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Renee Colette Redman

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THE LEAGUE OF NATIONS AND THE RIGHT TO BE FREE FROM ENSLAVEMENT: THE FIRST HUMAN RIGHT TO BE RECOGNIZED AS CUSTOMARY INTERNATIONAL LAW

Renee Colette Redman*

INTRODUCTION

Freedom from enslavement is now considered a fundamental human right under customary international law.1 Many scholars argue that the prohibition against slavery has risen to the level of jus cogens, and therefore cannot be derogated through treaties or even in a state of emergency.2 Others argue that it is erga omnes, a right so fundamental that it is the obligation of all nations to prevent its infringement.3 Still others label slavery and the slave trade as international crimes.4 Regardless of which designation is used, the right to be free


3. The International Court of Justice has stated that there are a small number of international obligations which, "[b]y their very nature . . . are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes." Barcelona Tracton, Light and Power Company, Limited, Judgment (Belg. v. Spain), 1970 I.C.J. 3, 32 (Feb. 5); see also Report of the International Law Commission on the Work of Its Twenty-eighth Session, 2 Y.B. Int'l L. Comm'n 1, 99, U.N. Doc. A/CN.4/SER.4/1976/Add.1 (Part 2) (setting forth its draft articles on state responsibility along with commentary to the articles) [hereinafter International Law Commission Report].

4. Article 19(3)(c) of the International Law Commission's draft articles on state responsibility provides that "a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid" is an international crime. International Law Commission Report, supra note 3, at 95. The commentary to the draft articles suggests that the obligation not to commit international crimes is an obligation erga omnes. Id. at 102-04. As one publicist notes, slavery need not be on a widespread scale to qualify as an international crime because Article 1 of the 1926 Slavery Convention defines slavery as the "status or condition of a person." Kamminga, supra note 1, at 100 n.114 (quoting Slavery Convention, Sept. 25, 1926, art. 1, 60 L.N.T.S. 253, 253); see

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from enslavement is considered so fundamental that all nations have standing to bring offending states before the International Court of Justice and possibly have the right to use force to ensure protection of the right.5

However, slavery's evolution from an accepted worldwide practice, dating from at least the times of the Old Testament to its present status as an international crime, took place over the course of only a century and a half. The movement for the abolition of slavery began at the beginning of the nineteenth century when many European nations and the United States outlawed the importation of African slaves. At the same time, many of the same nations entered into bilateral and multilateral treaties that denounced the institution of slavery and provided for the cessation of the slave trade between themselves.

Towards the end of the century, many Western nations sought to prevent the importation of slaves not only into their own countries, but into other nations as well. However, while the Western nations repeatedly declared slavery and the slave trade illegal, they lacked enforcement power over each other and over other states because slavery was not considered illegal under the law of nations and the slave trade was not considered an act of piracy.


5. See Barcelona Traction, Light, and Power, 1970 I.C.J. at 32; International Law Commission Report, supra note 3, at 99 ("[E]very State must be considered justified in invoking—probably through judicial channels—the responsibility of the State committing the internationally wrongful act.").

6. The institution is recognized in the Old Testament. See, e.g., Exodus 21:2, 26, 27, 32; Leviticus 25:39; Deuteronomy 15:12; and Ecclesiastes 2:7.

7. British Slave Trade Act, 1824, 5 Geo. 4, ch. 113 (Eng.), reprinted in 11 BRITISH AND FOREIGN STATE PAPERS 656 (1843); Imperial French Decree, Abolishing the Slave Trade, Mar. 29, 1815, 3 Hertslet's Com. T.S. 92; Edict of the King of Denmark, Mar. 16, 1792, 3 Hertslet's Com. T.S. 71.

8. Slave Trade Prohibition Act, 2 Stat. 205 (1803). Slavery was outlawed in the United States in 1865 when the Thirteenth Amendment was ratified. U.S. CONST. amend. XIII.

The work of the League of Nations was the turning point. It convinced most of the world to eradicate slavery and to halt the slave trade. By doing so, the League established the right to be free from enslavement as a fundamental freedom under customary international law. It became the first recognized human right, although many more followed in its wake.

Slavery was one of the first issues that the League addressed. In 1924, the Council established a Temporary Slavery Commission and charged it with studying the existence of slavery throughout the world. This led to the promulgation of the Slavery Convention of 1926. The signatories to the Convention agreed to prevent and suppress the slave trade and to work "progressively" towards the complete abolition of slavery within their jurisdictions.

Even though it was the first time international legislation sought to abolish slavery and the slave trade, the mere promulgation of the Slavery Convention did not establish slavery as a violation of customary international law. The notion of modern international law, of which customary international law is a part, developed in the nineteenth century during the same period in which the eradication of slavery was achieved.

10. The League of Nations was created pursuant to a Covenant that was part of the Treaty of Versailles that ended World War I. F. P. Walters, A History of the League of Nations 38-39 (1952). The Covenant of the League of Nations was adopted on April 28, 1919 and entered into force on January 10, 1920. Id. at 4, 38-39. It was created largely pursuant to the last of the Fourteen Points constituting the war aims of the United States that were enunciated by President Woodrow Wilson on January 8, 1918 in a speech before Congress. Id. at 20. However, the Senate never approved the United States's membership. Id. at 68-71; see also Herbert F. Margulies, The Mild Reservationists and the League of Nations Controversy in the Senate (1989).

The League was an intragovernmental organization whereby member states did not forfeit any sovereignty. League of Nations Covenant pmbl., art. 1. The Covenant created three "instrumentalities": the Assembly, the Council, and the permanent Secretariat. Id. at art. 2. The Assembly consisted of representatives from member states and had exclusive jurisdiction over several matters including the admission of members into the League. Id. at art. 1, para. 2. The Council consisted of "permanent" members who were "Representatives of the Principal Allied and Associated Powers" and several nonpermanent members selected by the Assembly. Id. at art. 4. The numbers of both varied throughout the history of the League. Hans Aufrecht, Guide to League of Nations Publications 70-71 (1951). The two bodies held concurrent jurisdiction over any matter "affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." League of Nations Covenant art. 11, para. 2. The permanent Secretariat consisted of the Secretary-General and his staff. Id. at art. 6, para. 1. The Secretary-General was appointed by the Council with the approval of the majority of the Assembly. Id. at art. 6, para. 2.

slavery was progressing. The League of Nations furthered the development of international law. The founders of the League envisioned it as an international government. The Covenant created an international court to adjudicate disputes between nations\textsuperscript{12} in an effort to eliminate the need for wars. The League also had a legislative body called the Assembly. However, while the Assembly was empowered to pass international legislation, the League did not have the power to enforce those laws against either nonconsenting members or non-members unless the rule became one of customary international law.

