on June 19, 1822, when President James Monroe received Manuel Torres as the Colombian Chargé d'affaires). See also D. A. G. Waddell, *International Politics and Latin American Independence*, in 3 THE CAMBRIDGE HISTORY OF LATIN AMERICA 197, 210 (Leslie Bethell ed., 1985) (“The proposal was endorsed by Congress and formally implemented in June when the representative of Gran Colombia was officially received by the president – the first such act of external recognition of any South American country.”).

57. See *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Mexico*, OFFICE OF THE HISTORIAN, DEP'T OF STATE, <https://history.state.gov/countries/mexico> (last visited Sept. 19, 2021) (summarizing how the United States recognized Mexico on December 12, 1822, when President James Monroe received José Manuel Zozaya as Mexican Minister to the United States).

58. See *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Chile*, OFFICE OF THE HISTORIAN, DEP'T OF STATE, <https://history.state.gov/countries/chile> (last visited Sept. 19, 2021) (summarizing how the United States recognized the Republic of Chile on January 27, 1823, when the U.S. Senate confirmed President James Monroe's nomination of Herman Allen of Vermont as Envoy Extraordinary and Minister Plenipotentiary to Chile).

59. See *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Argentina*, OFFICE OF THE HISTORIAN, DEP'T OF STATE, <https://history.state.gov/countries/argentina> (last visited Sept. 19, 2021) (summarizing how diplomatic relations were established on December 27, 1823, when American Minister Plenipotentiary Caesar Rodney presented his credentials to the Government of Buenos Ayres).

60. See *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Peru*, OFFICE OF THE HISTORIAN, DEP'T OF STATE, <https://history.state.gov/countries/peru> (last visited Sept. 19, 2021) (summarizing how the independence of Peru was recognized by the United States by the appointment of James Cooley as Chargé d'affaires on May 2, 1826).

61. Weeks, *supra* note 53, at 493.

and Paraguay in 1852.⁶² U.S. foreign policy during this period was represented by a virtually uniform practice of extending recognition towards states who demonstrated *de facto* control of their territories.

Despite the United States' foreign policy of recognition based on *de facto* control, the U.S. government refused to recognize Haiti for over sixty years.⁶³ State practice for the purpose of customary international law, however, does not require complete uniformity.⁶⁴ Given the conflict over slavery in the United States, U.S. presidents withheld recognition of Haiti until 1862, despite Haiti's *de facto* control of its territory.⁶⁵ Slavery was still present in the United States,⁶⁶ and Haiti's revolution threatened U.S. economic interests.⁶⁷ However, with the exception of Haiti, U.S. general practice during this era demonstrates that it consistently granted recognition to newly independent states once those states established *de facto* control.

3. *Britain mirrors United States' foreign policy*

In addition to the United States, Great Britain's foreign policy toward newly independent countries during this era also demonstrates an extensive and representative state practice of recognition. For example, in 1822, aligning its foreign policy with that of the United States, the British government revised its navigation law to allow vessels flying South American flags entry into British ports.⁶⁸ The following year,

62. *See id.* (discussing U.S. recognition of Central American states such as Honduras, Guatemala, Nicaragua, Costa Rica, and El Salvador).

63. *Id.* at 492–93 (discussing how Haiti was the “exception to the *de facto* rule.”).

64. *See* RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 29, § 102 cmt. b (“A practice can be general even if it is not universally followed.”).

65. Weeks, *supra* note 56, at 492. Ann Crawford-Roberts, *A History of United States Policy Towards Haiti*, BROWN U. LIBR., <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-14-the-united-states-and-latin-america/moments-in-u-s-latin-american-relations/a-history-of-united-states-policy-towards-haiti/> (last visited Sept. 20, 2021).

66. *See* Bob Corbett, *Why is Haiti so Poor?*, WEBSTER U. (1986), <http://faculty.webster.edu/corbette/haiti/miscopic/leftover/whypoor.htm> (last visited June 19, 2021) (“However, the United States was still a slave nation.”).

