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The Relation Between the Articles Concerning the Law of the Sea Adopted by the International Law Commission and International Agreements Dealing With the Suppression of the Slave Trade

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THE RELATION BETWEEN THE ARTICLES CONCERNING THE LAW OF THE SEA
ADOPTED BY THE INTERNATIONAL LAW COMMISSION AND INTERNATIONAL
AGREEMENTS DEALING WITH THE SUPPRESSION OF THE SLAVE TRADE

MEMORANDUM BY THE SECRETARIAT OF THE UNITED NATIONS

(Preparatory document No. 7)

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INTRODUCTION

1. The draft articles concerning the law of the sea, prepared by the International Law Commission at its eighth session, contain, in articles 37 and 46, provisions dealing with the slave trade.

2. During the consideration of the report of the International Law Commission on its eighth session¹ at the eleventh session of the General Assembly, the question of the relation between any future code of the law of the sea and existing treaties and conventions on certain aspects of maritime law was raised. It was recognized that this question would arise, *inter alia*, in regard to the slave trade and the right of visit.²

3. In the discussion, the representative of Egypt drew attention to the need for revising article 46, paragraph 1 (b), which gave warships the right, in certain specified maritime zones, to board vessels, suspected of engaging in the slave trade. Conditions had radically changed since the adoption of the Brussels Act of 1890 on which the provision in question was based. He recalled that the Convention of St. Germain-en-Laye of 1919 and the Slavery Convention of 1926 contained no such provision and that a similar provision proposed for inclusion in the Supplementary Convention on the

Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, signed on 7 September 1956, was omitted in the final text. In its final form, the relevant provision stated merely that States parties should take effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to ensure that their ports, airports and coasts are not used for the conveyance of slaves and that they should exchange information with a view to stamping out the slave trade. Some similar provision should be included in the codification of the law of the sea.³

4. The Special Rapporteur of the International Law Commission, in reply, pointed out that article 46 was not concerned with the slave trade (which was dealt with in article 37), but only with the visit of ships suspected of engaging in the slave trade. The Commission had restricted the right of visit to special zones in order to avoid abuses.⁴

5. The object of this paper is to present a survey of the important treaties and conventions concerning slavery and the slave trade. The main provisions of some of these instruments, particularly those which relate to the repression of the slave trade by sea, will be summarized or reproduced.

I. INTERNATIONAL TREATIES AND CONVENTIONS DEALING WITH THE SUPPRESSION OF THE SLAVE TRADE CONCLUDED PRIOR TO THE SECOND WORLD WAR

6. A large number of international treaties and conventions have been concluded since the nineteenth century on the abolition of slavery and the suppression of the slave trade.

7. The early nineteenth century treaties and declarations—such as the Peace Treaties of Paris of 1814 and 1815, the Declaration of Vienna of 1815, and the Declaration of Verona of 1822—embodied the general principle that the slave trade is repugnant to the principles of justice and humanity, exhorted the community of nations to prohibit the slave trade and called

¹ Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159).
² *Ibid.*, Annexes, agenda item 53, document A/3520, para. 43.

³ *Ibid.*, Sixth Committee, 498th meeting, para. 16.
⁴ *Ibid.*, 500th meeting, para. 44.

upon the signatory States to take separate action against that trade.

8. In the middle of the nineteenth century, between 1830 and 1870, a number of international treaties concerning the suppression of the slave trade were concluded, such as the Treaties of 1831 and 1833 between France and Great Britain, the Treaty of London of 20 December 1841 for the suppression of the African Slave Trade, which was signed by Austria, Great Britain, Prussia and Russia as well as by France (France did not, however, ratify this treaty), and the Treaty of Washington of 1862 between Great Britain and the United States of America. These treaties dealt mainly with joint action at sea to suppress the slave trade and provided for mutual rights to visit, search and capture ships suspected of engaging in the slave trade.

General Act of Berlin of 1885

9. The Conference of Powers on the problems of Central Africa which met in Berlin in 1885 (Berlin Congo Conference) included in its General Act the following provision concerning slavery and the slave trade:

" Article 6

" All Powers exercising rights of sovereignty or an influence in the said territories engage themselves to watch over the conservation of the indigenous populations and the amelioration of their moral and material conditions of existence and to strive for the suppression of slavery and especially of the Negro-slave trade . . .

