

TRANSLATION

The German version of this document shall prevail in the event of any discrepancy.

Office of the Attorney General
of Switzerland
Guisanplatz 1
3003 Berne
Switzerland

Widnau, 1 September 2026

Criminal Complaint: Aiding and Abetting Enslavement¹

Dear Sir or Madam,

I hereby file a criminal complaint on behalf of my client, Shelley Moorhead (Appendices 1–2), alleging aiding and abetting enslavement.

¹ The term of enslavement is essentially identical to that of slavery (GERHARD WERLE/FLORIAN JESSBERGER, Principles of International Criminal Law, 4th ed., Oxford 2020, p. 401 N 1037, with further references). The two terms are being used interchangeably.

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1. Jurisdiction of the Office of the Attorney General of Switzerland

In the present case, the offense to be investigated is one under «Zwölfter Titel bis» Swiss Criminal Code (StGB), a crime against humanity in the form of enslavement, respectively of aiding and abetting thereof (art. 25 in conjunction with art. 264a para. 1 lit. c StGB).

As the federal prosecution authority (art. 2 para. 1 lit. b Swiss Criminal Authorities Organisation Act [StBOG]), you have jurisdiction to investigate such offenses (art. 23 para. 1 lit. g Swiss Criminal Procedure Code [StPO]).² Delegating the investigation to one or more cantons is not permitted (art. 25 para. 1 last sentence StPO).³ Military investigating authorities do not have jurisdiction in this case (art. 3 Swiss Military Criminal Code [MStG]). The International Criminal Court has supplementary or subsidiary jurisdiction only (art. 1 and art. 17 s. 1 Rome Statute of the International Criminal Court [Rome Statute]).⁴

Although you apply the law ex officio to the facts presented to you, I take the liberty, in my client's interest, of offering some legal considerations.

² Cf. for example DAMIAN K. GRAF, Art. 102, in: STGB Annotierter Kommentar, Damian K. Graf (ed.), 2nd ed., Berne 2025, art. 102, N 39a.

³ Example: BStGer, BH.2017.1, 24/2/2017, E. 1.1.

⁴ Exemplary in this case BGE 143 IV 316, E. 4.1., with further references; WERLE/JESSBERGER, p. 117 N 313, with further references.

2. Applicability of the StGB (Incl. Imprescriptibility)

2.1. Historical Overview (Chronological)

Today, it is taken for granted that slavery is prohibited peremptorily and against everyone (*ius cogens* and *erga omnes*)⁵ and cannot be derogated from even in a state of emergency^{6,7} and that it constitutes an imprescriptible⁸ crime against humanity⁹. Thus defined, the prohibition respectively the crime against humanity have been incorporated into the relevant instruments of international law, are recognized as customary international law and are considered as general principles of law pursuant to art. 38 para. 1 lit. c Statute of the International Court of Justice of 26 June 1945 (ICJ Statute).¹⁰ This has not always been a given.

Until the end of the Middle Ages, various arguments were advanced in favor of slavery, insofar as such arguments were invoked at all; critical voices were rare:¹¹ Aristotle justified slavery on the

⁵ Art. 4 ECHR; CHERIF BASSIOUNI, *Enslavement as an International Crime*, in: N.Y.U. Journal of International Law and Politics 1991/23, p. 445; SAMANTHA BESSON, *Droit international public*, 2nd ed., Berne 2024, p. 218 N 53; NADJA CAPUS, *Ewig still steht die Vergangenheit?, Der unvergängliche Strafverfolgungsanspruch nach schweizerischem Recht*, Berne 2006, p. 87; JUAN PABLO MONTIEL, *Von der schlechten Angewohnheit Menschenrechte zu verletzen – Analyse und Prognose des Gewohnheitsrechts als Quelle des Völkerstrafrechts*, in: *Gesetzlichkeit und Strafrecht*, Hans Kudlich/Juan Pablo Montiel/Jan C. Schuhr (eds.), Berlin 2012, p. 334, with further references; ANNE PETERS/ANNA PETRIG, *Völkerrecht – Allgemeiner Teil*, 6th ed., Zurich/Geneva 2023, p. 139 N 30 and 142 N 37; YASMINE RASSAM, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, Penn State International Law Review 2005/23, p. 809 et seq., with further references; WERLE/JESSBERGER, p. 400 N 1036; ANDREAS R. ZIEGLER, *Einführung in das Völkerrecht*, 4th ed., Berne 2020, p. 74 N 163.

⁶ Art. 15 s. 2 ECHR; UNO, *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Declaration and Programme of Action, New York 2002, p. 9, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf> (last accessed 22/3/26); GISELA MANSKE, *Verbrechen gegen die Menschlichkeit als Verbrechen an der Menschheit, Zu einem zentralen Begriff der internationalen Strafgerichtsbarkeit*, Diss. Hamburg, Berlin 2003, p. 257.

⁷ As far as we know today, this prohibition was the first human right to be recognized globally. Cf. UNO, OHCHR, *Fact Sheet No. 14, Contemporary Forms of Slavery*, 1/6/1991, p. 1, available at <<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-14-contemporary-forms-slavery-archive>> (last accessed 8/3/26); RASSAM, S. 827, with further references.

⁸ Instead of many RASSAM, p. 810; HANS VEST, Art. 101 Unverjährbarkeit, in: *Die völkerstrafrechtlichen Bestimmungen des StGB*, Kommentar, Hans Vest/Andreas R. Ziegler/Jürg Lindenmann/Stefan Wehrenberg (eds.), Zurich 2014, p. 128 N 1.

⁹ HARMEN VAN DER WILT, *Trafficking in Human Beings, Enslavement, Crimes Against Humanity: Unravelling the Concepts*, Chinese Journal of International Law 2014, p. 303, with further references.

¹⁰ BASSIOUNI, p. 447 and 456. On customary international law cf. also MISCHA MORGENBESSER, *Staatenverantwortlichkeit für Völkermord, Verbrechen gegen die Menschlichkeit und Kriegsverbrechen*, Diss. Zurich 2002, p. 162; SIMONETTA STIRLING-ZANDA, *L'application judiciaire du droit international coutumier, Étude comparée de la pratique européenne*, Zurich 2000, p. 16.

¹¹ Cf. for instance HEINRICH HONSELL, *Was ist Gerechtigkeit?*, Berne 2023, pp. 110 et seq. and 143; HEINRICH HONSELL/THEO MAYER-MALY, *Rechtswissenschaft*, Berne 2017, p. 228; ATILAY ILERI, chapter 5: Social und Future Talk / Das Unrecht als Bedingung der kulturellen Evolution, in: *Mehrspuriger Schadenausgleich / Des différentes voies menant à la réparation du dommage*, Stephan Fuhrer/Ueli Kieser/Stephan Weber (eds.), Zurich 2022, p. 1268; ABDOULAYE SOMA, *Droit de l'homme à l'alimentation et sécurité alimentaire en Afrique*, Geneva 2010, p. 13.

grounds of the (postulated) natural inferiority of barbarian peoples.¹² The Romans apparently saw nothing wrong with enslaving peoples they had defeated in war,¹³ although the Digest provides (Florentinus: Dig. 1.5.4.1): «Slavery is an institution of the law of nations [jus gentium], by which a person is subjected to the ownership of another, *contrary to the state of nature* [emphasis added by the undersigned]». ¹⁴ Christianity, indeed, drew upon a rich repertoire of arguments:¹⁵ The first enslaved brought from Africa to Europe were purchased by Moors on the Moroccan coast. From a Christian perspective, they were deemed as having been wrested from the infidels – redeemed, as it were – a circumstance understood, in the eyes of the Lord and of Christendom, as an act of benevolence. In this sense, slaveholders were bound to instruct the enslaved in the Christian faith. Slavery was thus understood as an integral part of evangelization efforts. Furthermore, there is evidence of the view that poverty and wars – interpreted as the consequences of human transgressions (sins) – had, as it were, led those affected into slavery themselves, where they were to atone for their sins. Against this backdrop, Christianity predominantly called upon enslaved people to submit and condemned any form of «revolutionary impulse». Much later, Thomas Aquinas (1228–1274) still maintained that it was in the natural order of things for some people to be born to serve others throughout their lives.¹⁶

The Spanish Requerimiento of 1513 still regarded slavery as the result of a person's free choice not to submit.¹⁷ Almost at the same time, however, the criticism of slavery – previously merely

¹² Cf. the references in MIRTA ALICIA HERNANDEZ, Fray Antonio De Montesinos and the Laws of Burgos, 1512-1513, Thesis Louisiana 1977, p. 26; FRANCESCA IURLARO, The Invention of Custom, Natural Law and the Law of Nations, c. 1550-1750, Oxford 2021, p. 58 et seq.; JAMES Q. WHITMAN, From Masters of Slaves to Lords of Lands, The Transformation of Ownership in the Western World, New York 2024, p. 343, with further references.

¹³ WHITMAN, p. 334, with further references.

¹⁴ «Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur.». The Latin Digest is available at <<https://droitromain.univ-grenoble-alpes.fr/Corpus/d-01.htm>> (last accessed on 3/4/26); JEAN ALLAIN, Völkerrecht und Sklaverei, 16.–21. Jahrhundert, in: Welten der Sklaverei, Eine vergleichende Geschichte, Paulin Ismard (ed.), Berlin 2023, p. 1031.

¹⁵ The following remarks on the Christian stance are based on the following literature: JEAN ALLAIN, Slavery in International Law, Of Human Exploitation and Trafficking, Leiden 2013, p. 42; PIERRE BERTAUX, Afrika, Von der Vorgeschichte bis zu den Staaten der Gegenwart, 13th ed., Frankfurt a.M., 1999, p. 148 et seq.; CHRISTIAN DELACAMPAGNE, Die Geschichte der Sklaverei, Düsseldorf/Zürich 2004, p. 94; HERNANDEZ, p. 26; CLAUDINE HUNTING, The Philosophes and Black Slavery: 1748-1765, in: Journal of the History of Ideas 39/1978, p. 409; IURLARO, p. 59; WHITMAN, pp. 334 and 348, with further references. Incidentally, a Christian justification was also found for the policy of apartheid: It was based on the deep-seated belief that God had expressly decreed the existence of separate races in the Bible (JOST F. NOLLER, Theorie und Praxis der Apartheid, Eine Analyse der Grundlagen und Bedingungen der Politik der «Getrennten Entwicklung» in Südafrika, Frankfurt a.M. 1977, p. 78, with further references).

¹⁶ DELACAMPAGNE, p. 108.

¹⁷ WHITMAN, p. 372. The Requerimiento was a legal and political instrument used by the Spanish conquerors in the early colonial period in the Americas, from around 1513 onwards. It was a written declaration that was read out to the indigenous peoples, though it usually remained incomprehensible to them, before the Spaniards resorted to force.

incidental – began to intensify with the rediscovery of humanism during the Renaissance and with the Reformation:

- 1511: Dominican friar Fray Antonio de Montesinos (c. 1475–1540) criticised slavery as «cruel» and «horrific».¹⁸
- 1526: King Afonso I (Congo) (c. 1456–1543) wrote a letter to Portugal in which he described the slave traders as, among other things, «thieves and men of evil conscience» and requested assistance in bringing an end to the slave trade in Congo.¹⁹
- 1550: Bartolomé de las Casas (1484–1566), who had once advocated for the transport of Black people from Africa to Mexico,²⁰ now refuted the arguments put forward by the Aristotelian Juan Ginés de Sepúlveda in favor of slavery.²¹
- 1553: In his *De iustitia et iure*, Domingo de Soto questioned whether one man could be the master of another and regarded slavery as contrary to nature.²²
- 1555: Portuguese publisher Fernão de Oliveira (1507–1581), a Dominican friar, denounced the slave traders; they «bought and sold peaceful people, just as one buys and sells animals».²³
- 1559: Bartolomé de las Casas completed his work *Historia de las Indias*, in which he described slavery as a «sin» and a «crime».²⁴
- 1571: A court in Bordeaux banned a slave trader from importing enslaved people into France, stating that «France, the mother of liberty, had no room for a single slave».²⁵
- 1573: Bartolomé Frías de Albornoz (ca. 1519–1573), the first professor of civil law at the University of Mexico, held in his *Arte de los Contratos* that not even Jesus Christ could

¹⁸ HANS BARTH/HANS FÄSSLER, Eine Geschichte der Sklavereikritik, Chronik, in: WOZ Nr. 21 of 26/5/2022, p. 20.

¹⁹ Quoted from NORA WITTMANN, An International Law Deconstruction of the Hegemonic Denial of the Right to Reparations, in: Social and Economic Studies 68/2019, p. 115. The copies of the letter available online refer to «bad conscience» (cf. <https://pohlmanpavilion.weebly.com/uploads/2/1/2/6/21268594/doc_3.pdf>, <[https://human.libretexts.org/Courses/Lumen_Learning/Book%3A_History_of_World_Civilization_II-2_\(Lumen\)/04%3A_2%3A_African_Slave_Trade/04.10%3A_Primary_Source%3A_King_Afonso_of_Congo](https://human.libretexts.org/Courses/Lumen_Learning/Book%3A_History_of_World_Civilization_II-2_(Lumen)/04%3A_2%3A_African_Slave_Trade/04.10%3A_Primary_Source%3A_King_Afonso_of_Congo)>, <<https://1619education.org/sites/default/files/2022-04/King%20Afonso%20I%2C%20Letter%20to%20King%20John%20III%20of%20Portugal.pdf>> [all last accessed on 1/4/26]).

²⁰ ALLAIN (Völkerrecht), p. 1033; BERTAUX, p. 149.

²¹ DELACAMPAGNE, p. 151 et seq., with explanations as to how this happened.

²² Cf. the reference in IURLARO, p. 58.

²³ BARTH/FÄSSLER (Chronik), p. 20; HANS FÄSSLER, Zürich, Bern, Solothurn und die Sklaverei (1719–1839), Historisches Gutachten (expert opinion) dated 18/3/26, p. 42, with further references.

²⁴ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 42, with further references.

²⁵ BERTAUX, p. 148.

justify the enslavement of a human being, since all people were to be regarded as free.²⁶ He advised the merchants to invest no further in this «bloodthirsty» trade.²⁷

- 1576: French political theorist Jean Bodin (1529–1596) firmly rejected slavery in his work *Six livres de la République* with reference to human dignity.²⁸

In the 17th century, the French and the English were literally vying for dominance in the slave trade due to their great need for human capital,²⁹ a dominance which was ultimately secured by the English.³⁰ As a result, the slave trade reached proportions that further exacerbated the already cruel practices (more people died during transport; African slave hunters killed many people and displaced entire villages in order to sell a few dozen people to a slave trader; etc.).³¹ Parallel to this development, criticism intensified and now also encompassed secular and ecclesiastical acts of protest (pamphlets; refusal to grant absolution to slaveholders) as well as demands for reparation for what had happened. In Switzerland, a ban on the slave trade concerning Turkish slaves was already introduced at the beginning of the century, with violations resulting in punishment. All this is evidenced by the following sources:

- 1605: The Upper Engadine decreed, «[...] that no bonded slaves, who are referred to as Turks, shall be granted passage by our High Court, nor shall they be taken in or harbored by anyone, on pain of a fine of 30 kreuzers for each person or Turk so brought, which shall be paid by the owners or those who are guiding these persons.»³²
- 1615: Felipe Guaman Poma de Ayala (exact dates of birth and death unknown) took a radical stand against slavery in his work *Primer Nueva Corónica y Buen Gobierno*.³³
- 1625: Hugo Grotius (1583–1645) rejected Aristotle's view that there were people born into slavery by nature (the so-called barbarian peoples, see above) now, and regarded slavery as

²⁶ FÄSSLER (expert opinion), p. 42, with further references.

²⁷ Ibid., with further references.

²⁸ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 42 et seq., with further references.

²⁹ Further details on trans-imperial cooperation will follow later.

³⁰ BERTAUX, p. 149.

³¹ Ibid., p. 148.

³² ALFONS V. FLUGI, Türkische Sklaven im Engadin?, in: Anzeiger für Schweizerische Geschichte, 4/1871, p. 168, with further references, available at <<https://www.e-periodica.ch/digbib/view?pid=szg-004%3A1873%3A1%3A%3A174>> (last accessed on 14/3/26).

³³ FÄSSLER (expert opinion), p. 40, with further references.

contrary to nature.³⁴ Previously, he had regarded slavery of non-Christians as compatible with natural law and the law of nations.³⁵

- 1656: The English cooper Thomas Venner (1600–1661) condemned the slave trade in his treatise *A Banner of Truth Displayed*.³⁶
- 1681: Capuchin friar Epifanio de Moirans (1644–1689) from the French Jura region refused to grant absolution to slaveholders on the grounds that the keeping and trading of enslaved people were sins.³⁷ He demanded the release of the enslaved people and compensation for their labor.³⁸
- 1688: *The Germantown Protest* (pamphlet), written by a group of German and Dutch Mennonites, pointed out that there was no greater justification for enslaving Blacks than for enslaving *white* people.³⁹
- 1689: In his *Two Treatises of Government*, John Locke (1632–1704) argued «[...] that a man had natural, inalienable rights that pre-existed the nation-state [...]».⁴⁰ He also acknowledged that every person had a right to the fruits of their labor.⁴¹

Under the influence of the Enlightenment, resistance to slavery – particularly on the part of the so-called civilized nations⁴², which at that time were regarded as the sole authoritative source for the development of customary international law⁴³ – grew so markedly in the 18th century that

³⁴ ALLAIN (Slavery), p. 42 et seq.; BERND FRANKE, *Sklaverei und Unfreiheit im Naturrecht des 17. Jahrhunderts*, Hildesheim/Zurich/New York 2009, p. 93, with further references.

³⁵ JENNY S. MARTINEZ, *The Slave Trade and the Origins of International Human Rights Law*, New York 2012, p. 18, with further references. This statement is supported by the comments made by ALLAIN (Völkerrecht), p. 1033.

³⁶ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 43, with further references.

³⁷ BARTH/FÄSSLER (Chronik), p. 20.

³⁸ Ibid.

³⁹ DELACAMPAGNE, p. 210.

⁴⁰ Quoted in MARTINEZ, p. 18, with further references.

⁴¹ Ibid.

⁴² The term «Kulturvölker» is regularly used in German literature, for example by STEFAN ZIMMERMANN, *Strafrechtliche Vergangenheitsaufarbeitung und Verjährung, Rechtsdogmatische und -politische Analyse mit vergleichenden Ausblicken nach Tschechien, Ungarn und Frankreich*, Diss. Freiburg i. Br. 1997, p. 245. During this period, the so-called «Kulturvölker» consisted primarily of the European peoples. The term has been criticised (see among others ANNE-CHARLOTTE MARTINEAU, *Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law*, in: *The European Journal of International Law* 25/2014, p. 331, with further references). However, compared to the phrase «civilized peoples» it seems like the lesser of two evils.

⁴³ Cf. instead of many art. 38 para. 1 lit. c ICJ Statute; LASSA FRANCIS LAWRENCE OPPENHEIM, *International Law: A Treatise*, Vol. I: *Peace*, 3rd ed., London 1920, p. 1, available at <<https://ia800307.us.archive.org/8/items/cu31924007494754/cu31924007494754.pdf>> (last accessed on 21/3/26). In this context, OPPENHEIM points out that the origins of international law lie in «Christian civilisation» (ibid., p. 2). This is highly relevant to the present discussion, as it helps to properly contextualize the criticism raised by heterodox Christians from a legal perspective.

even states with a substantial economic interest in this practice introduced and enforced prohibitions, together with penalties for non-compliance. By this time, enslaved persons were already receiving certain reparations under specific circumstances. The following sources illustrate the developments during this century:

- 1720: Tamba, the king of the Rio Nunez region (today Guinea), organized his people and thwarted the slave trade, in part by capturing and executing middlemen.⁴⁴ As a result, he himself was captured and enslaved.⁴⁵ He organized a revolt on the slave ship and was subsequently brutally killed.⁴⁶ His companions were forced to eat his liver.⁴⁷ After that, they too were killed.⁴⁸
- 1724: France enacted the so-called Code Noir⁴⁹ for the US region of Louisiana, where the Mississippi Company operated.
- 1730: From the 1730s onwards, over a hundred enslaved persons in Paris brought freedom suits; the Admiralty Court routinely recognized their freedom.⁵⁰
- 1737: British Quaker⁵¹ Benjamin Lay (1662-1759) described slavery as repugnant and damaging to faith.⁵²
- 1748: In his *De l'esprit des loix*, Montesquieu (1689–1755) demonstrated – in part through an ironic reconstruction of contemporary attempts at justification – that there was no tenable justification for the enslavement of human beings; it proved to be incompatible with the principles of reason and natural law.⁵³
- 1752: David Hume (1711–1776) described slavery as «disgusting» and «barbarous».⁵⁴
- 1754: Anthony Benezet, a Quaker born in France who died in North America (1713–1784), in his publications *An Epistle of Caution and Advice and Concerning the Buying and Keeping*

⁴⁴ WITTMANN, p. 116, with further references.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ The Code Noir is available at <<https://www.loc.gov/item/2021667007>> (last accessed on 22/3/26). It regulated the status of enslaved people, defined rights and penalties (in favor of slaveholders) and, for example, required Catholic baptism.

⁵⁰ SUE PEABODY, Barriers to Accessing France's Sol Libre in Early Modern France, in: The European Experience in Slavery, 1650–1850, Rebekka von Mallinckrodt (ed.), Berlin/Boston 2024, p. 30.

⁵¹ A Protestant movement of a liberal persuasion (DELACAMPAGNE, p. 210).

⁵² BARTH/FÄSSLER (Chronik), p. 20.

⁵³ Cf. CHARLES-LOUIS DE SECONDAT, BARON DE LA BRÈDE ET DE MONTESQUIEU, *De l'esprit des lois*, Paris 1844, p. 163 et seqq., available at <https://archive.org/details/bub_gb_T5la1umY0TYC/page/166/mode/2up> (last accessed on 3/4/26).

⁵⁴ WHITMAN, p. 333, with further references.

of Slaves, wondered how they – whose very charge it was to spread the message of universal love and peace among humankind – could be so self-contradictory as to countenance this un-Christian practice, or even to acquire human beings themselves.⁵⁵

- 1755: That year saw the (posthumous) publication of *A System of Moral Philosophy* by Scottish Enlightenment philosopher Francis Hutcheson (1694–1746), who declared that all human beings had a right to life and natural liberty; he situated this right in the context of slavery.⁵⁶
- 1758: In his work *De l'Esprit*, general tax collector Claude Adrien Helvétius (1715–1771) condemned the slave trade and expressed outrage that the sugar for which Europe had such a craving was steeped in the blood of enslaved people.⁵⁷ He called for a sugar boycott.⁵⁸ In the same year, Emer de Vattel (1714–1767) assessed slavery in his *Le droit des gens ou principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains* as fundamentally incompatible with natural law⁵⁹ and as «disgrace to humanity»⁶⁰, which had «fortunately been banished from Europe».⁶¹
- 1759: François-Marie Arouet (1694–1778) published the book *Candide ou l'optimisme* under the pen name Voltaire; it quickly gained popularity throughout Europe.⁶² In it, Voltaire described the fate of enslaved people.⁶³
- 1760: In *A System of the Principles of the Law of Scotland*, Scottish legal scholar George Wallace took a clear stand against slavery.⁶⁴ In Jamaica, from this year onwards, some white people voluntarily set their enslaved people free («manumission») for various reasons (paternalistic generosity; reward for loyalty and hard work; love/affection/sympathy).⁶⁵ This

⁵⁵ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 44, with further references.

⁵⁶ BARTH/FÄSSLER (Chronik), p. 20. FÄSSLER (expert opinion), p. 44 et seq., with further references.

⁵⁷ DELACAMPAGNE, p. 203.

⁵⁸ Ibid.

⁵⁹ Quoted from CHRISTOPH GOOD, Emer de Vattel (1714-1767) – Naturrechtliche Ansätze einer Menschenrechtsidee und des humanitären Völkerrechts im Zeitalter der Aufklärung, Diss. St. Gallen 2010, p. 88, with further references.

⁶⁰ According to MARTINEZ, p. 19, with further references.

⁶¹ ALLAIN (Völkerrecht), p. 1033 et seq., with further references.

⁶² FÄSSLER (expert opinion), p. 35, with further references.

⁶³ Ibid., with further references. See also HUNTING, p. 413, with further references.

⁶⁴ See the reference in DELACAMPAGNE, p. 205.

⁶⁵ DAVID BECK RYDEN, Manumission in Late Eighteenth-Century Jamaica, in: New West Indian Guide 92/2018, available at <<https://www.sciencedirect.com/org/science/article/pii/S1382237318000211#FN000002>> (last visited on 14/3/26). On the concept of manumission see also WITTMANN, p. 113. Manumission also occurred from time to time among the Romans (see f.e. THOMAS E. J. WIEDEMANN, The Regularity of Manumission at Rome, in: The Classical Quarterly 35/1985, p. 162).

manumission was often accompanied by compensation for the future loss of board and lodging,⁶⁶ that is, for a portion of the prospective pecuniary damage.

- 1761: Portugal banned the import of enslaved people.⁶⁷ This year saw the publication of Jean-Jacques Rousseau's (1712–1778) epistolary novel *Julie, ou la Nouvelle Héloïse*, in which he expressed feelings of horror, pity, and shame regarding the slave trade.⁶⁸
- 1762: Jean-Jacques Rousseau condemned slavery even more explicitly in *Du contrat social ou principes du droit politique*: «Thus, however one looks at the matter, the right of a slave is null and void, not only because it is illegitimate, but because it is absurd and meaningless. These words, slavery and right, are contradictory; they are mutually exclusive. Whether applied from one man to another, or from one man to a people, this argument will always be equally nonsensical.»⁶⁹
- 1765: In his article *Traite des nègres*, Louis de Jaucourt (1704–1779) compared the colonial settlers to highwaymen and advocated the destruction of the colonies – whose luxury goods were vital to France's survival – through the abolition of slavery.⁷⁰ In this context, he asked himself whether human beings had the right to themselves by cruel and criminal means, and whether it could be lawful to deprive people of their inviolable rights out of base motives (greed, vanity, etc.).⁷¹
- 1769: The English jurist Granville Sharp (1735–1813) published *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery*, in which he asserted that slavery was contrary to the laws of nature, which guaranteed equality for all people, notwithstanding any artificial laws that society might impose upon them.⁷²
- 1772: In England, a significant court ruling was handed down this year, paving the way for the British abolitionist movement.⁷³ The ruling concerned the enslaved man James Somerset, born in West Africa, and his slaveholder Charles Stewart.⁷⁴ Somerset had fled

⁶⁶ RYDEN.

⁶⁷ RASSAM, p. 828, with further references.

⁶⁸ Cf. the reference with quotation in HUNTING, p. 412 et seq.

⁶⁹ Cf. JEAN-JACQUES ROUSSEAU, *Du contrat social ou principes du droit politique*, Livre Premier, Chapitre IV, De L'Esclavage, Amsterdam 1762, available at <<https://athena.unige.ch/athena/rousseau/rousseau-contrat-social.pdf>> (last visited on 14/3/26).

⁷⁰ HUNTING, p. 415, with further references.

⁷¹ Ibid.

⁷² BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 45, with further references.

⁷³ WHITMAN, p. 375, with further references.

⁷⁴ English Heritage, The Somerset v Stewart Case, available at <<https://www.english-heritage.org.uk/visit/places/kenwood/history-stories-kenwood/somerset-case>> (last accessed on 12/3/26). On this website more references about the Somerset Case can be found.

while in England and had refused to return to his service as a slave (he was to be transported to Jamaica by ship).⁷⁵ The central questions with which the judge, Lord Mansfield, was concerned were: Can a slave be lawfully detained in England and taken abroad against his will?⁷⁶ In his ruling, Lord Mansfield held, contrary to the applicable positive law⁷⁷: «[...] slavery is of such a nature, that it is incapable of being introduced on any reasons [...] but only by positive law. [...] It is so odious, that nothing can [...] support it, but positive law. Whatever inconveniences, therefore, may follow from this decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.»⁷⁸ Somerset was therefore released and not forced to return to North America. This was neither a criminal prosecution nor a civil action, and accordingly neither a penalty was imposed nor damages were awarded.

- 1773: The physician, chemist, and humanist Benjamin Rush (1746–1813) advocated in *An address to the inhabitants of the British settlements, on the slavery of the Negroes in America* for the abolition of slavery, as he believed it constituted a violation of natural law and a disgrace before God.⁷⁹ In the same year, German poet Matthias Claudius (1740–1815) criticised slavery in his politico-moral didactic poem *Der Schwarze in der Zuckerplantage*.⁸⁰
- 1775: In *African Slavery in America*, U.S. Founding Father Thomas Paine (1736–1809) criticised slavery and could not understand why this cruel practice was endorsed by many civilized, indeed Christian-minded, people, who were involved in it and wished to cling to it, even though it had been proven (by a number of eminent men and several publications) that it was contrary to nature, justice, humanity, and good governance.⁸¹
- 1776: The United States was founded. The Declaration of Independence stated: «[...] all men are created equal [...]».⁸²
- 1777: Vermont abolished slavery.⁸³ In response to numerous freedom suits brought before the Paris Admiralty Court (see above), King Louis XVI of France (1754–1793) issued new laws

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ BASSIOUNI, p. 450; DELACAMPAGNE, p. 214.

⁷⁸ English Heritage, The Somerset v Stewart Case (FN 74).

⁷⁹ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 45, with further references.

⁸⁰ DELACAMPAGNE, p. 212.

⁸¹ BARTH/FÄSSLER (Chronik), p. 20.

⁸² National Archives, America's Founding Documents, Declaration of Independence: A Transcription, available at <<https://www.archives.gov/founding-docs/declaration-transcript>> (last accessed on 14/3/26).