67. Weeks, *supra* note 53, at 493.

68. John Tate Lanning, *Great Britain and Spanish Recognition of the Hispanic American States*, 10 HISP. AM. HIST. REV. 429, 432 (1930) (“Merchants thought [that the] recognition of Spanish American commercial flags in 1822 and [the] appointment of consuls in 1823 [was] ‘as much an act of recognition as the appointment of higher ministers.’”). Waddell, *supra* note 56, at 210 (“Similar considerations influenced even the British government, which took its first significant step in the direction of acknowledging the *de facto* achievement of Spanish American independence in May 1822, by providing, in a

Great Britain recognized the independence of Mexico and Colombia.⁶⁹ Great Britain unequivocally announced its decision to negotiate commercial treaties with the new states of Mexico, Colombia, and Buenos Aires, which would in effect amount to diplomatic recognition of the *de facto* governments of those new states.⁷⁰ In conclusion, British attitude toward newly independent states corroborates recognition as an extensive and representative state practice.

4. *Establishing Representativeness Through Other European Powers*

In addition to the United States and Great Britain, recognition was representative as a state practice among other European powers. While universal participation is not required to establish state practice, state practice should represent the states that had an opportunity to apply the alleged rule.⁷¹

Great Britain and the United States' progress towards regularizing relations with Latin America prompted other European powers, especially those with commercial interests in the region, to reconsider their attitudes.⁷² Great Britain's recognition of the newly independent countries was particularly significant to the other Great Powers, who, along with smaller countries, followed Great Britain's lead and recognized

revised navigation law . . . for vessels displaying South American flags to be admitted to British ports.”).

69. Anthony McFarlane, *British Policy and the Independence of Colombia 1810-25*, in *THE ROLE OF GREAT BRITAIN IN THE INDEPENDENCE OF COLOMBIA* 8, 10 (2011).

70. Lanning, *supra* note 68, at 438 (“[Foreign Secretary George] Canning announced unequivocally the decision of the British government forthwith to negotiate commercial treaties with the new states, the effect of which, when severally ratified, would amount to a diplomatic recognition of the *de facto* governments of those three countries.”).

71. Draft Conclusions on Identification of Customary International Law, With Commentaries A/73/10 Conclusion 8(3) at 136 (2018), https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf (“As regards diplomatic relations, for example, in which all States regularly engage, a practice may have to be widely exhibited, while with respect to some other matters, the amount of practice may well be less. This is captured by the word “sufficiently”, which implies that the necessary number and distribution of States taking part in the relevant practice (like the number of instances of practice) cannot be identified in the abstract It is important that such States are representative, which needs to be assessed in light of all the circumstances, including the various interests at stake and/or the various geographical regions.”).

72. *See* Waddell, *supra* note 56, at 220 (discussing France, Netherlands, and Prussia).

the newly independent countries.⁷³ In 1825, France began sending commercial agents to newly independent nations in Latin and South America.⁷⁴ In 1826, France admitted vessels flying Latin American flags into its ports, and subsequently negotiated commercial treaties with several Latin American states in the following years.⁷⁵ During this period, Prussia also initiated commercial links with the region.⁷⁶ In 1826, Prussia exchanged commercial agents with Mexico and in 1827 signed a trade agreement similar to the trade agreement between Mexico and France.⁷⁷ The trade agreement was followed by the negotiation of a commercial treaty, which in effect acknowledged Mexico's independence.⁷⁸

Taken together, the conduct of the Great European Powers, as well as that of smaller powers, indicate that state practice was both extensive and representative, even if not entirely uniform. Despite some inconsistencies, recognition was relatively uniform and representative among the Great Powers, especially those with more importance. The next section will examine whether that state practice stemmed from a legal obligation.

5. *Subjective Inquiry of Opinio Juris*

In order to constitute customary international law, state practice must flow from a sense of legal obligation (*opinio juris*).⁷⁹ For example, if a practice is generally followed, but states do not consider that practice a legal obligation, then that practice does not contribute to customary law.⁸⁰

73. McFarlane, *supra* note 69, at 10 (“[R]ecognition from Britain was rightly regarded as more important.”). *See also*, Alan K. Manchester, *The Recognition of Brazilian Independence*, 31 HISP. AM. HIST. REV. 80, 96 n. 78 (1951) (noting that smaller powers followed the practice of the Great Powers in recognizing Brazilian independence).