In the international context, states are legally bound to treaties and agreements they ratify.\textsuperscript{13} However, they may also be bound by the terms of treaties to which they have not expressly consented if those terms constitute customary international law. Customary international law is usually defined as a general and consistent practice among states that is accepted and observed out of a sense of legal obligation.\textsuperscript{14} When a norm achieves such status, all states are bound to follow the norm, regardless of whether they signed a treaty.\textsuperscript{15} For the Slavery Convention to rise to the level of customary international law, the majority of the world's nations had to voluntarily comply with its provisions.

The League had little direct power over the actions of members because members did not give up their sovereignty. It only had the power to suggest measures to be taken; the individual member states had to decide whether to act. Accordingly, the only enforcement

\textsuperscript{12} League of Nations Covenant art. 14.

\textsuperscript{13} Statute of the Permanent Court of International Justice art. 38, para. 1. Another source of international law is the "general principles of law recognized by civilized nations," or laws that are common to all legal systems. Id. at art. 38, para. 3. "Judicial decisions and the teachings of the most highly qualified publicists of various nations" comprise subsidiary sources. Id. at art. 38, para. 4. The same sources of international law are found in Article 38 of the Statute of International Court of Justice, the successor to the Permanent Court of International Justice. Statute of the International Court of Justice art. 38.

\textsuperscript{14} See Statute of the Permanent Court of International Justice art. 38, para. 2 (The Court applies "[i]nternational custom, as evidence of a general practice accepted as law."); Statute of the International Court of Justice art. 38, para. 1(b) (one source of international law is "international custom, as evidence of a general practice accepted as law"); Restatement (Third) of the Foreign Relations Law of the United States § 102(2) (1987).

\textsuperscript{15} There is some question over whether a state is bound by a customary rule if the rule is contrary to its past uniform practice. The International Court of Justice has stated that in order for a practice to qualify as a customary rule, it must be shown that it "is in accordance with a constant and uniform usage practiced by the States in question. . . ." Asylum Case (Col. v. Peru), 1950 I.C.J. 266, 276 (Nov. 20). A year later the court was presented with a conflict over an alleged customary rule regarding fishing territories. The court ruled that the regulation that was accepted as customary international law was not applicable to Norway "as she has always opposed any attempt to apply it to the Norwegian coast." Fisheries Jurisdiction (U.K. v. Nor.), 1951 I.C.J. 116, 131 (Dec. 18). This ruling may mean that a state is not bound by a rule of customary international law if it opposes it from the beginning.
measures in the Slavery Convention are provisions for bringing an offending state before the Permanent Court of International Justice and provisions requiring each state to submit a report to the Council regarding any domestic legislation passed pursuant to the Convention.

Although not every state signed or ratified the Convention, it nonetheless developed the force of law. As of 1937, only twenty-nine states had ratified the Slavery Convention and were therefore affirmatively bound by its terms. However, because more had acceded to it or voluntarily complied with its provisions, it had developed the force of law and had become binding on the entire world.

Freedom from enslavement did not become a fundamental human right solely as a result of ratification and accession to the Convention. The Convention was not framed in terms of a fundamental right to be free from enslavement. It outlined the duties of states to eradicate slavery and the slave trade without declaring that every human being has the right to be free from enslavement. In fact, the signatories to the Slavery Convention did not even agree to completely eradicate slavery; they only agreed to "progressively" work for its abolition.

Therefore, while the promulgation of the Slavery Convention was significant, the real significance of the League's work is that it ele-
vated the right to be free from enslavement to a fundamental human right under customary international law by persuading most of the world to abolish slavery and the slave trade. It accomplished this through its extensive follow-up work after the Slavery Convention was signed. First a temporary and later a permanent Commission on Slavery was established and authorized to receive, organize, and publish information furnished by the signatories to the Slavery Convention and to make recommendations regarding the eradication of slavery in particular states. In 1930, at the invitation of Liberia, the League sent an international commission into Liberia to investigate conditions, to report on them, and to make recommendations.\textsuperscript{20}

The League's work was significant even though it did not completely eradicate slavery. The institution continued to exist in some form in Liberia, Ethiopia, and parts of the Middle East at the outbreak of World War II. The United Nations continues to grapple with the problem, albeit in isolated situations.\textsuperscript{21} However, every nation in the world need not agree to a practice or to a law in order for it to be customary international law. Pursuant to the League's influence, the vast majority of the powerful and less powerful nations outlawed slavery prior to World War II and they continue to look upon it with loathing.

Part I of this Article is a brief outline of the history of slavery in international law and the efforts to eradicate it during the nineteenth century. Part II explores the work done by the League of Nations to eradicate slavery. Part II-A concerns the Slavery Convention of 1926. Part II-B covers the Reports by the Committee on Slavery. Finally, Part II-C addresses the League's investigation in Liberia.


This Article concentrates on the work done by the League as a whole. The Mandate System, established by the League in 1919, also worked to eradicate slavery in the territories within its system.\textsuperscript{22} In contrast, the work done by the League as a whole was the first time an international body had attempted to make international law regarding the rights of individuals. Because the International Labor Organization did extensive work on the problem of forced labor,\textsuperscript{23} this Article is also primarily limited to "classic" slavery and slave trade,\textsuperscript{24} although the section dealing with the investigation in Liberia touches on other forms of slavery.

