

SLAVERY CONVENTION

PROTOCOL AMENDING THE SLAVERY CONVENTION

SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

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Over the long arc of human history, slavery has been the rule. By comparison, the international movement to end first the slave-trade, then slavery, and finally to address lesser forms of servitude, has been but a brief moment in time. While one person's enslavement of another persisted since time immemorial and existed as part of most civilisations throughout the ages, an industrialisation of enslavement emerged in the wake of the European voyages of discovery resulting in the transformation of the New World. That step-change led to the enslavement of an unknown number of indigenous people of the Western Hemisphere; and an estimated further 12.5 million people being forcibly taken from the African continent between 1501 and 1866 and put to commodity production in the Americas, the vast majority destined for sugar plantations (www.slavevoyages.org).

While some intellectuals, notably Jean Bodin (1530–1596) and Montesquieu (1689-1755), challenged the moral and philosophical underpinning of slavery, there persisted a consensus across Europe that slavery, though contrary to natural, was legal *jus gentium*. However, that consensus, anchored in Roman Law, would be tested over time – most notably by the slave rebellion which led, in 1804, to the revolution which transformed the French colony of Saint-Domingue into the independent Republic of Haiti. As a result, in 1815, at the Congress of Vienna, the European Powers declared their wish to “consider the universal abolition of the trade” of slaves so as to “bring to an end a scourge which has for a long time desolated Africa, degraded Europe, and afflicted humanity” (*Declaration des 8 Cours, relative à l'Abolition Universelle de la Traite des Nègres*).

For most of the Nineteenth Century, the international abolitionist movement was played out on the high seas through a series of bilateral treaties fostered by the United Kingdom allowing for a “right to search” so as to suppress the trade in enslaved Africans. By the end of the Century, this web of treaties led to the effective end of the Atlantic slave-trade and created the diplomatic space for a multilateral agreement to be reached. It was this General Act of the Brussels Conference in 1890, which created a maritime zone off the East Coast of Africa with a curtailed “right to visit”, along with the *Muscat Dhows* case in 1905, before the Permanent Court of Arbitration, that provided the effective abolition of the slave trade at sea.

In the early years of the League of Nations, the proposal to place an independent Ethiopia under the Mandate system for its perceived failure to suppress the slave trade within its territory was challenged with quick reverberations. Within a year, in 1923, Ethiopia was admitted as a Member of the League of Nations, and the issue of the slave trade on land was generalised through the considerations of the Temporary Slavery Commission and placed on a formal footing by the Slavery Convention, 1926.

The Slavery Convention sought to “complete and extend the work accomplished under the Brussels Act”, as it acknowledged the necessity to conclude “more detailed arrangements” to that end. Its objectives were two-fold: “the complete suppression” and “securing the abolition of slavery and the slave trade”. Thus, the Convention sought not only to end slavery and the slave trade in fact, but also in law: to abolish laws which allowed for such enslavement. The Convention is wider in scope than its title suggests, as it addresses not only slavery but also compulsory or forced labour, and the slave trade. Pre-dating the establishment of international human rights law, the Slavery Convention is an instrument of penal law, mandating that the

High Contracting Parties “adopt the necessary measures in order that severe penalties” be imposed. The Convention creates differing obligations as between the slave trade, which requires States to “prevent and suppress”, and slavery where the Parties were given time to “bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”. Where forced labour is concerned, the obligation set out by the Convention is to “take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery”.

The provisions of the Slavery Convention which continue to have contemporary resonance, beyond their formal inclusion in this instrument, are the definitions of both slavery and the slave trade as first set out in 1926. This is so that the definition of slavery, as first established in the Slavery Convention, is reproduced, in substance, in both the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and the Statute of the International Criminal Court, 1998. That definition reads:

“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Where the slave trade is concerned, the definition as set out in the Slavery Convention, 1926, was confirmed by its inclusion in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956. The definition of the slave trade reads:

“The slave trade includes 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 slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”

In seeking to complete the work of the Brussels Act, the Slavery Convention gives emphasis to ensuring the end of the slave trade, requiring the High Contracting Parties adopt appropriate measures to suppress the trade within “their territorial waters and upon all vessels flying their respective flags”.