74. Waddell, *supra* note 56, at 220.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 29, § 102(2) (“Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.”).

80. *Id.* § 102(2) cmt. c.

i. Discerning Recognition as a Legal Obligation

During this period, sovereignty was viewed as both a right of the state and a duty owed by other nations to the state.⁸¹ For example, Hugo Grotius espoused the notion that states should grant recognition of other states to demonstrate that the system of nations had accepted an individual government of the recognized state.⁸² The Great Powers similarly framed legal recognition as a right. For example, in 1818 U.S. Secretary of State John Adams acknowledged recognition as a duty owed to the former Spanish colonies, stating “there is a stage in such contests when the parties struggling for independence have . . . a *right to demand* its acknowledgment by neutral parties.”⁸³ In 1822, the Committee on Foreign Affairs similarly described recognition as a “political right.”⁸⁴ This forceful, rights-oriented language regarding recognition demonstrates that recognition was not merely a matter of courtesy or habit, but instead stemmed from a sense of legal obligation.

Great Britain shared a similar sense of *opinio juris*. For example, commentary from legal scholars have framed British attitudes toward recognition of the newly independent Latin American countries as acknowledging a legal obligation that “cannot be withheld when it has been earned.”⁸⁵ Foreign Secretary George Canning publicly recognized the political existence of these new states because “civilized Nations are bound mutually to respect, and are entitled reciprocally to claim from each other.”⁸⁶ Such comments from legal scholars and state

81. EMER DE Vattel, THE LAW OF NATIONS 176–77 (Béla Kapossy & Richard Whatmore eds., Liberty Fund 2008) (1797) (“Every nation, every sovereign and independent state, deserves consideration and respect, because it makes an immediate figure in the grand society of the human race, is independent of all earthly power, and is an assemblage of a great number of men, which is, doubtless, more considerable than any individual.”).

82. Weeks, *supra* note 53, at 492.

83. Lauterpacht, *supra* note 51, at 402 (emphasis in original). See also Lauterpacht, *supra* note 51, at 401–02 (“It cannot be long before they will demand that acknowledgment of *right* . . . and however questionable that *right* may now be considered; it will deserve very seriously the consideration of . . . how long that acknowledgment can rightfully be refused.”) (emphasis added).

84. Weeks, *supra* note 53, at 493 (“The political *right* of this nation to acknowledge their independence . . .”) (emphasis added); James Monroe, *Special Message (Mar. 8, 1822)*, GERHARD PETERS & JOHN T. WOOLLEY, AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/node/206479> (“When the result of such a contest is manifestly settled, the new governments have a claim to recognition by other powers which *ought not to be resisted*.”) (emphasis added).

85. Lauterpacht, *supra* note 51, at 400 (quoting WILLIAM E. HALL, INTERNATIONAL LAW § 26 (4th ed. 1895)).

86. *Id.*

governments referring to recognition as a right or duty affirm that state recognition was viewed as a legal obligation.

In light of a clear state practice that stemmed from a sense of legal obligation, it is evident that recognition was and is a part of customary international law. The following section concludes that France violated customary international law by demanding the Independence Debt from Haiti in exchange for recognition.

6. *State Practice of Exactions*

It was not unusual for states to extract benefits from new states in exchange for recognition. The Great Powers did not grant recognition as a “gratuitous concession.”⁸⁷ Latin American states and Brazil vigorously pursued recognition by Europe and the United States and were willing to offer concessions in exchange for it.⁸⁸

Despite the lofty goals of the Monroe Doctrine,⁸⁹ the United States was not free of self-interest⁹⁰ and granted recognition so long as these emerging republics provided access to their emerging markets.⁹¹ For example, the United States’ recognition of Argentina was subject to the indefinite condition that the latter would not grant any special privileges to Spain.⁹² Similarly, in 1823, Great Britain recognized independence of Brazil, conditioned upon the latter’s renunciation of the slave trade.⁹³ Such examples demonstrate that extracting concessions from newly independent states was part of the state practice of recognition.