" Article 9

" Seeing that trading in slaves is forbidden in conformity with the principles of international law as recognized by the signatory Powers, and seeing also that the operations which, by sea or land, furnish slaves to the trade ought likewise to be regarded as forbidden, the Powers which do or shall exercise sovereign rights or influence in the territories forming the conventional basin of the Congo declare that these territories may not serve as a market or way of transit for the trade in slaves of any race whatever. Each of these Powers binds itself to employ all means at its disposal for putting an end to this trade and for punishing those who engage in it."

General Act of Brussels of 1890

10. On 2 July 1890, the General Act for the Repression of African Slave Trade was adopted by the Anti-Slavery Conference held in Brussels from 18 November 1899 to 2 July 1890. This was the most detailed and comprehensive international agreement concerning slavery and the slave trade which was in force at the outbreak of the First World War. The General Act was signed and ratified by seventeen States and provided for a number of military, legislative and economic measures for the suppression of the slave trade.

11. Chapter III of the General Act (articles 20-61) contained detailed provisions concerning the repression of the slave trade by sea within a defined maritime zone in which the slave trade was still in active existence on the coasts of the Indian Ocean and the Red Sea. The text of articles XX-XXIX read as follows:

" Article XX

" The signatory Powers recognize the desirability of taking steps in common for the more effective repression of the slave-trade in the maritime zone in which it still exists."

" Article XXI

" This zone extends, on the one hand, between the coasts of the Indian Ocean (those of the Persian Gulf and of the Red Sea included), from Beloochistan to Cape Tangalane (Quilimane); and, on the other hand, a conventional line which first follows the meridian from Tangalane till it intersects the 26th degree of South latitude; it is then merged in this parallel, then passes round the Island of Madagascar by the east, keeping twenty miles off the east and north shore, till it intersects the meridian at Cape Ambre. From this point the limit of the zone is determined by an oblique line, which extends to the coast of Beloochistan, passing twenty miles off Cape Ras-el-Had.

" Article XXII

" The signatory Powers of the present General Act, among whom exist special conventions for the suppression of the slave-trade, have agreed to restrict the clauses of those conventions concerning the reciprocal right of visit, of search and of seizure of vessels at sea, to the above-mentioned zone.

" Article XXIII

" The same Powers also agree to limit the above-mentioned right to vessels whose tonnage is less than 500 tons. This stipulation shall be revised as soon as experience shall have shown the necessity thereof.

" Article XXIV

" All other provisions of the conventions concluded for the suppression of the slave-trade between the aforesaid Powers shall remain in force provided they are not modified by the present General Act.

" Article XXV

" The signatory Powers engage to adopt efficient measures to prevent the unlawful use of their flag, and to prevent the transportation of slaves on vessels authorized to fly their colours.

" Article XXVI

" The signatory Powers engage to adopt all measures necessary to facilitate the speedy exchange of information calculated to lead to the discovery of persons taking part in operations connected with the slave-trade.

" Article XXVII

" At least one international bureau shall be created; it shall be established at Zanzibar. The high contracting parties engage to forward to it all the documents specified in article XLI, as well as all information of any kind likely to assist in the suppression of the slave trade.

" Article XXVIII

" Any slave who has taken refuge on board a ship of war bearing the flag of one of the signatory Powers, shall be immediately and definitively set free. Such freedom, however, shall not withdraw him from the competent jurisdiction if he has been guilty of any crime or offence at common law.

" Article XXIX

" Any slave detained against his will on board of a native

vessel shall have the right to demand his liberty. His release may be ordered by any agent of any of the signatory Powers on whom the present General Act confers the right of ascertaining the status of persons on board of such vessels, although such release shall not withdraw him from the competent jurisdiction if he has committed any crime or offence at common law."

12. The remaining articles of chapter III (articles 30-61) set out rules concerning the use of the flag by native vessels, the stopping of suspected vessels, and the examination and trial of vessels seized.