⁸³ HANS BARTH/HANS FÄSSLER, Die Schande des Bundesrats, in: WOZ Nr. 21 of 26/5/2022, p. 20; DELACAMPAGNE, p. 207.

that year, by which he prohibited the entry of any «noir, mulâtre, ou autre gens de couleur» into the French Kingdom.⁸⁴ He also declared the transfer of enslaved people within France to be illegal.⁸⁵

- 1780: Pennsylvania took steps towards the gradual abolition of slavery.⁸⁶
- 1781: The public learned of the shocking facts surrounding the slave ship *Zong*: 133 enslaved people had been thrown overboard to secure provisions for those who remained on board.⁸⁷ That same year, the newspaper *Zürcher Zeitung* (today NZZ) reported more broadly on slavery, the slave trade, and their deadly consequences, and noted: «Every year, Europeans purchase 104,100 slaves in Africa, whom they transport to their colonies, where they kill them, partly through unforgivable neglect and overburdening with work. The English transport 53,100 of them annually; the provinces of North America 6,300, the French 23,500, the Dutch 11,300, the Portuguese 8,700, the Danes 1,200. An English ship carrying several hundred Negroes to the West Indies often has only five Europeans on board, namely the crew. This vast number of imprisoned Blacks is kept in check by a handful of Whites through a single cannon, which opens its muzzle through a hole in the deck and is often loaded with chopped iron and lead, or at worst with glass and porcelain shards. Should the Blacks attempt to seek their natural freedom and realize that they outnumber the Whites, the cannon is fired into their midst: The blast and the screams of the wounded, whom one leaves to whimper helplessly as a lesson to the unharmed, restore calm. Often, even a blind shot suffices. On average, a human being costs about 70 guilders. What must not half of humanity suffer so that the other half may live in voluptuousness!»⁸⁸ That year (1781), in Massachusetts, the enslaved persons Bett and Brom (who were neither married nor related) sued their slaveholder John Ashley with the assistance of counsel.⁸⁹ They demanded the freedom that had been guaranteed to them by the constitution since 1780.⁹⁰ The court (on which Ashley sat as a judge [in an auxiliary capacity, as was customary at the time]) affirmed

⁸⁴ PEABODY, p. 30 et seq., with further references.

⁸⁵ Ibid., p. 32, with further references.

⁸⁶ DELACAMPAGNE, p. 210 et seq.

⁸⁷ DEREK O'BRIEN, *Magna Carta, the 'Sugar Colonies' and 'Fantasies of Empire'*, in: *Magna Carta and Its Modern Legacy*, Robert Hazell/James Melton (Hrsg.), New York 2015, p. 111, with further references.

⁸⁸ *Vermischte Meldungen*, in: *Zürcher Zeitung*, 25/8/1781, p. 4.

⁸⁹ Commonwealth of Massachusetts, *Massachusetts Constitution and the Abolition of Slavery*, available at <<https://www.mass.gov/guides/massachusetts-constitution-and-the-abolition-of-slavery#-the-mum-bett-case>> (last accessed on 11/3/26).

⁹⁰ Ibid. It does not appear that reparations for slavery had been demanded.

- their freedom, even though Ashley had paid for them, and ordered him to release the two.⁹¹ The latter failed to comply and appealed the decision.⁹² The higher court affirmed that the two enslaved persons were not, and had never been, Ashley's property, and awarded them compensation.⁹³ The compensation amounted to GBP 1.5.⁹⁴ In terms of purchasing power, this amount corresponds to almost CHF 350 today. The available court records do not specify the grounds on which this compensation was awarded. According to rumors, Ashley Bett's wife had struck Bett with a hot shovel, causing burns; the attack had really been intended for Bett's sister.⁹⁵ The compensation may have been the result of this single incident, which would explain the low amount. Also that year (1781), the first proceedings concerning the enslaved man Quock Walker took place.⁹⁶ He brought an action against his slaveholder Nathaniel Jennison for «assault and battery».⁹⁷ Walker contended that he had been wrongfully injured, since his first slaveholder, James Caldwell, had promised to grant him his freedom at the age of 25.⁹⁸ The case was tried before a jury at the Worcester County Court of Common Pleas.⁹⁹ The jury found that Walker was a free man and not Jennison's lawful slave, and awarded him compensation in the amount of GBP 50 at the time.¹⁰⁰ In terms of purchasing power, this amount is equivalent to approximately CHF 11,500 today.
- 1783: Massachusetts and New Hampshire abolished slavery.¹⁰¹ Starting this year, Belinda, a former slave, made history. After she had obtained her freedom – her slaveholder, Isaac Royall of Medford, had fled to Britain and left his property behind when he fled¹⁰² – she fell

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid. Cf. on this also the court records of the higher instance, available at <<https://elizabethfreeman.mumbet.com/who-is-mumbet/mumbet-court-records/>> (last accessed on 11/3/26).

⁹⁴ Commonwealth of Massachusetts, Massachusetts Constitution and the Abolition of Slavery (FN 89). It was 30 shillings. At that time, the pre-decimal currency system was still in use in the United Kingdom. 1 pound was equal to 20 shillings, and 1 shilling was equal to 12 pence. The pound has been the single currency of Great Britain (GBP) since 1707. / General note on historical monetary amounts: The monetary amounts in this criminal complaint have been converted into figures with decimal places. A CPI inflation calculator was used to convert each amount into the equivalent in the local currency based on current purchasing power. (i.e. <https://www.in2013dollars.com/uk/inflation/1781?amount=1.50>). The Onanda Currency Converter was always used to convert this amount into CHF (i.e. <https://www.oanda.com/currency-converter/en/?from=GBP&to=CHF&amount=1>). This will not be mentioned again.

⁹⁵ Commonwealth of Massachusetts, Massachusetts Constitution and the Abolition of Slavery (FN 89).

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ DELACAMPAGNE, p. 210.

¹⁰² ROY E. FINKENBINE, Belinda's Petition: Reparations for Slavery in Revolutionary Massachusetts, in: The William and Mary Quarterly 64/2007, p. 95 et seq.

into poverty.¹⁰³ She was already of a somewhat advanced age, lived on the margins of society and looked after her disabled daughter Prine.¹⁰⁴ When she realized that she had nothing to show for her years of slave labor, she turned to the Massachusetts legislature («Honourable Senate and House of Representatives in General Court Assembled».)¹⁰⁵ She initially applied for the three-year annuity bequeathed to her by Royall in his will and, upon its expiry, for a continuing annual annuity extending beyond that term, for herself and her daughter, to be paid out of Royall's estate.¹⁰⁶ She based her petition on the ground that she had contributed, through her labor, to Royall's wealth.¹⁰⁷ Belinda and her daughter were awarded an annual annuity of GBP 15.6.¹⁰⁸ Adjusted for purchasing power, this figure amounts to just under CHF 3,200 today. The annuity was paid out of the income generated by the Royall property.¹⁰⁹ Belinda's petition generated considerable public resonance.¹¹⁰ (With respect to France as well, there are indications that manumitted enslaved persons received an annuity; in connection with the case of Madeleine, a figure of 600 livres per year is mentioned.¹¹¹)

- 1784: Connecticut and Rhode Island took steps towards the gradual abolition of slavery.¹¹² In the same year, former Royal Navy doctor James Ramsay published *An Essay on the Treatment and Conversion of African Slaves in the British Sugar Colonies*.¹¹³ In this essay, he described the appalling treatment of the enslaved people he had witnessed on board of a slave ship.¹¹⁴ He gave up his career as a Royal Navy doctor as a result of this experience and later worked as an Anglican clergyman and doctor on a sugar plantation on Saint Kitts.¹¹⁵

¹⁰³ ANA LUCIA ARAUJO, Reparationen, in: Welten der Sklaverei, Eine vergleichende Geschichte, Paulin Ismard (ed.), Berlin 2023, p. 1062; FINKENBINE, p. 95 et seq.

¹⁰⁴ FINKENBINE, p. 95, with further evidence.

¹⁰⁵ Ibid.

¹⁰⁶ ARAUJO, p. 1062; FINKENBINE, p. 95 et seq. Royall had stipulated in his will that Belinda was to be paid «thirty pounds for three years».

¹⁰⁷ ARAUJO, p. 1062.

¹⁰⁸ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 41, with further references; FINKENBINE, p. 102, with further references. It was 15 pounds and 12 shillings.

¹⁰⁹ FINKENBINE, p. 102, with further references.

¹¹⁰ ARAUJO, p. 1062.

¹¹¹ PEABODY, p. 34, with further references.

¹¹² DELACAMPAGNE, p. 210 et seq.

¹¹³ O'BRIEN, p. 111, with further references.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

- 1786–1817: Several Swiss people were active members of the Société des Amis des Noirs¹¹⁶ and the Groupe de Coppet and spoke out in favor of the abolition of slavery and the slave trade.¹¹⁷ Among the founders of the Société des Amis des Noirs was merchant and cotton trader Jacques Bidermann (1751–1817) from Winterthur.¹¹⁸
- 1787: The Society for the Abolition of the Slave Trade was founded in Great Britain; it presented 100,000 signatures to Parliament and called for a boycott of slave-grown sugar, a boycott joined by nearly half a million Britons.¹¹⁹ In the same year, the Northwest Ordinance, passed by the Continental Congress, declared slavery to be fundamentally unlawful throughout the territory of what are now the states of Illinois, Indiana, Michigan, Ohio, and Wisconsin (with the exception of criminals sentenced to imprisonment).¹²⁰ And James Madison (1751–1836), one of the Founding Fathers of the United States, declared that year, in the course of the preparatory work for the first U.S. Constitution, that it would be wrong to recognize in it the idea that human beings could be property.¹²¹
- 1788: In her *Réflexions sur les hommes nègres*, Olympe de Gouges (1748–1793) expressed the conviction that it was violence, prejudice, and the unjust, mighty interests of *white* people that had led to slavery, and that nature had played no part in it.¹²²
- 1789: The first article of the French *Déclaration des droits de l'homme et du citoyen* stated that all men are born free and equal in rights («Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.»).¹²³ That same year, Benjamin-Sigismond Frossard (1754–1830), a pastor and doctor of jurisprudence from Vaud, in *La Cause des esclaves nègres*, called for the disgrace associated with the slave trade, and the barbarity with which these human beings were treated, to be brought before the tribunal of public opinion.¹²⁴ He observed: «There is no one who would not have said that this trade, founded on greed and fuelled by barbarism,

¹¹⁶ The main aim of this society was to secure civil rights for freed slaves and «people of color» (DELACAMPAGNE, p. 219).

¹¹⁷ BARTH/FÄSSLER (Chronik), p. 20; FÄSSLER (expert opinion), p. 36, with further references.

¹¹⁸ FÄSSLER (expert opinion), p. 36, with further references.

¹¹⁹ BARTH/FÄSSLER (Chronik), p. 20; COLIN CLARKE, *Racist Regimes, Forced Labour and Death, British Slavery in the Caribbean and the Holocaust in Germany and Occupied Europe*, Cham 2024, p. 106.

¹²⁰ DELACAMPAGNE, p. 211; WHITMAN, p. 382, with further references.

¹²¹ On this see the reference in WHITMAN, p. 333.

¹²² BARTH/FÄSSLER (Chronik), p. 20.

¹²³ La Maison Élysée, *La déclaration des droits de l'homme et du citoyen*, available at <<https://www.elysee.fr/la-presidence/la-declaration-des-droits-de-l-homme-et-du-citoyen>> (last accessed on 14/3/26).

¹²⁴ BARTH/FÄSSLER (Chronik), p. 21.

violates all the laws of justice, religion, and sound policy.»¹²⁵ That year, British parliamentarian William Wilberforce introduced the first bill to ban the slave trade.¹²⁶ 1789 was also the year of publication of the autobiography of the formerly enslaved Olaudah Equiano (c. 1745–1797).¹²⁷

- 1791: Christian Ulrich Detlev von Eggers (1758–1813), a German professor of law and political economy, informed the readers of the journal *Deutsches Magazin*, in an appeal, of the efforts of the Société des Amis des Noirs.¹²⁸ He called upon his readers to contribute to this society's cause and, for example, to break with their prejudices against Black people.¹²⁹
- 1792: Christian VII (1749–1808), King of Denmark and Norway, decreed a prohibition on any participation by Danes in the slave trade, in particular the import of slaves into the Danish West Indies (today the US Virgin Islands) and the export from present-day Ghana; the decrees entered into force on 1 January 1803, following a transitional period of a good ten years.¹³⁰ They had been published immediately after their promulgation¹³¹ and constituted one of the first state prohibitions of the transatlantic slave trade.¹³² Violations of the prohibition were regarded as unlawful.¹³³ This is notable because, at that time, Denmark had the largest share in the slave trade of any colonial power relative to population size.¹³⁴ The British government, too, came close to imposing an immediate ban on slavery during this period.¹³⁵ The proposal was passed by the House of Commons but blocked in the House of Lords.¹³⁶ (The population is represented in the House of Commons. In the 18th century, the House of Lords represented almost exclusively the financial elite [hereditary nobility, landed gentry, bishops], which profited from enslavement.)

¹²⁵ FÄSSLER (expert opinion), p. 37, with further references.

¹²⁶ NOËMI CRAIN MERZ, Der transatlantische Sklavenhandel, available at <<https://blog.nationalmuseum.ch/2019/09/der-transatlantische-sklavenhandel/>> (last accessed on 8/3/26).

¹²⁷ Ibid.; DELACAMPAGNE, p. 216. Other sources date its publication to 1791 (O'BRIEN, p. 111, with further references).

¹²⁸ SARAH LENTZ, «Wer helfen kann, der helfe!», Deutsche SklavereigegnerInnen und die atlantische Abolitionsbewegung, 1780–1860, Diss. Bremen, Göttingen 2020, p. 56.

¹²⁹ Ibid.

¹³⁰ DANIEL P. HOPKINS, The Danish Ban on the Atlantic Slave Trade and Denmark's African Colonial Ambitions, 1787–1807, in: *Itinerario* 25/2001, pp. 154, 163 and 165, with further references.

¹³¹ Ibid., p. 165, with further references.

¹³² Danmarks Nationalleksikon, Danmarkshistorien, Forordning om negerhandelen, 16. marts 1792, available at <https://danmarkshistorien.lex.dk/Forordning_om_negerhandelen%2C_16._marts_1792> (last accessed on 13/3/26).

¹³³ Ibid.

¹³⁴ EVA LUNDGREN, Denmark as a colonial power, Interview with Klas Rönnbäck and Stefania Galli, 22/10/25, available at <<https://www.gu.se/en/news/denmark-as-a-colonial-power>> (last accessed on 23/3/26).

¹³⁵ HOPKINS, p. 163, with further references.

¹³⁶ See MARTINEZ, p. 22, with further references.

- 1793: The Jamaican Consolidated Slave Act was amended to stipulate that anyone found guilty in Jamaica of mutilating or dismembering a slave was liable to pay a monetary penalty/fine of GBP 100.¹³⁷ That GBP 100 is equivalent to around CHF 20,000 today, taking purchasing power into account.
- 1794: The French National Convention abolished slavery.¹³⁸ In this process, the deputy Jacques Alexis Thuriot (1753–1829) coined the term «crime de lèse-humanité».¹³⁹ In the same year, the U.S.A. passed the Act to Prohibit the Carrying On of the Slave Trade.¹⁴⁰ The act prohibited the transport of slaves from the United States to another country and barred U.S. citizens from outfitting a ship for the purpose of importing slaves.¹⁴¹ Violations were punished with monetary penalties/fines and the confiscation of the ships.¹⁴²
- 1797: In Great Britain, the slave trade was subject to numerical restrictions; exceeding the prescribed restrictions was punishable by monetary penalties/fines.¹⁴³
- 1798: Great Britain enacted the Amelioration Act, which applied to the British Caribbean colonies.¹⁴⁴ This act introduced financial penalties for cruel treatment – that is, criminal consequences for slaveholders who mistreated their slaves.¹⁴⁵

The codification of prohibitions and penalties at the level of nation states continued throughout the 19th century. The penalties became increasingly severe. Following the Congress of Vienna, this development was accompanied by various multilateral and bilateral instruments of codified international law (e.g. agreements, treaties). By the end of the period relevant to this criminal

¹³⁷ O'BRIEN, p. 111, with further references. The financial interests of slaveholders based in the Caribbean were considerable. There, the authorities were more lenient towards slaveholders than in Europe. Based on O'BRIEN's account of the situation in the Caribbean, it can be assumed that significantly higher monetary penalties/fines would have been imposed in Europe for such offences, had the penalties been limited to fines.

¹³⁸ BARTH/FÄSSLER (Schande), p. 20.

¹³⁹ BARTH/FÄSSLER (Chronik), p. 21.

¹⁴⁰ National Archives Foundation, Slave Trade Act of 1794, available at <<https://docsteach.org/document/slave-trade-act-1794>> (last accessed on 12/3/26).

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Royal Navy, Slave Trade Legislation, Acts of Parliament, An Act for regulating the Shipping and carrying of Slaves in British Vessels from the Coast of Africa, Anno tricesimo septimo Georgii III, cap. CIV, 19.07.1797, available at <https://www.pdavis.nl/Legis_26.htm> (last accessed on 12/3/26).

¹⁴⁴ Laws of Enslavement and Freedom in the Anglo-Atlantic World, An Act more effectually to provide for the support, and to extend certain regulations for the protection of Slaves, to promote and encourage their increase, and generally to meliorate their condition, available at <<https://slaveryandfreedomlaws.lib.unb.ca/laws/st-christopher-1798>> (last accessed on 13/3/26).

¹⁴⁵ Ibid.

complaint (1839), the following key points, amongst others, are relevant:

- 1800: The U.S.A. passed An Act in Addition to the Act Intituled "An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country."¹⁴⁶ This act increased the penalties for importing enslaved people.¹⁴⁷ For persons residing in the U.S.A., it became illegal, regardless of their nationality, to take part in the slave trade between any nations, irrespective of who owned a ship or where it came from.¹⁴⁸ Those who served on board a slave ship faced heavy monetary penalties/fines and prison sentences.¹⁴⁹
- 1803: The Danish ban on the slave trade of 1792 entered into force (see above).¹⁵⁰ U.S. Congress passed An Act to Prevent the Importation of Certain Persons into Certain States, Where, by the Laws Thereof, Their Admission is Prohibited.¹⁵¹ This act stipulated that a monetary penalty/fine of USD 1,000 was to be paid for every person who was to be taken to the U.S.A. to be sold there.¹⁵² The captain of the slave ship had to pay the monetary penalty/fine.¹⁵³ In terms of purchasing power, this is equivalent to nearly USD 29,000 today. A slave ship could carry 300, 400 or even 600 people;¹⁵⁴ during the period relevant here, the number was usually 300–400.¹⁵⁵
- 1804: Haiti gained independence and abolished slavery.¹⁵⁶
- 1807: Great Britain abolished the slave trade by an act of 23 February 1807, effective as of 1 January 1808.¹⁵⁷ The act banned the slave trade throughout the British Empire and

¹⁴⁶ Yale Law School, An Act in Addition to the Act Intituled "An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country., available at <https://avalon.law.yale.edu/19th_century/sl002.asp> (last accessed on 14/3/26).

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ DELACAMPAGNE, p. 212.

¹⁵¹ National Archives Foundation, Slave Trade Act of 1794 [Description below this act!], available at <<https://docsteach.org/document/slave-trade-act-1794>> (last accessed on 12/3/26).

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ MARTINEZ, pp. 3 and 72.

¹⁵⁵ HERBERT S. KLEIN, *The Atlantic Slave Trade*, 2nd ed., Cambridge 2010, p. 151.

¹⁵⁶ ARAUJO, p. 1063.

¹⁵⁷ Cf. UK Parliament, Parliament and the British Slave Trade: Key dates, available at <<https://www.parliament.uk/about/living-heritage/transformingsociety/tradeindustry/slavetrade/key-dates/>> (last accessed on 8/3/26); BARTH/FÄSSLER (Schande), p. 20; CRAIN MERZ; DELACAMPAGNE, p. 217; FÄSSLER (expert opinion), pp. 11 and 47, with further references.; SARAH KEHL, *Moderne Sklaverei*, Diss. Lucerne, Zurich 2021, p. 169 N 214, with further references.; O'BRIEN, p. 112, with further references.; ADRIANE SANCTIS DE BRITO, *Seeking Capture, Resisting Seizure, An International Legal History of the Anglo-Brazilian Treaty for the Suppression of the Slave Trade (1826-1845)*, Frankfurt a.M. 2023, p. 1. The statements made during the relevant parliamentary

imposed monetary penalties/fines on captains, shipowners, investors (e.g. lenders), insurers, and other accomplices should they violate the ban.¹⁵⁸ Foreign vessels were also subject to the penal provisions.¹⁵⁹ In the same year, the U.S.A. prohibited, effective 1808, the importation of enslaved persons into U.S. ports and attached criminal consequences to any violation of this prohibition.¹⁶⁰ Convictions demonstrably ensued.¹⁶¹

- 1810: James Madison (mentioned earlier), at that time the fourth President of the U.S.A., described the slave trade as a «violation of the laws of humanity» in a message to U.S. Congress.¹⁶² In the same year, a British Vice-Admiralty Court, a maritime court, held, among other things, that «the African slave trade violated the principles of justice and humanity».¹⁶³
- 1811: The United Kingdom's Slave Trade Felony Act rendered any involvement in the slave trade a major criminal offense («felony»)¹⁶⁴ Now traders, captains, and others participants no longer faced «merely» monetary penalties/fines and confiscations, but also imprisonment with hard labor.¹⁶⁵ The norms also applied to accomplices.¹⁶⁶
- 1812: On the basis of the act mentioned above, a trial was held in Sierra Leone against the slave traders Samuel Samo, Joseph Peters and William Tufft, who were convicted by the

debate are available at <<https://api.parliament.uk/historic-hansard/commons/1807/feb/10/slave-trade-abolition-bill>> (last accessed on 12/3/26).

¹⁵⁸ Royal Navy, Slave Trade Legislation, Acts of Parliament, An Act to prevent the Importation of Slaves, by any of His Majesty's Subjects into any Islands, Colonies, Plantations, or Territories belonging to any Foreign Sovereign, State, or Power; and also to render more effectual a certain Order, made by His Majesty in Council on the Fifteenth Day of August One thousand eight hundred and five, for prohibiting the Importation of Slaves (except in certain Cases), into any of the Settlements, Islands, Colonies, or Plantations on the Continent of America, or in the West Indies, which have been surrendered to His Majesty's Arms during the present War; and to prevent the fitting out of Foreign Slave Ships from British Ports, 46° Georgii III. Cap. LII., 23/5/1806, available at <https://www.pdavis.nl/Legis_25.htm> (last accessed on 12/3/26).

¹⁵⁹ Ibid.

¹⁶⁰ National Archives Foundation, Act Prohibiting the Importation of Slaves, available at <<https://docsteach.org/document/act-prohibit-importation-slaves>> (last visited on 12/3/26).

¹⁶¹ See the example in ANITA RUPPRECHT, «When he gets among his Countrymen, they tell him that he is free»: Slave Trade Abolition, Indentured Africans and a Royal Commission, in: *Slavery & Abolition* 33/2012, p. 436, with further references.

¹⁶² MARTINEZ, p. 116, with further references.

¹⁶³ Quoted from ALLAIN (Völkerrecht), p. 1035, with further references.

¹⁶⁴ Royal Navy, Slave Trade Legislation, Acts of Parliament, An Act for rendering more effectual an Act made in the Forty Seventh Year of His Majesty's Reign, intituled, An Act for the Abolition of the Slave Trade, 51° Georgii III. Cap. XIII., 14/5/1811, available at <https://www.pdavis.nl/Legis_26.htm> (last accessed on 12/3/26).

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

jury.¹⁶⁷ In the course of the proceedings, the presiding judge described the slave traders as «hostes humani generis», «much worse than pirates» and «monsters».¹⁶⁸ (The reference to piracy is relevant because piracy had already been recognized as an «offence against the human race» prior to this point.¹⁶⁹)

- 1814: King William I of the Netherlands (1772–1843) banned the Dutch slave trade.¹⁷⁰ The ban was specifically aimed at the participation of Dutch citizens and vessels.¹⁷¹
- 1814/15: On the occasion of the Congress of Vienna, the slave trade was explicitly condemned in the «Declaration of the Powers on the Abolition of the Slave Trade» of 8 February 1815 as having been considered «by just and enlightened men of *all ages* [emphasis added by the undersigned], as repugnant to the principles of humanity and universal morality» and as a «scourge which has so long desolated Africa, degraded Europe, and afflicted humanity».¹⁷² This declaration formed part of the annex to the official Final Act of 9 June 1815.¹⁷³ In it, the participating states undertook to abolish the slave trade.¹⁷⁴ The wording of the declaration corresponds, rhetorically, to the standard that would later come to be applied to *ius cogens* and *erga omnes* norms. In the run-up to the Congress of Vienna, Thomas Clarkson, a British abolitionist, had taken the liberty of drawing the attention of the Prussian King Frederick William III – who was one of the key monarchs at the Congress of Vienna – to the barbaric slave trade by means of a letter and a booklet, explicitly linking this with the hope that Frederick William III might speak out against the continuation of the slave

¹⁶⁷ There is a very detailed document on this procedure: The Trials of the Slave Traders Samuel Samo, Joseph Peters, and William Tufft, Tried in April and June, 1812, Before the Hon. Robert Thorpe, L.L.D. Chief Justice of Sierra Leone, &c. &c. With Two Letters on the Slave Trade, From a Gentleman Resident at Sierra Leone to an Advocate for the Abolition, In London, p. 11 et seq., available at <https://en.wikisource.org/wiki/Trials_of_the_Slave_Traders_Samo,_Peters_and_Tufft> (last accessed on 13/3/26).

¹⁶⁸ Ibid., p. 11.

¹⁶⁹ Cf. the reference to a relevant quotation in MARTINEZ, p. 125, with further references. This recognition was based on customary law. Even today, the prohibition of piracy is recognized as customary international law (concerning this see ZIEGLER [Völkerrecht], p. 51 N 112).

¹⁷⁰ WILLIAM TUCKER, Fourth Sub-Enclosure in No. 1382., Commander Tucker to Governor Bosch. 28/10/1839, in: Class B., Further Series., Correspondence with Foreign Powers Relating to the Slave Trade. 1840, London 1840, p. 148, available at <<https://cloudshare.regeneratedidentities.org/LA/Irish%20Publishing%20Press/Slave%20Trade%2019/Class%20B.%20%28Further%20Series.%29%20Correspondence%20with%20Spain%2C%20Portugal%2C%20Brazil%2C%20the%20Netherlands%2C%20and%20Sweden%2C%20relative%20to%20the%20slave%20trade.%20Jan%201-May%2010%2C%201840.pdf>> (last accessed on 14/3/26).

¹⁷¹ Ibid.

¹⁷² RASSAM, p. 828, with further references.

¹⁷³ The Final Act of the Congress of Vienna is available at <<https://www.staatsvertraege.de/Frieden1814-15/wka1815-i.htm>> (last accessed on 15/8/26).

¹⁷⁴ SANCTIS DE BRITO, p. 25.

trade at the Congress of Vienna.¹⁷⁵ In this letter, Clarkson described slavery as «a Mass of Crime and Misery unexampled in the History of the World».¹⁷⁶ Clarkson had also presented the booklet to the Minister of State, Prince Karl August von Hardenberg, and in his accompanying letter had used the term «against the Law of Nature, and therefore against the Law of Nations».¹⁷⁷ France, which in the First Treaty of Paris of 1814 had already undertaken to abolish the slave trade within five years, reaffirmed this commitment in the Second Treaty of Paris of 1815 in the context of the resolutions of the Congress of Vienna.¹⁷⁸

- 1815–1839: During this period,¹⁷⁹ further relevant national developments followed; namely, in the wake of the Congress of Vienna, several bilateral¹⁸⁰ and multilateral instruments (treaties, agreements, etc.) concerning slavery were signed respectively ratified.¹⁸¹
 - 1817: Treaty between Great Britain and Spain for the Abolition of the Slave Trade:¹⁸² In this treaty, Spain undertook to abolish the slave trade (with a transitional period) and to cooperate in the prosecution of illegal vessels.
 - 1818: In the Anglo-Dutch Slave Trade Treaty, the Netherlands undertook to ban the slave trade within its territory and to make it a punishable offense.¹⁸³ The agreement granted the signatory states reciprocal rights of inspection: Ships could be stopped and searched provided there were reasonable grounds to suspect they were carrying

¹⁷⁵ LENTZ (Helfe), p. 167, with further references.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ PAUL E. LOVEJOY, Appendix - Chronology of Measures against Slavery, 5/6/2012, available at <<https://www.cambridge.org/core/books/abs/transformations-in-slavery/chronology-of-measures-against-slavery/B759FB5758B1B5B963971E87A638ADAC>> (last accessed on 28/3/26). The text of the 1815 treaty is available at <<https://www.napoleon-empire.org/en/official-texts/treaty-of-paris-1815.php>> (last accessed on 28/3/26) (Art. XI: «[...] confirmed, and shall be maintained [...]»).

¹⁷⁹ Examples of later instruments: 1841: Treaty for the Suppression of the African Slave Trade (Treaty of London) (BASSIOUNI, p. 460). The treaty contains an explicit recognition of the criminal nature of the prohibition of slavery (ibid., p. 461). / 1842: Quintuple-Treaty (HANNES TRETTER, Entwicklung und gegenwärtige Bedeutung der internationalen Sklavereiverbote, Development and Current Importance of International Inhibitions of Slavery, in: Fortschritt im Bewusstsein der Grund- und Menschenrechte, Progress in the Spirit of Human Rights, Festschrift für Felix Ermacora, Manfred Nowak/Dorothea Steurer/Hannes Tretter [eds.], Kehl/Strassburg/Arlington 1988, p. 532; cf. also the reference in HANS VEST/URS SUTTER, art. 264a Verbrechen gegen die Menschlichkeit / Lit. c Versklavung, in: Die völkerstrafrechtlichen Bestimmungen des StGB, Kommentar, Hans Vest/Andreas R. Ziegler/Jürg Lindenmann/Stefan Wehrenberg [eds.], Zurich 2014, p. 383 N 162.).

¹⁸⁰ These are not set out in detail.

¹⁸¹ BASSIOUNI, p. 453.

¹⁸² The text of the treaty is available at <https://liberatedafricans.org/databases/source_details_AL.php?ObjectID=23> (last accessed on 28/3/26). See also LOVEJOY (Appendix) (FN 178); DAVID MURRAY, Odious Commerce, Britain, Spain and the abolition of the Cuban slave trade, Cambridge 1980, p. 50 et seqq.