87. LORCA, *supra* note 52, at 102.

88. *Id.*

89. The Monroe Doctrine had two major points: (1) the United States would not allow European countries to start new colonies or interfere with independent countries in North or South America; and (2) the United States would not interfere with existing European colonies or become involved in conflicts among European Colonies. *Monroe Doctrine, 1823*, OFFICE OF THE HISTORIAN, DEP’T OF STATE, <https://history.state.gov/milestones/1801-1829/monroe>; *Monroe Doctrine (1823)*, OURDOCUMENTS.GOV, <https://www.ourdocuments.gov/doc.php?flash=false&doc=23> (last visited Mar. 5, 2021) (warning European nations that the United States would not tolerate any more colonization or “puppet monarchs” in Latin America).

90. Lauterpacht, *supra* note 51, at 415.

91. LORCA, *supra* note 52, at 91.

92. Lauterpacht, *supra* note 51, at 415.

93. *Id.* at 416. Manchester, *supra* note 73, at 96 n. 78.

7. *France's Exaction Violated Customary International Law*

While there are examples states extracting compensation in exchange for recognition, France's demand from Haiti exceeded the bounds of acceptable state practice. Although nineteenth-century sovereigns occasionally 'conditioned' their recognition of emerging states in some capacity, these conditions were typically far more humane such as "the concession of most favoured-nation treatment . . . , settlement of outstanding claims, abstention from and suppression of trade in slaves, respect of private property, [or] proper treatment of minorities."⁹⁴

In the context of these commonly acceptable conditions, France's demand amounted to extortion, violating traditional state practice. In 1825, French King Charles X issued an ordinance stipulating that France would recognize Haiti's independence for the price of 150 million francs paid over five years, a sum which then represented three hundred percent of Haiti's GDP.⁹⁵ Evidence from the time period suggests that King Charles X knew that Haiti could not afford its debt payments, especially because the total debt was over ten times Haiti's annual budget.⁹⁶ In fact, the debt was five times greater than even France's annual budget.⁹⁷ One British journalist similarly noted that the "enormous price" constituted a "sum which few states in Europe could bear to sacrifice."⁹⁸ Although in 1838 France reduced the remaining

94. Lauterpacht, *supra* note 51, at 358.

95. SIMON HENOCHSBERG, PUBLIC DEBT AND SLAVERY: THE CASE OF HAITI (1760-1915), at 26-27 (2016), <http://piketty.pse.ens.fr/files/Henochsberg2016.pdf>.

96. DÉsirÉ DALLOZ ET AL., CONSULTATION DE MM. DALLOZ, DELAGRANGE, HENNEQUIN, DUPIN JEUNE ET AUTRES JURISCONSULTES POUR LES ANCIENS COLONS DE SAINT-DOMINGUE [TALKS FROM MS. DALLOZ, DELAGRANGE, HENNEQUIN, DUPIN JR. AND OTHER LEGAL EXPERTS ON THE FORMER SETTLERS OF SAINT-DOMINGUE] 26–29 (Bibliothèque Nationale de France 2009) (1829), <https://gallica.bnf.fr/ark:/12148/bpt6k55990363/f31.item.texteImage?lang=EN> ("[H]e knew the state of Saint Domingue's public wealth and *he knew perfectly that the citizens could not pay the two indemnities*. He hid his fears so little that during the discussion of the Law of April 3, 1826, at the Chamber of Paris, Mr. M de V said, '*Perhaps the indemnity exceeds the resources of [the Haitians] who have undertaken to pay it.*' How did he charge them with a debt he knew they could not carry? How did he structure these obligations if he knew he couldn't fulfill them?") (emphasis added) (translation by authors). Marle Daut, *When Haiti Paid France for Freedom: The Greatest Heist in History*, AFRICA REPORT (July 2, 2020, 5:13 PM), <https://www.theafricareport.com/32162/when-haiti-paid-france-for-freedom-the-greatest-heist-in-history/>.