Convention of St. Germain-en-Laye of 1919

13. By a Convention signed at St. Germain-en-Laye on 10 September 1919 by the United States of America, Belgium, the British Empire, France, Italy, Japan and Portugal, and ultimately ratified by all the signatories, the General Act of Berlin of 1885 and the General Act of Brussels of 1890 were abrogated as between the Powers who were parties to the new Convention.

14. The Convention of St. Germain contained the following provisions (article II, paragraph 1) on slavery and the slave trade: "The Signatory Powers exercising sovereign rights or authority in African territories will continue to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being. They will, in particular, endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea."

Slavery Convention of 1926

15. On 25 September 1926 the Slavery Convention was adopted by the Assembly of the League of Nations and signed on the same date by the representatives of thirty-six States. Article 3 of the Convention, which deals with the slave trade, reads as follows:

"Article 3

"The High Contracting Parties undertake to adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon all vessels flying their respective flags.

"The High Contracting Parties undertake to negotiate as soon as possible a general convention with regard to the slave trade which will give them rights and impose upon them duties of the same nature as those provided in the Convention of 17 June 1925, relative to the International Trade in Arms (articles 12, 20, 21, 22, 23, 24 and paragraphs 3, 4, 5 of section II of annex II) with the necessary adaptations, it being understood that this general convention will not place the ships (even of small tonnage) of any High Contracting Parties in a position different from that of the other High Contracting Parties.

"It is also understood that, before or after the coming into force of this general convention, the High Contracting Parties are entirely free to conclude between themselves, without, however, derogating from the principles laid down in the preceding paragraph, such special agreements as, by reason of their peculiar situation, might appear to be suitable in order to bring about as soon as possible the complete disappearance of the slave trade."

16. The Slavery Convention of 1926 was amended by a Protocol adopted on 23 October 1953 by the General Assembly of the United Nations, which transferred the functions undertaken by the League of Nations under the Convention to the United Nations. By 30 September 1957, thirty-seven states had become Parties to the 1926 Convention,⁵ as amended by the Protocol of 1953.

II. SUPPLEMENTARY CONVENTION OF 7 SEPTEMBER 1956 ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

17. The most recent international instrument dealing with the question of the slave trade is the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (E/CONF.24/23), which was adopted and opened for signature on 7 September 1956 by a Conference of Plenipotentiaries convened in Geneva under the auspices of the United Nations.

18. The Convention was signed by thirty-nine States and, as of 30 September 1957, had been ratified or acceded to by the following seven States: Byelorussian Soviet Socialist Republic, Cambodia, Laos, Jordan, Sudan, Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland. It entered into force on 30 April 1957.

19. Articles 3 and 4 of the Convention, which deal with the slave trade⁶, read as follows:

"Article 3

"1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

"2. (a) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.

"(b) The States Parties shall take all effective measures to ensure that their ports, airfields and coasts are not used for the conveyance of slaves.

"3. The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combatting the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

"Article 4

"Any slave who takes refuge on board any vessel of a State Party to this Convention shall *ipso facto* be free."

⁵ The number of Parties to the original convention is forty-six.

⁶ Article 7 (c) defines "slave trade" as including "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance".

20. There was considerable discussion⁷, at the Conference concerning the question of including in the Convention provisions relating to the right of visit, search and seizure with respect to vessels suspected of engaging in the slave trade. The debate centred on the text of article 3 of the draft supplementary convention prepared by an *ad hoc* committee appointed by the Economic and Social Council and used by the Conference as the basis of its discussions.⁸ The text of that draft article was as follows :

“(a) The act of conveying or of attempting to convey slaves on the high seas, or being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to penalties as severe as those generally applied to acts of piracy.

“(b) While on the high seas in the area of the Indian Ocean, including the Red Sea and the Persian Gulf, bounded on the south by the twenty-sixth degree south latitude and on the east by the sixty-second degree east longitude, warships or military aircraft under the control of Parties to this Convention shall have the same right of visit, search and seizure in relation to vessels of Parties to this Convention suspected on reasonable grounds of being engaged in the act of conveying slaves as they have in relation to vessels so suspected of being engaged in acts of piracy.