¹⁸³ Royal Navy, Slave Trade Legislation, TREATY between His Britannic Majesty and His Majesty the King of the Netherlands, for preventing their Subjects from engaging in any Traffic in Slaves. Signed at the Hague, May Fourth One thousand eight hundred and eighteen, Art. I, available at <https://www.pdavis.nl/Treaty_NL.htm> (last accessed on 14/3/26).

slaves.¹⁸⁴ Mixed Commission Courts (Freetown [Sierra Leone], Paramaribo [Suriname]) decided on disputes arising from this agreement.¹⁸⁵

- 1819: In a message to the US House of Representatives, US President James Monroe described the slave trade as «disgraceful to the civilized world».¹⁸⁶
- 1821: A Royal Commission of Inquiry was sent to the Danish West Indies to investigate the situation (health, etc.) of the Africans who had been recruited by the British Royal Navy following the abolition of the slave trade.¹⁸⁷ In the same year, the American Colonization Society¹⁸⁸ purchased a piece of land in Sierra Leone and founded a town named Monrovia in honor of President Monroe; several thousand former enslaved people «brought home» from the U.S.A. were settled there.¹⁸⁹ In the same year, the autobiography of the former slave trader Joachim Christian Nettelbeck was published, in which he described the involvement of Germans in the slave trade at all levels.¹⁹⁰
- 1822: Declaration Respecting the Abolition of the Slave Trade (Congress of Verona).¹⁹¹
- 1824: Great Britain passed An Act for the more effectual Suppression of the African Slave Trade:¹⁹² The act equated certain acts of the slave trade with piracy as of January 1825 and threatened perpetrators with death (without spiritual assistance). A few months later, Great Britain enacted An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade:¹⁹³ This act was aimed specifically at investors: Lending money, providing security, granting loans, making advances, offering guarantees, etc.,

¹⁸⁴ Ibid., Art. II and III.

¹⁸⁵ Ibid., Art. VII und Annex Regulations for the Mixed Courts of Justice, which are to reside on the Coast of Africa, and in a Colonial Possession of His Majesty the King of the Netherlands. On the equivalent commissions in Brazil and Cuba see MARTINEZ, p. 69, with further references.

¹⁸⁶ WILLIAM EDWARD BURGHARDT DU BOIS, The Suppression of the African Slave Trade to the United States of America 1638-1870, London/Bombay 1896, p. 251, available at <<https://archive.org/details/suppressionofafr00dubo/page/n5/mode/2up>> (last accessed on 16/3/26).

¹⁸⁷ RUPPRECHT, p. 435. The Africans who were seized from illegally operating slave ships were either enlisted in the armed forces or employed as contract workers for a maximum of 14 years. It was these contract workers who were the subject of the investigation.

¹⁸⁸ According to BERTAUX, this private company set itself the aim of resettling freed slaves in Africa. Later, the company's settlement was named Liberia and granted the status of a state.

¹⁸⁹ BERTAUX, p. 151; BURGHARDT DU BOIS, p. 249.

¹⁹⁰ LENTZ (Helfe), p. 173, with further references.

¹⁹¹ BASSIOUNI, p. 460.

¹⁹² Royal Navy, Slave Trade Legislation, Acts of Parliament, An Act for the more effectual Suppression of the African Slave Trade, 5° Georgii IV, cap. XVII, 31.03.1824, available at <https://www.pdavis.nl/Legis_17.htm> (last accessed on 12/3/26).

¹⁹³ Royal Navy, Slave Trade Legislation, Acts of Parliament, An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade, 5° Georgii IV, cap. CXIII, 14/6/1824, available at <https://www.pdavis.nl/Legis_17.htm> (last accessed on 12/3/26); UK Legislation, UK Public General Acts, Slave Trade Act 1824, 24/6/1824, Ziff. IX, available at <<https://www.legislation.gov.uk/ukpga/Geo4/5/113/enacted>> (last accessed on 16/3/26).

were declared criminal offenses. A monetary penalty/fine equal to twice the value of such financial investments had to be paid.

- 1825: Charles Fenton Mercer (1778–1858) presented a resolution to US Congress calling on the President, amongst other things, to encourage (other) nations to declare the slave trade to be piracy under international law («piracy, under the laws of nations»).
- 1826: Great Britain concluded an agreement with Brazil under which the slave trade conducted by Brazilians was classified not only as illegal but also as an act of piracy.
- 1827: A French law criminalized the slave trade, prescribing terms of imprisonment, among other penalties, for any breach.
- 1831: France and Great Britain concluded an agreement aimed at putting an end to the trade in enslaved Black people; the two countries granted each other reciprocal rights of inspection. France enacted a law replacing that of 1827, which made the slave trade mandatorily punishable by imprisonment; the maximum term of imprisonment varied depending on the offense. Investors and insurers also faced term of imprisonment, the length of which depended in each case on the principal offense.
- 1833: The Emancipation Act abolished slavery throughout the British Empire.
- 1835: The Zurich Criminal Code of 24 September 1835, which entered into force on 1 January 1836, also contained relevant criminal provisions. According to § 174 and § 175 lit. a, an act was classified as first-degree abduction «if the victim was taken to distant parts of the world to be abandoned there or to serve as a slave or serf». In such cases, the sentence was imprisonment in chains for a term not exceeding four and twenty [24] years. First-degree abduction at that time was not considered kidnapping, as the latter was regulated separately (§ 178 et seq.). It is clear from § 5 that imprisonment in chains was a punishment more severe than imprisonment or penitentiary. The specific

¹⁹⁴ BURGHARDT DU BOIS, p. 260.

¹⁹⁵ MARTINEZ, p. 126, with further references.

¹⁹⁶ Loi relative à la Répression de la Traite des Noirs, 25 April 1827, Bulletin des lois, ser. 8, vol. 6, p. 377. This text is available at <https://fr.wikipedia.org/wiki/Loi_du_25_avril_1827#/media/Fichier:Loi_du_25_avril_1827.jpg> (last accessed on 14/3/26).

¹⁹⁷ Villèle Museum, Abolition Slavery, Chronology of abolitions, available at <<https://www.portail-esclavage-reunion.fr/en/documentaires/abolition-slavery/chronology-of-abolitions/>> (last accessed on 12/3/26).

¹⁹⁸ Loi du 4 mars 1831, Concernant la répression de la Traite des Noirs, Bulletins des lois, available at <<https://www.assemblee-nationale.fr/histoire/esclavage/loi-4mars1831.pdf>> (last accessed on 14/3/26).

¹⁹⁹ Ibid.

²⁰⁰ BERTAUX, p. 150; PEABODY, p. 40, with further references.

²⁰¹ Erster Theil. Von den Verbrechen und deren Bestrafung, in: StAZH OS 4 (pp. 43–148), available at <https://www.zentraleserien.zh.ch/documents/os/OS_4_S__43-148_> (last accessed on 15/3/26).

features of this custodial sentence, a kind of « penitentiary plus», are set out in § 6 (heavy chains day and night and spring chains outside the building, special clothing, generally only hot soup, vegetables, bread and water to eat, a straw mattress with a woolen blanket to sleep on, performance of heavy labor, strict isolation from other prisoners; prisoners were not permitted to carry money or other valuables, and were practically only allowed to speak to prison staff or in the presence of such staff for important matters). The minimum term of imprisonment in chains was six years (§ 7). In addition, the perpetrators lost their rights of active citizenship for life and were placed under guardianship during their imprisonment (§ 8). The Criminal Code of the time already recognized the concept of aiding and abetting (§ 48): «All participants in a crime, whether principal perpetrators, accessories or instigators, are liable to punishment.» The Criminal Code defined accessories as follows (§ 53): «Anyone who, by counsel or deed, e.g. by instructing on the manner of execution, by procuring the means for it or removing obstacles standing in its way, or even by a preliminary promise of assistance to be rendered only after the crime has been committed, intentionally facilitates the commission of the crime, is an accomplice.» Accomplices were generally liable to the following penalty (§ 56 lit. a): «The penalty shall consist of one-quarter to two-thirds of the penalty prescribed for the offence». In the same year (1835), Great Britain and Spain signed the Treaty between Great Britain and Spain for the Abolition of the Slave Trade.²⁰² This treaty renewed the treaty concluded in 1817 and made its terms more stringent.²⁰³

- 1836: The slave trade was banned in the Portuguese colonies and on ships flying the Portuguese flag.²⁰⁴
- 1837–1839: In this period, states focused on the practical implementation of the acts that had already entered into force and the treaties and agreements that had been concluded. One such example of this implementation was the accession of the Hanseatic cities of Bremen, Hamburg and Lübeck to the Anglo-French treaties of 1831

²⁰² This is evident, for example, from UK Parliament, Lord Glenelg, statement dated 14/3/1836, available at <<https://hansard.parliament.uk/lords/1836-03-24/debates/d27ff98f-8ecb-4017-97c5-d58ed4ff431c/SlaveTreaty—Spain>> (last accessed on 28/3/26).

²⁰³ Ibid.

²⁰⁴ Villèle Museum (FN 197).

and 1833 in 1837.²⁰⁵ As part of this implementation, the United Kingdom enacted, for example, the Slave Compensation Act of 23 December 1837,²⁰⁶ according to which slaveholders were compensated.

The following remarks on developments following the period in question (1719–1839) will be kept to a minimum: The first half of the 20th century was shaped by the World Wars, in the wake of which the multilateral instruments of international law were increasingly globalized. A League of Nations convention²⁰⁷ and a UN convention²⁰⁸ were dedicated to the prohibition of slavery. Moreover, since the Second World War, enslavement has consistently been incorporated into the statutes of institutions charged with enforcing international criminal law, as one of several possible underlying acts of crimes against humanity;²⁰⁹ as, at the turn of the millennium, into article 7 s. 1 lit. c of the Rome Statute. At the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban (South Africa), in which Switzerland participated, the Declaration and Programme of Action (Durban Declaration) (soft law) was adopted.²¹⁰ Given Switzerland's participation in the follow-up processes, notably the review of implementation at the Durban Review Conference in Geneva in 2009,²¹¹ it must be concluded that Switzerland endorsed the consensus reached at the 2001 conference. In 2001, the consensus with respect to historical enslavement was the following: «[...] slavery and the slave trade are a crime against humanity, [...] that slavery and the slave trade, including the

²⁰⁵ SARAH LENTZ, "No German Ship Conducts Slave Trade!" The Public Controversy about German Participation in the Slave Trade during the 1840s, in: *The European Experience in Slavery, 1650–1850*, Rebekka von Mallinckrodt (ed.), Berlin/Boston 2024, p. 290, with further references.

²⁰⁶ The act is available at <<https://archive.org/details/acollectionpubl19britgoog/page/13/mode/2up>> (last accessed on 28/3/26).

²⁰⁷ BASSIOUNI, pp. 455 and 466; MISCHA MORGENBESSER, *Staatenverantwortlichkeit für Völkermord, Verbrechen gegen die Menschlichkeit und Kriegsverbrechen*, in: *SStiR 119/2003*, p. 19; RASSAM, p. 828; DIETRICH M. SCHINDLER, *Gemeinwesen zwischen Tradition und Weltoffenheit*, Zurich 2024, p. 388; PATRICIA VISEUR SELLERS/JOCELYN GETGEN KESTENBAUM, *Missing in Action, The International Crime of the Slave Trade*, JICJ 2020/18, p. 518; TRETTER, p. 533.

²⁰⁸ RASSAM, p. 829; TRETTER, p. 534.

²⁰⁹ Representative: art. 6 lit. c Charter of the International Military Tribunal, available at <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf> (last accessed on 10/3/26).

²¹⁰ Durban Declaration (FN 6).

²¹¹ Cf. for instance FDFA, *Durban Review Conference on racism: adoption by consensus of the final declaration*, Berne 21/4/2009, available at <<https://www.eda.admin.ch/countries/finland/en/home/news/news.html/content/eda/en/meta/news/2009/4/21/26505>>. Further evidence for this involvement is available, for example, at <<https://www.humanrights.ch/de/ipf/menschenrechte/rassismus/durban-review-konferenz/im-vorfeld/durban-review-vorbereitungssitzungen>>. Both were last accessed on 22/3/26.

transatlantic slave trade, were appalling tragedies in the history of humanity, particularly in their negation of the victims' humanity.»²¹² On 25 March 2026, the UN General Assembly declared that the transatlantic slave trade constituted the gravest crime against humanity.²¹³ It is clear from currently available sources that the UN (rightly) does not distinguish between the trade and the other aspects of transatlantic slavery: «For more than 400 years, millions of people were stolen from Africa, put in shackles and shipped to the New World to toil in cotton fields and sugar and coffee plantations under scorching heat and the crack of the whip. Denied their basic humanity and even their own names, they were forced to endure generations of exploitation with repercussions that reverberate today, including persistent anti-Black racism and discrimination. The resolution emphasized "the trafficking of enslaved Africans and racialised chattel enslavement of Africans as the gravest crime against humanity by reason of the definitive break in world history, scale, duration, systemic nature, brutality and enduring consequences that continue to structure the lives of all people through racialised regimes of labour, property and capital".».²¹⁴

2.2. Customary International Law

The current international legal order is based to a significant extent on customary law.²¹⁵ Compared with national legal systems, this source of law plays a more significant role in international law in terms of the scope of the norms.²¹⁶

Customary international law also applies in international criminal law.²¹⁷ The existence of customary international criminal law must be examined particularly when assessing historical

²¹² Durban Declaration (FN 6), pp. 1 and 16.

²¹³ Cf. UN, UN resolution urges reparations for slavery's «historical wrongs», 25/3/26, available at <<https://caribbean.un.org/en/312498-un-resolution-urges-reparations-slavery's-'historical-wrongs'>> (last accessed on 26/3/26).

²¹⁴ Ibid.

²¹⁵ MONTIEL, p. 352. Customary law existed as far back as ancient times (see for example NORMANN SCHWARZ, *Ius Cogens als Basis für ein stabiles Völkerrecht, Wie zwingendes Recht zum Schutz der moralischen Werte der internationalen Gemeinschaft beiträgt*, Frankfurt a.M. 2013, p. 41 et seqq. and p. 67, with further references).

²¹⁶ See MILAN KUHLI, *Das Völkerstrafgesetzbuch und das Verbot der Strafbegründung durch Gewohnheitsrecht, Zur Frage der Zulässigkeit von strafgesetzlichen Verweisungen auf Völkergewohnheitsrecht im Hinblick auf das Verbot der Strafbegründung durch Gewohnheitsrecht nach Artikel 103 Absatz 2 des Grundgesetzes*, Diss. Frankfurt a.M., Berlin 2010, p. 153, with further references, relating to another topic in German law.

²¹⁷ Cf. for example KAI AMBOS, *Internationales Strafrecht, Strafanwendungsrecht – Völkerstrafrecht – Europäisches Strafrecht – Rechtshilfe*, 5th ed., München 2018, p. 104 N 5 and 105 N 6 et seq.; ANTONIO CASSESE, *International Criminal Law*, 2nd ed., New York 2008, p. 14; SARAH ERNE, *Das Bestimmtheitsgebot im nationalen und internationalen Strafrecht am Beispiel des*

offenses, because in the past the law relied on customary norms far more frequently than it does today. The principle of *nullum crimen sine lege* does not preclude the recognition of customary law as a source of international criminal law, as the principle must be interpreted in accordance with international/human rights law.²¹⁸ Such an interpretation must inevitably lead to the conclusion that the prosecution of crimes against humanity²¹⁹ – which are, or at least ought to be, recognizable to everyone – must not be subject to the same requirements of the principle of legality as the punishment of conduct where the line between citizens' freedom and the state's power to punish²²⁰ is more difficult to draw. For this category of offense, the principle of legality is satisfied if the individual is able to recognize that a particular course of conduct is prohibited and that there is a risk of punishment.²²¹ The letter of article 7 s. 2 ECHR (the so-called Nuremberg Clause) supports this interpretation of the principle of *nullum crimen sine lege*.²²² This less strict interpretation of the principle of legality has implications for the required content and the specificity of any applicable customary law: Since, for example, it is practically impossible to determine a concrete sentencing range under customary law, customary law in international criminal law generally — and in the case of crimes against humanity in particular — can assume only the function of establishing prohibitions and rules of attribution, recognizing grounds of justification, and providing the basis for the imprescriptibility of such crimes.²²³ The following procedure should be followed when identifying this customary international law²²⁴: Just as national customary law does, international customary law and, more specifically, customary international criminal law objectively requires a general, widespread and consistent practice (*consuetudo*) and, subjectively, a sense of legal obligation relating to that practice (*opinio iuris*).²²⁵ In some cases, the permanence of these two elements is demanded; in certain cases,

Straftatbestands der Verfolgung, Diss. Köln, Baden-Baden 2016, pp. 151 et seq., 155, 177, 184 and 187 et seq.; MONTIEL, p. 322 et seq.; MORGENBESSER (Diss.), p. 160 et seq.

²¹⁸ On this topic cf. KUHLLI, S. 153, with further references.

²¹⁹ Similarly, AMBOS (int. Strafrecht), p. 6 N 12; CASSESE, p. 39.

²²⁰ On the relevance of this line in the context of the principle of legality more generally KUHLLI, p. 217, with further references. Regarding the principle of legality as a safeguard against an overbearing state cf. for example CASSESE, p. 37.

²²¹ AMBOS (int. Strafrecht), p. 6 N 11; ERNE, p. 282; KUHLLI, p. 187, with further references.

²²² More in KUHLLI, p. 221 et seq., with further references.

²²³ MONTIEL, p. 327 et seqq.

²²⁴ Ibid., p. 338 et seq.; PETERS/PETRIG, p. 129, N 4, with further references, point out that the required standard of care is not always met.

²²⁵ Instead of many BESSON, p. 221 et seq. N 731; OLIVER DÖRR, 5. Kapitel: Weitere Rechtsquellen des Völkerrechts, in: Völkerrecht, Ein Studienbuch, Knut Ipsen (ed.), 8th ed., München 2024, p. 554 N 2; KUHLLI, p. 152, with further references; MONTIEL, pp. 329 and 333, with further references; PETERS/PETRIG, p. 129 N 3; ZIEGLER (Völkerrecht), p. 53 N 118 et seq.

however, an almost instant custom is recognized.²²⁶ There is a growing tendency to regard increasingly shorter periods as sufficient.²²⁷ It is not possible to identify a clear lower limit from the case law.²²⁸ A possible shortfall in respect of duration may be offset by a pronounced expression of *consuetudo* and *opinio iuris*.²²⁹ However, where customary law norms are grounded in natural law, the temporal element must not be overrated, even in the absence of a more pronounced expression of the two elements.²³⁰ It should also be borne in mind that historical customary law, even more so than its modern counterpart, was characterized precisely by the fact that it had not yet been codified.²³¹ The practice (*consuetudo*) must be followed by a significant number of states, or the most representative states, in order to be regarded as widespread.²³² Examples of evidence for a practice include verbal statements by representative, relevant stakeholders, court rulings, and statutory law²³³ as well as the enforcement of positive law and court rulings.²³⁴ A uniform practice does not require that everything be handled in an absolutely identical manner.²³⁵ It is sufficient if states are seen to have agreed to a norm, and if actions contrary to it are regarded as a breach, not as a new norm.²³⁶ With regards to the *opinio iuris*, opinions differ. For some, this element consists in the consent to, or the desire that, something constitute a rule of international law; for others, it is the belief in the validity of the rule; and still others see in this element the acceptance or recognition of a practice as legally binding.²³⁷ The view that *opinio iuris* constitutes the legal consciousness²³⁸ underpinning the practice is convincing. It is impossible to provide conclusive proof of *opinio iuris*, as it is an

²²⁶ Cf. for instance. MONTIEL, pp. 330 and 332, with further references; PETERS/PETRIG, p. 129 N 3; ZIEGLER (Völkerrecht), p. 53 N 120 und p. 67 N 144.

²²⁷ PETERS/PETRIG, p. 130 et seq. N 9.

²²⁸ DÖRR, p. 560 N 13.

²²⁹ MONTIEL, p. 332, with further references; PETERS/PETRIG, p. 131 N 9; ZIEGLER (Völkerrecht), p. 54 N 120.

²³⁰ On this cf. IURLARO, p. 55; MARTINEZ, p. 17, with further references.

²³¹ More generally on customary international law DÖRR, p. 553 et seq. N 1.

²³² DÖRR, p. 559 N 11; MONTIEL, p. 333, with further references.

²³³ This concerns legislation that builds on and clarifies customary law (CASSESE, p. 17; MONTIEL, p. 355). Conversely, when gaps in national law are filled by rules of customary international law, cf. for example STIRLING-ZANDA, p. 112.

²³⁴ MONTIEL, p. 331 et seq., with further references.; PETERS/PETRIG, p. 130 N 6. Concerning the court rulings see also ERNE, p. 286, with further references.

²³⁵ DÖRR, p. 558 N 11; ERNE, p. 290 et seq.; MONTIEL, p. 335, with further references.; PETERS/PETRIG, p. 130 N 8; ZIEGLER (Völkerrecht), p. 54 N 121.

²³⁶ MONTIEL, p. 335, with further references.; PETERS/PETRIG, p. 130 N 8.

²³⁷ BESSON, p. 225 N 733; MONTIEL, p. 335 et seq., with further references.; PETERS/PETRIG, p. 131 N 10; ZIEGLER (Völkerrecht), p. 55 N 123.

²³⁸ SCHWARZ, p. 67.

internal matter.²³⁹ Circumstantial evidence must suffice. Such evidence can be found, for example, in soft law (e.g. resolutions by non-judicial international organizations, draft agreements or treaties, and declarations from diplomatic conferences), in doctrine, in legislative and judicial activities of nation states, and in general principles of law.²⁴⁰ As a consequence of these stringent requirements, a substantial part of customary international law is recognized as *ius cogens*.²⁴¹

With regards to historical slavery and the customary international criminal law that may have applied at the time, it must therefore be examined whether, and if so as of when and to what extent, there was a general, widespread and uniform practice, and whether it was accompanied by an *opinio iuris*.

In Africa, slavery was not considered lawful.²⁴² Numerous African rulers (kings and queens) and the majority of people in Africa opposed slavery (incl. the transatlantic slave trade) in word and deed, long before and also during the period in question (1719–1839).²⁴³ That they were unable to prevail was due above all to an opportunistic minority within the African coastal aristocracies, who enslaved other Africans with the aid of the firearms («the might of the [...] firearms») supplied to them by so-called civilized nations.²⁴⁴

At the time, however, only the customs and views of the so-called civilized nations in Europe and North America (France, United Kingdom, U.S.A.) were regarded as solely authoritative for the development of customary law. Chapter 2.1. therefore focuses on developments within this legal sphere.

With regards to the practice, it is clear from the preceding remarks that criticism of slavery in these states initially focused – primarily driven by heterodox Christians and leading philosophical advocates – on the serious ethical violation, both in word and deed. At that time, ethical

²³⁹ PETERS/PETRIG, p. 131 N 11. On the fact that internal facts are difficult to identify cf. also BESSON, p. 225 N 733, with further references; DÖRR, p. 561 N 17.

²⁴⁰ MONTIEL, p. 336, with further references.

²⁴¹ *Ibid.*, p. 334, with further references.

²⁴² FÄSSLER (expert opinion), p. 39; WITTMANN, p.117, with further references.

²⁴³ WITTMANN, p. 116 *et seq.*, with references to specific examples.

²⁴⁴ *Ibid.*

standards played a decisive role in the development of customary law across various legal spheres.²⁴⁵ It would therefore be wrong to regard this ethical criticism as legally irrelevant. It should also be noted that the origins of international law lie in «Christian civilization»²⁴⁶ and were thus significantly shaped by Christian proponents, as is evident in the case of slavery. Due to the intertwined religious and secular structures, Christian criticism soon had an impact on secular scholarship (jurisprudence, philosophy) as well. And the verdict of secular scholars also became increasingly clear over the course of the period in question (1719–1839) – slavery in all its forms is a crime against humanity. Given the significance of «Christian civilization» for international law, both Christian and scholarly statements and sources should be regarded as doctrine relating to international law, as teachings of the most highly qualified publicists of the various nations²⁴⁷. Civil society took up the criticism voiced by religious and academic authorities: Slavery was condemned by individuals and organizations (the Société des Amis des Noirs, the Groupe de Coppet) in word and deed (e.g. protests, boycotts, manumissions, and voluntary or testamentary compensation). Even the (conservative) judiciary occasionally engaged in civil disobedience towards positive national law and refused to apply it. In the course of this widespread criticism, treaties and agreements were concluded at the international level, and acts issued at the national level, aimed at suppressing slavery as swiftly as possible – yet, given its economic significance, also with due caution – which is why these treaties, agreements, and acts initially focused above all on the trade. The slave trade, and participation in it, were prohibited in writing somewhat earlier than other aspects of slavery, among other reasons, because substantial compensation claims by slaveholders – significant in macro-economic terms – were foreseeable (see, in this regard, the British Slave Compensation Act of 23 December 1837, which ultimately confronted this issue). During the period relevant for this criminal complaint (1719–1839), even those countries that benefited more immediately from slavery than Switzerland (e.g. France, Great Britain, but also Denmark, the Netherlands, and Portugal)²⁴⁸ banned the slave trade in writing. Moreover, the so-called civilized nations – decisive at the time for the emergence of universal customary international law – prohibited any participation in it as well. Criminal consequences, both *de iure* and *de facto*, were attached to violations, and these grew in severity

²⁴⁵ See for example IURLARO, p. 24.

²⁴⁶ Cf. FN 43.

²⁴⁷ Regarding the relevance of doctrine as a source of customary international law cf. for example DÖRR, p. 564 N 22.

²⁴⁸ According to the prevailing legal opinion, this is very relevant to the development of customary international law (cf. for example *ibid.*, p. 559 N 11).

over the course of the offense period (1719–1839). In the run-up to the Congress of Vienna, criticism of slavery also took on the form of diplomatic or quasi-diplomatic efforts. The Final Act of the Congress of Vienna itself provides further evidence that slavery was recognized as a crime against humanity, one that had always been prohibited. It reflects the conduct of state organs that is relevant to the formation of customary international law.²⁴⁹ This practice of the so-called civilized nations is particularly relevant to the identification of customary international law. The views expressed by religious and secular scholars, as well as other influential figures (including associations), before and during the Congress of Vienna serve, amongst other things, to assess state practice.²⁵⁰ Part of this assessment is that slavery and any contribution to it were regarded as unlawful. The Congress of Vienna focused on codifying, as far as possible, the natural law recognized and acknowledged under customary international law.

Enslavement and any complicity in it were thus increasingly recognized, even during the period in question (1719–1839), as having always been unlawful and as a crime against humanity. The prohibitions accompanying this recognition, and the penalties for violating them, were therefore regarded as lawful, just, and right, and were enforced (*opinio iuris*). Only with this *opinio iuris* can criminal codes, penalties, and compensations for formerly enslaved persons be explained. Codified laws, penalties, and compensations are not typical consequences of a violation of international courtesy or usages.²⁵¹ Nor were the relevant statements made in the run-up to and during the Congress of Vienna, during legal proceedings, etc., by any means an expression of politeness or ritual, but rather reflected the legal opinions of eminent state representatives. As already explained, this view was based on considerations of natural law (Chapter 2.1.: e.g. «against nature», «sin», «no greater right to [...] to keep Black people as slaves than White people», «natural, inalienable rights», «against the laws of nature», «against nature, justice, and humanity», «nature had no part in it», «against the Law of Nature»), which is why the duration of this practice and *opinio iuris* is comparatively insignificant.

If one is compelled (as in the present case) to draw a timeline between the ethical critique of slavery and the emergence of the relevant customary international law, one must do so in the

²⁴⁹ On the relevance of this conduct see *ibid.*, p. 557 N 7.

²⁵⁰ Cf. *ibid.*, p. 556 N 6, with further references.

²⁵¹ Concerning the fact that *opinio iuris* distinguishes customary international law from these, see *ibid.*, p. 560 N 14, and SCHWARZ, p. 67, with further references.

second half of the 18th century.²⁵² At that time, the virtually unchallenged view (see the quote from Swiss theologian Benjamin-Sigismond Frossard) had prevailed that the enslavement of human beings stood in stark contradiction to humanity, to the «commonly shared values of the world community», to justice, to equality, and to general principles of law.²⁵³ The prohibition, which at that time had not yet been fully codified or standardized, was recognized by the so-called civilized nations as a «norm of international character»,²⁵⁴ as *delictum iuris gentium*,²⁵⁵ «law of humanity» and as «Law of Nations»²⁵⁶ and thus as international law. Even at that time, there was already consensus regarding the criminal significance and the grave nature of a violation of this prohibition («crime de lèse-humanité», «much worse than pirates», «crime», etc.), although penalties and measures were initially limited to monetary penalties, fines, and confiscations, which inadequately reflected the gravity of this crime. This changed, however, around the turn of the century. Penalties became progressively harsher. In 1811, the consequences of this crime in the states that were decisive for the development of customary international law were at least equivalent to today's (see Chapter 2.3. on this point).

With regard to the broad content of the customary law applicable at the time of the offense (1719–1839), it may thus be stated, by way of interim conclusion, that during the second half of the relevant period there was agreement that slavery, in every form,²⁵⁷ is and always had been unlawful and prohibited under natural law, because it is and was a crime against humankind or against humanity (not yet codified in its present form at that time)²⁵⁸.²⁵⁹ This holds true regardless of the fact that such recognition was not granted to other crimes against humanity until later²⁶⁰

²⁵² WHITMAN, p. 334, also recognizes a shift in perception during this period, but does not place it in a legal context.

²⁵³ Cf. the references indicating this in BASSIOUNI, p. 452 *et seq.*

²⁵⁴ In another context DANIEL DISKIN, *The Historical and Modern Foundations for Aiding and Abetting Liability under the Alien Tort Statute*, p. 820.

²⁵⁵ TRETTER, p. 528.

²⁵⁶ LENTZ (Helfe), p. 167.

²⁵⁷ The participating states at the Durban Conference also did not make a conceptual distinction between the slave trade and other forms of enslavement but rather subsumed all such manifestations under the term «crime against humanity» (Durban Declaration [FN 6], p. 16).

²⁵⁸ The Federal Supreme Court is therefore correct in pointing out that, at the time the Rome Statute entered into force, Swiss law did not recognize an «express» offence of crimes against humanity (cf. for instance BGE 143 IV 316, E. 4.2., with further references).