In regard to forced or compulsory labour, it should be emphasised that the Slavery Convention, 1926, makes plain that such labour was only to be “exacted for public purposes,” and, where this did take place, the High Contracting Parties “endeavour progressively and as soon as possible to put an end to the practice”. During the process of adopting the Slavery Convention, 1926, the Assembly of the League of Nations also passed a number of resolutions, including one which effectively requested that the International Labour Office take over responsibility for addressing forced labour, including “the best means of preventing forced or compulsory labour from developing into conditions analogous to slavery” (League of Nations, Doc. A.104.1926.VI, p. 3). With this, the International Labour Office moved to address the issue: resulting in the conclusion of the Forced Labour Convention, 1930, which sets out a definition of forced or compulsory labour including a number of exceptions for public purposes – for instance: military conscription and penal labour – and an obligation to criminalise such conduct. The vast majority of the provisions of the 1930 Convention sought to regulate the use of such forced labour in a colonial context. These provisions were meant to be exceptional, to be applicable for a transitional period which formally expired with the conclusion of the Protocol of 2014 to the Forced Labour Convention of 1930. Reference here might also be made to a further International Labour Organisation instrument touching on forced or compulsory labour: the Abolition of Forced Labour Convention, 1957.

In regard to issues of slavery, during the League of Nations era, the work of three bodies stands out, that of International Commission of Inquiry into the Existence of Slavery and Forced Labour in the Republic of Liberia that, in 1930, delivered a report which ultimately forced the resignation of both the President and the Vice-President of that Republic. Beyond this Commission, the League of Nations established two bodies to give effect to the provisions of the Slavery Convention, 1926. The first of these was the Committee of Experts on Slavery, which met during 1932 and transitioned into the Advisory Committee of Experts on Slavery in

1934. The Advisory Committee was active until 1938, before falling silent in the march towards the Second World War.

During the early years at Lake Success, the United Nations was involved at the organisational level in the general exercise of ensuring that League of Nations' obligations were given legal effect within the framework of the United Nations. With this in mind, the United Nations Secretary-General suggested to the Economic and Social Council's *Ad Hoc* Committee on Slavery that the United Nations take over the "functions and powers formerly entrusted" to the League of Nations in regard to the Slavery Convention, 1926 (E/AC.33/4). The *Ad Hoc* Committee acted on this suggestion, noting that certain provisions of that Convention "referred to officials or organs no longer in existence" (E/AC.33/9). To that end, the Committee's suggestion of a protocol was taken up with the conclusion on 7 December 1953 of the Protocol amending the Slavery Convention signed at Geneva on 25 September 1926. For the States Parties, the Protocol effectively brought the Slavery Convention into the United Nations system, substituting, in general terms, the language of "League of Nations" for that of the "United Nations". In more specific terms, the Protocol brought the Slavery Convention into the orbit of the International Court of Justice, by replacing the wording of "the Permanent Court of International Justice" within the compromissory clause found at article 8 of the Slavery Convention. Likewise, it substituted the language of the "Secretary-General of the League of Nations" with that of "the Secretary-General of the United Nations" so as to allow the United Nations Secretary-General to receive communications from the Parties to the Slavery Convention as to any laws or regulations they have enacted with a view to giving effect to the provisions of the 1926 Convention.

The United Nations *Ad Hoc* Committee on Slavery was created in 1949 as a result of a request by the United Nations General Assembly. In appointing its Members, the Secretary-General noted that "should the Committee find that the substantive provisions of the Slavery Convention of 1926 are no longer adequate in the light of the present situation, it might consider the possibility and desirability of proposing a new convention on slavery" (E/AC.33/4, p. 3). In its deliberations, the *Ad Hoc* Committee did not find that the Slavery Convention, 1926, was lacking; rather, the Committee believed it worthy of supplementing, "so as to be more precise than that instrument in defining the exact forms of servitude dealt with" (E/AC.33/13, p. 16).

Note the use of the language of "servitude", as the legislative history of what would become the Supplementary Convention of 1956 can be traced back to 1924 when the servile statuses included in the 1956 Convention were first considered. Yet, despite these various servitudes having been deliberated upon by expert bodies of both the League of Nations and the United Nations, the very term "servitude" would not survive in an instrument meant to address, at its core, that precise issue. As late as February 1956, the penultimate draft of the negotiated instrument was entitled the "Draft Supplementary Convention on Slavery and Servitude". Yet, with the conclusion of the diplomatic negotiations in September of that year, came an instrument whose title revealed a new concept: The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

What moved the parties negotiating the Supplementary Convention, 1956, to change tack and speak of "institutions and practices similar to slavery" rather than "servitudes"? The answer lies in the obligations which were being considered in the suppression of the four servile statuses at play: debt bondage, serfdom, servile marriage, and child exploitation. While some delegations sought to have applied the same obligations incumbent upon the High Contracting Parties to the Slavery Convention, 1926, in regard to slavery, that is: its abolition "progressively and as soon as possible"; other delegations pointed to the 1948 Universal Declaration of Human Rights and its pledge that "no one shall be held in slavery or servitude". With the language used to address servitude remaining that of "progressively and as soon as possible", a concerted effort transpired, expunging the term "servitude" from the final draft of the Supplementary Convention, replacing it with the term "institutions and practices similar to slavery", or more often abbreviated as "practices similar to slavery".