I. A Brief History of Slavery in International Law Before 1919

Slavery has existed since ancient times.\textsuperscript{25} It held the status of \textit{jus gentium} under Roman law.\textsuperscript{26} The Christian church justified it by using three different rationalizations: (1) it was punishment for the original sin of ancestors;\textsuperscript{27} (2) some races were born slaves;\textsuperscript{28} and (3) the victor

\textsuperscript{22} The Mandate System was organized pursuant to Article 22 of the League of Nations Covenant. The Covenant provided that non-self-governing territories would be administered by more "advanced" States. The territories included parts of the former Turkish Empire and parts of Central Africa. They were divided into three groups according to their stage of development. AARON M. MARGALITH, THE INTERNATIONAL MANDATES 93 (1930). The A mandates (established by Article 22, Paragraph 4 of the League of Nations Covenant) were Palestine and Transjordan (administered by Great Britain) and Syria and Lebanon (administered by France). The B mandates (established by Article 22, Paragraph 5 of the League of Nations Covenant) were the Cameroons and Togoland (administered by Great Britain and France), Tanganyika (Great Britain), and Rwanda and Urundi (Belgium). The C mandates (from Article 22, Paragraph 6) were Western Samoa (New Zealand), Nauru (Great Britain), former German South equatorial possessions (Australia), and North equatorial possessions (Japan). \textit{Id.} at 82 n.35. South West Africa was to be administered by the Union of South Africa, but the Union never gave up the territory. A permanent Mandates Commission was created to receive and examine annual reports. LEAGUE OF NATIONS COVENANT art. 22, para. 9. Hugo Fischer, \textit{The Suppression of Slavery in International Law-II}, 3 INT'L L. Q. 503, 506 (1950).

\textsuperscript{23} The International Labor Organization was established in 1919 and a Forced Labour Convention was promulgated in 1930. Convention Concerning Forced Labour, June 28, 1930, 39 U.N.T.S. 55 (entered into force May 1, 1932).

\textsuperscript{24} The term "classic" refers to a system in which certain persons have the status of slaves and are bought and sold as such. This is the definition used by the League.

\textsuperscript{25} The Romans also had slaves. See J. INST. 1.3.

\textsuperscript{26} Id. Although the Romans considered slavery part of the law of all nations, they did not find the source for slavery in the law of nature. W.W. BUCKLAND, THE ROMAN LAW OF SLAVERY 1 (1908).

\textsuperscript{27} See SAINT AUGUSTINE, THE CITY OF GOD, bk. XIX, chs. 14-16 (Marcus Dods trans., 1950).

\textsuperscript{28} In 1452, the papal bull, \textit{Dum Diversas}, authorized the King of Portugal "to subdue Saraceans, pagans, and other unbelievers imimical to Christ, to reduce their persons to perpetual slavery and then to transfer for ever their territory to the Portuguese Crown." HUGH THOMAS, CONQUEST: MONTEZUMA, CORTÉS AND THE FALL OF OLD MEXICO 59 (1993) (quoting the papal bull \textit{Dum Diversas}, 1452). In 1513, Ferdinand's Privy Council claimed that the enslavement of
in a “just” war had the right to enslave prisoners.\textsuperscript{29} The African slave trade, which began in 1434 when the Portuguese began transporting Africans to Portugal for labor, was institutionalized by the sixteenth century.\textsuperscript{30} For the next two centuries, slavery and slave trading in Africa were not only permitted by Western governments, but were actively protected and encouraged as a lucrative branch of international commerce.\textsuperscript{31}

Treatise writers in the seventeenth and eighteenth centuries acknowledged that slavery was legal under the law of nations if not that of nature.\textsuperscript{32} For example, in 1646, Hugo Grotius, the Dutch jurist, wrote that “[b]y nature at any rate... no human beings are slaves.”\textsuperscript{33} Nevertheless, he argued that it was not “in conflict with natural justice that slavery should have its origins in a human act, that is, should arise


\textsuperscript{30} Umozurike, \textit{supra} note 28, at 335-36.

\textsuperscript{31} Henry Wheaton, \textit{Elements of International Law} 168 (3d ed., Philadelphia, Lea & Blanchard 1846); \textit{see} Treaty of Peace and Friendship, July 13, 1713, Gr. Brit.-Spain, 28 Consol. T.S. 325 (also known as the Treaty of Utrecht) (England given a monopoly over the importation of African slaves into the American Spanish colonies); Treaty of Alcáçovas, Sept. 4, 1479, Port.-Spain, \textit{reprinted in part in} Antonio Rumeu de Armas, \textit{El Tratado de Tordesillas} 263-65 (1993) (Spanish text). In the Treaty of Alcáçovas, Spain and Portugal divided the known parts of Africa. Portugal was granted exclusive control of shipping routes bordering the African-Atlantic coast. \textit{Rumeu de Armas, supra}, at 84. This gave Portugal an exclusive right to traffic in African slaves that was solidified in 1493 by the papal bull that drew an imaginary north-south line 100 leagues west of Cape Verde. Spain was assigned the territories west of the line, while Portugal was assigned those east of the line. Portugal built a series of castles along the African coast and dominated the slave trade until the seventeenth century. Umozurike, supra note 28, at 335-36. The English Kings granted charters for exclusive trade in Africa in 1618, 1631, and 1662. William O. Blake, \textit{The History of Slavery and the Slave Trade} 107 (1858). In 1750, Parliament passed the Act for Extending and Improving the African Slave Trade. \textit{Id.} at 108. It is estimated that in 1790 there were about forty forts along the west coast of Africa; fourteen English, fifteen Dutch, three French, four Portuguese, and four Danish. \textit{Id.}

\textsuperscript{32} The term “law of nations” was based on \textit{jus gentium} as first used by the Romans to mean the laws common to all civilized societies that were enforced by the courts of the Roman Empire. \textit{See Barry Nicholas, An Introduction to Roman Law} 54-59 (1962). During the eighteenth century, the term was used with various shades of meaning but generally referred to law enacted by nations as opposed to natural law which flowed from a common sense of morality. Jeremy Bentham was the first important English writer to use the term “international law.” \textit{See Jeremy Bentham, Principles of International Law} (1786-1789), \textit{reprinted in} 2 Jeremy Bentham, \textit{The Works of Jeremy Bentham} 535 (John Bowring ed. 1962) (publication of the works of Bentham from the original manuscripts under the supervision of his executor). For a discussion of slavery as natural law in United States jurisprudence, see David Brion Davis, \textit{The Problem of Slavery in Western Culture} (1966); Cover, \textit{supra} note 29.