²⁵⁹ This fact is not altered by the fact that crimes against humanity, as we know them today, were not codified until the 20th century (for more on this history, see, for example, BStGer, CA.2022.8, 30/5/2023, E. 1.1.5.3, with further references; WERLE/JESSBERGER, p. 374 N 975).

²⁶⁰ HELMUT KREICKER, *Art. 7 EMRK und die Gewalttaten an der deutsch-deutschen Grenze, Zu den Urteilen des Europäischen Gerichtshofs für Menschenrechte*, 1st ed., Baden-Baden 2002, p. 92, takes the view that with regards to (other) crimes against

and that the body of these crimes had not yet been scientifically recognized and analyzed as a distinct category of crimes.

If one takes a closer look at the accomplices, it is clear from the preceding remarks that the so-called civilized nations – which were decisive for the development of customary international law – already explicitly codified accomplices’ criminal liability as early as the turn of the century (an expression of *opinio iuris* regarding any participation in enslavement). The relevant norms indicate that, in particular, those were also considered and punished as accomplices who, from the perspective of the colonial states, provided by far the most significant support for the overall system of enslavement: money (Large ships [including their maintenance and operation] are a costly endeavor.). The so-called civilized nations regarded lenders, investors, guarantors, etc., as accomplices, regardless of their legal status. On the basis of national acts issued by the so-called civilized nations, companies, respectively their executives, or ships (The acts were attributed to them.) were also convicted.²⁶¹ A very common consequence of a conviction was the confiscation of the ship, which was also the method of choice in case of piracy²⁶² and could drive a company into bankruptcy. Investors thus lost all their investments. Yet not only the state actors responsible for the making and application of law, but the companies themselves (e.g. joint-stock companies) too, assumed that they – like states and natural persons – were bound by the prohibitions connected with enslavement. Consequently, their relevant activities declined dramatically following the enactment of the first national prohibitions, even though they had played a significant role in the early slave trade.²⁶³ The only explanation for this is that they also considered the norms of customary international law as law, irrespective of the applicable national law, and abided by that law. Practice and *opinio iuris* must therefore also be affirmed with respect to those accomplices who invested in slavery (above all the costly slave-trade), regardless of whether they were natural persons or legal entities.

humanity, it is only since the early 1990s that one can assume with absolute certainty the existence of universally applicable customary international law. This proves to be incorrect with regards to enslavement.

²⁶¹ MARTINEZ, p. 164.

²⁶² Supreme Court of the United States, *Nestlé U.S.A. Inc. and Cargill Inc. v. John Doe I et al.*, On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit, Brief of Yale Law School Center for Global Legal Challenges as Amicus Curiae in Support of Respondents, p. 14 et seqq., with further references, available at <https://law.yale.edu/sites/default/files/area/clinic/document/40153_pdf_hathaway12.pdf> (last accessed on 16/3/26).

²⁶³ MARTINEZ, p. 164. (In addition, see Supreme Court of the United States [FN 262], p. 13, with further references. This document refers to a statement made in 1815.)

By way of a further interim conclusion regarding the more specific content of the customary law concerning accessories, it may thus be stated that, in the view of the authoritative so-called civilized nations, complicity in enslavement constituted a contribution to a crime against humankind – or against humanity – and entailed corresponding consequences.

Criminal provisions in national or regional legal systems (e.g. within Switzerland) that conformed to the customary international law as outlined above and were required by bilateral and multilateral instruments of international law did not serve as a basis for the emergence of the corresponding customary international law. They merely had a declaratory and potentially specifying effect (provided that these provisions did not conflict with customary international law). Nothing to the contrary can be inferred from isolated instances where customary international law, as identified above, has been inadequately transposed into national respectively regional law (see § 52 of the Zurich Penal Code dated 24 September 1835).²⁶⁴ Such aberrations are insignificant, since customary international law does not require absolute uniformity in practice; moreover, isolated instances of ex post self-exculpation (such as the example mentioned of a public-law corporation that has profited greatly from investing into slavery) must be disregarded.

The preceding remarks illustrate the doctrine regarding the content of customary international law: In the context of historical slavery, it has assumed the function of establishing a prohibition and rules of attribution (with respect to the actions of accessories, particularly investors). It is also evident that no justification for violations of the prohibition of slavery was recognized, and the relevant so-called civilized nations did not recognize and enact limitation periods for the respective crimes. It likewise emerges that the penalties attached to the prohibitions were, by the end of the offense period (1719–1839) at the latest, at least comparable to today's (see, in this regard, Chapter 2.3.).

The fundamental principles of historical customary international law set out above were increasingly put into writing and specified – in international treaties and agreements, in

²⁶⁴ «If the entire body or a majority of the members of a municipality or other corporation has committed a crime, only the guilty individuals, not the association itself, shall be punished.»

national legal orders, and, finally, in the StGB as well.

2.3. Specification of Customary International Law by Today's StGB

The principle of legality does not preclude the specification of customary international law in force at the time by means of the application of the requirements for criminal liability and the legal consequences set out in the StGB. The maxim «no punishment without law», and hence the principle of legality, is satisfied if an act was punishable, at the time it was committed, pursuant to customary international law or to the general principles of law recognized by the so-called civilized nations.²⁶⁵ It has been established that this was the case.

Nor does the prohibition on retroactive application arising from art. 2 para. 1 StGB preclude the application of the StGB with regards to the requirements for criminal liability and the legal consequences. It applies only to acts or omission which, at the time they were committed, were *not* punishable pursuant to domestic or international law.²⁶⁶ It is clear from the above, however, that a violation of the prohibition of slavery under customary international law was punishable as a crime against humanity at the time of the offense (1719–1839), including financial complicity in slavery (irrespective of the legal status of the accomplices). Conduct could be aligned with unwritten customary international law.

Furthermore, the current law is the more lenient one (art. 2 para. 2 StGB). The current specifications regarding the elements of this crime against humanity are formulated more narrowly²⁶⁷ than was the case under customary law at the time of the offense (1719–1839). Furthermore, those involved faced not only substantial monetary penalties/fines (which were substantial in terms of today's purchasing power), but also imprisonment with hard labor. The current penalty of a maximum fine of CHF 5 million (art. 102 para. 1 StGB) per legal entity (not per ship) must therefore be regarded as comparatively lenient.

Consequently, it is therefore assumed that the historically applicable customary international law is specified by the StGB. This is also the assumption on which the StGB itself is based: According

²⁶⁵ BBl 2008 3911.

²⁶⁶ BStGer, CA.2022.8, 30/5/2023, E. 3.2.2.1, with further references; VEST, p. 134 N 25.

²⁶⁷ CASSESE, p. 125, with further references.

to art. 101 para. 1 lit. b in conjunction with art. 264a para. 1 lit. c StGB crimes against humanity are, in principle, investigated and punished in application of the StGB regardless of when they were committed.²⁶⁸

2.4. Art. 101 StGB

Pursuant to art. 101 para. 1 lit. b StGB, crimes against humanity (art. 264a para. 1 and 2 StGB), hence also the acts to be investigated, are not subject to limitation periods. According to the will of the Swiss legislature, this principle of imprescriptibility is, by way of exception, to be departed from in the case of crimes against humanity where prosecution or punishment of such acts had already become time-barred when the amendment of 18 June 2010 entered into force (art. 101 para. 3 StGB, limitation of prosecution/enforcement).²⁶⁹

However, the cut-off date of 18 June 2010 does not apply in the case of historical enslavement. According to the correct view, it applies only insofar as an act or omission was not already covered by art. 75^{bis} para. 1 s. 1 former StGB (in force until 31 December 2006).²⁷⁰ Among other things, this provision had declared (despite concerns raised during the legislative process) that the oppression of a population group on grounds of its (postulated) race was not subject to limitation periods.²⁷¹ According to the governmental dispatch to the Swiss Parliament, this explicitly included enslavement.²⁷² Although enslavement falls under art. 101 para. 1 lit. b StGB, the relevant date for it would therefore be 1 January 1983 (the date on which art. 75^{bis} para. 1 s. 1 former StGB entered into force) and thus a date prior to the entry into force of art. 264a StGB on 1 January 2011.²⁷³

²⁶⁸ This principle is in no way affected by the fact that art. 101 para. 3 StGB exceptionally recognizes and regulates limitation periods for prosecution and enforcement.

²⁶⁹ In this context cf. BStGer, CA.2022.8, 30/5/2023, E. 3.2.2.1, with further references, particularly to BStGer, BB.2021.141, 23/9/2021, E. 2.1.3, in: TPF 2021, p. 213. This constitutes a reservation pursuant to art. 389 para. 1 StGB (BStGer, BB.2021.141, 23/9/2021, E. 2.1.3, in: TPF 2021, p. 213; BStGer, BB.2017.9/BB.2017.10/BB.2017.11, 30/5/2018, E. 7.2.2, with further references, in: TPF 2018, p. 98 et seq.).

²⁷⁰ VEST, p. 134 N 24, with further references.

²⁷¹ Ibid., p. 130 N 7.

²⁷² BBl 1977 II 1254.

²⁷³ CAPUS (Vergangenheit), p. 88 et seq.; VEST, p. 130 N 8.

However, this statutory restriction of imprescriptibility does not apply in the present case, for the following reasons, irrespective of the legislature's will²⁷⁴.

2.5. Non-Applicability of Art. 101 Para. 3 StGB to Historical Slavery

(A) Imprescriptibility as Peremptory Customary International Law

According to the view advanced herein, the imprescriptibility of crimes against humanity, in particular historical enslavement, forms part of *peremptory* customary international law and cannot be abrogated by national provisions.²⁷⁵ A national statute of limitations that abrogates imprescriptibility is void.²⁷⁶ It must not be denied application. The reasons for this are set out in what follows.

The most compelling argument in favor of the *ius cogens* nature of imprescriptibility is the grave unlawfulness of such crimes, which calls for punishment even long after the offense has been committed. This is readily apparent to anyone, even without any written basis. Although this also applies to many other serious crimes, the crucial difference between crimes against humanity and other serious crimes – a difference which is relevant to the debate on *peremptory* imprescriptibility, as advocated, for example, by ZIMMERMANN²⁷⁷ – lies, above all, in the fact that

²⁷⁴ Contrary to BGE 132 III 661, para. 4.4. See also the reference in CAPUS (Vergangenheit), p. 88, to the fact that this was the intention of the legislature.

²⁷⁵ See, for example, ECHR, 36376/04, Kononov v. Latvia, 17th May 2010, § 186 *et seq.* On the debates in legal literature, see, instead of many, NADJA CAPUS, Die Unverjährbarkeit von Verbrechen gegen die Menschheit nach schweizerischem und nach internationalem Recht, Bemerkungen zu BGE 132 III 661 ff. (4C.113/2006) i. S. GIRCA (Gypsy International Recognition and Compensation Action) gegen IBM (International Business Machines Corporation), in: recht 2006, p. 248, with further references.; JAN ARNO HESSEBRUEGGE, Justice Delayed, Not Denied: Statutory Limitations and Human Rights Crimes', in: Georgetown Journal of International Law 43/2012, p. 350 *et seqq.*; VEST, p. 128 *et seqq.*, N 2 *et seq.*; KREICKER, p. 62; MONTIEL, p. 349 *et seqq.*; WILLIAM A. SCHABAS, Article 29: Non-applicability of the statute of limitations', in: Rome Statute of the International Criminal Court: Article-by-Article Commentary, Kai Ambos (ed.), 4th ed., Munich 2022. Art. 29, N 4. In view of the letter of the Rome Statute, SCHABAS rightly raises the question whether it is permissible to introduce national limitation periods (SCHABAS, art. 29, N 10). HESSEBRUEGGE elaborates on this on p. 350: «[...] core international crimes are imprescriptible under general international law and must not be subject to any domestic statute of limitations.» With regards to reparations, he also refers to the Venezuelan-US Mixed Claims Commission (*ibid.*, p. 373), which has stated: «It is doubtless true that municipal statutes of limitation cannot operate to bar an international claim». This also applies to limitation periods in criminal law.

²⁷⁶ On the nullity of national provisions that contravene peremptory rules of customary international law, see, for example, IAGMR, Series C, No. 15, Aloeboetoe *et al.* v. Suriname, Reparations and Costs, 10/9/1993, § 57; PETERS/PETRIG, p. 140, N 33; WALTER KÄLIN/ASTRID EPINEY/MARTINA CARONI/JÖRG KÜNZLI/BENEDIKT PIRKER, International Law, Berne 2022, p. 89. International treaties that contravene peremptory norms of customary international law are also null and void (see, for example, SCHWARZ, p. 81 *et seq.*).

²⁷⁷ ZIMMERMANN, p. 286.

the former harm humanity as a whole and thus take on significance far beyond that of the individual victims^{278, 279} That is why such crimes can hardly be justified (grounds of justification are recognized more restrictively under international criminal law than national law²⁸⁰). This applies particularly to historical enslavement, for which no justification²⁸¹ (e.g. self-defense) is even remotely apparent. It was Bartolomé Frías de Albornoz who, in 1573, illustrated this distinction between historical enslavement and other serious crimes with the striking statement that not even Jesus Christ could justify the enslavement of a human being. By its very nature, *ius cogens* serves precisely to protect the fundamental legal interests of the international community, which must not be infringed under any circumstances.²⁸² Temporally unlimited accountability for crimes against humanity is one of these fundamental aspects of the international order.

Furthermore, crimes against humanity are often committed by individuals who wield considerable influence on the legislative process in their own states; they could rid themselves, by means of national statutes of limitations, of criminal responsibility for their acts and omissions. Only the *peremptory* imprescriptibility of international norms can prevent this.

The principle of equality before the law requires that all victims of crimes against humanity of universal relevance be afforded the same opportunity to hold those responsible accountable.²⁸³ It is not permissible to give preferential treatment to, or to discriminate against, certain groups of victims. In the past, states have departed from their national statutes of limitations when it came to the punishment of crimes against humanity (see, for example, the *Menten* case in the Netherlands).²⁸⁴ The principle of equality before the law – which is also recognized in

²⁷⁸ The term is used in a non-technical sense in such passages. These remarks do not concern the distinction between art. 115 and art. 116 StPO, i.e. the distinction between these victims and aggrieved/injured persons.

²⁷⁹ See for example LARRY MAY, *Crimes Against Humanity, A Normative Account*, Cambridge 2005, p. 82.

²⁸⁰ This can be seen, for example, in ICTY, Appeals Chamber, ICTY-96-22-A, *Prosecutor v. Dražen Erdemović*, 7/10/1997, § 19 (with regards to the defense of duress).

²⁸¹ Relating to the grounds of justification in international criminal law, see instead of many others KAI AMBOS, *Defences in international criminal law*, in: *Research Handbook on International Criminal Law*, Bertram S. Brown (ed.), Cheltenham 2011, p. 299 et seqq., available at <<https://www.department-ambos.uni-goettingen.de/data/documents/Veroeffentlichungen/epapers/Defences-in-ICL-Handbook-2011.pdf>> (last accessed on 24/3/2026).

²⁸² SCHWARZ, p. 81.

²⁸³ Incidentally, this supports the argument for the peremptory imprescriptibility of such crimes.

²⁸⁴ VEST, p. 129 N 6, with further references.; HANS VEST/CHRISTIAN SAGER, *Die bundesrätliche Botschaft zur Umsetzung der Vorgaben des IStGH-Statuts – eine kritische Bestandesaufnahme*, in: AJP 2009 p. 428; ANDREAS ZIEGLER, *Der Einsatz der Schweiz für eine friedliche und gerechte internationale Ordnung (Art. 2 BV) – am Beispiel der Verfolgung von völkerrechtlichen Verbrechen aufgrund des Universalitätsprinzips*, in: AJP 2013 p. 1301 et seq.

international law – requires that such a departure is not limited to individual crimes or states. All victims of crimes against humanity must have the same opportunity to hold those responsible accountable, irrespective of whether perpetrators are individuals or legal entities. Different standards are incompatible with the principle of justice and with equality before the law. In a 1977 dispatch to Parliament – by which time the debate on prescription and its nature had long been under way – the Federal Council stated²⁸⁵: «Acts of arbitrariness committed against a large number of defenseless people [...] which, by virtue of their extraordinary cruelty or the means employed, provoke worldwide revulsion, become so deeply ingrained in people’s memories that they are not forgotten; the mere possibility that a person involved might evade accountability in court provokes outrage in public opinion worldwide, even decades later [...]. The demand that the suspect must, under all circumstances, face trial then becomes non-negotiable. If legal obstacles [at that time, extradition-related] stand in the way [...] and if the [asylum-granting] state decides in accordance with applicable law, then the mere fact that the suspect is thereby removed from judicial scrutiny is enough; an outcome which, in the eyes of the international community, contradicts the most fundamental principles of justice and which a state can scarcely afford to bring about. [...] It is politically untenable for Switzerland to expose itself to the accusation of condoning crimes against humanity and of violating the principles upheld by the United Nations and the Council of Europe. [...] The imperfection of the standards still in force today should therefore not be used as a pretext for sidestepping the issues.» Although the Federal Council made these remarks in the context of an extradition case, they express a general principle: States must not contribute to the impunity of perpetrators of crimes against humanity. A State may not deviate from this principle where its own acts or those of its public-law corporations are concerned. Only the *peremptory* imprescriptibility of these crimes can guarantee equality before the law.

Access to justice is essential for victims of the most serious crimes against humanity. This also applies to victims who suffer from the economic and other transgenerational consequences of such crimes. It is these victims who find themselves at the end of the chain of causality of systems that show contempt for human life.²⁸⁶ The International Criminal Court has therefore

²⁸⁵ BBl 1977 II 1250, 1252, and 1258.

²⁸⁶ FRANK HALDEMANN, Geschichte vor Gericht: der Fall Spring Hintergründe und Analyse des Bundesgerichtsentscheids vom 21. Januar 2000 i.S. J. Spring gegen Schweizerische Eidgenossenschaft, in: AJP 2002, p. 882, used this phrasing in a different context and appears to place the end of the chain of causation somewhat earlier.

recognized, in principle, the victims status of persons with inherited trauma, thus descendants of victims of crimes against humanity.²⁸⁷ It would be contradictory and would once again violate the human dignity and human rights (art. 13 ECHR) of victims suffering from transgenerational consequences of such crimes, were their access to justice to be denied by national statutes of limitations, regardless of the fact that internationally they are recognized as a category of victims in principle.

It therefore remains only to clarify since when the imprescriptibility of such crimes, specifically of historical enslavement, has been part of (peremptory) customary international law.

It can be inferred from a statement by the Federal Council in its dispatch to Parliament of 15 January 1977 that this must already have been the case in the 1970s. In that dispatch, the Federal Council noted that the *majority of Member States of the United Nations and the Council of Europe* upheld the principle of imprescriptibility of crimes against humanity^{288, 289}. The 1968 UN Convention suggests that this majority view must have become part of customary law even earlier and must have attained a high degree of recognition²⁹⁰; otherwise, it would not have been enshrined in the UN Convention. However, it happened even earlier. Crimes against humanity are «born» with an inherent imprescriptibility.²⁹¹ They are thus imprescriptible by their very nature («par leur nature»)²⁹². The point in time at which customary international law establishing the imprescriptibility of such a crime develops must therefore coincide with the moment at which the respective acts/omissions are recognized as crimes against humanity (respectively follow upon the very next logical instant). In the case of historical slavery, the peremptory customary international law of imprescriptibility consequently came into being upon the recognition of slavery as a crime against humanity by the so-called civilized nations.

²⁸⁷ ICC, ICC-01/04-02/06, Prosecutor v. Bosco Ntaganda, 18/12/2020, Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the former child soldiers, § 53; OMAR ABO YOUSSEF, *The Position of the Victim in International Criminal Law, with Particular Reference to the ICC Statute and the Rights of Victims of International Criminal Offences in Switzerland*, Diss. Zurich 2008, p. 164. The International Criminal Court does not require them to prove that their personal interest are affected in order to apply for reparations (ibid., p. 165).

²⁸⁸ This statement by a government in the heart of Europe, made long after 1945, suggests that «crimes against mankind» and «crimes against humanity» have always been one and the same.

²⁸⁹ BBI 1977 II 1250.

²⁹⁰ On this see SCHWARZ, p. 99, with further references.

²⁹¹ HESSEBRUEGGE, p. 351: «Underlying the Inter-American Court's position is the idea that the international crimes of genocide, crimes against humanity, and war crimes were «born» as imprescriptible offenses.»

²⁹² This note refers to the legal situation in France (see ZIMMERMANN, p. 281).

This peremptory customary international law was binding on Switzerland when it enacted art. 101 para. 3 StGB. Art. 101 para. 3 StGB is therefore null and void when it comes to art. 101 para. 1 lit. b StGB, and the provision must consequently be denied application in the present case. The fact that Switzerland has ratified neither the 1968 UN Convention nor any other treaties concerning the explicit *peremptory* imprescriptibility of crimes against humanity²⁹³ does not alter this.²⁹⁴ Even without such ratifications, Switzerland is and always has been bound by the peremptory norm of customary international law regarding the imprescriptibility of such crimes. However, the refusal to recognize the peremptory imprescriptibility of crimes against humanity raises questions, particularly as Switzerland frequently adopts a progressive stance in the fields of human rights and international criminal law.

(B) Prescription Not Mandatory

International law does not recognize a general forfeiture of victims' rights solely on the grounds of the passage of time, nor does it provide for any obligation to introduce limitation periods.²⁹⁵ Convincing reasons are therefore required, if one wishes to limit criminal liability for historical enslavement by means of limitation periods (see below).

(C) No Convincing Grounds for Limitation Periods

The grounds usually advanced in criminal-law doctrine for limitation periods relate in particular to the evidentiary difficulties arising from the lapse of time since the offense, issues of procedural fairness and the rights of the defense, the need for legal certainty, the rehabilitation

²⁹³ BBI 2008 3873 concerning the fact why Switzerland has not acceded to such conventions. The relevant wording of the UN Convention, to which Switzerland is not a signatory, reads: «No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: [...] b) Crimes against humanity [...]» (UN, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted on 26th November 1968 by General Assembly Resolution 2391 (XXIII), available at <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-non-applicability-statutory-limitations-war-crimes>> [last accessed on 28/2/2026]). The Convention contains an explicit obligation of the States Parties to «take all necessary measures to ensure that statutes of limitations do not apply to the prosecution and punishment of these crimes and, where applicable, are abolished». The current status regarding signatures and ratifications of this UN Convention is available at <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-6.en.pdf>> (last accessed on 28/2/26).

²⁹⁴ For an opposing view see BGE 132 III 661, E. 4.4.1.

²⁹⁵ HESSEBRUEGGE, pp. 339, 346, and 348.

of perpetrators, and criminal policy considerations regarding the diminishing need for retribution on the part of victims.²⁹⁶ None of these grounds applies in the present case. Rather, it is as follows:

- This criminal complaint is not based on the recollections of individuals.
- The territorial public corporations concerned have the same opportunity as the victim to produce documents and to persuade the authorities and courts of a differing set of facts or a different legal position. Procedural fairness and equality before the law are not affected by the passage of time.
- The general need for legal certainty is not undermined when historical crimes are redressed (by means of criminal investigations, convictions, and compensation/satisfaction). On the contrary, reparation helps to bring an end to the debates that give rise to uncertainty.
- A possible «betterment» of public-law corporations (e.g. acts and other measures [particularly relating to organizational law] enacted respectively introduced since the time of historical enslavement to prevent comparable practices today) cannot be a decisive factor, as such improvements would be attributable to general progress in the area of governance and do not reveal a change in awareness or a moral transformation with regards to historical slavery.
- As my client's commitment demonstrates, the need for truth, criminal investigations, convictions, as well as compensation and satisfaction – reparation – can outlast generations in the case of crimes with economic and other transgenerational consequences. This comes as no surprise²⁹⁷. Viewed globally, millions of people are in the same situation as my client; they all have the same needs as he does: transparency and accountability.

²⁹⁶ BStGer, CA.2022.8, 30/5/2023, E. 3.2.2.1, m.w.H.; BBI 1977 II 1259; NADJA CAPUS, Die Annahme der Unverjährbarkeits-Initiative, Ein Kommentar zur eidgenössischen Abstimmung, in: *forum poenale* 2/2009, p. 111, with further references.; HESSEBRUEGGE, p. 340; RUTH A. KOK, *Statutory Limitations in International Criminal Law*, Den Haag 2007, p. 239 et seqq.; KREICKER, p. 59; LILIANE DENISE MINDER, *Die Unverjährbarkeit von Ansprüchen aus Grundrechts- und Kerngehaltsverletzungen*, Ein Beitrag zum Umgang mit sozialen Randgruppen in der Schweiz im 19. und 20. Jahrhundert am Beispiel fürsorglicher Zwangsmassnahmen und Fremdplatzierungen, Diss. Freiburg, Zurich 2020, p. 280 N 463; NICCOLÒ RASELLI, *Sachverhaltserkenntnis und Wahrheit; Rechtsanwendung und Gerechtigkeit*, in: *recht* 2008, p. 71; SCHABAS, Art. 29 N 2; VITO ROBERTO, *Repetitorium zum Haftpflichtrecht, Fragen und Antworten – Einstiegsfälle – Leading Cases*, 2nd ed., Berne 2023, p. 329; VEST, p. 133 N 20; ZIMMERMANN, p. 298. However, evidence may, under certain circumstances, become even more accessible with time, for example as a result of archives being opened, changes in the political system, or advances in forensic methods (on this topic HESSEBRUEGGE, p. 340 et seqq.; KOK, p. 243 et seqq., with further references). The blanket assumption that memories can no longer be recalled accurately is also problematic (KOK, p. 250, with further references).

²⁹⁷ From certain passages in the Bible (Exodus 20:5 and 34:7), it can be derived – without any ideological evaluation (such as sin, etc.) – that even in those days it was assumed that certain things in life result in consequences extending up to three or four

- Investigating the reported offenses does not jeopardize reconciliation.²⁹⁸ Rather, genuine reconciliation between the descendants of enslaved people and the descendants of those who enslaved others or contributed to the enslavement of others, who continue to profit from slavery today, that is, between the societies of perpetrators and victims, is only possible, if the details are clarified by means of criminal investigations, if offenses are punished, and if the victims are compensated adequately for their pecuniary and non-pecuniary damages.²⁹⁹
- Public-law corporations cannot invoke «the right to forget», as individuals may under certain circumstances. The interests of the victims of such crimes outweigh the purely economic interest of public-law corporations in forgetting.
- A fair assessment of this abhorrent practice, which also affects present-day generations, does not call for limitation periods relating to the offenses, but for their prosecution and punishment.³⁰⁰ Otherwise, there can be no question of justice. The Federal Council of 1977 took the same view with regards to other crimes against humanity. It therefore emphasized that it was a matter of justice to at least attempt to establish the guilt of the accused in the case of such heinous crimes.³⁰¹

That conceptions of custom and morality change over time³⁰², is not a convincing argument in favor of applying art. 101 para. 3 StGB in the present case either. Slavery was already being criticised in ancient times (although the prevailing view at the time was a different one). Criticism of slavery grew steadily from the 16th century onwards. During the period in question (1719–1839), enslavement was recognized as a crime against humanity and, outside of Switzerland, resulted in severe penalties earlier than it did domestically. But even in Switzerland, slavery was recognized as gravest crime against humanity at the time by the overwhelming majority; otherwise, the Zurich legislation of 1835, which provided for draconian penalties (for accomplices as well), would not have come into being. To this day, it remains undisputed that

generations beyond one's own lifetime. By now it is known that the number of generations can be greater (FLORIAN DUNKEL, Zur transgenerationalen Traumatisierung, Ätiologie und Ansätze für die Therapie, in: Zeitschrift für Psychodrama und Soziometrie 20/2021, p. 220).

²⁹⁸ See KOK, p. 281, with further references.

²⁹⁹ The UN has also reached this conclusion (FN 213). More generally, see KOK, p. 282, with further references.

³⁰⁰ More generally VEST, p. 133 N 21.

³⁰¹ BBI 1977 II 1256.

³⁰² MINDER, p. 339 N 556.

the enslavement of human beings is abhorrent. The respective crimes cannot be relativized by invoking a shift in ethical and/or moral notions.

There are, therefore, no cogent reasons to curtail the criminal liability for historical enslavement by way of limitation periods.

(D) Application of Art. 101 Para. 3 StGB as a Human Rights Violation

Failure to carry out an effective investigation into the most serious human rights violations constitutes a human rights violation.³⁰³ The ECHR (European Court of Human Rights) requires an independent, adequate, thorough, serious, and prompt investigation which is subject to public scrutiny and allows for the participation of the victims or their relatives.³⁰⁴ According to the ECHR, this obligation also applies, under certain conditions, to crimes committed before the ECHR entered into force.³⁰⁵ As a criminal investigation authority, the Office of the Attorney General of Switzerland is particularly suitable to meet these requirements for the investigation.

Limitation periods must not preclude such an investigation,³⁰⁶ especially when limitation periods – as in the present case – effectively amount to unacceptable³⁰⁷ self-amnesties³⁰⁸ and the state or its territorial public corporations demonstrate a reluctance to address historical human rights violations. My client's fruitless (independent) efforts (see Chapter 3.6) and parliamentary motions demanding that these human rights violations be addressed³⁰⁹ underline this reluctance. An order not to open a criminal investigation would reinforce that stance.

³⁰³ ECHR, 4239/08, C.N. v. UK, 13/11/2012, § 69.

³⁰⁴ Instead of many ECHR, 4239/08, C.N. v. UK, 13/11/2012, § 69; NADJA CAPUS, La réparation des victimes de graves violations contre les droits de l'homme et l'obligation d'enquêter dans le système légal suisse et européen, in : RPS 127/2009, pp. 355, 362, and 371 et seq., with further references; FELIX E. TORRES, Reparations: To What End? Developing the State's Positive Duties to Address Socio-economic Harms in Post-conflict Settings through the European Court of Human Rights, in: The European Journal of International Law 2021/32, p. 816 and 818, with further references.

³⁰⁵ ECHR, 71463/01, Šilih v. Slovenia, 9/4/2009, § 139 et seqq.

³⁰⁶ ECHR, 4455/10, Marguš v. Croatia, 27/5/2014, § 133.

³⁰⁷ On these types of amnesties and their impermissibility under international criminal law, see, for example, WERLE/JESSBERGER, p. 112 et seq., N 298. They rightly argue that amnesties can only be legitimate, if they are absolutely necessary to put an end to ongoing violence (ibid., p. 113, N 300).

