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INTERNATIONAL CONVENTIONS RELATING TO SLAVERY

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1. Background

The abolition of slavery and the slave trade through the adoption of international law instruments has been an extended process that has occurred over the course of the last three centuries. Parallels have been drawn between slavery (and the slave trade) and modern human trafficking, with some commentators suggesting that the latter is in fact a modern version of the former.¹ Evidence of this close link has been recognised at a legislative level through the inclusion of the terms 'slavery' and 'servitude' in the United Nations' *Protocol for the Prevention and Suppression of Trafficking in Persons, especially Women and Children*² (the '*Trafficking Protocol*') and the influence of these older conventions on the Trafficking Protocol and modern domestic legislation is clear.³ The key provisions of the major anti-slavery treaties and conventions propagated over previous centuries will be detailed, along with a brief discussion of the context in which they came into existence.

2. 19th century instruments

2.1 Early instruments

Acknowledgment within the international community of the need to abolish slavery began with a number of early nineteenth century international law instruments. The first reference to the abolition of slavery is annexed to the *Peace Treaty of Paris*, signed in 1814 by France and Great Britain as one of two treaties aiming to end the wars of the Napoleonic era. Article 1 of this Treaty of the Additional Articles recognised the need:

to induce all the powers of Christendom to decree the abolition of the slave trade, so that the said trade shall cease universally in the course of five years; and that during the said period, no slave merchant shall import or sell slaves, except in the colonies of the state of which he is a subject.

The first international condemnation of the slave trade appeared in the *Declaration relative to the Universal Abolition of the Slave Trade* of 1815 signed at the Congress of Vienna (the '*Declaration of 1815*').⁴ This treaty, too, had the purpose of resolving the conflict of the Napoleonic era and stated that the slave trade was 'repugnant to the principles of humanity and universal morality.' There was a lack of consensus at the Congress of Vienna regarding a timeframe for the abolition of the slave trade, despite a strong push by Britain to outlaw the trade within three years. This meant the *Declaration of 1815* had minimal practical effect but nonetheless represented an important development in the recognition of slavery as contrary to fundamental human rights.⁵

Slow progress was made towards the tangible abolition of slavery through international law during the remainder of the nineteenth century. Between 1839 and 1890, more than three hundred treaties and soft law instruments were introduced to combat slavery but all were ineffective.⁶ The issue appears to have been a reluctance to restrict the slave trade by land, with a focus instead on fighting the trade by sea.

¹ Silvia Scarpa, *Trafficking in human beings: Modern Slavery* (2008)

² Opened for signature 15 December 2000, 2237 UNTS 319, Annex II

³ Jean Allain, *The slavery conventions: the travaux préparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 3

⁴ Annexed to the Final Act of the Congress of Vienna, 8 February 1815, 63 Conso / TS no. 473. See Kevin Gales and Peter T Robbins, "No shall be held in slavery or servitude: a critical analysis of international slavery agreements and concepts of slavery" (2001) Jan-Mar *Human Rights Review* 19, 20

⁵ S Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (2003) 14-15

⁶ R Sawyer, *Slavery in the Twentieth Century* (1986) 217

2.2 The General Act of Berlin (1885)

The *General Act of the Berlin Conference on West Africa*⁷ (the ‘*General Act of Berlin*’) was the first attempt to ban the slave trade by land and within the territories of the contracting parties in the Congo Basin. Article 9 of the General Act of Berlin comprises the ‘Declaration relative to the Slave Trade’. This provision began by making two observations:

1. Trading in slaves is forbidden in conformity with the principles of international law; and as such
2. Operations by sea or land which furnish slaves to trade ought likewise to be regarded as forbidden.

Accordingly, nations exercising sovereign rights or influences within the territories of the Congo Basin, pursuant to the *General Act of Berlin*, had to declare that these territories would not serve as a market or transit route for the slave trade, regardless of the race of persons involved. Again, no time limit was designated for the achievement of this and nations were left to bind themselves to end the trade and punish those who continued to engage in it.

2.3 The General Act for the Repression of the Slave Trade (1890)

The *General Act for the Repression of the Slave Trade*⁸ (the ‘*General Act of Brussels*’), signed in Brussels on the July 2, 1890, was the most comprehensive attempt made in the nineteenth century to abolish slavery.