\textsuperscript{33} Hugo Grotius, \textit{De Jure Belli ac Pacis Libri Tres (On The Law of War and Peace)} 690 (Francis W. Kelsey trans., 1925) (1646).
from a convention or a crime." The law of nations provided that people could sell themselves into slavery and that those who were captured in war became slaves over which their captors had unlimited rights. He wrote that this later law arose for two reasons. The first was humanitarian; by permitting captors unlimited rights over slaves, they would be persuaded not to kill the prisoners as they had previously done. The second was that, pursuant to moral justice, those who engaged in a "lawful" war had the right to enslave their captors as punishment. Grotius stated that things done to a slave that are repugnant to natural reason are permissible under the law of nations. He then outlined such permissible practices.

In 1764, Christian Wolff, a German jurist, agreed that, while captives did not become slaves by the law of nature, by the law of man they could become slaves for an offense that deserved a penalty. Captives taken in a "just" war could legally be enslaved as punishment for being morally unjust. While he acknowledged that the right to enslave had developed as a humanitarian reaction to the killing of prisoners, he was not convinced that slavery was necessarily better than death.

In 1772, in Somerset v. Stewart, Lord Mansfield of the King's Bench reiterated this distinction. He stated that the state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: it's so odious, that nothing can be suffered to support it but positive law.

34. Id.
35. Id. at 691.
36. Id. at 692. In support, he quotes Pomonius, stating "'[t]he name slaves (servi)'... 'comes from the fact that commanders are accustomed to sell prisoners and thereby to save them (servare) and not to kill them.'" Id. (quoting Pomonius in Dig. 50.16.239.1). In ancient Greece and Italy, the laws of war were based on religion. "War was the judgement of heaven." See Wheaton, supra note 29, at 3. Therefore, in a just war, the losers were deemed to have been abandoned by the gods and therefore could be lawfully killed by the victors. Grotius, supra note 33, at 692.
37. Grotius, supra note 33, at 761.
38. Id. at 762.
40. Id.
42. Id. Lord Mansfield's decision did not outlaw slavery in England as many of his contemporaries believed. He merely found that a slave who had been brought into England by his master had the right of habeas corpus to prevent his removal. See William M. Wiecek, Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World, 42 U. Chi. L. Rev. 86 (1974). For the effects of Somerset v. Stewart in the United States, see Paul Finkelman, An Imperfect Union: Slavery, Federalism, and Comity (1981).
Throughout the nineteenth century, Anglo-American judges and diplomats resisted finding that slavery and the slave trade were against the law of nations or international law. During the beginning of the century, many Western powers outlawed the importation of slaves into territories under their control. Denmark was the first. In 1792 it declared that the slave trade would be illegal as of 1803. The United States and Great Britain followed suit in 1807, as did France in 1815. Britain freed all the slaves within its jurisdiction in 1833.

At the same time, many of the European peace treaties contained flowery statements condemning the slave trade as repugnant to the principles of justice and humanity and calling upon each other for its eradication. For example, in the Peace Treaty of Paris, 1814, Article I of the additional articles between France and Great Britain provided that

His Most Christian Majesty, concurring without reserve in the sentiments of His Britannic Majesty, with respect to a description of Traffic repugnant to the principles of natural justice and of the enlightened age in which we live, engages to unite all his efforts to those of His Britannic Majesty, at the approaching Congress, to induce all the Powers of Christendom to decree the abolition of the Slave Trade, so that the said Trade shall cease universally as it shall cease definitely, under any circumstances, on the part of the French Government, in the course of five years; and that, during the said

43. Edict of the King of Denmark, supra note 7. The edict provides that, as "all further importation of Negroes will be unnecessary," the slave trade will be discontinued from the beginning of 1803. It then outlines the prices to be paid for slaves until that time. Id. at arts. 3-5, at 72-73.

44. Slave Trade Prohibition Act, supra note 8; British Slave Trade Act, supra note 7. In 1816, Britain made agreements with several North African states that, in case of war with any European Power, the other Africans would not enslave any "Christian" prisoners. Declaration of the Dey of Algiers, Aug. 28, 1816, Gr. Brit.-Algiers, 1 Hertslet's Com. T.S. 87; Declaration of the Bey of Tripoli, Apr. 29, 1816, Gr. Brit.-Tripoli, 1 Hertslet's Com. T.S. 155; Declaration of the Bey of Tunis, Apr. 17, 1816, Gr. Brit.-Tunis, 1 Hertslet's Com. T.S. 177.

45. Imperial French Decree, Abolishing the Slave Trade, supra note 7; JAMES A. RAWLEY, THE TRANSATLANTIC SLAVE TRADE 421 (1981). Since at least 1716, colonists were not permitted to bring slaves into France without meeting strict guidelines. SHELBY T. MCCLOY, THE NEGRO IN FRANCE 25-26 (1961). In 1738, a French Admiralty court ruled that because a master had not complied with the provisions under the 1716 law, his slaves were free from the moment they reached France. 1 JOHN CODMAN HURD, LAW OF FREEDOM AND BONDAGE 341-44 (1738) (discussing the 1738 French case of Boucaut v. Verdelin).