³⁰⁸ ECHR, 4455/10, Marguš v. Croatia, 27/5/2014, § 131 et seqq. HESSEBRUEGGE, p. 355, also recognizes the similarity between amnesties and statutes of limitations (in a broader sense).

³⁰⁹ See, for example, the private members' questions «Sklaverei-Vergangenheit der Schweiz und ihrer Banken» by Claudia Friedl dated 6/3/18 (available at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20183072>>, last accessed on 6/3/26) and «Schweizer Beteiligung an Sklaverei und transatlantischem Handel mit Sklavinnen und Sklaven» by Pia

The protection of individual rights enshrined in the ECHR and specified by the ECHR³¹⁰ and reaffirmed by UN resolutions³¹¹ therefore requires that the offenses reported be investigated irrespective of any limitation periods.³¹²

(E) Disapplication of Art. 101 Para. 3 StGB Permissible

There are no legally relevant obstacles to disapply art. 101 para. 3 StGB.

In particular, the subsequent disapplication of limitation provisions does not contravene the prohibition of retroactivity. In the context of criminal limitation periods, the prohibition of retroactivity is attenuated, as the point is not to render retroactively punishable acts or omissions that were previously not punishable.³¹³ In normative terms, this attenuation can be derived, for example, from art. 15 s. 2 International Covenant on Civil and Political Rights (UN Covenant II) and art. 7 s. 2 ECHR.³¹⁴ Swiss case law³¹⁵ as well as German doctrine and case law³¹⁶ support this view with the following argument: Prescription is not a characteristic of criminal liability; its abrogation therefore raises no problem. This holds especially for limitation periods concerning prosecution and punishment, as perpetrators' reliance on being exposed to prosecution and punishment for only a certain period is not worthy of protection.³¹⁷ This must hold especially for offenses that are, or ought to be, recognizable as such by anyone. If the democratic legislature, bound by human rights, privileges crimes against humanity by introducing national limitation periods governing the prosecution and punishment of the

Hollenstein dated 3/3/03 (available at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20033014>>, last accessed on 6/3/26).

³¹⁰ ECHR, 73316/01, *Siliadin v. France*, 26/7/2005, § 112.

³¹¹ UNO, A/RES/60/147, Grundprinzipien und Leitlinien betreffend das Recht der Opfer von groben Verletzungen der internationalen Menschenrechtsnormen und schweren Verstößen gegen das humanitäre Völkerrecht auf Rechtsschutz und Wiedergutmachung, 16th December 2005, available at <<https://www.un.org/german/sites/default/files/2024-09/ar60147.pdf>> (last accessed 28/8/26).

³¹² MINDER, p. 427 N 709, with further references, and TORRES, p. 816, would probably agree.

³¹³ CAPUS (Vergangenheit), p. 87.

³¹⁴ BStGer, CA.2022.8, 30/5/2023, E. 3.2.2.1, with further references.; CAPUS (Unverjährbarkeit), p. 253 et seq., with further references.; MAURIN SCHMIDT, Genozidverbrechen im Zivilprozess: zur Frage des anwendbaren Rechts und der Verjährung, at the same time a review of BGE 132 III 661, in: AJP 2007 p. 769, with further references.

³¹⁵ BStGer, BB.2021.141, 23/09/2021, E. 2.1.3, with further references., in: TPF 2021, p. 213 et seq.

³¹⁶ KREICKER, p. 58; SCHMIDT, p. 769 et seq., with further references.

³¹⁷ KREICKER, p. 59, with further references.

gravest human rights violations, those periods must not form a basis for the protection of legitimate expectations.³¹⁸ In such a case, substantive justice requires the disapplication of the national limitation provisions; the protection of legitimate expectations must recede.³¹⁹ Anyone who commits fundamental violations of human dignity must not be allowed to invoke the prohibition of retroactivity³²⁰ and benefit from national limitation provisions³²¹. The issue here is not to protect an individual, a citizen, from the arbitrary reassessment of an act or omission³²² by an all-powerful state³²³, but rather the retrospective punishment of activities which were already recognized as crimes against humanity at the time they were committed. Territorial public corporations may not invoke a legitimate expectation founded on their own prescription legislation anyway.

Nor, of course, does the fiscal burden justify criminal prescription either. The victims' right to criminal truth, to retribution, and to compensation and satisfaction – reparation –³²⁴ outweighs the fiscal burden. The preparatory work in the historical expert opinion (Appendix 3) and in this criminal complaint, as well as the forthcoming public call upon further victims to come forward (see Chapter 3.6. in this regard), should facilitate a proportionate investigation.

³¹⁸ Impetus for this argument: reference in *ibid.*, p. 37, to the case law of the German Federal Court of Justice.

³¹⁹ *Ibid.*, p. 37, with further references.

³²⁰ HALDEMANN, p. 881; HESSEBRUEGGE, p. 367, with further references.

³²¹ With the same conclusion, albeit on different grounds: MINDER, p. 479, note 802.

³²² KREICKER, p. 42, rightly disapproves of such a reassessment.

³²³ ANDRÉS PAYER, *Betrachtungen zum strafrechtlichen Rückwirkungsverbot*, in: *Ex/Ante 1/2022*, p. 57, with further references.

³²⁴ On the transatlantic slave trade UNO (FN 213). On criminal law as a domain of substantive truth, see for example RASELLI, p. 67. As for the rest, instead of many: DIANA CONTRERAS-GARDUÑO/SEBASTIAAN ROMBOUTS, *Collective Reparations for Indigenous Communities Before the Inter-American Court of Human Rights*, in: *Utrecht Journal of International and European Law* 2010/27, p. 11; HEIKE NIEBERGALL, *Overcoming Evidentiary Weaknesses in Reparation Claims Programmes*, in: *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity, Systems in Place and Systems in the Making*, Carla Ferstman/Mariana Goetz (eds.), 2nd ed., p. 145, with further references; ANA F. VRDOLJAK, *Reparations for Cultural Loss*, in: *Reparations for Indigenous Peoples, International and Comparative Perspectives*, Federico Lenzerini (Hrsg.), New York 2008, p. 224, with further references. There are various international sources and there is case law relating to the right to reparation. In terms of case law, the practice of the Inter-American Court of Human Rights is certainly worth mentioning, particularly with regards to indigenous peoples (cf. for example CONTRERAS-GARDUÑO/ROMBOUTS, p. 4 *et seq.*). On the right to reparation in the event of a breach of *ius cogens*, see for example SCHWARZ, p. 168.

2.6. Alternative Position (Application of Art. 101 Para. 3 StGB)

(A) The Limitation Period Has Not Yet Started to Run

Enslavement usually ends when victims regain their freedom.³²⁵ At this point, any financial profits that the perpetrators and others involved derive from the enslavement usually cease.³²⁶ Slavery is therefore a continuing offense, for the wrong embodied in the offense is not exhausted in a single act but consists in the ongoing maintenance of an unlawful situation.³²⁷ The offense therefore only ceases when the unlawful situation is remedied.³²⁸ Where aiding and abetting such a continuing offense contributes significantly to sustaining the unlawful situation, it forms a unity with the principal offense.³²⁹ This is the case with regards to the financing of the «business model» of enslavement.

Historical enslavement was not intended to humiliate and condemn, either individually or collectively, a party defeated in an armed conflict (or its combatants and civilians), or to atone for the wrongs committed (as was/is the moral justification put forward by the victorious party in the conflict³³⁰), but was aimed solely at economic gain. The aim was to exploit the labor of the persons affected as cheaply as possible (for the board and lodging needed to preserve their capacity to work) and without any unnecessary contractual negotiations – that is, by coercion – and to profit from that labor to the maximum, without any limit in time. The aim was to secure ownership rights in these human beings as one does in the case of a production machine. The investments made at the time in this «business model», too, were undertaken with the sole aim of profiting financially from enslavement for as long as possible. The «wealth gap» (see Chapter 3.6 for more on this) attests to the sad success of this «business model»: to this day, the perpetrator societies profit from historical enslavement, and to this day people are victims of

³²⁵ See for example BGer, 6B_107/2025, 2/10/2025, E. 2.3.1., relating to abduction.

³²⁶ While it is true that enslavement does not require financial gain (see Chapter 4.2.), the motivation for the offence is nevertheless often of an economic nature. By dispensing with a financial element of the offence, the aim was to ensure that all other cases of enslavement would be covered as well.

³²⁷ See for example BGer, 6B_107/2025, 2/10/2025, E. 2.3.1., for abduction, and BGE 131 IV 83, E. 2.1.2.

³²⁸ Exemplary in this context BGer, 6B_107/2025, 2/10/2025, E. 2.3.1.; BGer, 6B_113/2025, 11/6/2025, E. 2.1.

³²⁹ BGE 131 IV 83, E. 2.1.2 suggests this conclusion.

³³⁰ Example: After the end of the Second World War, the enslavement of people of German descent on the territory of the former Yugoslavia was justified with their collective guilt and regarded as a retaliatory measure in the interests of retributive justice.

historical enslavement, not merely in financial terms.³³¹ This means that the unlawful situation of historical enslavement persists to this day and is unlawfully sustained in various forms (e.g. denial of reparations; introduction of national limitation periods that contravene peremptory customary international law and constitute an impermissible self-amnesty; refusal to conduct effective investigations). The limitation period concerning the prosecution of historical enslavement has therefore never begun to run.

(B) The Limitation Period Is Suspended

Even if one were to assume that the limitation period for prosecuting historical enslavement had begun to run, it would remain suspended to this day. This follows from a general legal principle of law: Limitation periods in criminal law are suspended when the offenses go unprosecuted for systemic reasons. This is dictated by the purpose and rationale of limitation provisions, which are rooted in the imperative of realizing substantive justice.³³² Incidentally, in civil law, this notion of justice is realized by the rule that limitation periods do not begin to run until the person deriving a claim from the right is actually in a position to assert it³³³. This aspect of the notion of justice must be extended to the situation of victims suffering from economic and other transgenerational consequences of crimes against humanity today.

It is irrelevant in this context whether this systemic failure to prosecute is grounded in an abuse of state power or in the fact that state organs or officials are de facto powerless³³⁴. Neither situation may be permitted to give rise to an accountability gap.

To this day, the state organs respectively officials in Switzerland (not merely those of the cantons concerned) persistently refuse to undertake a criminal, or otherwise effective, investigation and to provide reparation for the local contributions to historical enslavement. There is no investigation, no punishment, and no other form of reparation, even though this crime against

³³¹ Durban Declaration (FN 6), p. 16.

³³² ZIMMERMANN, pp. 117 and 121, refers to the relevant case law and to academic literature on this subject.

³³³ With regards to the specific situation concerning the limitation periods in connection with the recovery of cultural property, similar arguments can be found in HANNES HARTUNG, Kunstraub in Krieg und Verfolgung, Diss. Zurich 2004, p. 301. The same basic idea is also reflected in CHRISTOFF JENSCHKE, Der völkerrechtliche Rückgabeanspruch auf in Kriegszeiten widerrechtlich verbrachte Kulturgüter, Diss. Berlin 2005, p. 246.

³³⁴ On the second aspect see MINDER, p. 447 N 747.

humanity clearly did not halt at Switzerland's gates. Viewing these facts in the context of the refusal to ratify the UN Convention, one is compelled to ask whether it might, in fact, form part of a political objective to «actively forget» these offenses. One might even be inclined to discern in this forgetting the very same ideology that gave rise to the offenses reported herein, and which may also find expression in art. 101 para. 3 StGB.³³⁵

With respect to historical enslavement, one must therefore proceed on the assumption of a systemic failure to prosecute the Swiss offenses, which severely disrupts legal certainty and finality and runs counter to the principle of the rule-of-law³³⁶. For as long as this systemic denial of material justice persists, the state's criminal jurisdiction in relation to historical enslavement cannot become time-barred.³³⁷

³³⁵ For the logical connection between state-sanctioned acts (in this case, state acquiescence and state support) constituting crimes against humanity and the failure to prosecute criminal offences, see the note in ZIMMERMANN, p. 141.

³³⁶ References to the relevant general considerations can be found in *ibid.*, p. 118 *et seq.*

³³⁷ See also on the general idea *ibid.*, p. 119.

3. The Facts (in Chronological Order)

The facts are presented in six chapters, each of which is arranged chronologically: The first chapter serves as an introduction to the transatlantic slave trade as a joint venture. The second chapter introduces the major foreign companies, some of whom had close links to more than one city state respectively canton (these are not the federal cantons as we know them today, the term «city state» is from here onwards used for the sake of simplicity; this is intended to ensure a clear distinction between today's cantons and their legal predecessors)³³⁸. Chapters 3.3 to 3.5 deal with each of the three cantons subject to this criminal complaint separately. The sixth chapter then sets out the consequences for my client and other victims (in chronological order as far as possible).

3.1. The Transatlantic Slave Trade as a Joint Endeavour

The slavery economy in the Atlantic region, which between the 17th and 19th centuries saw the forced removal of 12.5 million people from Africa,³³⁹ must be understood as a joint European-North American project. Trans-imperial cooperation³⁴⁰ between these basically rivalling powers was aimed, in the interests of maximizing profits, at establishing, maintaining, expanding, and continually refining the transatlantic slavery economy. Elements of this collaboration included, amongst others:

- elaboration of anti-Black racism by individual scholars and within academic networks,³⁴¹
- exchange of colonial knowledge (maps, atlases, travel accounts, contacts in Africa and the Americas, economic concepts, financial instruments, development of colonial societies, slave laws),
- deployment of multinational forces and the provision of national mercenary troops to secure (other nations') colonies, to control plantation slavery and to suppress uprisings in the colonies,
- exchange or cession of colonies in trade agreements and other treaties,

³³⁸ More on this in Chapter 4.4.

³³⁹ PAUL E. LOVEJOY, The Impact of the Atlantic Slave Trade on Africa: A Review of the Literature, in: *Journal of African History* 30/1989, p. 368.

³⁴⁰ DANIEL HEDINGER/NADIN HEÉ, Transimperial History: The New Global?, in: *Comparativ, Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung* 35/2025, pp. 611 et seqq.

³⁴¹ DELACAMPAGNE, pp. 112 et seqq.

- international composition of the plantocracies,³⁴²
- cooperation between colonial powers in the «procurement» of enslaved people from Africa,³⁴³ and
- trade in enslaved humans between the various European colonies.³⁴⁴

The following specific examples illustrate, on the one hand, the nature of the historical slave economy as a joint European-North American project and, on the other hand, show how the actors described in s. 3.2 to 3.5 were involved in this joint project.

- 1713: As part of the Treaty of Utrecht, Great Britain (Queen Anne) and Spain (King Philip V) concluded an agreement whereby Great Britain (after France) was to be granted the exclusive right to ship enslaved people to the Spanish colonial empire.³⁴⁵
- The British South Sea Company, co-financed by the Swiss City States of Zurich and Berne, inspired the French Mississippi Company (1717–1719), which was co-financed by the Swiss City State of Solothurn and headed by a Scotsman, John Law.³⁴⁶
- 1733: A major uprising by enslaved people broke out on the Danish island of Sankt Jan (today Saint John)³⁴⁷. It was only when French troops from Martinique (several hundred soldiers) came to the Danes' aid that the uprising was successfully quelled.³⁴⁸ Swiss nationals were also involved in this trans-imperial counter-insurgency operation³⁴⁹, namely members of the Karrer/Hallwyl mercenary regiment.³⁵⁰ (This regiment had been founded in 1719 by Franz Adam Karrer, a resident of Solothurn, and was deployed to various colonies in the Americas during the 1730s. The regiment's overseas deployment was incompatible with the mercenary contracts between the Swiss Confederation and European powers such as France, Spain and

³⁴² For example, there were Swiss and British slave-owners in the French colony of Saint-Domingue, and French, German, Scottish, and Swedish slave-owners in British colonial North America, and so on.

³⁴³ GREGORY E. O'MALLEY/EMILY BERQUIST SOULE, Trading Enslaved People in the Spanish and British Atlantic Empires, 30/5/2023, available at <<https://www.huntington.org/verso/trading-enslaved-people-spanish-and-british-atlantic-empires>> (last accessed am 27/3/26).

³⁴⁴ GREGORY E. O'MALLEY/ALEX BORUCKI, Patterns in the intercolonial slave trade across the Americas before the nineteenth century, in: *Revista Tempo* 23/2017, pp. 314 et seqq.

³⁴⁵ COLIN A. PALMER, *Human Cargoes: The British Slave Trade to Spanish America, 1700–1739*, Chicago 1981, p. 97.

³⁴⁶ LARRY NEAL/ERIC SCHUBERT, *The First Rational Bubbles: A New Look at the Mississippi and South Sea Schemes*, 1985. In addition, see HARRY M. LEWIS, *Edinburgh to 'Incatan': Scottish Subcontractors, the South Sea Company and the Caribbean Frontier, 1707-1741*, in: *Scottish Historical Review*, 104/2025, regarding another Scottish connection.

³⁴⁷ JEPPE MULICH, *In a Sea of Empires. Networks and Crossings in the Revolutionary Caribbean*, Cambridge 2020, p. 63.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

³⁵⁰ All information concerning this regiment is based on FÄSSLER (expert opinion), pp. 6 et seq. and 22 et seqq.

the Netherlands, and with the established practice in this regard.³⁵¹ The city states were aware of the regiment's deployment in the slave colonies and tolerated it.) In the same year, the French West India Company sold the neighboring island colony of St. Croix to the Danish West India Company.³⁵²

- In the mid-18th century, the Dutch colony of Berbice had not only Dutch but also Swiss, German, French, and English slaveholders; the Swedish colony of Saint-Barthélemy had not only Swedish but also French slaveholders; and the Danish colony of St. Croix had not only Danish but also British, Scottish, and German slaveholders.³⁵³
- 1763/64: As a result of the major slave revolt in Berbice³⁵⁴ (where there were also plantations owned by merchants from the Swiss city of St. Gallen), the Dutch governor appealed to the governor of the English colony of Barbados for assistance. He eventually received help from a British merchant (three warships with several hundred mercenaries). The uprising was finally quelled with the support of Dutch troops. The troops were commanded by a Swiss mercenary officer.³⁵⁵
- 1773: The same Swiss mercenary officer commanded the deployment of Dutch troops and Swiss mercenaries against the slave revolts in Suriname.³⁵⁶
- 1784: France (King Louis XVI) ceded the island of Saint-Barthélemy to Sweden (King Gustav III) in exchange for trade and storage rights in the port of Gothenburg.³⁵⁷
- 1787: Sweden enacted a slave law modelled on the French system for the Caribbean island of Saint-Barthélemy.³⁵⁸

³⁵¹ FÄSSLER (expert opinion), p. 24.

³⁵² FÄSSLER (expert opinion), p. 6.

³⁵³ MARJOLEINE KARS, *Blood on the River: A Chronicle of Mutiny and Freedom on the Wild Coast*, New York 2005, p. 48; FREDRIK THOMASSON/ALE PÅLSSON/VICTOR WILSON, *Swedish Caribbean Colonialism: A Digital Archive of Swedish St. Barthélemy, 1785–1878*, in: *Journal of Slavery and Data Preservation* 6/2025, p. 113 et seqq.; GUNVOR SIMONSEN, *Slave Stories – Law, Representation, and Gender in the Danish West Indies*, Aarhus 2017, p. 24.

³⁵⁴ On the whole topic KARS, 11 et seqq. and 99 et seq.

³⁵⁵ PHILIPP KRAUER, Louis-Henri Fourgeoud, *Historisches Lexikon der Schweiz* 2024, available at <<https://hls-dhs-dss.ch/de/articles/061697/2024-10-15/>> (last accessed on 27/3/26).

³⁵⁶ *Ibid.*

³⁵⁷ ALE PÅLSSON, *St. Barthélemy and the Atlantic World*, 29/7/2019, available at <<https://academic.oup.com/edited-volume/61800/chapter/546395023?login=true#546395023>> (last accessed on 27/3/26).

³⁵⁸ FÄSSLER (expert opinion), p. 8, with further references.

From the 1660s to the early 19th century, as part of this overall project, approximately 111,000 enslaved Africans were transported from the Gold Coast in Danish Guinea to the Danish colony on the three Danish West Indian islands of St. Thomas, St. John, and St. Croix.³⁵⁹ This slave trade was part of the broader Danish triangular trade between the Gold Coast, the Danish West Indies, and Denmark.³⁶⁰ Weapons and alcohol were shipped from Denmark to persuade Africans to sell other Africans.³⁶¹ Those who had been enslaved in this way were then transported to the Danish West Indies, from where sugar, in particular, was shipped back to Denmark.³⁶² According to recent research, Denmark was the largest slave-trading nation per capita of the mother country.³⁶³ This means that Denmark, too, is among those smaller countries with a colonial history, whose role has long been underestimated.³⁶⁴

3.2. The Major Companies

In 1711, the British founded the South Sea Company; in 1720, its initial capital was raised from government debt.³⁶⁵ Private individuals acquired shares or received them for other reasons (e.g. corruption: Marquis de Scotti, a member of the court in Madrid).³⁶⁶ The company used bribes to influence parliamentary decisions.³⁶⁷ Some of the executives at the South Sea Company were also directors of one of the insurance companies.³⁶⁸ The company competed with the Mississippi

³⁵⁹ Danmarks Nationalleksikon, Danmarkshistorien, Forordning om negerhandelen, 16. marts 1792, available at <https://danmarkshistorien.lex.dk/Forordning_om_negerhandelen%2C_16._marts_1792> (last accessed on 13/3/26).

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ NIELS BRIMNES, The colonialism of Denmark-Norway and its legacies, 7/1/2021, available at <<https://nordics.info/show/artikel/the-colonialism-of-denmark-norway-and-its-legacies>> (last accessed on 27/3/26); SCOTT STAWSKI, Denmark's Veiled Role in Slavery in the Americas: The Impact of the Danish West Indies on the Transatlantic Slave Trade, Master Harvard University, 2018, p. 3, available at <<https://dash.harvard.edu/server/api/core/bitstreams/aba6920e-f28e-431a-8384-b011ddf3de/content>> (last accessed on 24/3/26).

³⁶⁴ Switzerland is also among these underestimated countries: The Swiss Confederation's share of the entire transatlantic slavery system – involving both private and state actors (the slave trade, slave ownership, plantation ownership, investments, the colonial goods trade, ideological support, and the development and administration of colonies) – is currently estimated at 2–3 percent. On a per capita basis, this corresponds to a level of involvement that is likely higher than that of France. Cf. HANS FÄSSLER, A Zurich Monument Toppled The (Post-)Colonial Case of Swiss Industrialist and Entrepreneur Alfred Escher (1819–1882), in: *Atlantic Studies*, 22/2024, p. 565.

³⁶⁵ DANIEL MENNING, Politik, Ökonomie, Aktienspekulation, 'South Sea Bubble und Co.' 1720, Berlin/Boston 2020, pp. 32 and 34.

³⁶⁶ Ibid., p. 126, 129 FN 14 and 131.

³⁶⁷ Ibid., pp. 155 and 196.

³⁶⁸ Ibid., p. 157 FN 95.

Company and shipped enslaved men, women, and children from Africa across the Atlantic.³⁶⁹

The Mississippi Company (also known as the Compagnie des Indes perpétuelle) was formed between 1717 and 1719 through the merger of older colonial trading companies (Compagnie des Indes Occidentales Françaises, Compagnie d'Occident, Compagnie des Indes orientales, Compagnie de Chine), the purchase of the Compagnie du Sénégal – a slave-trading company founded by Louis XIV in 1673 – and the conversion of government debt into shares.³⁷⁰ The company acquired exclusive rights to mining (gold, silver) in the North American territory of Louisiana.³⁷¹ By the summer of 1720, the rapidly growing company is said to have already had a fleet of more than 62 ships.³⁷²

Both companies were major players at the time.³⁷³

3.3. The Canton of Zurich

In 1727, the Zurich treasury purchased 120 shares of the South Sea Company worth 100,000 Zurich guilders.³⁷⁴ Chat GTP³⁷⁵ estimates the purchasing power of this amount – based on wages, food prices, and real estate prices at the time – to be roughly equivalent to CHF 25–40 million in today's purchasing power. The assumptions on which Chat GPT's estimate is based have been validated³⁷⁶ and do not appear to be arbitrary. The city held more than half of these shares until 1836.³⁷⁷ Historian HANS CONRAD PEYER refers to the financial profit as a «nice success» for the city.³⁷⁸ In total, approximately 36,000 Africans were deported as a result of this financial contribution from the City State of Zurich.³⁷⁹

³⁶⁹ Ibid., pp. 78 and 95 *et seq.*

³⁷⁰ FÄSSLER (expert opinion), p. 21; MENNING, pp. 1 and 36.

³⁷¹ FÄSSLER (expert opinion), p. 21; MENNING, p. 36.

³⁷² MENNING, p. 71, uses the expression «property».

³⁷³ Ibid., p. 3.

³⁷⁴ FÄSSLER (expert opinion), p. 11.

³⁷⁵ AI was used only to estimate these amounts. This is stated in each case. Such estimates may change over time as AI improves.

³⁷⁶ See, for example, the City of Opfikon, Old Measures and Currency, available at <<https://www.opfikon.ch/geschichte/2380>> (last accessed on 22/3/26). Data for southern Germany is available, for example, at <https://www.sueddeutscher-barock.ch/ga-menuseiten/m72_Geld-Masse.html#Lebenskosten> (last accessed on 22/3/26). On August 2, 2026, AI Claude even estimated a figure of CHF 30–60 million, based on wages/income and the resulting potential standard of living.

³⁷⁷ FÄSSLER (expert opinion), p. 11.

³⁷⁸ Quoted in FÄSSLER, *ibid.*

³⁷⁹ Cf. the reference in FÄSSLER, *ibid.*

The Leu & Comp. Interest Commission was established by a charter dated 1754, and its office in Zurich City Hall was opened to the public for the first time on 15 April 1755.³⁸⁰ (This date is considered the start of their business operations.³⁸¹) The Leu & Comp. Interest Commission was established as a state-run investment institution; state endowment capital was used to fund its establishment.³⁸² The active business of the Leu & Comp. Interest Commission at that time can be divided into two categories: investments in government bonds and private lending transactions.³⁸³ As part of this active trading, the Leu & Comp. Interest Commission continuously purchased securities (stocks, bonds) from the Bank of Copenhagen – which was linked to the Danish crown and dependent on the Danish state – beginning in 1757.³⁸⁴ Danish securities (the old Danish partial bonds from Genoa) were recorded in the books of the Leu & Comp Interest Commission until 1839.³⁸⁵ As evidenced by a «promotional letter» from Geneva notary Jean Louis dated 1760, it was well known in Zurich that Denmark needed money to expand its small colonial empire, *Dansk Vestindien* («[...] nous avons acquis de nos propres deniers, et reuni au Domaine de notre Couronne, les Isles et les Colonies de l’Amerique [...]»³⁸⁶). In 1768 and 1772, the firm Jacob Ambrosius Pool & Comp. in Amsterdam received loans from the Leu & Comp. Interest Commission: 10,250 guilders in 1768³⁸⁷ («argent court d’Hollande à vue»), 1’105 Gulden in 1772³⁸⁸.³⁸⁹ In 1775, the Leu & Comp. Interest Commission expressed strong interest in participating in a 1 million guilder bond³⁹⁰ issued by Jacob Ambrosius Pool & Comp.³⁹¹ Jacob Ambrosius Pool & Co. was part of a large network of companies owned by members of the Pool family, who were originally from the Engadine.³⁹² They owned numerous slave plantations in the Dutch colony of Berbice.³⁹³

³⁸⁰ JULIUS LANDMANN, *Leu & Co. 1755-1905, Ein Beitrag zur Geschichte der öffentlichen und privaten Kreditorganisation*, Zurich 1905, pp. 58 and 73.

³⁸¹ LANDMANN, p. 73.

³⁸² BERNHARD WEHRLI, *Banken und Bankiers in Zürich*, in: *Geschichte der Schweizer Banken, Bankier-Persönlichkeiten aus fünf Jahrhunderten*, Louis H. Mottet (ed.), Zurich 1987, p. 208 et seq. The state’s endowment capital was repaid after a few years.

³⁸³ LANDMANN, p. 84; WEHRLI, p. 208.

³⁸⁴ FÄSSLER (expert opinion), p. 12, with further references.; LANDMANN, pp. 111 et seqq.

³⁸⁵ LANDMANN, p. 228.

³⁸⁶ FÄSSLER (expert opinion), p. 12.

³⁸⁷ According to ChatGPT, based on today’s purchasing power, approximately CHF 2.5 million to CHF 4 million.

³⁸⁸ According to ChatGPT, that would be several CHF 100,000 in today’s purchasing power.

³⁸⁹ FÄSSLER (expert opinion), p. 16, with further references.

³⁹⁰ According to ChatGPT, this amounts to approximately CHF 250–400 million in today’s purchasing power.

³⁹¹ FÄSSLER (expert opinion), p. 16, with further references.

³⁹² FÄSSLER (expert opinion), p. 16 et seq., with further references.

³⁹³ *Ibid.*

In 1777, the Leu & Comp. Interest Commission invested through the Brentano cousins (Genoa) 90,000 Lire di Banco in Swedish securities³⁹⁴ and additional amounts in Danish securities³⁹⁵. The Swedish bond was increased to 180,000 Lire di Banco in 1778.³⁹⁶ Payments were made between 1786 and 1790, but the value still stood at 73,800 Lire di Banco in 1798.³⁹⁷ Chat GPT estimates the purchasing power of these 73,800 Lire di Banco – based on wages, food prices, and real estate prices at the time – to be roughly equivalent to CHF 20–30 million in today’s terms. The assumptions on which the ChatGPT estimate is based do not appear to be arbitrary.³⁹⁸ Starting in 1829, the Danish titles were regularly awarded by lottery.³⁹⁹ Some of these funds flowed directly into the Swedish and Danish slavery economies in the Caribbean, while others flowed indirectly, as they allowed Denmark and Sweden to free up corresponding funds in their state budgets for colonial activities.⁴⁰⁰ The Leu & Comp. Interest Commission generated substantial profits from these investments.⁴⁰¹ (The practice of slavery by Sweden was significant for the European-North American slavery economy and the geographical region discussed here in that Sweden developed Saint-Barthélemy into a free port and hub for the slave trade among all nations and produced metal bars as a medium of exchange for enslaved people in the triangular trade.⁴⁰²)

³⁹⁴ FÄSSLER (expert opinion), p. 15.