“(c) (i) Any vessel seized in accordance with this article shall be brought in for adjudication by a court of the State which has made the seizure. This State, may, however, request any other State Party to this Convention, or to the Slavery Convention of 1926, to refer the case to one of its courts if, in its view, practical or other reasons make this advisable.

“(ii) Any slave who is found on board a vessel shall be immediately set at liberty.

“(iii) Any person found on board any vessel searched in accordance with this article who is reasonably suspected of having committed any of the offences specified in paragraph (a) of this article shall be handed over for trial to the authorities of the State of which he is a national or, if practical or other reasons make this advisable, he may be brought to trial by the authorities of the capturing State, or, subject to the consent of the State of which he is a national, by the authorities of any other State Party to this Convention or to the Slavery Convention of 1926.

“(d) In this article ‘slave’ means any person over whom any or all powers attaching to the right of ‘ownership’ are exercised and includes any person intended to be dealt with as a slave.”

21. The provision relating to the right of visit, search and seizure encountered strong opposition at the Conference. It was maintained that such provision would infringe the national sovereignty of States and violate the principle of freedom of navigation. The article would be a potential source of controversy ; the rights it conferred could be so abused as to endanger international peace and security. It was unnecessary to employ warships and aircraft to combat the slave trade. Traffic in slavery would cease as soon as the economic and social conditions causing it were improved. It was further pointed out that the 1926 Slavery Convention did not provide for the right of visit, search and seizure.

22. The draft article was also criticized as discriminatory in that it singled out a particular maritime zone

for special regulation. Reference to a particular area would imply that the countries on the borders of that area allowed the slave trade in some form or other. The assumption was without foundation, since no up-to-date reliable information concerning the slave trade was available. The proposed provision was based on the General Act of Brussels of 1890 which could no longer be regarded as an international standard. Not only had the Brussels Act been abrogated by the Convention of St. Germain-en-Laye, but great changes had taken place in Asia and North East Africa since the conclusion of that Act in 1890. It was also pointed out that the area described in the proposed article was larger than that defined in the Brussels Act. Moreover, while the Brussels Act restricted the right of visit and seizure to vessels of less than 500 tons, there was no similar restriction in the draft article.

23. On the other hand, a number of representatives maintained that the form of international control envisaged in the proposed article was essential in order to combat illicit traffic in slaves effectively. Even if States Parties to the Convention most vigilantly watched their ports and coasts, small boats could evade such vigilance. These boats might come to the notice, on the high seas, of naval vessels under the control of other States. If nothing was done to verify on the spot the suspicion that they were engaging in the slave trade, no effective action was likely to be taken against them. If the right of visit, search and seizure were granted by treaty, there was no question of infringing national sovereignty, since matters regulated by international agreements could no longer be regarded as coming within the exclusive domestic jurisdiction of the States Parties concerned. The misgivings expressed concerning the possible abuses to which the granting of the right might lead appeared to be groundless. It was pointed out that in the case of piracy the right of visit, search and seizure had long been recognized, but it had not given rise to abuses. In reply to the objection that the proposed article singled out a particular area, it was explained that on practical grounds it was desirable to confine the area in which vessels could be searched to those parts where there was reason to believe that the slave trade still existed. It was important that the freedom of the seas should be limited to the minimum extent possible.

24. In an attempt to meet some of the objections to the draft article, a revised text was prepared by the representatives of Belgium, France, Turkey and the United Kingdom (E/CONF.24/L.25) which omitted reference to any particular maritime zone, eliminated the right of seizure and restricted the right of visit and search to vessels of less than 500 tons, and left responsibility for further action against the offending vessel to the State Party under whose flag it was sailing. However, for lack of support, this revised text was withdrawn by the sponsors.

25. The Conference adopted the text proposed by Egypt, India and the Soviet Union, as amended by Peru and Portugal, which left it to each State Party to take effective measures to prevent ships or aircraft flying its flag from conveying slaves and to ensure that its ports, airports or seacoast were not used for the conveyance of slaves. The text of the article, as adopted, is reproduced in paragraph 19 above.

⁷ See E/CONF.24/SR.5-SR.8, SR.17 and SR.22.

⁸ *Official Records of the Economic and Social Council, Twenty-first Session, Annexes, agenda item 12, document E/2824.*