47. In 1814, near the end of the Napoleonic wars, the Congress of Vienna met and promulgated a series of economic and political treaties that created a balance of power between the European nations and maintained peace for almost one hundred years. This coalition became known as the "Concert of Europe." ALFRED ZIMMERN, THE LEAGUE OF NATIONS AND THE RULE OF LAW 1918-1935, at 73-86 (1945).
period, no Slave Merchant shall import or sell Slaves, except in the colonies of the State of which he is a subject.\textsuperscript{48}

Many French were opposed to complete abolition of the slave trade and the Spanish were afraid its abolition would be the ruin of their colonies.\textsuperscript{49} However, a year later, in 1815, Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden signed the Declaration at the Congress of Vienna which declared that the commerce, known by the name of the "Slave Trade" (\textit{Traite des Negres d' Afrique}) has been considered, by just and enlightened men in all ages, as repugnant to the principles of humanity and universal morality; . . . at length the public voice, in all civilized countries, calls aloud for its prompt suppression . . . [and] several European Governments have virtually come to the resolution of putting a stop to it. . . .\textsuperscript{50}

In 1822, Austria, France, Great Britain, Prussia, and Russia renewed their pledge in the Declaration of the Congress of Verona.\textsuperscript{51}

However, none of these treaties contained concrete measures for stopping the slave trade by sea. States did not consider the transport of slaves on the high seas a violation of the law of nations that justified encroaching upon another state's sovereignty. Under the doctrine of state sovereignty, each nation had the right to sovereignty within its borders and, more importantly, over ships flying its flag.\textsuperscript{52} Thus, nations did not have the right to stop or search other nations' vessels on the high seas.

The one recognized exception was for certain offenses committed on the high seas that were condemned as acts of piracy outlawed by the law of nations.\textsuperscript{53} In those cases, because the actions were against the law of nations, every nation had the right to punish the offender regardless of against whom the acts were committed or on whose ship they were committed.\textsuperscript{54} However, jurists and judges were careful to distinguish between those acts committed on the high seas that were universally outlawed from those that were merely outlawed by the

\textsuperscript{48} Peace Treaty of Paris, \textit{supra} note 9.

\textsuperscript{49} \textbf{THE GREAT EUROPEAN TREATIES OF THE NINETEENTH CENTURY} 32 (Sir Augustus Oakes & R.B. Mowat, eds., 1918).

\textsuperscript{50} Declaration of the Congress Treaty of Vienna, \textit{supra} note 9.

\textsuperscript{51} \textit{SLAVERY MEMORANDUM}, \textit{supra} note 9, at 4-5.

\textsuperscript{52} In 1928, the Permanent Court of International Justice ruled that vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them.

The S.S. \textit{Lotus} (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 9, at 25 (Sept. 7).


\textsuperscript{54} \textit{WHEATON}, \textit{supra} note 31, at 176.
municipal laws of certain states. Robbery and murder were considered punishable as crimes against the law of nations. Therefore, ships did not have the right to stop and search ships on the high seas that were flying the flags of other nations even if they were suspected of carrying slaves.

As late as 1928, James Brierly, the British publicist, wrote that it was a rule of the law of the sea that the jurisdiction of each state was limited to its own ships and nationals. The only exceptions he recognized were cases of "hot pursuit," and cases of piracy where the offending ship was considered to have forfeited the protection of the national flag. Slavery and slave trading were not included in either exception. Ships suspected of carrying slaves should only be legally stopped and searched pursuant to a treaty that explicitly provided for such actions. He noted that this "cardinal rule" had been established by the British and American courts in the nineteenth century slave cases.

In 1813, the British Court of Admiralty, in the case of The Diana, held that slave trading was not piracy and found that one nation did not have the right to trample on the sovereign independence of an-
other state.61 The case involved a Swedish ship captured by the British off the coast of Africa with a load of African slaves. Lord Stowell ordered that the ship and cargo be returned to its Swedish owners because Britain and Sweden did not have a treaty between them and slave trading was not outlawed either by Swedish law or the law of nations.62 In the case of Le Louis, a French ship, Sir William Scott returned the cargo of slaves to the French owners even though slavery and slave trading were outlawed in France because, under the law of nations, there was no right of visitation and search during a time of peace.63

In contrast, in 1822, in La Jeune Eugenie, United States Supreme Court Justice Joseph Story, while riding circuit, ruled that every law that may be found in the "nature of moral obligation, may theoretically be said to exist in the law of nations" unless it is waived by the consent of nations.64 Thus, as the slave trade was immoral, it was contrary to the law of nations.65

However, three year later, in The Antelope, Supreme Court Justice John Marshall found that although slavery was contrary to the law of nature, it was not yet outlawed by the law of nations.66 In defining "the law of nations," Marshall outlined the sources of international law as "a collection of rules deduced from natural reason, as that is interpreted by those who adopt them, and resting in usage, or established by compact, for regulating the intercourse of nations with each other."67

Marshall distinguished natural law from the law of nations and looked to the acts of nations and the "general assent of that portion of the world of which [the actor] considers himself as a part."68 He noted that, "throughout Christendom . . . war is no longer considered as giving a right to enslave captives."69 However, as far as he knew, enslavement of prisoners was still legal in Africa. In addition, Europe and America had engaged in the slave trade for at least two centuries. Marshall found that simply because they had recently decided to out-

64. 26 F. Cas. 832, 846 (C.C.D. Mass. 1822) (No. 15,551).
65. Id. at 846-47.
67. Id.
68. Id. at 121.
69. Id.
law the practice did not mean that it was a rule of international law until all or most nations consented.\textsuperscript{70}

Despite the fact that many states had outlawed the importation of slaves into territories under their control, it has been estimated that during the period from about 1808 until 1862, approximately one-fifth of the entire trade from Africa, which had begun three centuries earlier, entered the United States illegally.\textsuperscript{71} In an effort to thwart this trade, Great Britain, the acknowledged policeman of the seas, positioned cruisers off the coast of Africa.\textsuperscript{72} However, out of respect for the sovereignty of other states, they believed that they could only stop ships flying the British flag.