³⁹⁵ LANDMANN, p. 228.

³⁹⁶ FÄSSLER (expert opinion), p. 15.

³⁹⁷ Ibid.

³⁹⁸ AI Claude estimates this amount to be slightly lower (CHF 10–20 million). The assumptions on which AI Claude’s estimate is based: The Lira di Banco (the Banco di San Giorgio’s accounting currency) was worth approximately 1.15 current lire (lire corrente). 73,800 Lire di Banco correspond to approximately 84,900 current lire. Silver content as a reference: In the 1790s, a Genoese lira still contained about 3.7 g of fine silver. 84,900 lire = approximately 314 kg of fine silver. (In terms of pure metal value alone, that would be only about CHF 250,000–300,000 today – which massively underestimates purchasing power and is not the method we are seeking.) Wage/Income Equivalent: An unskilled laborer in northern Italy earned around 5–6 g of silver per day around 1798 (according to standard European wage scales), or roughly 1.5–2 lire per day. This amount thus corresponds to approximately 55,000–60,000 workdays, or about 190–200 person-years of unskilled labor. If we value this based on today’s Swiss income for unskilled labor (roughly CHF 200–350 per day, or CHF 50,000–60,000 per year), this results in approximately CHF 10–20 million. To put this in perspective: In 1798, 73,800 Lire di Banco represented a considerable fortune – roughly two centuries’ worth of an unskilled worker’s earnings. This estimate is less convincing than that of Chat GTP because it is based on the income of an unskilled worker.

³⁹⁹ LANDMANN, p. 228.

⁴⁰⁰ For Sweden FÄSSLER (expert opinion), p. 15.

⁴⁰¹ For Sweden *ibid.*

⁴⁰² FÄSSLER (expert opinion), p. 9.

In 1791, the Leu & Comp. Interest Commission granted several loans to Hottinguer & Cie., a Paris-based bank with Swiss roots.⁴⁰³ The latter was led by Hans Konrad Hottinger (1764–1841) of Zurich and took part in two triangular trade voyages to Africa and across the Atlantic in 1792, during which a total of 669 enslaved people were deported.⁴⁰⁴

The ledgers of the Leu & Comp. Interest Commission also contained records pertaining to other business partners involved in global transactions related to slavery.⁴⁰⁵

The last meeting of the Leu & Comp. Interest Rate Commission under the old regime took place on 2 December 1797; this was followed by a reorganization and some sort of restructuring, which was largely completed by 1822.⁴⁰⁶ In 1854, the interest commission firm Leu & Comp. was reorganized into the stock corporation Leu & Co.⁴⁰⁷ The «old» Canton of Zurich retained its stake in this corporation.⁴⁰⁸ The government's stock holdings were not sold at a profit until later.

3.4. The Canton of Berne

In 1719, the City State of Berne (Grand Council), on the advice of Müller & Comp., decided to invest 150,000 GBP from the Bernese treasury in the South Sea Company through the private Bernese bank Malacrida & Comp.⁴⁰⁹ Adjusted to today's purchasing power, this sum is equivalent to about CHF 35 million. The City State of Berne profited significantly from this (GBP 168,952).⁴¹⁰ The City State of Berne was one of the South Sea Company's largest individual shareholders.⁴¹¹

From 1757 to 1782, the City State of Berne participated in the Danish slavery economy to a significant extent in terms of monetary value through the acquisition – partly direct and partly indirect (via private banks) – of various securities (Danish government bonds).⁴¹² The following

⁴⁰³ Ibid., p. 17.

⁴⁰⁴ Ibid., p. 17 et seq.

⁴⁰⁵ Ibid., p. 28, with further references., particularly to the names of these companies.

⁴⁰⁶ LANDMANN, pp. 156, 176, and 225.

⁴⁰⁷ Ibid., p. 235.

⁴⁰⁸ Ibid., p. 276 et seq.

⁴⁰⁹ FÄSSLER (expert opinion), p. 18.

⁴¹⁰ Ibid.

⁴¹¹ Ibid., with further references.

⁴¹² FÄSSLER (expert opinion), p. 20.

transactions serve as examples⁴¹³: In 1757, Frankfurt banker Jean Jacquer Perretz was commissioned to purchase 100 bonds at a price of 157,238 Reichstaler. The maturity of these bonds was extended three times. In 1768, on the advice of the brothers Johann Philipp and Simon Moritz Bethmann in Frankfurt, Berne contributed 140,000 Banko Thaler to a subscription by the Danish government in Hamburg. In 1777, the 140,000 Banko Thaler were converted into bonds. In 1782, a bond worth 100,000 livres de France was purchased through the Bernese bank Marcuard, Beuther & Comp.⁴¹⁴ and the Royal Chartered Trading and Canal Company, which was guaranteed for by the Danish king. As late as 1798, Berne's holdings of Danish bonds amounted to 599,691 Reichstaler. Chat GTP estimates the purchasing power of these 599,691 Reichstaler – based on wages, food prices, and real estate prices at the time – to be roughly equivalent to CHF 85–200 million in today's terms. The assumptions on which the ChatGPT estimate is based do not appear to be arbitrary. However, the estimate is significantly lower than that of the AI Claude.⁴¹⁵

3.5. The Canton of Solothurn

In 1719, Solothurn City Council decided to purchase 42,000 livres worth of shares in the French Mississippi Company.⁴¹⁶ To establish a colony, people were «imported» from Angola, the Gold Coast (present-day Ghana), and the French West Indies and enslaved.⁴¹⁷ Chat GTP estimates the purchasing power of the 42,000 livres – based on wages, food prices, and real estate prices at

⁴¹³ Ibid.

⁴¹⁴ This bank was also involved in the Indiennes trade, which was linked to slavery (MAYA ZELLWEGER, *Die «Seel des Commercii» der «Fetzen Krämer» von Trogen: Textilfernhandel nach Lyon und Genua, 1670 bis 1820*, Diss. Zurich, Basel 2023, p. 386).

⁴¹⁵ Using the same wage/income method as for the Banco Lira (unskilled laborer!), AI Claude arrives at a rough estimate of CHF 0.5–1 billion, with a median estimate of approximately CHF 600–700 million. This is consistent with the fact that this figure is effectively on the same order of magnitude as the legendary Bernese state treasury, which was confiscated by France in 1798. Silver content as a reference: The Berner Taler of 1798 contained about 26.7 g of fine silver (Reichstaler standard, corresponding to just under the old 25.98-g standard). 599,691 Reichstalers = about 15.6 metric tons of fine silver. (In terms of pure metal value, that would be only about CHF 14 million today – but that is not the method we are looking for.) Wage/income equivalent: Around 1798, an unskilled laborer earned roughly 5–6 g of silver per day. 15.6 million g / ~6 g equals roughly 2.6 million workdays, or about 10,000 person-years of unskilled labor. Valued at today's Swiss income for unskilled labor (roughly CHF 200–350 per day or CHF 50,000–60,000 per year), this amounts to approximately CHF 0.5–1 billion. For context: At an exchange rate of 4 livres per taler, the 599,691 Reichstaler were nominally equivalent to roughly 2.4 million Bernese livres – and in terms of labor value, to about ten thousand annual income. This was state wealth, not private wealth. AI Claude draws attention to the following issue: Depending on the assumed daily wage and modern comparative wage, the result varies easily by a factor of two. This suggests that the amount could actually be significantly higher.

⁴¹⁶ FÄSSLER (expert opinion), p. 22.

⁴¹⁷ Ibid., p. 21.

the time – to be roughly equivalent to CHF 8–20 million in today’s terms. The assumptions on which Chat GTP’s estimate is based do not appear to be arbitrary.⁴¹⁸ Chat GTP has, for example, explicitly considered the fact that prices were, in part, distorted at the time as a result of the Mississippi Bubble.

3.6. Consequences for Shelley Moorhead and Other Victims

Through these contributions to the overarching European-North American project, to Atlantic plantation slavery («chattel slavery») in general, and to slavery on the three Danish West Indian islands of St. Thomas, St. John, and St. Croix in particular, the city states promoted the enslavement of people in general and on the Danish West Indies in particular (see Chapter 4).

My client, Shelley Moorhead, is a descendant of people who were enslaved in the Danish West Indies. His family tree is largely set out in the attached documents (Appendix 4). The Moorhead and Brow families have lived on St. Croix for generations and have quite evidently engaged with their colonial past in various ways, engaging with civil society accordingly (Appendix 4).

Particularly noteworthy in this regard is my client’s great-grandfather, C.R.T. Brow (born c. 1880), who served as the elected treasurer of the St. Croix Labor Union and as one of the principal negotiators of the 1916 Labor Agreement in the period immediately preceding the transfer of the Danish West Indies to the United States – a transfer that was carried out without consultation with or the consent of the islands’ population (Appendix 4). He subsequently served as an elected member of the Colonial Council (Appendix 4). One of my client’s grandmothers, Esther Virginia Brow Moorhead, was a founding member of the so-called Independent Citizens Movement (Appendix 4). An uncle of my client’s, Mario C. Moorhead, was arrested in the 1970s

⁴¹⁸ The result is almost identical to the estimate provided by AI Claude: Using the wage/income method, AI Claude arrives at a rough figure of CHF 8–15 million, with a median estimate of about CHF 10 million. An important additional caveat: 1719 was the year of John Law’s system – the French livre tournois was heavily manipulated during this period, so the uncertainty is even greater than usual. Derivation based on the assumptions (this refers to the French livre tournois): Silver content as a reference: In the early 1700s, the livre tournois contained roughly 5–6 g of fine silver (before it was stabilized at 4.5 g in 1726). I am using ~5 g. 42,000 livres = approximately 210 kg of fine silver. (Pure metal value today is only about CHF 190,000 – not the method we are looking for.) Wage/income equivalent: An unskilled laborer in France earned roughly 5 g of silver per day around 1719. 210,000 g / ~5 g equals roughly 42,000 workdays, or about 150 person-years of unskilled labor. Valued at today’s Swiss income for unskilled labor (roughly CHF 200–350 per day or CHF 50,000–60,000 per year), this amounts to approximately CHF 8–15 million. To put this in perspective: In 1719, 42,000 livres represented roughly one and a half centuries’ worth of an unskilled worker’s earnings – a substantial sum by «state/contractual» standards.

and served a prison sentence (Appendix 4). Within the affected community in the US Virgin Islands, this action by the authorities was seen as politically motivated because Mario C. Moorhead had been a political activist (Appendix 4).⁴¹⁹ My client's father, Raymond A. Moorhead, founded the St. Croix Teachers' Union (Appendix 4). Extracts from official registers (e.g. concerning births, marriages, and deaths) and other documents – e.g. concerning other members of his family tree and relatives from earlier generations – are either inaccessible to my client or very difficult for him to access, as they are held in Danish archives to which he has no online access (Appendix 4). For more than two decades, my client has been campaigning pro bono for reparation for the crime of historical enslavement. To this end, he founded the African-Caribbean Reparations and Resettlement Alliance (ACRRA) and continues to lead and represent ACRRA to this day (see Appendices 5–10 for information on this organization's public relations work)⁴²⁰. As part of his role, he consults experts worldwide and regularly submits petitions, motions and complaints to banks, government authorities, parliaments, national and international commissions (e.g. the United Nations, the African Union and CARICOM), as well as to courts (Appendices 10–35)⁴²¹. In 2008, he went on a 34-day hunger strike to draw attention to outstanding reparation – an endeavor that was physically and mentally demanding (Appendix 4). His sustained commitment over more than two decades has hampered his opportunities to pursue paid employment and build up his personal wealth. During this time, he has had to deal extensively with public authorities, commissions, and courts; he has repeatedly faced institutional rejection and social exclusion; and he has had to endure the discrediting of his work. These ongoing stresses and experiences have also had consequences for his personal and private life.

My client's commitment follows a documented pattern within his family that has persisted across several generations – a pattern of civic engagement, trade union organisation, political representation, advocacy and resistance to systems of inequality.⁴²² This family history forms part

⁴¹⁹ See also ELISA MCKAY, 'BEELLLOWVEEEDDD!' – STX Icon Mario Moorhead, 8/7/2019, available at <<https://stthomassource.com/content/2019/07/08/beelllowveeeddd-stx-icon-mario-moorhead/>> (last accessed on 28/7/26).

⁴²⁰ The documents submitted are provided by way of example. My client has further documents which demonstrate his commitment.

⁴²¹ Ditto.

⁴²² KLAS RÖNNBÄCK/DIMITRIOS THEODORIDIS/STEFANIA GALLI, Slavery, Resistance and Repression: A Quantitative Empirical Investigation, in: Göteborg Papers in Economic History 37/2024, suggest that this is a pattern that reflects the continued resistance of enslaved people.

of the context within which his own commitment to restorative justice has developed.

As a resident of a region that remains culturally and economically scarred by historical enslavement to this day, and as a descendant of people who were enslaved in that region, my client, Shelley Moorhead, has been and is affected on the one hand as a victim of the overarching European-North American project – in particular, Atlantic plantation slavery («chattel slavery») – and on the other hand as a victim of the slave economy in the Danish Virgin Islands (today the US Virgin Islands), specifically St. Croix.

- Economic Consequences

The enslavement of ancestors results in financial loss for their descendants:⁴²³ The descendants of enslaved people earn less than others, partly because of a higher unemployment rate.⁴²⁴ Furthermore, enslaved people left their descendants less wealth than others – if they left any at all.⁴²⁵ These effects on income and wealth accumulate over time. The overall effect per person resulting from this to date (known as the «wealth gap») varies from region to region.⁴²⁶ For the non-independent territories of the USA – which include the US Virgin Islands – a net worth of USD 196,987 (2020) per person is assumed.⁴²⁷ This figure is a conservative estimate and therefore represents the lowest limit of the actual financial loss.⁴²⁸ Even though the exact extent of my client's individual financial loss cannot be reconstructed with mathematical certainty, this available evidence on the cumulative intergenerational wealth gap provides an objective contextual basis for assessing the economic consequences of enslavement and its after-effects. The figure of USD 196,987 (2020) cited must therefore serve as a reference point for estimating my client's financial loss (see Chapter 4.5.).

⁴²³ See Report on Reparations for Transatlantic Chattel Slavery in the Americas and the Caribbean, 8/6/2023, available at <<https://www.brattle.com/wp-content/uploads/2023/07/Report-on-Reparations-for-Transatlantic-Chattel-Slavery-in-the-Americas-and-the-Caribbean.pdf>> (last accessed on 17/3/26) (hereafter referred to as Brattle Report).

⁴²⁴ Brattle Report, p. 60 et seqq.

⁴²⁵ Ibid., p. 49, with further references.

⁴²⁶ Ibid., p. 54, with further references.

⁴²⁷ Brattle Report, p. 54, for further information on the situation in the US Virgin Islands compared to other parts of the USA, see also Disability Rights Centre of the Virgin Islands, Shadow Citizens: Confronting Federal Discrimination in the US Virgin Islands, March 2021, available at <<https://drcvi.org/shadow-citizens>> (last accessed on 20/8/26).

⁴²⁸ Brattle Report, pp. 50 and 55, with further references.

- Other Possible Transgenerational Consequences

The common consequences of a post-traumatic stress disorder, from which the overwhelming majority of the enslaved are likely to have suffered, are well known – recurrent, involuntary and intrusive memories; traumatic nightmares; dissociative reactions (e.g. flashbacks), which may occur on a continuum from brief episodes to complete loss of consciousness; intense and prolonged stress following confrontation with traumatic stimuli; marked physiological reactivity following confrontation with trauma-related stimuli; persistent, deliberate avoidance of distressing trauma-related stimuli after the event; trauma-related thoughts or feelings; trauma-related external stimuli (e.g. persons, places, conversations, activities, objects, or situations); negative changes in cognition and mood that began or have worsened after the traumatic event; inability to recall important aspects of the traumatic event (usually dissociative amnesia, not due to head injury, alcohol, or other drugs); persistent (and often distorted) negative beliefs and expectations about oneself or the world (e.g. «I am bad.», «The world is utterly dangerous.»); persistent distorted attribution of blame to oneself or others for causing the traumatic event or for the resulting consequences; persistent negative trauma-related emotions (e.g. fear, horror, anger, guilt, or shame); markedly diminished interest in (pre-trauma) meaningful activities; a feeling of estrangement from others; persistent inability to experience positive emotions (constricted affect); trauma-related changes in arousal and reactivity that began or have worsened after the traumatic event; irritable or aggressive behavior; self-destructive or risky behavior; hypervigilance (excessive alertness); exaggerated startle response; concentration problems; sleep disturbances.⁴²⁹ The enslaved who suffered from such symptoms had no access to today's forms of therapy.⁴³⁰

Their trauma reverberates in their descendants.⁴³¹ These after-effects in descendants are referred to as transgenerational trauma, in the case of the descendants of enslaved people they are called Post Traumatic Slave Syndrome (PTSS).⁴³² In descendants, such a transgenerational trauma

⁴²⁹ JOY DEGRUY, *Post Traumatic Slave Syndrome, America's Legacy of Enduring Injury & Healing*, Portland 2017, p. 99.

⁴³⁰ *Ibid.*, p. 100.

⁴³¹ *Ibid.*, p. 101 *et seqq.* DEGRUY describes this in greater detail (including the relevant theories on the mechanisms involved). For a more general discussion of trauma, see also JUDITH LEWIS HERMAN, *Trauma and Recovery*, 2nd ed., Philadelphia 2015.

⁴³² See for example BRIA CAMPBELL, *Past, Present, Future: A Program Development Project Exploring Post Traumatic Slave Syndrome (PTSS) Using Experiential Education and Dance/Movement Therapy Informed Approaches*, in: *American Journal of Dance Therapy* 41/2019, p. 215, with further references; DEGRUY.

can, for example, trigger trauma-related symptoms as mentioned above, promote depression and anxiety, or manifest itself, for instance, as impairing beliefs and assumptions (about the possibility or impossibility of success), self-doubt and impaired self-confidence, anger/aggression, generalized stress, etc.⁴³³ Such effects impair interpersonal relationships.⁴³⁴ At the same time, it is recognized that transgenerational trauma – and thus also a PTSS – can, by virtue of an inherited responsibility for law and justice, lead to a pronounced, intense commitment in this regard.⁴³⁵

My client does not claim to have been clinically diagnosed with PTSS, nor is such a diagnosis presented here as an established fact. Nevertheless, his documented family history, the ongoing consequences of enslavement within the community into which he was born and in which he lives, his commitment to restorative justice, which has continued for more than two decades, as well as the significant personal, professional and economic consequences described above, constitute facts that are potentially relevant to assessing whether, and to what extent, the historical and ongoing circumstances in question have impaired his personal or psychological integrity. These circumstances should not be understood as suggesting incapacity, instability, impaired judgment, or lack of professional competence. Nor should my client's deliberate political, legal, and diplomatic advocacy itself be treated as evidence of psychological pathology. To the extent that a determination concerning transgenerational trauma/PTSS in my client's individual case is deemed legally necessary to establish his victim status, this open question should be determined based on the available scientific evidence and, if required, appropriate expert assessment.

In the event of any assessment, it is important to bear in mind that the descendants of former slaves, such as my client, experience disrespect in all manner of forms on a daily basis.⁴³⁶ These acts of disrespect are a continuation of the abuse, oppression, and humiliation that their

⁴³³ CATHERINE REITER/STEFAN WEHRENBURG, Das vererbte Trauma im Recht, in: AJP 2023 p. 461, with further references, based on the following MA paper: CATHERINE REITER, Transgenerational Trauma in Post-Apartheid South Africa, Geneva 2022.

⁴³⁴ DEGRUY, p. 104.

⁴³⁵ REITER/WEHRENBURG, p. 461 *et seq.*, with further references. The descendants pay tribute to their ancestors (see in this context ZLATOMIRA KOSTOVA/VANYA L. MATANOVA, Transgenerational trauma and attachment, in: *Frontiers in Psychology* 15/2024, p. 2, with further references).

⁴³⁶ DEGRUY, p. 145.

enslaved ancestors experienced.⁴³⁷ Any expert opinion must therefore not lead to secondary victimization⁴³⁸ and must under no circumstances call into question my client's capacity for judgment and action or his professional competence. Moreover, the assessment would have to be carried out by a culturally aware, competent person. As far as possible, however, such an expert opinion should be dispensed with.

- Further Consequences

The enslavement of ancestors, according to general findings, further leads to poorer health and to a shortened life expectancy.⁴³⁹ The risk of imprisonment for descendants is elevated as well.⁴⁴⁰ Further consequences are apparent from the so-called Brattle Report.⁴⁴¹ Such consequences are to be considered when awarding satisfaction (see Chapter 4.5.).

- General Remark on the Evidence

The above-mentioned consequences for the affected societies are generally recognized. There is abundant evidence for these consequences, to which reference has already been made.

Moreover, it must be taken into account that, for historical crimes – and in particular crimes such as enslavement, with its depersonalization and dehumanization of the victims – it is virtually characteristic that evidence is sparse or unavailable at all.⁴⁴² In due consideration of this, collective reparation programmes regularly reduce the required standard of proof (e.g. rely on the plausibility of facts), make assumptions (including with respect to the damage incurred), etc.⁴⁴³ To date, despite targeted political initiatives in the Swiss Federal Parliament and in

⁴³⁷ Ibid.

⁴³⁸ Cf. also the Federal Council's dispatch to Parliament on a Federal Act on Assistance to Victims of Crime (Opferhilfegesetz OHG) and on a Federal Resolution concerning the European Convention on the Compensation of Victims of Violent Crimes of 25 April 1990, in: BBl 1990 II 961, p. 964.

⁴³⁹ Brattle Report, pp. 57 et seq. and 64 et seqq.; WITTMANN, p. 120.

⁴⁴⁰ Brattle Report, p. 59.

⁴⁴¹ Ibid., p. 74 et seqq. In this context see also WITTMANN, p. 121.

⁴⁴² On the depersonalization of the enslaved see e.g. WITTMANN, p. 110, and on the issue of supporting documents NIEBERGALL, p. 149.

⁴⁴³ NIEBERGALL, p. 151, with further references.

cantonal legislatures⁴⁴⁴, no steps have been taken to establish a reparations program relating to slavery, which my client could join.

- Other Victims

It must be assumed with a probability bordering on certainty that, within the geographical area in question and beyond, countless other victims have suffered damage (consequences as set out above) attributable to the actions or omissions of the three city states. We assume that the Office of the Attorney General of Switzerland will identify further victims (e.g. other victims, further descendants within the affected communities, and possibly also other members of my client's family). In the interest of identifying as many victims as possible, my client will – independently of the work of the Office of the Attorney General of Switzerland and with the means available to him (a website of his choice on which he wishes to publish documents relating to his case; social media; post-colonial networks; etc.; he does this in the public interest, but also regards it as part of his reparation) – organize a public call upon victims to come forward either to the Office of the Attorney General of Switzerland or to ACRRA. The damage suffered by these victims may differ from my client's (which is why reparation programs typically provide for different categories of victims).

⁴⁴⁴ Cf. for example private members' questions «Zürcher Verstrickungen in den Sklavenhandel und Wiedergutmachung» by Anne-Claude Hensch Frei/Melanie Berner dated 19/10/20, available at <https://louverture.ch/wp-content/uploads/2020/10/reparationen_zuerich-_kanton.pdf> (last accessed 4/8/26); «Berner Reparationen für Sklaverei?» by Christa Ammann dated 9/9/20, available at <<https://www.gr.be.ch/de/start/geschaeftes/geschaeftssuche/geschaeftsdetail.html?guid=3b7207d1d96149069229334b85fd1ee>> (last accessed on 4/8/26); «Bundesrätliche Rechtfertigung der Sklaverei (1864 und 2018)» by Franziska Ryser dated 18/6/21, available at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20213905>> (last accessed on 6/3/2026); «Berner Reparationszahlungen für Sklaverei?» by Tabea Rai/Eva Gammenthaler dated 10/9/20, available at <<https://stadtrat.bern.ch/de/dokumente/index.php?dld=2dddda16a2c64077a8328e4d2426e360-332&dVersion=1&dView=Dokument>> (last accessed on 4/8/26); concerning the City of Zurich by Ezgi Akyol dated 30/9/20, available at <https://louverture.ch/wp-content/uploads/2020/10/Interpellation_Reparationen_ZH_Stadt.pdf> (last accessed on 4/8/26); «Reparationen für die Sklaverei. Hilft die Schweiz der Caricom?» by Claudia Friedl dated 7/5/14, available at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20143315>> (last accessed on 4/8/26); «Schweizer Initiativen zur Wiedergutmachung der Sklaverei» by Josef Lang dated 19/12/06, available at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20063738>> (last accessed on 4/8/26).

4. The Law

4.1. Introduction

The following remarks are made in the interest of my client and the other victims; I shall keep them as brief as possible, as the Office of the Attorney General of Switzerland knows the law and applies it ex officio. I would like to thank you for your understanding in this regard.

4.2. Enslavement Pursuant to Art. 264a Para. 1 Lit. c StGB (Principal Offense)

- Objective Elements of the Offense (Including Contextual Element)

The «attack»⁴⁴⁵ (contextual element) may take place in times of war or peace, within or outside an armed conflict, with or without the use of military force.⁴⁴⁶ It covers «any mistreatment of the civilian population».⁴⁴⁷ The attack must also be widespread or systematic.⁴⁴⁸ This requires a multiplicity of victims or a heightened degree of organisation, whereby these elements may overlap.⁴⁴⁹ Provided there is a nexus between the attack and the act, a single act may also fulfill the elements of the offense.⁴⁵⁰ As a rule,⁴⁵¹ the attack is carried out pursuant to or in furtherance of a state policy or the policy of an organization.⁴⁵² Such a policy facilitates the commission of

⁴⁴⁵ RONC PASCAL, Art. 264a, in: STGB Annotierter Kommentar, Damian K. Graf (ed.), 2nd ed., Berne 2025, Art. 264a N 3.

⁴⁴⁶ BBl 2008 3921; BGE 143 IV 316, E. 4.5.2, with further references; BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.1, with further references; STEPHAN MESEKE, Der Tatbestand der Verbrechen gegen die Menschlichkeit nach dem Römischen Statut des Internationalen Strafgerichtshofes, Eine völkerstrafrechtliche Analyse, Diss. Berlin 2004, p. 131, with further references; WERLE/JESSBERGER, p. 380 N 989 and p. 384 N 998.

⁴⁴⁷ WERLE/JESSBERGER, p. 384 N 998, with further references.

⁴⁴⁸ BGE 143 IV 316 E. 4.5.4, with further references; BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.2; BStGer, BB.2019.184, 3/3/2020, E. 3.4, with further references; MESEKE, p. 133 et seqq.; CASSESE, p. 125, with further references; WERLE/JESSBERGER, p. 379 N 987.

⁴⁴⁹ BGE 143 IV 316 E. 4.5.4, with further references; BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.2; BStGer, BB.2019.184, 3/3/2020, E. 3.4, with further references; BStGer, BH.2017.6, 29/8/2017, E. 4.3.1, with further references; BStGer, BH.2017.5, 31/5/2017, E. 4.3.1, with further references; BStGer, BH.2017.1, 24/2/2017, E. 5.3.4, with further references; RONC, Art. 264a N 3; WERLE/JESSBERGER, p. 386 N 1001 et seq. On the degree of organization in international criminal law («thoroughly organized») see among others ICTR, Trial Chamber, ICTR-96-4-T, Prosecutor v. Jean-Paul Akayesu, 2/9/1998, § 580.

⁴⁵⁰ BStGer, BH.2017.6, 29/8/2017, E. 4.3.1, with further references; BStGer, BH.2017.5, 31/5/2017, E. 4.3.1, with further references; BStGer, BH.2017.1, 24/2/2017, E. 5.3.4, with further references; WERLE/JESSBERGER, p. 384 N 997, with further references.

⁴⁵¹ According to customary international law, this is not required. However, it may be an indicator as to whether the attack was systematic. This follows from e.g. BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.1, with further references, and MESEKE, p. 137 et seqq.

⁴⁵² BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.1, with further references; BStGer, BH.2017.1, 24/2/2017, E. 5.3.4, with further references.

the individual act and impedes victims' ability to resist.⁴⁵³ For a policy it is sufficient for the attack to actually follow a regular pattern.⁴⁵⁴ A «random act» cannot constitute a crime against humanity.⁴⁵⁵

The attack is not directed at members of the armed forces – that is to say, not at combatants within the meaning of international humanitarian law – but against the civilian population.⁴⁵⁶ The members of the civilian population targeted by the attack are linked by common characteristics that identify them as a group or collectivity.⁴⁵⁷ Not every victim has to display these characteristics.⁴⁵⁸ Should there be combatants amongst the victims, this does not preclude the application of the offense, provided that the civilian population remains the primary object and is not merely collateral damage.⁴⁵⁹

This offense must be facilitated by the commission of a single act as set out in lit. a–j,⁴⁶⁰ in this case, through enslavement pursuant to lit. c. The essence of enslavement lies in the fact that «the perpetrator arrogates to himself the exercise of all or some of a person's highly personal rights (against that person's free will)⁴⁶¹»⁴⁶² and does so by invoking legal («ownership», not necessarily exclusive⁴⁶³) or de facto power of disposal⁴⁶⁴ over that person.⁴⁶⁵ Perpetrators behave

⁴⁵³ BBI 2008 3921; BGE 143 IV 316 E. 4.5.2, with further references; BStGer, BB.2021.141, 23/9/2021, E. 2.2.3, with further references; RONC, Art. 264a N 3; WOLFGANG WOHLERS, *Schweizerisches Strafgesetzbuch – Handkommentar*, 5th ed., Berne 2024, Art. 264a N 2. With regards to international criminal law see also ICTR, Trial Chamber I, ICTR-96-4-T, *Prosecutor v. Jean-Paul Akayesu*, 2/9/1998, § 579 et seq.; ICTY, Trial Chamber, ICTY-98-34, *Prosecutor v. Naletilic and Martinovic*, 31/3/2003, § 233.