Article 1 of the *General Act of Brussels* conceded the need to abolish slavery and set out a number of development measures for counteracting the slave trade in the Congo Basin, including the introduction of a public service / government in these territories and the creation of necessary infrastructure. Those nations exercising a sovereignty or protectorate in Africa, by signing the *General Act of Brussels*, agreed to proceed gradually, as circumstances permitted, with the repression of the slave trade.⁹ The General Act also required the creation of national offences, within one year of signature, criminalising the continuation of the slave trade and associated practices¹⁰, and placed a positive duty on states ‘to stop convoys on their march or to pursue them wherever their action can be legally exercised.’¹¹

The *General Act of Brussels* seems to have taken a more cautious and conservative approach regarding the trade of slaves by sea.¹² Powers were granted which allowed for the visit, search and seizure of vessels but these were only applicable where the ship in question weighed less than 500 tonnes and travelled within a specific ‘slave trade zone’.¹³ Furthermore, these visit, search, and seizure powers could only be exercised where a ‘special convention for the suppression of the slave trade’ had been concluded between the nations of the searchers and the target.¹⁴ Regrettably, the valid operation of these powers occasionally led to slaves being thrown overboard.¹⁵ The latter provisions of Chapter III of the *General Act of Brussels*

⁷ *General Act of the Berlin Conference on West Africa*, opened for signature 26 February 1885

⁸ *General Act for the Repression of the Slave Trade*, opened for signature 2 July 1890 (entered into force 2 April 1892) [available at (1928) 236 *International Conciliation* 38].

⁹ Article 3, ch I *General Act of Brussels*.

¹⁰ Article 5, ch I *General Act of Brussels*.

¹¹ Article XV, ch II, *General Act of Brussels*.

¹² See Article XX, ch III, *General Act of Brussels*.

¹³ Articles XXII-XXIII, *General Act of Brussels*. See Art XXI for a definition of the maritime zone.

¹⁴ Article XXII, *General Act of Berlin*.

¹⁵ M R Saulle, *Dalla Tutela Giuridica all'Esercizio dei Diritti Umani* (1999) 19 [as referenced in Scarpa, *Trafficking in human beings: Modern Slavery* (2008) 44].

introduced numerous administrative requirements for the use of ships with a vague connection to the repression of slavery.

Significantly, the *General Act of Brussels* established international cooperative slavery bureaus in Zanzibar and Brussels.¹⁶ The Zanzibar bureau had the task of centralising all documents (and information) which would assist in the repression of the slave trade, particularly those created in accordance with Chapter III of the General Act.¹⁷ The Brussels bureau was attached to the Belgian Foreign Office¹⁸ and was of less importance than its counterpart in Zanzibar.¹⁹ Its main object was to coordinate the exchange of information among parties regarding the text of national laws and regulations aimed at repressing the slave trade, and statistical information about the slave trade.²⁰

3. 20th century instruments

3.1 Convention revising the General Act of Berlin of 1885 and the General Act and Declaration of Brussels of 1890 (1919)

The major effect of the *Convention revising the General Act of Berlin* of 1885 and the *General Act and Declaration of Brussels* of 1890 (the '*Treaty of St-Germain-en-Laye*')²¹ was to abrogate the operation of both the *General Act of Berlin* and *General Act of Brussels*.²² The power to visit, search and seize the ships of contracting nations was extinguished with no replacement and the international bureaux system, which had survived until World War I, was discontinued.²³ Interestingly, the *Treaty of St-Germain-en-Laye* also obligated contracting parties to preserve 'native populations' and 'secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.'²⁴

3.2 International Slavery Convention (1926)

Background

In the early 1920s, the issue of slavery in Ethiopia was referred to the newly formed League of Nations which soon after established the Temporary Slavery Commission.²⁵ The *Final Report of the Temporary Slavery Commission* noted that 'the most important measure for the gradual abolition of slavery is that the status of slavery should no longer be recognised in the eye of the law' and proposed a comprehensive convention as the best instrument for facilitating this.²⁶ This report was tabled with a draft slavery convention and on September 26, 1925, the League of Nations adopted a resolution recommending the draft Convention for approval. The resulting

¹⁶ Art 27, General Act of Brussels.

¹⁷ See Art LXVII, General Act of Brussels.

¹⁸ See Art LXXII, General Act of Brussels.