Therefore, Britain entered into a series of bilateral agreements whereby the signatories declared the slave trade an act of piracy and granted each other the right to search or visit ships flying the other’s flag.\textsuperscript{73} Britain often offered subsidies in exchange. For example, in 1815, Portugal agreed to prohibit the slave trade north of the equator in exchange for £300,000 and the balance of a loan.\textsuperscript{74} In 1817, Spain agreed to abolish the slave trade in all of its colonies after 1820 and granted Britain the right to search Spanish merchant vessels in exchange for a subsidy.\textsuperscript{75} The Netherlands granted British ships the right to search in May 1818.\textsuperscript{76} In 1831, France and Great Britain signed a treaty which gave each other the right to search the other’s vessels within prescribed zones.\textsuperscript{77}

\textsuperscript{70} Id. at 121-22.
\textsuperscript{71} Rawley, supra note 45, at 421.
\textsuperscript{72} Id.
\textsuperscript{73} In 1824, certain forms of slave trading were declared acts of piracy in Britain. British Slave Trade Act, supra note 7.
\textsuperscript{74} The two countries executed this arrangement by means of two agreements signed one day apart. In the first agreement, Great Britain agreed to pay Portugal £300,000 “in discharge of claims for Portuguese ships detained by British cruisers...upon the alleged ground of carrying on an illicit traffic in slaves.” Convention to Discharge Claims Arising out of British Capture of Portuguese Ships, Jan. 21, 1815, Gr. Brit.-Port., art. 1, 2 Hertslet’s Com. T.S. 71, 73. In the second agreement, Portugal agreed to forbid its subjects from engaging in the slave trade north of the equator, and Britain agreed to discharge a £600,000 debt. Treaty for the More Efficacious Means for the Abolition of The Slave Trade, supra note 9, at 79.
\textsuperscript{75} Treaty for the Abolition of the Slave Trade, supra note 9, art. II, at 36-37.
\textsuperscript{76} Treaty for Preventing Traffic in Slaves, supra note 9, at 127.
\textsuperscript{77} Convention for the More Effectual Suppression of the Traffic in Slaves, supra note 9, art. I, at 642. The zones consisted of the waters along the west coast of Africa from Cape Verde to 10 degrees south of the equator, all around the island of Madagascar, and 20 leagues from the coasts of Cuba, Puerto Rico, and Brazil. Id. In 1845, the two nations entered into an agreement to co-operate off the coast of Africa to suppress the trade. This replaced the mutual right to stop and search in the previous treaty. Convention for the Suppression of the Traffic in Slaves, Gr. Brit.-Fr., May 29, 1845, 33 British and Foreign State Papers 4 (1859).
Between 1824 and 1841, Britain entered into similar treaties with Brazil, Haiti, Uruguay, Venezuela, Equador, Bolivia, Chile, the Persian Gulf Arab states, Mexico, Texas, and Sweden.78 Treaties permitting the seizure of vessels equipped for the slave trade, though not necessarily carrying slaves at the time, were completed with the Netherlands in 1823, France in 1833, and Spain in 1835.79 In at least two cases, Great Britain breached the sovereignty of other states. In 1839, Parliament unilaterally authorized British Navy ships to stop and search Portuguese ships anywhere.80 In 1845, Parliament authorized the adjudication by British courts of cases involving Brazilian slave vessels operating in contravention to the bilateral treaty between the two countries.81 Soon after, Great Britain began to aggressively stop and search suspected slaving ships.

In 1841, Austria, Great Britain, Prussia, Russia, and France signed the Treaty of London, the first multilateral treaty to proclaim the trade in slaves an act of piracy.82 Each party had the power to stop merchant ships flying the others' flags in prescribed zones.83 However, the Treaty was weakened by the fact that France never ratified it.84


80. SOULSBY, supra note 46, at 42; RAWLEY, supra note 45, at 422. Portugal later was able to negotiate a settlement of £300,000 for this breach of its sovereignty. Portugal agreed to outlaw slave trading north of the equator only on the condition that Great Britain pay this sum. See supra note 74 and accompanying text.

81. RAWLEY, supra note 45, at 422.

82. Treaty of London, supra note 9, art. 1, at 272.

83. Treaty of London, supra note 9, art. 2, at 272.

84. Treaty for the Suppression of the African Slave Trade, supra note 9, at 269.
During this period, the United States stood firmly against granting British ships or the ships of any other nation the right to search or even visit ships flying its flag. Therefore, many ships engaged in the slave trade fraudulently flew the United States flag. Even though the United States was aware that its flag was being fraudulently used, it resisted any interference in its right to free trade. In 1858, before the United States abolished slavery, it complained when British ships "molested" American ships suspected of carrying slaves. The British argued that, because the trade had been "condemned by all civilized nations," it had the right to stop United States ships even without a treaty.

In 1862, after the outbreak of the civil war, the United States finally gave another state the right to visit and search its ships suspected of engaging in the slave trade, albeit in a narrowly prescribed zone. The Treaty of Washington between the United States and Britain provided for Mixed Courts made up of equal numbers of individuals from each nation. The Mixed Courts were seated in Sierra Leone, the Cape of Good Hope, and New York. However, these Mixed Courts only lasted until 1870 when they were replaced by the customary arrangements of a trial by the state whose flag the captured ship was flying.

By the end of the nineteenth century, the market for African slaves in the United States and Europe was nonexistent. Slavery had

85. In 1820, Congress declared the slave trade piracy, but only with regard to those ships flying the United States flag. Act of May 15, 1820, ch. 113, §§ 4-5, 3 Stat. 600 (1820). In 1824, Richard Rush, Assistant Secretary of State to President Monroe, signed a Convention with Britain granting it the right to search American merchant vessels. Convention for the Complete Suppression of the African Slave Trade, Mar. 13, 1824, Gr. Brit.-U.S., 12 BRITISH AND FOREIGN STATE PAPERS 838-44 (1846). However, the Senate ratified the Convention with amendments and the Convention was abandoned. SOULSBY, supra note 46, at 37. For a more complete discussion of the diplomatic history concerning this convention, see generally SOULSBY, supra note 46.

86. 2 WORLD PEACE FOUNDATION, LEAGUE OF NATIONS 16 (1919). Even President Tyler admitted in 1841 that "it is but too probable" that "the American flag is grossly abused by the abandoned and profligate of other nations." 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1931 (1897) (from the first annual message of President John Tyler in Washington on Dec. 7, 1841); SOULSBY supra note 46, at 47.

87. 1 OPPENHEIM, supra note 53, at 617.

88. WORLD PEACE FOUNDATION, supra note 86, at 16.

89. Treaty for Suppression of African Slave Trade, Apr. 7, 1862, Gr. Brit.-U.S., art. 1, 12 Stat. 1225 [hereinafter Treaty of Washington]. The right to search and detain could be exercised only within two hundred miles of the African coast in certain latitudes, and within thirty leagues of the Cuban coast. Id. at 1226. For a discussion of events leading to the Treaty, see CALEB CUSHING, THE TREATY OF WASHINGTON (1873).