Like its predecessor, the Supplementary Convention, 1956, is an instrument of penal law. Where slavery is concerned, the temporal element of "progressively and as soon as possible" is done away with and a range of possible ancillary crimes – inducing, attempting, conspiring, or

being an accessory to an act of enslavement – is mandated to be included into the domestic law of the States Parties. Where the practices similar to slavery are concerned, the ancillary crimes hold; however, so too does the temporal element: to abolish these acts not forthwith, but rather progressively and as soon as possible.

As regards those practices similar to slavery, it should be noted that despite having suggested the development of a new instrument, the Secretary-General had, as early as 1953, questioned the need for a supplementary convention, as he was of the opinion that the practices under consideration were “in the main” covered by the Slavery Convention, 1926 (E/2357, p. 23). Those doubts were acknowledged and formalised within the Supplementary Convention, 1956, which reads, in part:

“Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926.”

As to the specific institutions and practices similar to slavery, as set out in the Supplementary Convention, 1956, debt bondage is defined as:

“the 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”;

Serfdom, for its part, is defined as:

“the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status”;

What may be termed “child exploitation” emerged from considerations around fraudulent adoptions. However, the final provisions go beyond such adoptions, as including the prospective exploitation of the child:

“Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

Finally, the Supplementary Convention, 1956, sets out what may be termed three variations of “servile marriage”: bride purchase, wife transfer, and widow inheritance. They are defined as follows:

“Any institution or practice whereby:

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person;”

Rather interestingly, it is within the Supplementary Convention, 1956, that we see for the first time provisions in international law related to marriage. In seeking to address the issue of servile marriages, the Supplementary Convention calls on States Parties to prescribe, where appropriate, a minimum age of marriage, and to encourage both the registration of marriages

and the ability for the consent of both parties to be made freely in the presence of a civil or religious authority. Following on from these provisions was a Recommendation made by the Conference negotiating the Supplementary Convention, 1956, to the Economic and Social Council to consider the question of marriage as it relates to consent and setting a minimum age (E/CONF.24/23, p. 6.). It is from this source that we witness the emergence of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962, and provisions within the Convention on the Elimination of all Forms of Discrimination against Women, 1979.

As its full title suggests, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery also includes provisions specific to the slave trade, including requirements that those convicted of such offences “be liable for very severe penalties”. Emphasis is taken away from the exclusive focus of the slave trade at sea, with the requirement for States Parties to address the issue both at airfields and with regard to flagged aircraft.

Finally, the Supplementary Convention, 1956, like the Slavery Convention, 1926, before it, requires that the States Parties communicate to the Secretary-General, “any laws, regulations and administrative measures enacted” so as to give voice to that Convention. Any information received by the Secretary-General is then to be passed on to the Economic and Social Council with an eye to possibly making recommendations in regard to slavery, the slave trade and institutions and practices similar to slavery.

During the decade that followed the conclusion of the Supplementary Convention, 1956, two events transpired which reduced the possible impact of this instrument. The first was the adoption of the International Covenant on Civil and Political Rights in 1966, which made good on the promise of the Universal Declaration of Human Rights by creating for States Parties the obligation to ensure that no one be held in slavery or servitude, the slave trade be prohibited, and, barring some exceptions, that nobody be required to perform forced or compulsory labour. In so doing, it both brought into sharp relief the move away from “servitude”, which transpired in 1956 in favour of the term “institutions and practices similar to slavery”, and it established in international law the term “servitude” without defining it or having a clear sense as to its normative content.

The second event which reduced the possible impact of the Supplementary Convention, 1956, was the attempt within the Economic and Social Council, in 1966, to equate both apartheid and colonialism with either slavery or practices similar to slavery. While this attempt failed, the residual would sow lingering confusion throughout the United Nations system, as a term of art: “slavery-like practice” was created. That term, and its similarity to “practices similar to slavery’, has meant that the language of law and diplomacy has sometimes been used interchangeably and often times conflated.

This conflation and, ultimately, obfuscation was most evident during the latter part of the Twentieth Century when consideration of the newly established umbrella term, “contemporary forms of slavery”, was taken up by a Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which functioned during the pre-2006 United Nations institutional framework of human rights under the former United Nations Commission on Human Rights.