¹⁹ Scarpa, *Trafficking in human beings: Modern Slavery* (2008) 44.

²⁰ Art LXXXI, General Act of Brussels.

²¹ Signed 10 September 1919 at St-Germain-en-laye between the United States, Belgium, the British Empire, France, Italy, Japan and Portugal.

²² See Art 13, Treaty of St-Germain-en-laye.

²³ Scarpa, *Trafficking in human beings: Modern Slavery* (2008) 44.

²⁴ See Art 11, Treaty of St-Germain-en-laye.

²⁵ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 31.

²⁶ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 32.

*League of Nations Slavery Convention*²⁷ (the '1926 Convention') opened for signature on December 25, 1926.

Terms of the Convention

Article 1 of the 1926 Convention contains the definitions of slavery and the slave trade. Some members of the Temporary Slavery Committee were sceptical of the need for definitions but they were nonetheless included in the interests of international consistency.²⁸ Slavery is defined as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.' Acts caught within the ambit of 'the slave trade' are also defined. They include all acts:

- a) involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery;
- b) involved in the acquisition of a slave with a view to selling or exchanging him;
- c) of disposal by sale / exchange of a slave acquired with a view to being sold or exchanged; and
- d) of trade or transport in slaves.

These definitions were developed from suggestions by the Drafting Committee and Temporary Slavery Commission, both of which considered the treatment of a person as property to be the cornerstone of slavery.²⁹

Articles 2 to 5 outline the obligations of contracting parties with respect to the prevention and suppression of slavery, the slave trade, and similar practices.

Article 2 creates State obligations with regard to 'slavery' and the 'slave trade' as defined in Article 1. It requires signatories:

- a) to prevent and suppress the slave trade; and
- b) to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms

in respect of the territories placed under its sovereignty, jurisdiction, protection or tutelage.

Article 3 of the 1926 Convention sought to remedy a perpetual inadequacy in previous slavery conventions by mandating the prevention and suppression of the slave trade by sea. Appropriate measures could only, however, be employed at the embarkation, disembarkation, and transport of slaves within a party's territorial waters and no powers of visitation, search or seizure were granted by the Convention.³⁰

Article 4 is the 1926 Convention's mutual assistance provision, and states that all contracting parties 'shall give to one another every assistance with the object of securing the abolition of slavery and the slave trade.'

²⁷ *Slavery Convention*, opened for signature 25 December 1926, 60 LNTS 253 (entered into force 9 March 1927).

²⁸ League of Nations, *Question of Slavery: Report of the Sixth Committee to the Assembly*, League of Nations Official Journal (Special Supplement 33), Annex 29, p.435, UN Doc A 130.1925 VI (26 Sep 1925).

²⁹ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 52-54.

³⁰ The British Government failed in its repeated attempts to have the slave trade assimilated with piracy, which would have justified the grant of additional powers i.e. visit, search and seizure over sea vessels: Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 93. Cf. General Act of Brussels

Article 5 is the first provision relating to practices similar to slavery and requires contracting parties to take all necessary steps to prevent compulsory or forced labour from developing into conditions analogous to slavery. A notable exception was allowed for the exaction of compulsory or forced labour for public purposes. This was the most contentious provision during negotiations.³¹ Supporting literature to the 1926 Convention sought to limit the application of this provision to private purposes and allowed for the 'progressive' phasing out of forced labour; delegates had been quick to point out that the International Labour Organisation was better equipped to deal with this issue.³²

Article 6 imposed an obligation on contracting parties to enact laws and regulations to give effect to the purpose of the 1926 Convention, including the imposition of 'severe penalties' for any infraction, unless adequate provision had already been made in domestic legislation. Importantly, this obligation to criminalise acts associated with slavery, the slave trade and forced labour applied only at a domestic level and would not be effective at creating international criminal law (according to modern principles).³³

The remainder of the 1926 Convention deals with the following administrative matters:

- The exchange of laws and regulations by contracting parties (Article 7);
- Dispute resolution procedure (Article 8);
- Declaration of foreign territories which are not subject to the Convention (Article 9);
- Denunciation (Article 10);
- Accession (Article 11); and
- Entry into force (Article 12).

Whilst undoubtedly a step forward for the prevention of slavery and the slave trade, the 1926 Convention suffered from a number of flaws, namely the lack of clear enforcement measures and a permanent monitoring body, and the ability of contracting parties to declare that some territories of theirs were not bound by certain provisions.³⁴ These flaws gave cause for revision of the 1926 Convention.