90. Treaty of Washington, supra note 89, art. IV, at 1227.

91. SLAVERY MEMORANDUM, supra note 9, at 8.
been outlawed throughout the Americas.92 However the trade in African slaves continued to exist in Africa and the Middle East.93 In 1885, the European Powers94 met in Berlin in an effort to arrive at an agreement regarding trade in their African territories.95

The parties to the General Act of the Berlin African Conference were largely concerned with opening up the Congo and Niger rivers to free trade, especially in liquor.96 They agreed that the entire Congo Basin would be an area of free trade without import duties.97 A trusteeship system was established for the first time but the parties only agreed to “bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, especially the Slave Trade.”98 It provided that “trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers,” but it contained no enforcement provisions.99

In 1889, at the instigation of the British, representatives from seventeen countries met at a similar conference in Brussels.100 One goal of the conference was to put an “end to the crimes and devastations engendered by the traffic in African slaves.”101 The comprehensive
General Act of the convention contained several articles obligating the parties to undertake economic, legislative, and military measures towards the eradication of slavery on the African continent. It provided for the establishment of military stations in the interior of Africa to prevent the capture of slaves, to provide for the interception of slave caravans, and to organize expeditions.\(^{102}\)

However, it also contained a comprehensive system to eradicate the slave trade at sea.\(^{103}\) The Act's provisions applied within a maritime zone that included the Red Sea and the Indian Ocean, where most of the slave trading was taking place.\(^{104}\) Within that zone, the parties gave each other the mutual right to visit and search ships under five hundred tons.\(^{105}\) The Act established rules for stopping and examining ships believed to be engaged in the slave trade\(^{106}\) and provided regulations concerning authorization of the use of their national flags by "native" vessels as well as procedures to be followed when negro passengers were embarking.\(^{107}\) The officer in command could stop any ship under five hundred tons operating within the prescribed zone. He could board the ship and examine the list of passengers and crew.\(^{108}\) However, cargo could be searched only on those ships flying the flag of a signatory.\(^{109}\) If the commanding officer believed that any ship was engaged in the slave trade, he had the right to bring it to the nearest port of the nation whose flag the ship was flying.\(^{110}\) The Act outlined rules for the trial of the seized ship.\(^{111}\) This Act was still in force at the outbreak of World War I.\(^{112}\)

The next significant convention dealing with the elimination of slavery was that of St. Germain-en-Laye, signed on September 10, 1919 at the end of World War I.\(^{113}\) It was signed by Belgium, the British Empire, France, Italy, Japan, Portugal, and the United States,

\(^{102}\) Id. at arts. I-XIX, 27 Stat. at 890-99, 1 Bevans at 137-43.

\(^{103}\) Id. at arts. XX-LXXIII, 27 Stat. at 899-915, 1 Bevans at 143-54.

\(^{104}\) Id. at arts. XXI-XXII, 27 Stat. at 900, 1 Bevans at 143-44.

\(^{105}\) Id. at art. XXIII, 27 Stat. at 900, 1 Bevans at 144. In this manner, the parties lessened the risk of stopping each other's ships but increased the risk that Arab dhows transporting slaves would be stopped.

\(^{106}\) Id. at arts. XLII-LXI, 27 Stat. at 907-12, 1 Bevans at 148-52.

\(^{107}\) Id. at arts. XXX-XLI, 27 Stat. at 902-07, 1 Bevans at 145-48.

\(^{108}\) Id. at arts. XLII-XLIV, 27 Stat. at 907-08, 1 Bevans at 148-49.

\(^{109}\) Id. at art. XLV, 27 Stat. at 908, 1 Bevans at 149.

\(^{110}\) Id. at art. XLIX, 27 Stat. at 908-09, 1 Bevans at 150.

\(^{111}\) Id. at arts. L-LXXVIII, 27 Stat. at 909-16, 1 Bevans at 150-55.

\(^{112}\) SLAVERY MEMORANDUM, supra note 9, at 11.

but was subsequently ratified by all the signatories to the Treaty of Versailles that ended World War I.\textsuperscript{114} The general purpose of the Convention was to "restore" the previous system of free trade within a prescribed zone on the continent of Africa as well as in the Indian Ocean and the Red Sea.\textsuperscript{115} Significantly, the Berlin and Brussels General Acts were abrogated as between the signatories to the new Convention.\textsuperscript{116} With regard to slavery and slave trading, the parties merely agreed to exercise their "sovereign rights or authority in African territories [to] 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."\textsuperscript{117} In particular, they agreed to "endeavor to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea."\textsuperscript{118} There was no more right pursuant to a treaty to stop and search vessels on the high seas.

II. The Work of the League of Nations

A. The Slavery Convention of 1926

The League of Nations Covenant did not expressly state that slavery was illegal. However, Article 23(b) of the Covenant provided that "the Members of the League . . . undertake to secure just treatment of the native inhabitants of territories under their control."\textsuperscript{119} The issue of slavery was first brought up during the Third Assembly in 1922 by Sir Arthur Steel-Maitland, the representative from New Zealand, in reference to Abyssinia (later known as Ethiopia).\textsuperscript{120} In response, the Assembly requested the Council to prepare a report for the Fourth Assembly in 1923.\textsuperscript{121} The Council distributed a questionnaire to member nations, but only received fifteen replies from the fifty-two members.\textsuperscript{122}

The Assembly then ordered the Council to create a body to investigate the problem of slavery "with a view to obtaining further information on the subject, particularly from the governments of states