⁴⁵⁴ BStGer, BB.2019.184, 3/3/2020, E. 3.4, with further references; BStGer, BH.2017.6, 29/8/2017, E. 4.3.1, with further references; BStGer, BH.2017.5, 31/5/2017, E. 4.3.1, with further references; BStGer, BH.2017.1, 24/2/2017, E. 5.3.4, with further references.

⁴⁵⁵ MESEKE, p. 135, with further references.

⁴⁵⁶ BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.3, with further references; BStGer, BH.2017.6, 29/8/2017, E. 4.3.1, with further references; BStGer, BH.2017.5, 31/5/2017, E. 4.3.1, with further references; BStGer, BH.2017.1, 24/2/2017, E. 5.3.4.; MESEKE, p. 148, with further references; RONC, Art. 264a N 2; WERLE/JESSBERGER, p. 380 et seq. N 988 et seqq.

⁴⁵⁷ RONC, Art. 264a N 2, with further references.

⁴⁵⁸ BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.3, with further references.

⁴⁵⁹ BGE 143 IV 316 E. 4.5.5, with further references; BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.3, with further references; RONC, Art. 264a N 2; WERLE/JESSBERGER, p. 382 N 993, with further references. With regards to international criminal law ICTY, Appeals Chamber, ICTY-95-14/2, *Prosecutor v. Kordic and Cerkez*, 17/12/2004, § 50.

⁴⁶⁰ BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.1, with further references; RONC, Art. 264a N 3. The situation is no different under international criminal law (see e.g. ICC, Pre-Trial Chamber, ICC-01/04-01/07, *Prosecutor v. Katanga*, 30/9/2008, § 400).

⁴⁶¹ For more on this topic see VEST/SUTTER, p. 390 N 189 and p. 401 N 231 et seq.

⁴⁶² BBI 2008 3923; RONC, Art. 264a N 6.

⁴⁶³ RASSAM, p. 814, with further references.

⁴⁶⁴ VEST/SUTTER, p. 388 et seq. N 184 et seqq.

⁴⁶⁵ In more detail VEST/SUTTER, p. 386 N 172 et seqq., with further references. Cf. also MESEKE, p. 192; HARMEN VAN DER WILT, *Slavery Prosecutions in International Criminal Jurisdictions*, *Journal of International Criminal Justice* 2016/14, p. 275, with further

as if the victim «belonged» to them and buy, sell, lend, or barter the victim; as a result, victims are deprived wholly or in part of their freedom/autonomy.⁴⁶⁶ The perpetrators attain the power of disposal through the threat or use of force, coercion, the abuse of power or of a position of vulnerability, or by other means.⁴⁶⁷ Torture is not required; enslavement remains punishable even in the case «comparatively decent treatment».⁴⁶⁸ Enslavement is often accompanied by financial gain for the perpetrators (not a constitutive element of the offense according to the prevailing doctrine).⁴⁶⁹ For enslavement to be deemed to further the attack, it must occur within the framework of the attack, be connected to it (enslavement must not merely occur on the occasion of the attack), and further it.⁴⁷⁰

In the present case, it can hardly be disputed that the extensive, politically organized and promoted⁴⁷¹ European-North American assault on a large proportion of the world's population on the basis of their postulated race in the form of widespread enslavement, i.e. the overarching project of enslavement, was underpinned and promoted by every single act of enslavement for the purpose of exploiting their labor, and that every exercise of violence and coercion, every act of mistreatment (physical injury, humiliation)⁴⁷², every individual restriction of liberty, every

references; VAN DER WILT (Trafficking), p. 312 et seq., with further references; VISEUR SELLERS/GETGEN KESTENBAUM, p. 520; WERLE/JESSBERGER, p. 402 N 1040, with further references.

⁴⁶⁶ JEAN ALLAIN/ROBIN HICKEY, Property and the Definition of Slavery, in: The International and Comparative Law Quarterly, 2012/61, p. 916; MESEKE, p. 191; RASSAM, p. 812 et seqq.; EVELYNE SCHMID, Taking Economic, Social and Cultural Rights Seriously in International Criminal Law, Cambridge 2015, p. 242; VAN DER WILT (Slavery), p. 271 and 282; WERLE/JESSBERGER, p. 401 N 1038.

⁴⁶⁷ BBI 2008 3923; RONC, Art. 264a N 6; VEST/SUTTER, *ibid.*, p. 389 N 187 et seq. More on coercion e.g. UNO, OHCHR (Fact Sheet No. 14) (FN 7), p. 2; RASSAM, p. 815; VAN DER WILT (Trafficking) p. 304, with further references; WERLE/JESSBERGER, p. 402 N 1040, with further references.

⁴⁶⁸ VAN DER WILT (Slavery), p. 271, with further references.

⁴⁶⁹ UNO, OHCHR (Fact Sheet No. 14) (FN 7), p. 1; RASSAM, p. 816, with further references, in particular to international case law (ICTY, IT-96-23-T & IT-96-23/1-T, Prosecutor v. Kunarac, 22/2/2001, § 31); WERLE/JESSBERGER, S. 402 N 1040. However, where enslavement is, in its essence, directed at the economic exploitation of a substantial part of the world's population, the exploitation, or the profit thereby obtained, must – according to the view advanced herein – constitute an element whose continuation means that the offence cannot be brought to an end for as long as the situation of exploitation persists and the profit obtained has not been returned (cf. Chapter 2.6).

⁴⁷⁰ BGE 143 IV 316 E. 4.5.3, with further references; RONC, Art. 264a N 3.

⁴⁷¹ On the organized nature of historical enslavement see, for example, the Durban Declaration (FN 6), p. 16. The «politically related» (das «Politikbezogene») (on this expression see OLIVER DIGGELMANN/MATTHIAS EMERY/DANIEL RÜFLI, Die Verfolgung schweizerischer Jenischer [und Sinti] im Licht des völkerrechtlichen Strafrechts, Unter Berücksichtigung der Verantwortlichkeit der Schweiz, 15/9/24, p. 48, available at <<https://www.news.admin.ch/news/message/attachments/91924.pdf>> [last accessed on 22/3/26]) is obvious when it comes to historical enslavement.

⁴⁷² On such mistreatment see e.g. WITTMANN, p. 113 f., with further references. These actions included: «placing people in facial or whole-body gibbets [...]»; the utilisation of thumbscrews; extreme lashing and smearing wounds with salt and hot pepper; limb amputation; alive muring [...] and smearing the whole naked body with honey and then tying the person to a tree for days so that bees, ants, and mosquitos would cover and bite every inch of their body».

purchase, sale, and barter, etc., was constitutive of this universal abomination. This also applies to every single act committed against my client's enslaved ancestors. They were enslaved within the framework of the attack and not merely on the occasion of it. The majority of those enslaved were civilians. It is therefore irrelevant whether my client's ancestors were civilians or combatants. My client has no indications of a combatant status on the part of his ancestors.

- Subjective Elements of the Offense

From a subjective point of view, at least *dolus eventualis* is required in respect of all objective elements of the offense (including the contextual element), whereby, in the case of the contextual element (i.e. the attack), such intent is not to be assumed lightly; perpetrators must be aware of the widespread or systematic attack,⁴⁷³ must be aware that their contribution forms part of a larger attack directed against the civilian population,⁴⁷⁴ and must at the very least accept that their individual act furthers the attack against the civilian population⁴⁷⁵. Knowledge of the attack can be inferred from the historical circumstances.⁴⁷⁶ It is not, however, necessary for perpetrators to be aware of the details of the state policy or an organization's policy.⁴⁷⁷ Nor does enslavement require any special intent (*dolus specialis*).⁴⁷⁸ (Since the relevant cut-off date in this case is established by art. 75^{bis} para. 1 s. 1 former StGB, it is nevertheless added, as a precaution, that the widespread, historical enslavement of people was linked to the intent to oppress a population group based on its [postulated] race.⁴⁷⁹)

The principal perpetrators of historical enslavement, who enslaved my client's ancestors, were fully aware – or must have been aware – of the details of the universal, overarching project of

⁴⁷³ Example.: BGE 143 IV 316, E. 4.4.; MESEKE, p. 166, with further references; WERLE/JESSBERGER, p. 393 N 1019, with further references.

⁴⁷⁴ BGE 143 IV 316, E. 4.4.; BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.1, with further references; WERLE/JESSBERGER, p. 393 N 1020, with further references.

⁴⁷⁵ BBI 2008 3922; BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.4, with further references; RONC, Art. 264a N 14; VEST/SUTTER, p. 400 N 230, with further references. To the same effect for international criminal law cf. HELMUT SATZGER, *Internationales und Europäisches Strafrecht*, 11th ed., Baden-Baden 2025, p. 436 N 39. All of this can also be inferred from the facts of the case (BGE 143 IV 316, E. 4.4., with further references.).

⁴⁷⁶ BStGer, CA.2022.8, 30/5/2023, E. 3.2.5.4, with further references.

⁴⁷⁷ BGE 143 IV 316, E. 4.4., with further references; WERLE/JESSBERGER, p. 393 N 1020, with further references.

⁴⁷⁸ RONC, Art. 264a N 15.

⁴⁷⁹ CAPUS (Vergangenheit), p. 88, points out that art. 75^{bis} para. 1 lit. 1 former StGB does not require the intent to destroy (*dolus specialis*).

enslavement, which affected a large proportion of the civilian population, a (postulated) race – of this widespread, politically organized respectively furthered attack. To assume otherwise would be arbitrary, given the history set out above – that is, the level of knowledge possessed by the so-called civilized nations and, consequently, by their slaveholders in the Danish West Indies.⁴⁸⁰ The principal perpetrators at the very least accepted that their individual acts of enslavement (every assumption of authority over my client's ancestors, every individual restriction of liberty, every use of force and coercion, every physical assault and humiliation, etc.) would facilitate this attack. They knowingly and willfully harmed my client's ancestors, or at the very least accepted that this would happen and, in addition, at the very least accepted that this would cause damage in various ways⁴⁸¹ to the descendants of these people (including my client). The potential for transgenerational harm could, at the time of the offense, be gleaned from the Bible (Exodus 20:5 and 34:7), in which the so-called civilized nations were well versed.

⁴⁸⁰ Whether the perpetrator is aware that his conduct contravenes the law, or whether he has a vague sense that he is doing something wrong, is a question of fact which, in proceedings before the Federal Supreme Court, is subject only to the plea of arbitrariness (concerning this, see ANDREAS DONATSCH, Art. 21 Irrtum über die Rechtswidrigkeit, in: StGB/JStG Kommentar, Mit weiteren Erlassen und Kommentar zu den Strafbestimmungen des SVG, BetmG, AIG und OBG, Andreas Donatsch [ed.], 21st ed., Zurich 2022, Art. 21 N 1a, with further references.).

⁴⁸¹ Instead of many Yael Danieli/Fran H. Norris/Brian Engdahl, A Question of Who, Not If: Psychological Disorders in Holocaust Survivors' Children, in: Psychological Trauma: Theory, Research, Practice, and Policy 2016/Suppl. 1, p. 99; Charlotte El-Khalil/Denisa Caculidis Tudor/Catalin Nedelcea, Impact of intergenerational trauma on second-generation descendants: a systematic review, in: BMC Psychology 2025, p. 2, available at <<https://link.springer.com/content/pdf/10.1186/s40359-025-03012-4.pdf>> (last accessed on 24/3/26); Shanaaz Hoosain, The Transmission of Intergenerational Trauma in Displaced Families, PhD University of the Western Cape, Cape Town 2013, p. 33; Elizabeth M. Jelinek, Epigenetics: The Transgenerational Transmission of Ancestral Trauma, Experiences, and Behaviors – as Seen in Systemic Family Constellations', PhD California Institute of Integral Studies, San Francisco 2015, p. 57; Sarilee Kahn/Myriam Denov, Transgenerational trauma in Rwandan genocidal rape survivors and their children: A culturally enhanced bioecological approach, in: Transcultural Psychiatry 59/2022, p. 727 et seq.; Kostova/Matanova, p. 1 et seq., with further references.; Andreas L. Küffer/Myriam V. Thoma/Andreas Maercker, Transgenerational aspects of former Swiss child laborers: do second generations suffer from their parents' adverse early-life experiences?, in: European Journal of Psychotraumatology 7/2016, pp. 2 and 10; Yvonne Y. Kwan, Encountering Memory and Trauma: Transgenerational Transmission of Trauma in Cambodian Americans, PhD University of California, Santa Cruz 2015, p. 287; Cheryl Lawther, Haunting and transitional justice: On lives, landscapes and unresolved pasts, in: International Review of Victimology 1/2021, p. 15; Ann M. Piccard, Justiciability of All Human Rights: Scottish Independence as Redress for British Human Rights Abuses, in: Florida Journal of International Law 2015, p. 345; Nina Thorup/Brenda Kathryn Todd/Sarah I.F. Daniel/Edith Montgomery, The transmission of trauma in refugee families: associations between intra-family trauma communication style, children's attachment security and psychosocial adjustment, in: Attachment & Human Development 18/2015, p. 2 et seq.

- No Ground of Justification

There was no justification for the enslavement of my client's ancestors. The lack of consent⁴⁸² on the part of the victims with their enslavement does not need to be proven, it is inferred from the circumstances.⁴⁸³ An official authorization could have not constituted a ground of justification.⁴⁸⁴ The same applies to national provisions which deviated from peremptory customary international law,⁴⁸⁵ in so far as such provisions would have explicitly permitted slavery.

- No Ground for Excluding Culpability

Nor is any ground for excluding culpability apparent. In particular, the perpetrators could not invoke a mistake of law under art. 21 StGB by arguing, for example, that their acts/omissions were permitted nationally or regionally and that they were unaware of any diverging customary international law. Global criticism of slavery was so widespread at the time of the offenses (1719–1839) that one could not assume that the enslavement of human beings was legally unproblematic without harboring at least a vague sense of unlawfulness.⁴⁸⁶ At the time of the offense, one should have at least inquired whether enslavement was unlawful (and was not merely prohibited on the basis of a moral imperative) and what consequences it might entail.⁴⁸⁷ Such inquiries into the legal situation (and appropriate self-reflection) should have led the principal perpetrators, at the time of the offense, to realize that enslavement runs counter to every fundamental principle of human coexistence and constitutes a crime against humanity. Given the widespread global criticism of slavery at the time, the perpetrators of the main offense could not claim that they were operating in a milieu or region⁴⁸⁸ where inquiry and self-reflection

⁴⁸² On consent as ground of justification instead of many JULIAN MAUSBACH/PETER STRAUB, *Vorbemerkungen zu Art. 14 ff.*, in: STGB Annotierter Kommentar, Damian K. Graf (ed.), 2nd ed., Berne 2025, *Vorbemerkungen zu Art. 14 ff. N 2 f.*; WOHLERS, *Vorbemerkungen zu den Art. 14 ff. N 3 ff.*

⁴⁸³ VAN DER WILT (Trafficking), p. 304 et seq., with further references.

⁴⁸⁴ WOHLERS, *Vorbemerkungen zu den Art. 14 ff. N 15.*

⁴⁸⁵ On this objection, see, for example IAGMR, Serie C, Nr. 15, *Aloeboetoe et al. v. Suriname, Reparations and Costs*, 10.09.1993, § 57. See also the discussion earlier in this text regarding the nullity of such provisions.

⁴⁸⁶ DONATSCH, Art. 21 N 3, with further references; STEFAN TRECHSEL/BIJAN FATEH-MOGHADAM, Art. 21 Irrtum über die Rechtswidrigkeit, in: *Schweizerisches Strafgesetzbuch Praxiskommentar*, Stefan Trechsel/Mark Pieth (eds.), 4th ed., Zurich 2021, Art. 21 N 4, with further references.

⁴⁸⁷ Particularly in the context of the development of customary law and general principles of law, one must, when aware of immorality, at least seek further information (on this subject, for example, TRECHSEL/FATEH-MOGHADAM, Art. 21 N 5, with further references).

⁴⁸⁸ DONATSCH, Art. 21 N 3; TRECHSEL/FATEH-MOGHADAM, Art. 21 N 8, with further references.

would have been impossible or inappropriate. These inquiries and this self-reflection did not take place, otherwise, at least from a certain point onwards during the period in question, the offenses against my client's ancestors would not have taken place, since by the second half of the 18th century at the latest, within the so-called civilised nations (i.e. in slave-holding societies), the virtually unchallenged view (cf. once again the quotation from the Swiss theologian Benjamin-Sigismond Frossard) had prevailed that the enslavement of human beings stood in stark contrast to humanity, to the «commonly shared values of the world community», to justice, to equality and to general principles of law.

- Conclusion

The principal offense was therefore a crime against humanity pursuant to art. 264a para. 1 lit. c StGB. This has been the case since the second half of the period in question (1719–1839) at the latest.⁴⁸⁹

4.3. Aiding and Abetting Pursuant to Art. 25 StGB

- Objective Elements of the Offense

Aiding and abetting requires, first and foremost, a principal offense which is classified as a felony or a misdemeanor (art. 25 StGB), and which has been committed or attempted in a manner constituting an offense.⁴⁹⁰ Enslavement is classified as a felony (art. 264a in conjunction with art. 10 para. 2 StGB). The principal offense was not merely the subject of a criminal attempt but was committed (see Chapter 4.2.).

Aiding and abetting furthermore requires the furtherance of the principal offense.⁴⁹¹ Any substantial contribution (including any substantial financial support⁴⁹²) to the principal offense

⁴⁸⁹ See Chapter 2.2. At least, the UN holds the view that this «[...] should have always been so» (cf. Durban Declaration [FN 6], pp. 1 and 16).

⁴⁹⁰ MICHA NYDEGGER, Art. 25, in: STGB Annotierter Kommentar, Damian K. Graf (ed.), 2nd ed., Berne 2025, Art. 25 N 6. (The terms felony and misdemeanor do not precisely correspond with the distinction according to Swiss law.)

⁴⁹¹ Instead of many BGE 117 IV 186 E. 3; NYDEGGER, Art. 25 N 1; ROGER O'KEEFE, International Criminal Law, New York 2015, p. 189 N 5.69, with further references.

⁴⁹² DISKIN, p. 826.

constitutes such furtherance; it is not necessary for the principal perpetrator to be aware of the contribution, nor is it necessary that the principal offense would not have been attempted or committed without such assistance.⁴⁹³ In the case of a crime of universal relevance such as this, it cannot be a question of holding every janitor, every secretary, every individual taxpayer, etc., to account.⁴⁹⁴ The contribution to crimes against humanity must be more significant.⁴⁹⁵

The contributions by the three city states were described in Chapter 3. They furthered the overarching project of enslaving people of a (postulated) race and the principal offense committed against my client's ancestors. It should be noted that the principal offense was committed jointly by all accomplices in the European-North American overarching project of transatlantic enslavement, not merely by the specific principal perpetrators who enslaved and abused my client's ancestors. Any funding of this overall project constituted a substantial contribution to the enslavement of my client's ancestors. The principal perpetrators were only able to enslave people by means of such substantial financial contributions to the overall project. In particular, the financially demanding transatlantic slave trade, which relied on ships, would not have been possible without such financial contributions. The acts of complicity alleged in the present case were contributions made by public-law corporations which, regardless of their nature as commercial acts (the granting of loans and investments themselves constituted commercial acts), were not simply replaceable, but were in fact typical and constitutive of such a crime against humanity. Furthermore, given their scale, the financial contributions by the three city states (see Chapter 3) cannot be compared with those of a janitor, a secretary or an individual taxpayer. The contributions by the city states were therefore substantial.

⁴⁹³ Instead of many BGE 149 IV 75 E. 3.2.3; LAURA AUSSERLADSCHEIDER JONAS, *Individual Criminal Responsibility for the Financing of Ethnicities involved in Core Crimes*, Leiden 2022, p. 91, with further references.; NYDEGGER, Art. 25 N 1; O'KEEFE, p. 189 N 5.69 and p. 190 N 5.71.

⁴⁹⁴ ICC, Pre-Trial Chamber, ICC-01/04-01/10-465-Red, *Prosecutor v. Mbarushimana*, Decision on the Confirmation of Charges, 16/12/2011, § 277; AUSSERLADSCHEIDER JONAS, p. 74. Only in exceptional cases do such activities meet the required threshold (see German Federal Court of Justice, 5 StR 326/23, 20/8/24, available at <https://www.bundesgerichtshof.de/SharedDocs/Entscheidungen/DE/Strafsenate/5_StS/2023/5_StR_326-23D.pdf?__blob=publicationFile&v=1> [last accessed on 27/8/26]).

⁴⁹⁵ O'KEEFE, p. 190 N 5.71. On this requirement concerning Nazi crimes FLAVIO MARCO NOTO, *Secondary Liability in International Criminal Law, A Study on Aiding and Abetting or otherwise Assisting the Commission of International Crimes*, Diss. Berne 2011, p. 47 FN 294.

- Subjective Elements of the Offense

Aiding and abetting must be committed at least with *dolus eventualis*, i.e. accepting that one is contributing to the principal offense,⁴⁹⁶ in this case enslavement. The accomplices did not need to be aware of the details of the enslavement (e.g. the principal perpetrators of the offense committed against my client's ancestors, the manner in which the offense was carried out, the individual victims)⁴⁹⁷.⁴⁹⁸ It was sufficient for them to accept that the principal perpetrators would use the funds provided for the pan-European and North American project of the slave economy and to anticipate the possibility that they might be supporting the enslavement of people, and to accept this.⁴⁹⁹

The granting of loans and the investments took place with the knowledge and direct intent (*dolus directus*) of the city states Zurich, Berne, and Solothurn, as well as the individuals acting on their behalf. Given the historical circumstances and the level of knowledge throughout Switzerland,⁵⁰⁰ the city states knew that they would thereby contribute to the enslavement of people – or at the very least had to expect that this would be the case. They accepted that. It is documented that the City of Berne was aware that the South Sea Company was also involved in the slave trade («[...] that the Company's alluring business – both the slave trade in America and the whaling undertaken in the North – caused quite a stir among the uninformed [...]»)⁵⁰¹ People in the City State of Zurich, too, knew that Denmark needed money to expand its small colonial empire.⁵⁰² This body of knowledge regarding the present-day U.S. Virgin Islands also stemmed from the exchange of information with the Karrer/Hallwyl mercenary regiment, which was stationed on the Danish island of St. John; as a result, people in the City State of Solothurn were also aware of the situation, as they maintained contact with the founder of the mercenary

⁴⁹⁶ NYDEGGER, Art. 25 N 9.

⁴⁹⁷ BGer, 6B_808/2010, 17/5/2011, E. 3.6.2; NYDEGGER, Art. 25 N 9.

⁴⁹⁸ Cf. BGE 149 IV 57, E. 3.2.3; BGE 132 IV 49, E. 1.1; BGE 128 IV 53, E. 5f/cc; BGE 121 IV 109, E. 3a; BGE 117 IV 186, E. 3; BGE 113 IV 108, E. 1; BGer, 6B_836/2015, 28/4/2016, E. 1.3; NYDEGGER, Art. 25 N 9.

⁴⁹⁹ On this aspect see BGE 149 IV 57, E. 3.2.3; BGE 132 IV 49, E. 1.1; BGE 121 IV 109, E. 3a; BGE 117 IV 186, E. 3; BGer, 6B_645/2018, 22/5/2019, E. 2.2; BGer, 6B_711/2012, 17/5/2013, E. 7.5.2; BGer, 6B_86/2009, 29/10/2009, E. 3.3; BGer, 6S.575/2001, 16/3/2002, E. 2b/aa; NYDEGGER, Art. 25 N 9. The Federal Supreme Court's view – that the principal perpetrators must have decided to commit the crime before the accomplices provided their assistance – must be rejected (NYDEGGER, Art. 25 N 10, with further references).

⁵⁰⁰ On this see among others FÄSSLER (expert opinion), p. 24 et seqq.

⁵⁰¹ Ibid., p. 19, with further references.

⁵⁰² Ibid., p. 12, with further references.

regiment and his son.⁵⁰³ In the City State of Solothurn, officials were in close contact with the French Embassy as well.⁵⁰⁴ The information provided by Swiss plantation owners constituted a further source.

The acts/omissions of the individuals acting on behalf of the city states and as part of them did not constitute excessive acts or private offenses.⁵⁰⁵ The funds were not invested on the individuals' own initiatives; rather, these individuals were carrying out their official duties (see, for example, the decision of the Grand Council of Berne in Chapter 3.4). Their actions are therefore attributable to the city states.

- No Ground of Justification and No Ground for Excluding Culpability

With regards to grounds of justification and for the exclusion of culpability, reference is made to the reasoning concerning the principal offense, which applies *mutatis mutandis* to the three city states and their representatives. In connection with the grounds of justification, it should be noted for the sake of completeness that the three city states were, of course, under no obligation to engage in aggressive profit maximization using taxpayer funds, regardless of whether investments constituted crimes against humanity.

⁵⁰³ Regarding the proximity of the two to the Canton of Solothurn *ibid.*, p. 22, with further references.

⁵⁰⁴ *Ibid.*, p. 30, with further references.

⁵⁰⁵ Concerning these STEFAN HEIMGARTNER, Art. 102 Strafbarkeit, in: StGB/JStG Kommentar, Mit weiteren Erlassen und Kommentar zu den Strafbestimmungen des SVG, BetmG, AIG und OBG, Andreas Donatsch [ed.], 21st ed., Zurich 2022, Art. 102 N 11.

4.4. Criminal Liability of Today's Cantons

The city states' criminal offenses are attributable to today's cantons for the following reasons:

(A) Legal Successors to the City States and «Old» Cantons

Before 1798, the Old Swiss Confederacy was a loose confederation comprising the (Old and New)⁵⁰⁶ city states.⁵⁰⁷ This alliance was based on a multitude of individual contracts and customs.⁵⁰⁸ In 1798, it was replaced by the Helvetic Republic, a unitary state.⁵⁰⁹ It was divided into administrative units of equal status, the «cantons».⁵¹⁰ De facto, the Helvetic Republic collapsed following the withdrawal of Napoleon Bonaparte's French troops (1802).⁵¹¹ Napoleon Bonaparte then intervened as a mediator and brought the Helvetic Republic de iure to an end – with the Act of Mediation of 19 February 1803, which restored Switzerland's (still a French vassal state) federalist order (the federal part of the Act of Mediation established a confederation of states) and provided the cantons with cantonal constitutions (the cantonal constitutions were part of the Act of Mediation).⁵¹² Under the «Bundesvertrag» (Federal Treaty) dated 7 August 1815, the cantons voluntarily became contracting parties and mutually guaranteed each other's constitutions; Switzerland remained a confederation of states.⁵¹³ During the so-called «Regeneration» period (1830–1845), the cantons adopted new constitutions.⁵¹⁴ In terms of content, these cantonal constitutions were the precursors to the Federal Constitution of 12 September 1848.⁵¹⁵

⁵⁰⁶ ANDREAS AUER, *Staatsrecht der schweizerischen Kantone*, Berne 2016, p. 204 N 516, refers to Zurich and Berne as «Old» City State and Solothurn as «New» City State.

⁵⁰⁷ AUER, p. 204 N 516; ULRICH HÄFELIN/WALTER HALLER/HELEN KELLER/DANIELA THURNHERR, *Schweizerisches Bundesstaatsrecht*, 11th ed., Zurich 2024, p. 11 N 28; RAINER J. SCHWEIZER/KAY HAILBRONNER/KARL HEINZ BURMEISTER, *Der Anspruch von St. Gallen auf Rückerstattung seiner Kulturgüter aus Zürich*, Zurich 2002, p. 47, with further references.

⁵⁰⁸ AUER, p. 204 N 516; HÄFELIN/HALLER/KELLER/THURNHERR, p. 11 N 28; SCHWEIZER/HAILBRONNER/BURMEISTER, p. 48, with further references.

⁵⁰⁹ AUER, p. 206 N 523; HÄFELIN/HALLER/KELLER/THURNHERR, p. 11 N 30. Instead of the word «unitary state» («Einheitsstaat»), AUER uses the expression «unzertheilbarer Staat» («indivisible state») (p. 207 N 525).

⁵¹⁰ HÄFELIN/HALLER/KELLER/THURNHERR, p. 11 N 31.

⁵¹¹ *Ibid.*, p. 11 N 32.

⁵¹² AUER, p. 207 N 526.

⁵¹³ *Ibid.*, p. 208 N 529.

⁵¹⁴ *Ibid.*, p. 210 N 536.

⁵¹⁵ *Ibid.*, p. 216 N 547.

The legal status of today's cantons is based on the continuation of the city states' respectively «old» cantons' legal personality. Due to territorial, institutional, and – at their core – organizational continuity, the criminal offenses of those city states or former cantons are attributable to today's cantons of Zurich, Berne, and Solothurn; the legal subjects are identical.⁵¹⁶ None of the constitutions sought to establish these three city states respectively «old» cantons from scratch; the new constitutions merely served to further develop the existing legal personality of the territorial public corporations. Today's cantons have therefore assumed all the obligations of the city states respectively «old» cantons, to the extent that these have not been explicitly repealed, including obligations arising from criminal offenses and other violations of the law. (For the sake of clarity, the term «city states» will be used hereinafter when referring to the legal predecessors of today's cantons.)

(B) Criminal Liability of Territorial Public Corporations for Commercial Acts

According to the letter of art. 102 para. 4 lit. b StGB, territorial public corporations⁵¹⁷ cannot be held criminally liable.

This self-exculpation under criminal law, which appears comprehensive according to its letter, is untenable in light of other canons of statutory interpretation, if a territorial public corporation is not acting in a sovereign capacity⁵¹⁸ but, in its acts/omissions, is equivalent to a private-law company or a state-affiliated enterprise – for example, because it manages its financial assets for profit, as a private entity would.⁵¹⁹ In this case, the territorial public corporation must be held accountable in its capacity as «business operation». This follows from art. 102 StGB (structure of the article) as well as the following considerations:

⁵¹⁶ In this context, it should be noted that during the dispute concerning cultural property between Zurich and St. Gallen (1996–2006), no one – not even the Canton of Zurich itself – questioned the fact that the Canton of Zurich is the legal successor to the former City State of Zurich (vgl. SCHWEIZER/HAILBRONNER/BURMEISTER, p. 112 *et seq.*, with further references).

⁵¹⁷ ALAIN MACALUSO, *La responsabilité pénale de l'entreprise*, Commentaire des art. 100^{quater} et 100^{quinquies} CP, Diss. Geneva, Geneva/Zurich/Basel 2004, p. 114 *et seq.*, addresses the distinction of these territorial public corporations in general. In this context, he also points out – independently of the present subject matter – hybrid forms and problems of delimitation *vis-à-vis* state-affiliated enterprises.