3.3 Protocol Amending the 1926 Slavery Convention (1953)

In 1949, the Economic and Social Council of the newly established United Nations instructed the Secretary-General to appoint an Ad Hoc Committee on Slavery to consider the issue of slavery and methods of attacking the problem.³⁵ During its investigations, the Ad Hoc Committee identified a number of difficulties with the continued application of the 1926 Convention. The *United Nations Protocol Amending the 1926 Slavery Convention*³⁶ (1953) (the '1953 Protocol') rectified a number of the surface issues so as to bring the League of Nations instrument within the United Nations system.³⁷

³¹ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 115, 121.

³² Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 124.

³³ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 129.

³⁴ Scarpa, *Trafficking in human beings: Modern Slavery* (2008) 47.

³⁵ *Resolution establishing the Ad Hoc Committee on Slavery*, ESC Res 238 (IX), UN Economic and Social Council, UN Doc E/1553 (1949).

³⁶ Opened for signature 7 December 1953, 182 UNTS 51 (entered into force 9 December 1953).

³⁷ For example by replacing 'League of Nations' with 'United Nations' in the body of the 1926 Convention: see Annex to the 1953 Protocol.

3.4 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery

Background

The need for an updated international instrument for the suppression of slavery and similar practices was raised by a number of parties during negotiations for the 1953 Protocol.³⁸ In noting the continued prevalence of these practices, the Ad Hoc Committee recommended that States be called upon:

- a) to end such remnants of slave-raiding and slave-trading as might still exist;
- b) to end the mutilation, branding, or tattooing of persons of servile status;
- c) to punish as criminals any individual engaged in conspiracy to enslave, incitement to enslave, or enticement to part with the liberty of oneself or a dependent person; and
- d) to encourage civil marriages and their registration as a means of eliminating certain forms of servitude.³⁹

On the recommendation of the Ad Hoc Committee, a drafting committee was established to consider a draft convention submitted by Great Britain (complete with comments from 27 States) and prepare a draft supplementary convention on slavery and other forms of servitude.⁴⁰ The Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery was subsequently convened in Geneva on August 13, 1956 to review the draft convention that resulted.⁴¹ The Final Act of this Conference, encompassing the United Nations *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery*⁴² (the '1956 Convention'), opened for signature in Geneva on September 7, 1956.

Provisions of the 1956 Convention

Institutions and Practices similar to Slavery

As a supplementary instrument to the 1926 Convention, the 1956 Convention clarifies and expands the application of the original convention, particularly in relation to practices analogous to slavery.⁴³ Article 1 begins by introducing new institutions and practices similar to slavery which are to be abolished, including debt bondage which is defined in Article 1(a):

[T]he status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Article 1 also requires the abolition of serfdom and the exploitation of young persons, and outlaws the following discriminatory and exploitative institutions involving women:

³⁸ the Belgium delegation described the 1953 Protocol as 'an illusory form of progress': *Technical Assistance in Public Administration*, UN GAOR, 453rd meeting, 8th sess, p. 251 (1953).

³⁹ United Nations Economic and Social Council, *Report of the Ad Hoc Committee on Slavery (Second Session)*, pp. 16-17 (1951) UN Doc E/1998, E/AC.33/13.

⁴⁰ Economic and Social Council, *Report of the Rapporteur appointed under Council Resolution 525A (XVII)* UN Doc. E.2673 (9 Feb 1955); *Resolution establishing a Drafting Committee for the Preparation of a Supplementary Slavery Convention*, ESC Res 564 (XIX), UN Economic and Social Council (7 Apr 1955).

⁴¹ Economic and Social Council, *United Nations Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Preparation of the Convention: Note by the Secretary-General*, p.2, UN Doc. CONF.24/3 (8 June 1956).

⁴² 226 UNTS 3 (entered into force 30 April 1957).

⁴³ See Model Criminal Code Officers Committee, *Model Criminal Code – Chapter 9: Offences against humanity – Slavery* (1998) 5.

- Where a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to another person;
- Where the husband of a woman, his family, or his clan has a right to transfer her to another person for value received or otherwise; or
- Where a woman on the death of her husband is liable to be inherited by another person.