97. Obregón, *supra* note 6, at 610.

98. Daut, *supra* note 96.

debt to 60 million francs, it still would take Haiti until 1910 to complete repayment of the debt.⁹⁹

Not only was the debt egregious, but the method of delivery of the Ordinance amounted to coercion. A representative of Charles X, accompanied by a fleet of fourteen brigs of war, carrying more than five-hundred cannons, delivered the ordinance to Haiti.¹⁰⁰ This is in stark contrast to France's favorable treaty provisions to the newly recognized American republic.¹⁰¹ Rejection of the ordinance appeared likely to result in war and, threatened with invasion, Haiti had no choice but to comply.¹⁰² Similarly, France accompanied its 1938 reduction agreement with twelve warships to force the Haitian president to agree.¹⁰³ Even after paying off the initial debt, Haiti suffered from crippling debt to French banks, interest payments, and multiple re-financings, until finally making its last payment in 1950.¹⁰⁴

Ultimately, under threat of recolonization, Haiti capitulated to the terms of France's conditional recognition.¹⁰⁵ France's immoral exaction from Haiti vastly exceeded the acceptable bounds of the state practice of recognition. Therefore, France likely violated customary international law, entitling Haiti to redress.

IV. CONCLUSION

The Haitian Independence Debt invites larger questions about the ICJ. Specifically, the Independence Debt raises questions as to whether the ICJ is the correct forum to examine historical, moral, economic, and political wrongs. Given the evils inherent in colonial conquest, colonial rule, and colonial economic exploitation, world powers will likely attempt to prevent the establishment of precedent that examines the morality and fairness of centuries-old conduct.

Nevertheless, Haiti and similarly situated countries have few other options to seek redress beside the Court. Despite procedural hurdles

99. Obregón, *supra* note 6, at 614.

100. Daut, *supra* note 96.

101. *Transcript of Treaty of Alliance with France (1778)* arts. II, IX, OURDOCUMENTS.GOV, <https://www.ourdocuments.gov/doc.php?flash=false&doc=4&page=transcript> (last visited Dec. 24, 2021) (signing a treaty with the United States recognizing its "liberty, sovereignty, and independence absolute and unlimited.").

102. Daut, *supra* note 96.

103. *Id.*

104. Thomas Piketty, *Confronting Racism, Repairing History*, LEMONDE.FR (June 16, 2020), <https://www.lemonde.fr/blog/piketty/2020/06/16/confronting-racism-repairing-history/>.

105. Daut, *supra* note 96.

and ambiguous legal merit, such claims can at least bring awareness to the damage that the Independence Debt has had on Haiti's development and ability to provide for its citizens.¹⁰⁶ Bringing suit in the ICJ would afford Haiti an opportunity not only to make its legal claim, but also to lay out the facts and arguments for a moral case against France in the public arena. Intellectuals and politicians, including American linguist Noam Chomsky, French philosopher Etienne Balibar, and Members of the European Parliament Daniel Cohn-Bendit and Eva Joly, have all called upon France to repay the Independence Debt.¹⁰⁷ A well-crafted legal claim could have a large impact in the court of public opinion, earning Haiti a moral, and hopefully judicial, victory.

106. Haiti is the most impoverished country in the Western Hemisphere, with seventy-six percent of its

population below the poverty line. Haiti also has a life expectancy of 58.1 years. *See* IMF, *Haiti: Poverty Reduction Strategy Paper*, Country Report No. 08/115 (Mar. 2008), <http://www.imf.org/external/pubs/ft/scr/2008/cr08115.pdf>.

107. *See France Urged to Repay Haiti's Huge 'Independence Debt'*, BBC (Aug. 16, 2010), <https://www.bbc.com/news/world-europe-10988938> (describing an open letter from members of parliament from Europe, Canada and the Philippines, as well as scholars, journalists and activists in France, Haiti, the United States, Canada, the United Kingdom, Nigeria, Sierra Leone and Germany, all calling upon France to reimburse the crushing "independence debt" it imposed on Haiti nearly two hundred years ago). *See also* Willsher, *supra* note 27.