⁵¹⁸ The remarks in VGer SG, B 2018/97 (previously B 2017/38), 16/3/2019, E. 1, related to a case in which the canton had acted in its sovereign capacity.

⁵¹⁹ Cf. Verwaltungsgericht Graubünden, U 22 52, 9/5/2023, in: PVG 2023, p. 113, with further references.

Art. 102 para. 4 lit. b StGB reflects the legislature's will not to subject democratically legitimized respectively controlled sovereign acts of state authority to criminal jurisdiction, to uphold the separation of powers, and not to require the state to punish itself.⁵²⁰ However, state courts are certainly authorized to review sovereign acts of state authority and are responsible for certain abstract reviews of laws in this context (separation of powers). The circular argument (the state punishes itself) does not apply, either, when federal authorities hold cantons accountable for their operations on the capital market. Furthermore, private-law investments are subject to significantly weaker parliamentary legitimacy and oversight than other aspects of state authority. The ratio legis for granting immunity to territorial public corporations lies in the sanctity of sovereign state power. However, whoever extends loans and holds securities for profit does not exercise sovereign state authority. Such conduct is no different from that of any other market participant. A teleological reduction of art. 102 para. 4 lit. b StGB is therefore called for, one that excludes conduct under private law and confines the application of art. 102 para. 4 lit. b StGB to sovereign acts of state authority.

From a systematic perspective, in addition to art. 102 StGB itself (structure of the article), international law and the Federal Constitution must also influence the interpretation of art. 102 para. 4 lit. b StGB. The principle of equality before the law, which is enshrined in both legal spheres (see, e.g., art. 8 para. 1 Federal Constitution), requires that it make no difference whether financial or economic contributions to a crime are made by a private-law company, a state-affiliated enterprise, or a territorial public corporation.⁵²¹ It opposes the unilateral immunization and preferential treatment of public entities' transactions governed by private law, given the lack of convincing objective and reasonable grounds for such a distinction.⁵²² The principle of legality, which applies in both legal spheres (see, e.g., art. 5, paras. 1 and 4 Federal Constitution), also precludes any accountability gap with regards to the cantons' private-law

⁵²⁰ See for example NIKODEMUS VON GLEICHENSTEIN, *Strafrechtliche Bankhaftung, Anforderungen an organisatorische Vorkehren der Banken zur Verhinderung von strafrechtlicher Verantwortlichkeit nach Art. 102 StGB*, Diss. Berne 2011, p. 20 et seq., with further references.

⁵²¹ Cf also MARIANNE JOHANNA LEHMKUHL, *Wer nicht will, der hat schon... ein effektives und effizientes Unternehmensstrafrecht?*, in: *Empreinte d'une pionnière sur le droit pénal*, Yvan Jeanneret/Bernhard Sträuli (eds.), Zurich 2021, p. 205. For Austria MARIANNE JOHANNA HILF, *Das neue Unternehmensstrafrecht in Liechtenstein im Spiegel seiner Nachbarrechtsordnungen*, in: *ZStrR* 129/2011, p. 266, with further references. The separation of powers does not justify exclusion in the realm of private law (for a general discussion of this justification, see MATTHIAS FORSTER, *Unternehmensbegriff*, in: *Die strafrechtliche Verantwortlichkeit des Unternehmens nach Art. 102 StGB*, Heinz Hausheer (ed.), Berne 2006, p. 109).

⁵²² Concerning the fact that criminal liability of associations is geared toward the equal treatment of all legal and organizational forms, see for example, MATTHIAS FORSTER, *Die strafrechtliche Verantwortlichkeit des Unternehmens nach Art. 102 StGB*, Diss. St. Gallen, Berne 2006, p. 92, with further references.

capital investments. Rather, it requires the state to align such capital investments with the law. An unrestricted, comprehensive understanding of art. 102 para. 4 lit. b StGB would also distort competition, as it would allow public law corporations to engage in more aggressive practices on the capital market than those permitted for private-sector companies and state-affiliated enterprises, and do so without a constitutional basis pursuant to art. 94 para. 4 Federal Constitution (art. 123 Federal Constitution does not meet the necessary requirements). Federal law of a lower rank likewise militates against the comprehensive immunization of territorial public corporations from criminal liability: For example, in art. 61 para. 1 Swiss Code of Obligations (OR) the legislature has recognized that the state cannot claim a special status once it operates in the domain of capital investments and thus on the private-law market. It would be incoherent for an activity to be subject to market logic under private law but to remain exempt from it under criminal law.

These considerations constitute valid grounds to deviate from the letter of art. 102 para. 4 lit. b StGB in the present case.⁵²³ The cantons are therefore liable under criminal law as well – not merely under private law – provided that the requirements of the offense set forth in art. 102 para. 1 StGB are met.

Although art. 102 para. 1 StGB entered into force long after the reported crimes were committed, its application to historical crimes – to which the StGB is applicable (unless crimes are time-barred) – cannot be denied by invoking the prohibition of retroactivity. At the time of the offense, aiding and abetting enslavement was a punishable offense pursuant to customary international law. Like individuals, neither the city states nor private companies could have reasonably expected, at the time of the crime, that their involvement in this crime against humanity would go unpunished.⁵²⁴ The norms applicable at the time, with which so-called civilized nations criminalized financial support for slavery, also applied to companies (respectively their executives and ships) (see Chapter 2.2.). Companies considered themselves bound by these norms (see Chapter 2.2.). At the latest by the second half of the period of the offenses, it

⁵²³ Cf. BGE 142 IV 333 E. 3.2, with further references.

⁵²⁴ See the preceding discussion and references on this topic, e.g. ECHR, 36376/04, *Kononov v. Latvia*, 17/5/2010, § 186 ff. See also the Nuremberg industrial cases, namely US Military Tribunal Nuremberg, *United States v. Carl Krauch, et al.*, 30/7/1948, in: *Trials of War Criminals Before the Nuernberg Military Tribunals*, Vol. VIII., p. 1205, available at <<https://www.legal-tools.org/doc/ce19e9/pdf>> (last accessed on 8/3/26), which concerned the liability of the executives of these companies (instead of many see also ALLIE BRUDNEY, *The I.G. Farben Trial: Evidentiary Standards and Procedures and the Problem of Creating Legitimacy*, in: *Harvard International Law Journal* 61/2020, p. 256).

had become clear that any economic nexus to the crime of historical enslavement was of criminal relevance. The application of today's art. 102 para. 1 StGB – a purely attributive provision that creates no new criminal liability⁵²⁵ – to the case of historical enslavement thus serves to give effect to the customary international law in force at the time (which recognized comparable rules of attribution), to substantive justice, to the closing of accountability gaps, and to the safeguarding of the rule of law, without infringing the tenets of the prohibition of retroactivity.

It must therefore be determined whether the requirements for the application of art. 102 para.1 StGB are met.

(C) Requirements of Art. 102 Para. 1 StGB

Art. 102 para. 1 StGB first requires that, in the course of commercial activities within the scope of the corporate objects, a felony or misdemeanor not yet time-barred has been committed in a manner that fulfils the requirements of the offense and is unlawful.⁵²⁶ A commercial activity requires only a minimal level of economic activity.⁵²⁷ For private companies, the corporate objects serve as the standard for determining whether an act is characteristic for the operations of such a corporation.⁵²⁸

The city states granted loans and invested in securities to generate profits. This profit-oriented investment was governed by private law. A public law corporation lacks an object recorded in a commercial register. The characteristics of its activities must therefore be determined by its functions: The decisive factor is whether the granting of loans and investments in securities fall

⁵²⁵ On the character of art. 102 StGB as a norm of attribution, see for example BGE 146 IV 68; GEIGER, p. 21 et seq.; GRAF, Art. 102 N 2, with further references; WEBER/BAUMGARTNER, p. 442, with further references.

⁵²⁶ GRAF, Art. 102 N 3 f.; ADRIAN LOBSIGER, Unternehmensstrafrecht und Wirtschaftskriminalität, in: ZStrR 123/2005, pp. 189 and 193; BERTRAND PERRIN, La responsabilité pénale de l'entreprise en droit suisse, in: Corporate Criminal Liability, Emergence, Convergence, and Risk, Mark Pieth/Radha Ivory (eds.), Dordrecht/Heidelberg/London/New York 2011, p. 207.

⁵²⁷ Vgl. DANIEL S. WEBER/LORIS BAUMGARTNER, Zur Schutznormqualität von Art. 102 Abs. 2 StGB, in: AJP 2023 p. 442.

⁵²⁸ Cf. for example FORSTER (Diss.), p. 189 et seqq.; ROMAN GEIGER, Organisationsmängel als Anknüpfungspunkt im Unternehmensstrafrecht, Aufgezeigt am Beispiel der Geldwäschereibekämpfung im Private Banking einer Bank-AG, Diss. Zurich 2006, p. 28 et seq.; VON GLEICHENSTEIN, pp. 33 and 58 et seq., with further references.

within the fiscal scope of the public law corporation's activities. This is the case. The acts/omissions in question must therefore be classified as commercial activities.⁵²⁹

Furthermore, it must not be possible to convict an individual because the crime cannot be attributed to a specific individual due to an organizational deficit (rather than, for example, insufficient investigative efforts).⁵³⁰ In this regard, adequate causation is required.⁵³¹ An organizational deficit exists where a legal entity has not taken all necessary and reasonable organizational measures to prevent criminal offenses committed by individuals acting on its behalf, representing it, etc.⁵³² Reasonable organizational measures to prevent criminal offenses are, above all, statutory obligations relating to recording, retention and documentation.⁵³³ As far as financial transactions are concerned, the organizational separation of authorization, approval, and payment is also regarded as a reasonable measure to prevent criminal offenses.⁵³⁴ The careful selection, training, and supervision of staff constitutes a further organizational duty of care.⁵³⁵ In the case of private corporations, the necessary measures are derived from industry standards (including, for example, the state of science and technology of the time), regulatory requirements, and statutory compliance obligations.⁵³⁶ Legal doctrine requires a thorough criminal investigation into all these aspects.⁵³⁷

In the case at hand, the offenses cannot be attributed to any natural person, owing to organizational deficits on the part of the city states; the city states failed to take all necessary and reasonable measures to prevent the offenses reported herein. They (and the «old» cantons) were weakly developed from an institutional point of view.⁵³⁸ They did not foresee the recording, retention, and documentation obligations necessary to prevent such offenses, even though this would have been necessary and reasonable given the potential of providing financial support to enslavement. It must also be assumed that the city states and their successors failed to exercise

⁵²⁹ On the issue of delimitation, which is complicated not least by the fact that state liability tends to be extended, FELIX UHLMANN/MATTHIAS KRADOLFER, *Schweizerisches Staatshaftungsrecht*, 2nd ed., Zurich/St. Gallen 2016, p. 66 ff. N 107 et seqq.

⁵³⁰ GRAF, Art. 102 N 11 and 15, with further references.

⁵³¹ *Ibid.*, Art. 102 N 17 et seq., with further references; PERRIN, p. 212.

⁵³² GRAF, Art. 102 N 22, with further references; PERRIN, p. 212.

⁵³³ GRAF, Art. 102 N 14, with further references.

⁵³⁴ PERRIN, p. 212.

⁵³⁵ GRAF, Art. 102 N 22, with further references; PERRIN, p. 212.

⁵³⁶ GEIGER, p. 45, with further references; VON GLEICHENSTEIN, pp. 41, 46, and 51, with further references.

⁵³⁷ GRAF, Art. 102 N 18, with further references.

⁵³⁸ AUER, p. 204 N 516.

the necessary due care in the selection, training, and supervision of staff. Had it not been for these shortcomings, the criminal conduct would hardly have occurred, at least in the second half of the period in question; in other words, the contracts would not have been concluded or would have been terminated, and the securities already acquired would have been sold. The digitized documents in the archives, which are thought to provide further evidence for organizational shortcomings, can only be consulted on site, rather than being accessible regardless of location and time (regarding the Zurich State Archives see Appendices 12, 15, and 18, p. 2). This does not do justice to an investigation of this complexity (as Zurich Cantonal Councilor, i.e. member of the cantonal executive, Jacqueline Fehr ultimately conceded to this when she assured my client on 18 December 2025 that the State Archives were committed to ensuring that the relevant digitized documents would eventually be available regardless of location and time [Appendix 21, p. 2]). In criminal investigations, the victim is not obliged to provide comprehensive evidence of organizational deficits. Even without comprehensive evidence, given the institutional weaknesses of the city states, it must be assumed that this condition for the application of art. 102 para. 1 StGB is met.

4.5. Consequence: Reparation

(A) Introduction and Requests

Considering the foregoing, it cannot suffice for Switzerland to merely apologize⁵³⁹ publicly for the city states' contribution, or to make itself available as a mediator (for instance, between African states and former colonial powers), thereby purporting to contribute to coming to terms with these crimes against humanity⁵⁴⁰. One might well ask whether the latter would not be

⁵³⁹ See the reference in HALDEMANN, p. 882. On apologies in international criminal law, for example ABO YOUSSEF, p. 170 et seq., with further references. HERBERT R. REGINBOGIN, *Litigating Genocide of the Past*, in: *Loyola of Los Angeles International and Comparative Law Review* 32/2010, p. 92, rightly points out that such apologies can constitute an inadequate attempt at reparation. In doing so, he refers to the former U.S. President's apology regarding American involvement in the slave trade.

⁵⁴⁰ See however the Federal Council's response to Pia Hollenstein's private member question of 3/3/2003 (03.3014) dated 16/3/03, available at <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20033014> (last accessed on 27/8/26).

presumptuous, given the country's own involvement in these crimes. A sincere, authentic apology⁵⁴¹ would certainly be a start, but it would need to be followed by genuine repentance.

The condemnation of these historical atrocities, the restoration of justice, and the strengthening of the international legal order⁵⁴² by means of a criminal investigation, the determination that the actions/omissions of the city states respectively of the «old» cantons were unlawful in the subsequent conviction, awarding compensation and satisfaction (i.e. financial reparations) in accordance with the general principle applicable to violations of human rights⁵⁴³ and on the basis of art. 41 et seq. OR, as well as imposing an appropriate fine pursuant to art. 102 paras. 1 and 3 StGB, is, on the contrary, indispensable.

My client hereby constitutes himself as a private claimant (criminal and civil claimant) (art. 118 para. 1 StPO) and, in addition to the demand for a public apology, requests that the offenses be investigated based on sufficient grounds for initial suspicion pursuant to art. 309 para. 1 lit. a StPO, and that the cantons be convicted and punished by means of a fine in accordance with art. 102 para. 1 StGB, but also that he eventually be awarded compensation and satisfaction, even though financial compensation can never be commensurate with the actual consequences of these offenses⁵⁴⁴. To ensure that sufficient funds are available for all victims, the profits derived from these offenses must be confiscated or equivalent claims must be imposed (art. 70 et seq. StGB).⁵⁴⁵

⁵⁴¹ Cf. UNO, General Assembly, A/HRC/60/70, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality, 23/7/25, s. 25.

⁵⁴² On these and other functions of penalties in international criminal law MORGENBESSER (SStiR), p. 24.

⁵⁴³ HESSEBRUEGGE, p. 372 et seq., with further references. Specifically on indigenous peoples for example FRANCESCO FRANCIONI, Reparation for Indigenous Peoples: Is International Law Ready to Ensure Redress for Historical Injustices?, in: Reparations for Indigenous Peoples, International and Comparative Perspectives, Federico Lenzerini (ed.), New York 2008, p. 44, with further references.

⁵⁴⁴ More broadly for reparations PABLO DE GREIFF, Justice and Reparations, in: The Handbook of Reparations, Pablo de Greiff (Hrsg.), New York 2006, p. 469. HANS BARTH, Ab wann war Sklaverei ein Verbrechen?, July 2017, p. 3, available at <https://www.archiv.louverture.ch/KAMPA/AGASSIZ/Sklaverei_ein_Verbrechen.pdf> (last accessed on 19/3/2026), on the same conclusion.

⁵⁴⁵ Confiscation and equivalent claims also serve a reparative function (cf. for example BGer, 6B_803/2025, 11/2/2026, E. 7.1., with further references).

(B) Fine According to Art. 102 Para. 1 StGB

Art. 102 para. 1 StGB provides for a fine of up to CHF 5 million. The court determines the amount of the fine especially based on the seriousness of the offense, organizational deficits, and the damage caused, as well as the (perpetrator's) economic capacity (art. 102 para. 3 StGB).⁵⁴⁶ In view of the seriousness of the offenses and the damage caused, my client demands the maximum fine of CHF 5 million for each canton.

(C) Compensation and Satisfaction (Art. 41 et seq. OR)

These remarks are deliberately kept particularly brief and will be amended at a later stage. Unlawfulness and culpability may be derived from the preceding remarks. With regards to the adequate causal nexus, it must be emphasized that, apart from the enslavement of his ancestors, my client was not subjected to any acts or omissions that led to, or could have led to, the consequences described in s. 3.6. The adequate causal nexus between these consequences and the principal offense committed against his ancestors (respectively the relevant body of offenses),⁵⁴⁷ to which the city states contributed, must therefore be affirmed.⁵⁴⁸

My client's individual pecuniary damage is to be estimated in accordance with art. 42 para. 2 OR. It amounts to at least USD 196,987 (at the 2020 exchange rate).⁵⁴⁹

With regards to individual non-pecuniary damage, it must be emphasized that my client has suffered serious non-pecuniary harm because of the enslavement of his ancestors and due to the consequences thereof (see Chapter 3.6.). The satisfaction due for this must be determined in proportion to the severity of the harm and the circumstances of the individual case.⁵⁵⁰

Unfortunately, the politically sensitive comparison with other cases is inevitable to determine the amount.

⁵⁴⁶ GRAF, Art. 102 N 27, with further references; LOBSIGER, p. 194; PERRIN, p. 216.

⁵⁴⁷ ABO YOUSSEF, p. 175.

⁵⁴⁸ Regarding this requirement CATHERINE REITER/STEFAN WEHRENBURG, Das vererbte Trauma im Recht, in: AJP 4/2023, p. 464 et seq., with further references, based on CATHERINE REITER, Transgenerational Trauma in Post-Apartheid South Africa, MA Paper, Geneva Academy 2022.

⁵⁴⁹ More on this in Chapter 3.6.

⁵⁵⁰ ABO YOUSSEF, p. 162.

On 21 January 2000, the Swiss Federal Supreme Court awarded Joseph Spring (a German Jew who had fled Germany in 1942, had been refused entry at the Swiss border and had been handed over to the Gestapo by Swiss border officials in 1943) compensation for the legal costs of representation amounting to CHF 100,000, thereby taking account – not merely in words – of the exceptional circumstances and the human tragedy involved.⁵⁵¹ The Federal Supreme Court justified this with the exceptional circumstances of the case, the sensitive issues involved, and the legally complex nature of the matter.⁵⁵² It should be noted that the applicable Federal Act on the Administration of Justice at the time provided for legal costs of representation of up to CHF 30,000 only, whilst the claimant had sought exactly CHF 100,000 in satisfaction.⁵⁵³ The Federal Supreme Court therefore considered this sum to be appropriate to compensate Joseph Spring's individual non-pecuniary damage. This case was not an isolated case. Based on the court ruling mentioned, two siblings whose parents had died in a concentration camp run by the Nazi regime⁵⁵⁴ were able to reach an out-of-court settlement with the same financial terms (CHF 100,000 per person).⁵⁵⁵

My client acknowledges that his non-pecuniary harm is not comparable to that of these victims. He thus demands the sum of CHF 20,000.

His civil claims are not time-barred, as the limitation period for prosecuting the offenses reported has not expired (art. 60 para. 2 first sentence OR).

(D) Confiscation of Profits or Equivalent Claim (Art. 70 et seq. StGB)

Those who profited most from slavery were not only the plantation owners and the slave traders, but also the investors.⁵⁵⁶ The city states generated substantial profits with their investments

⁵⁵¹ BGE 126 II 145, E. 5 bb.

⁵⁵² Ibid.

⁵⁵³ Ibid. In legal literature, the Federal Supreme Court's reasoning is therefore described using terms such as «ploy» and «far-fetched» (STEFAN SCHÜRER, Staatliche Vergangenheitsbewältigung zwischen später Wiedergutmachung und Politik mit der Geschichte, Rechtliche Aspekte der offiziellen Aufarbeitung von der Entschädigung der «Kinder der Landstrasse» bis zur Rehabilitierung der Spanienkämpfer, in: ZBl 110/2009, p. 660).

⁵⁵⁴ MINDER, p. 419 N 692.

⁵⁵⁵ STEFAN SCHÜRER, Die Verfassung im Zeichen historischer Gerechtigkeit, Diss. Zurich 2008, p. 156, with further references.

⁵⁵⁶ SCOTT STAWSKI, Denmark's Veiled Role in Slavery in the Americas: The Impact of the Danish West Indies on the Transatlantic Slave Trade, Master Harvard University, 2018, pp. 34 et seq., 63 and 82 et seqq., available at <<https://dash.harvard.edu/server/api/core/bitstreams/aba6920e-f28e-431a-8384-b011ddfc3de/content>> (last accessed on

linked to slavery.⁵⁵⁷ (In the case of the US Virgin Islands, these too are above average when compared with the profits generated in other affected regions: At the end of the 18th century, Great Britain generated four-fifths of its total colonial revenue from the so-called sugar colonies,⁵⁵⁸ which included what are now the US Virgin Islands. Denmark, too, profited substantially from sugar produced by the enslaved in the Caribbean.⁵⁵⁹) The profits generated during the period in question, which are to be estimated (art. 70 para. 5 StGB) (see also Chapter 3), were reinvested after that period – that is, after 1839 – for a period of almost two centuries. From 1840 onwards, it must be assumed that the profits originally generated yielded an inflation-adjusted real return in CHF of around four and a half per cent per annum.⁵⁶⁰ These profits must be confiscated to ensure the reparations owed to all victims (art. 70 StGB). As these profits are likely to have been commingled with other funds to such an extent that they can no longer be identified beyond doubt («paper trail»), an equivalent claim must alternatively be imposed (art. 71 para. 1 StGB).⁵⁶¹ The assets are to be secured by way of seizure pursuant to art. 263 para. 1 lit. d–e StPO.

24/3/26), concerning the Danish West India Company: «The objective of the [...] Company was to create revenue and profit for the stockholders of the company through the establishment and growth of the Danish triangular trade route.»

⁵⁵⁷ Chapter 3.3. *et seqq.*

⁵⁵⁸ O'BRIEN, p. 108.

⁵⁵⁹ MARIANNE STECHER-HANSEN, Chapter 4 Colonialist Legacy and Public Commemoration: Denmark and the West Indies, in: *Memory Studies in the Nordic Countries: A Handbook*, Gunnþórunn Guðmundsdóttir/Ulla Savolainen (eds.), Leiden 2025, p. 74.

⁵⁶⁰ On this topic cf. for example HANNAH DUDECK, *Welche Rendite Aktien seit 1900 erzielt haben*, 27/2/2020, available at <<https://www.dasinvestment.com/credit-suisse-studie-welche-rendite-aktien-seit-1900-gebracht-haben/>> (last accessed on 16/8/26); EDWARD F. MCQUARRIE, *Stocks for the Long Run? Setting the Record Straight*, 30/5/24, available at <<https://rpc.cfainstitute.org/blogs/enterprising-investor/2024/stocks-for-the-long-run-setting-the-record-straight>> (last visited on 16/8/26).

⁵⁶¹ NADJA CAPUS/STEFAN MBIYAVANGA, *Die Einziehung von Vermögenswerten in Fällen transnationaler Unternehmensbestechung* (1/2 : I. - II.), in: ZStrR 144/2026 p. 18, with further references.

5. Concluding Remarks

Compliance with the principle of «in dubio pro duriore», which derives from the principle of legality (art. 5 para.1 Federal Constitution; art. 319 para. 1 and art. 324 para. 1 StPO), requires an investigation to be initiated in the present case. There are no grounds which would, with certainty or at least with a high degree of probability, lead to an acquittal or a similar decision by the competent judicial authority,⁵⁶² particularly as the Swiss judiciary has not, to date, dealt with historical slavery in this form. Criminal offenses of this seriousness must be investigated.⁵⁶³ The evidence pointing to a criminal offense is substantial and specific in nature⁵⁶⁴ and the legal questions must be referred to a court.

My client assumes that you will apply the law and established practice ex officio and, where there is sufficient initial suspicion (art. 309 para. 1 lit. a StPO), extend your investigation to include legal entities governed by private law, who may be considered accomplices to the enslavement of his ancestors, or the legal successors of such accomplices.⁵⁶⁵ It is impossible for my client to establish the relevant facts in this regard as he lacks coercive authority (see Appendices 12, 15, and 16 regarding his independent efforts). Archives of legal entities governed by private law must be secured without delay (art. 263 para. 1 lit. a and para. 2 StPO).

The International Criminal Court has, in principle, recognized the victim status of those suffering from inherited trauma, i.e. of certain descendants of victims of crimes against humanity.⁵⁶⁶ This must also apply to the descendants of formerly enslaved who are, or may be, affected by economic and other potential transgenerational consequences (e.g. PTSS). In cases of crimes against humanity – and thus in the case of historical enslavement – the Office of the Attorney General of Switzerland cannot deviate from the relevant case law of the International Criminal Court by referring to the StPO. The StPO must be interpreted in the light of international law,

⁵⁶² Cf. BGE 138 IV 86, E. 4.1.1 *et seq.*, with further references. The case raises numerous questions regarding the facts of the matter and the law (*ibid.*, E. 4.3).

⁵⁶³ BGE 138 IV 86, E. 4.1.2, with further references.

⁵⁶⁴ See for example BGer, 7B_798/2019, 27/8/2019, E. 3.2, with further references; BGer, 6B_897/2015, 7/3/2016, E. 2.1, with further references.

⁵⁶⁵ In this context, reference is made to the expert opinion by historian HANS FÄSSLER.

⁵⁶⁶ ICC, ICC-01/04-02/06, Prosecutor v. Bosco Ntaganda, 18/12/2020, Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, § 53; ABO YOUSSEF, p. 164. The International Criminal Court does not require them to provide evidence that their personal interests are affected in order to apply for reparations (*ibid.*, p. 165).

and hence of the case law of the International Criminal Court. It must be assumed that my client is a victim (in dubio pro victima). My client and other victims must have access to an effective remedy (art. 13 ECHR) should you decide not to act upon the request to investigate these offenses.

Thank you very much for your efforts.

Respectfully yours,



Prof. Dr. iur. C. Reiter, LL.M., MTJ
Attorney-at-Law

List of Appendices

No.	Description
1	Power of Attorney by Shelley Moorhead dated 13/3/26
2	Image Driver's License of Shelley Moorhead
3	Historical expert opinion by historian Hans Fässler, MA, dated 18/3/26
4	Dossier by Shelley Moorhead dated 17/3/26
5	IACHR Takes Historic Step on USVI Human Rights Petition, Press Release Shelley Moorhead dated 26/7/25
6	ACRRA Petitions US Government, Accusing Human Rights Violations in the USVI, in: The Source St. Thomas, 24/8/25
7	Denmark Rejects Legal Responsibility Tied to Former Rule of Virgin Islands, in: The Source St. Croix, 22/12/25
8	Virgin Islanders' Rights Are Not a Bargaining Chip, 12/1/26 Press Release by Shelley Moorhead
9	Op-Ed: Virgin Islanders' Rights Are Not a Bargaining Chip, in: The Source St. Thomas, 12/1/26
10	Fifty degrees difference, the same fate, in: De Groene Amsterdammer, dated 26/3/26
11	Letter from Shelley Moorhead to Klaas Knot (De Nederlandsche Bank) dated 9/2/24
12	E-Mail Exchange Concerning Documents dated 18/2/24 to 7/3/24
13	E-Mail from Shelley Moorhead to Sergio P. Ermotti (UBS) dated 22/2/24
14	Press Release by Shelley Moorhead dated 22/2/24
15	E-Mail Exchange with Christian Leitz (UBS) dated 25/2/24 to 13/5/24
16	E-Mail from Shelley Moorhead to Christian Leitz (UBS) dated 13/5/24
17	Letter from Shelley Moorhead to Corinne Mauch (City of Zurich) dated 30/10/25
18	Letter from Lotte Machon (Denmark) to Shelley Moorhead dated 10/12/25
19	Letter from Shelley Moorhead to Lotte Machon (Denmark) dated 10/12/25
20	Letter from Shelley Moorhead to Corinne Mauch (City of Zurich) dated 12/12/25

- 21 Letter from Jacqueline Fehr (Canton of Zurich) to Shelley Moorhead dated 18/12/25
- 22 Letter from Shelley Moorhead to Richard Straub (UBS) dated 20/12/25
- 23 Letter from Shelley Moorhead to Jacqueline Fehr (Canton of Zurich) dated 20/12/25
- 24 Letter from Shelley Moorhead to Jeff Landry (Governor Louisiana USA.) dated 28/12/25
- 25 Letter from Shelley Moorhead to Denmark (Dept. of Legal Affairs) dated 22/1/26
- 26 Letter from Shelley Moorhead to Søren Gade (Speaker of Danish Parliament) dated 22/1/26
- 27 E-Mail from Patrick Spangenberg (Danish Embassy in the U.S.A.) to Shelley Moorhead, without date
- 28 Print of Inputs by ACRRRA to OHCHR, without date
- 29 E-Mail Submission by Shelley Moorhead to the Permanent Court of Arbitration of dated 28/3/25 with Appendix
- 30 E-Mail from Shelley Moorhead to the Permanent Court of Arbitration dated 30/3/25 with Appendix
- 31 Letter from Shelley Moorhead to the Permanent Court of Arbitration dated 19/1/26
- 32 Letter from Shelley Moorhead to the Permanent Court of Arbitration dated 22/1/26
- 33 Petition by Shelley Moorhead to the Inter-American Commission on Human Rights dated 11/4/26 (Petition with Appendices)
- 34 Petition by Shelley Moorhead to the Inter-American Commission on Human Rights dated 11/4/26 (Precautionary Measure with Appendices)
- 35 Documents Concerning Proposed Friendly Settlement Agreement (IACHR), various dates