Article 2 of the 1956 Convention is closely linked with the abolition of these particular practices involving women and mandates the appropriate regulation of marriage, including the prescription of suitable ages of marriage and the need for consent.

The Slave Trade

Article 3 of the 1956 Convention criminalises participation in the slave trade and requires the imposition of severe penalties for offenders. The slave trade is defined as '[t]he act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto'. A positive obligation is placed on state parties to prevent their ships, aircraft, ports, airfields and coasts from being used in the slave trade. It is worth noting that a right to visit vessels, which was applied to specific zones under the General Act of Brussels, was excluded under the 1956 Convention (as it had been under the 1926 Convention). However, a general right to visit vessels anywhere on the high seas for the purpose of suppressing the slave trade was included in the *Convention of the High Seas* (1958).⁴⁴

Under Article 4 of the 1956 Convention, '[a]ny slave who takes refuge on board any vessel of a State Party to this Convention shall *ipso facto* be free.' This provision's application was limited to travel by sea, as the delegates considered it practically impossible for slaves to take refuge on aircraft.

Further offences

Articles 5 and 6 of the 1956 Convention create further offences relating to slavery and the slave trade. Article 5 supplements Article 1 by criminalising practices related to slavery, namely the mutilation, branding or marking of a slave or a person of servile status.

More important is Article 6, which introduces the 1956 Convention's major offences. Firstly, the act of enslaving another person or inducing another person to give himself or a person dependent upon him into slavery is prescribed as an offence. Secondly, inchoate offences covering attempt, conspiracy and accessorial liability are created with respect to these acts. Finally, the facilitation of conduct listed in Article 1 of the 1956 Convention leading to a person being kept in a servile state is criminalised, and inchoate offences related to this conduct are also established.⁴⁵

Definitions

Article 7 is the 1956 Convention's formal definitions clause. This provision formally affirms the definition of slavery appearing in the 1926 Convention and whilst a definition is provided for 'slave trade', this practically affirms the definition of slave trade contained in the 1926

⁴⁴ See *Convention on the High Seas*, opened for signature 29 April 1958, 450 UNTS 11, art 22 (entered into force 30 September 1962); See Allain, *The slavery conventions: the travaux préparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 440.

⁴⁵ *1956 Convention*, opened for signature 7 September 1956, 226 UNTS 3, art 6(b) (entered into force 30 April 1957).

Convention⁴⁶ as the differences between the two definitions are insignificant.⁴⁷ Finally, Article 7 of the 1956 Convention defines 'a person of servile status' simply as a person subject to any of the institutions or practices outlined in Article 1.

Final Articles

The remaining clauses of the 1956 Convention are largely administrative in nature and include:

- Cooperation and communication between state parties (Article 8);
- Dispute resolution procedure / compromissory clause (Article 10); and
- Timeline / process for signature, ratification, entry into force and denunciation (Articles 11, 13, 14 and 15)

A number of the final clauses are deserving of further mention. Article 9 of the 1956 Convention states unambiguously that '[n]o reservations may be made to this Convention.' This provision can be partly explained by the limited scope of the 1956 Convention, which aimed to finalise the abolition of slavery and similar practices, and the danger that it could become redundant if state parties refused to be bound by some of its articles.⁴⁸ Similarly, a clear ethos had developed at the Conference supporting the rigid enactment of the limited international obligations contained in the 1956 Convention.⁴⁹

Also of note is Article 12 of the 1956 Convention, which applied the terms of the Convention to 'all non-self governing, trust, colonial and other non-metropolitan territories for the international relations of which any state party is responsible' subject to the consent of a non-metropolitan territory where required by the constitutional laws or practices of the state party. A major flaw of previous international instruments was the ability of state parties to declare certain territories to be excluded from the operation of anti-slavery provisions. Debate surrounding the inclusion of this provision was contentious as a result of coinciding decolonisation. Nonetheless, Article 12 represented a significant departure from the freedom afforded to state parties by previous conventions in this respect.

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⁴⁶ 1956 Convention, opened for signature 7 September 1956, 226 UNTS 3, art 1(b) (entered into force 30 April 1957).

⁴⁷ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 528.

⁴⁸ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 573.

⁴⁹ Allain, *The slavery conventions: the travaux preparatoires of the 1926 League of Nations convention and the 1956 United Nations convention* (2008) 572.