Previous to this, the United Nations had appointed two Special Rapporteurs on slavery who produced reports (Hans Engen, 1955; and Mohamed Awad, 1966) which simply compiled responses by United Nations Members States and others as to persistence of slavery. Further, by the early 1970s, a growing consensus was emerging that slavery was a norm of *jus cogens*, spurred on by the work of the United Nations International Law Commission and the determination by the International Court of Justice, in the 1970 *Barcelona Traction* case, that the “protection from slavery” created obligations *erga omnes*.

Yet, over the life time of Working Group on Contemporary Forms of Slavery (1974-2006), it developed an expansive understanding of contemporary forms of slavery beyond that of the legal parameters of slavery and practices similar to slavery as set out within the Slavery

Convention, 1926, and Supplementary Convention, 1956. Under its development of contemporary forms of slavery, the Working Group considered, *inter alia*, female genital mutilation, honour killings, and street children; and reported over various years on such diverse issues as child pornography, detained juveniles, early marriages, and incest (E/CN.4/Sub.2). Thus, in the approach to the end of the Twentieth Century, the use of diplomatic terms such as contemporary forms of slavery and slavery-like practices eclipsed, for all intents and purposes, the international law as proscribed by the Slavery Convention, 1926, and Supplementary Convention, 1956.

Just as it appeared that these conventions were approaching legal desuetude, further events transpired near the turn of the Twenty-First Century to reverse the tide and breathe substantive life into the Slavery Convention, 1926, and Supplementary Convention, 1956. The first was the adoption of the Statute of the International Criminal Court in 1998 which established amongst its crimes against humanity and war crimes, the international crimes of enslavement and sexual slavery. Second was the adoption in 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. That Protocol sets out, amongst various types of exploitation to be considered in regard to the offence of trafficking in persons, “forced labour or services, slavery or practices similar to slavery, [and] servitude”.

While the Statute of the International Criminal Court turns to the definition of slavery as first set out in the Slavery Convention, 1926, to define enslavement and sexual slavery, it is somewhat unique in setting out a definition. The norm – manifest in the International Covenant on Civil and Political Rights and the various regional human rights instruments; in the *Ad Hoc* criminal tribunals, the International Criminal Tribunal for the former Yugoslavia and the International Tribunal for Rwanda; and with the trafficking Protocol to the United Nations Convention against Transnational Organized Crime and its European counter-part – has been to note the term, be it forced or compulsory labour, servitude, or slavery – but not to define it. Rather, and as determinations of various international courts and authoritative fora have demonstrated, reference to these concepts are based on their definitions as originally set out in either the Slavery Convention, 1926; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956; or the Forced Labour Convention, 1930.

At the heart of the re-emergence of the law, as manifest in the Slavery Convention, 1926, and the Supplementary Convention, 1956, has been the question of the application of the definition of slavery to contemporary instances of persons being held in slavery without legal title. That is to say: could a person be held in slavery without being legally owed? A consensus amongst international courts and tribunals has emerged which accepts that the definition of slavery as first set out in the Slavery Convention, 1926, is applicable in contemporary, *de facto* situations. That acceptance is facilitated by a reading of the elements of the definition itself which, it will be recalled, states that: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. As the Inter-American Court of Human Rights has determined in its 2016 judgment, the first of these elements – “status or condition” – “refers to both the *de jure* and *de facto* situations”; that is: status is a legal concept while condition is a state of being. While a number of international judgements have repeated a set of *indicia* to look for in ascribing the second element of the definition: the exercise of the powers attaching to the right of ownership; the Inter-American Court has engaged with the substance of what constitutes those powers. It did so by reference to the 2012 *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* in stating that “the ‘powers attaching to the right of ownership’ must be understood today as control exercised over a person who is restricted in or significantly deprived of his or her individual liberty, with the intention of exploitation through the use, management, profit, or transfer of a person to another” (*Workers of Fazenda Brasil Verde v. Brazil*, paras. 270 and 271). Where control tantamount to possession is established, slavery exists.

During much of the Twentieth Century, the Slavery Convention, 1926, and the Supplementary Convention, 1956, saw limited application. Yet, the contemporary resonance of these instruments is to be found, in the main, in the definitions which retain their normative value. Within the context of the Twenty-First Century, there is growing recognition that

enslavement beyond chattel slavery can and does exist. Whether it be international human rights law, international humanitarian law, or international criminal law, the Slavery Convention, 1926, and the Supplementary Convention, 1956, provide the foundation upon which a legal understanding of a contemporary manifestations of slavery and those institutions or practices similar to slavery is developed.

Related Materials

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Community Court of the Economic Community of West African States, *Case of Hadijatou Mani Koraou v. the Republic of Niger*, no. ECW/CCJ/JUD/06/08, Judgement of 27 October 2008.

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C. Documents

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