\textsuperscript{114} Id.
\textsuperscript{115} Id. at art. 13, 49 Stat. at 3040, 2 Bevans at 267.
\textsuperscript{116} Id. at art. 11, 49 Stat. at 3039-40, 2 Bevans at 266-67.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} LEAGUE OF NATIONS COVENANT art. 23(b).
\textsuperscript{120} MARGARET ERNESTINE BURTON, THE ASSEMBLY OF THE LEAGUE OF NATIONS 253 (1941).
\textsuperscript{121} LEAGUE OF NATIONS, TEN YEARS OF WORLD CO-OPERATION 285 (1930) [hereinafter TEN YEARS] (citing Assembly Records, 1922, Plenary at 10).
\textsuperscript{122} 4 LEAGUE OF NATIONS O.J. 589 (1923).
not Members of the League and, if necessary from individuals whose competence and reliability are recognized.”123 In 1924, the Council set up the Temporary Slavery Commission which was to “continue temporarily the enquiry on slavery and to communicate to the Council their conclusions on the subject.”124 The Commission was composed of three members of the Mandates Commission, two former Colonial officials, the Secretary-General of the Italian Geographical Society, a Haitian delegate, and an official from the International Labor Office who was an expert on “native labor questions.”125

The Temporary Slavery Commission met for the first time in July 1924 in Geneva. The first issue it addressed was whether it should limit its study to “actual slavery” or also look into conditions where people were compelled to work for others.126 In the end, the Commission proposed to the Fifth Assembly in 1924 that it consider both slavery and anything constituting forced labor, the acquisition of girls by fictitious dowry, and the pledging of human services for debt.127 It also proposed using official reports by governments as well as information from individuals and organizations whose competence had been established.128 The Fifth Assembly agreed to all the proposals.129

The Commission’s second and last session was held in July 1925.130 It had not received information from several governments in which it was especially interested, including Turkey, Afghanistan, Persia, Egypt, and the Hedjaz.131 However, even with inadequate information, the Commission submitted a report to the Sixth Assembly in

123. BURTON, supra note 120, at 253 (citing Assembly Records, 1923, Plenary, at 122-24).
124. BURTON, supra note 120, at 253; TEN YEARS, supra note 121, at 285.
125. Temporary Slavery Commission - Minutes of the First Session, League of Nations Doc. A.18 1924 VI.B (1924). The delegates were from Belgium, Portugal, Haiti, France, Great Britain, Italy, and the Netherlands.
126. BURTON, supra note 120, at 253-54.
128. Id. at 2-3.
129. BURTON, supra note 120, at 254 (citing Assembly Records, 1924, Plenary, at 130-31).
131. Id. at 1. It received documents from Abyssinia, Argentina, Australia, Belgium, Bolivia, Brazil, Chile, China, Czechoslovakia, Denmark, France, Great Britain, Guatemala, Hungary, India, Italy, Liberia, Mexico, Netherlands, New Zealand, Peru, Poland, Portugal, El Salvador, Siam, South Africa, Spain, Switzerland, the United States, and Uruguay. Id. at 14.
which it specified areas in the world where the status of slavery was legal.\textsuperscript{132}

The Commission reported that slave raiding was still prevalent in the Sahara and recommended that the burden of its control be placed upon France and Italy who occupied much of the area.\textsuperscript{133} In addition, it found that slave trading was openly practiced in the Arabian Peninsula.\textsuperscript{134} Most of the slaves were Africans who were shipped to Arab states. The Commission reported that British, French, and Italian warships had been patrolling the Red Sea and the Arabian Coast in an effort to at least diminish the trade.\textsuperscript{135}

The Commission suggested that the most effective way to combat slavery was to outlaw the status of slavery in every country.\textsuperscript{136} However, it also recommended that states enter into international agreements to combat slave raiding\textsuperscript{137} and the slave trade.\textsuperscript{138} To make enforcement measures more effective, it suggested that all interested European powers and Egypt be invited to make an agreement permitting ships to “pursue and capture, even in territorial waters . . . ships suspected of carrying slaves.”\textsuperscript{139} It also suggested that the transport of slaves at sea be declared an act of piracy.\textsuperscript{140} Finally, it proposed a new international convention to establish the minimum standards of intervention that the majority of governments would be willing to accept, and proposed that not only member states accede to it, but that non-members be invited to accede as well.\textsuperscript{141}

Lord Robert Cecil submitted such a draft convention on behalf of the British government.\textsuperscript{142} The Assembly recommended the Convention for the approval of members and nonmembers, and drafts were forwarded to all League members as well as to Afghanistan, Ecuador,

\textsuperscript{132} Id. It reported that the status of slavery was recognized in only one “Christian” nation, Abyssinia, but was also recognized in Tibet, Nepal, and most of the “Mohammedan States”, including Afghanistan, the Hedjaz, and other Arabian states. \textit{Id.} at 3.

\textsuperscript{133} Id. at 5. “Slave raiding” referred to raids conducted by one tribe or group into the territory of another for the purpose of capturing people to be used or sold as slaves. The Commission was concerned with nomads in the Sahara desert who were attacking other nomadic tribes and villages. \textit{Id.} at 4-5.

\textsuperscript{134} Id. at 6.

\textsuperscript{135} \textit{Id.}

\textsuperscript{136} Id. at 3.

\textsuperscript{137} Id. at 5.

\textsuperscript{138} Id. at 7.

\textsuperscript{139} Id. at 6.

\textsuperscript{140} Id. at 7.

\textsuperscript{141} Id. at 2.

\textsuperscript{142} Burton, \textit{supra} note 120, at 255; Ten Years, \textit{supra} note 121, at 286.
Egypt, Germany, Russia, the Sudan, Turkey, and the United States for recommendations.  

The next year, at the Seventh Assembly, the observations were incorporated into another draft of the Slavery Convention. That draft was adopted on September 25, 1926 and immediately signed by twenty-five members. Although it remained open for signature until April 1927, by which time eleven more states had signed, it entered into force on March 9, 1927. The Preamble to the Convention states that it desires to complete and extend the work accomplished under the Brussels Act and to find a means of giving practical effect throughout the world to such intentions as were expressed in regard to slave trade and slavery by the signatories of the Convention of Saint-Germain-en-Laye, and recognizing that it is necessary to conclude to that end more detailed arrangements than are contained in that Convention.  

It was meant to bring about the “disappearance from written legislation or from the customs of the country of everything which admits the maintenance by a private individual of rights over another person of the same nature as the rights which an individual can have over things.”  

The Convention was the first international agreement to define slavery and the slave trade. It defines slavery as the “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” 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  

143. Burton, supra note 120, at 255. One of the more interesting replies was from the Apostolic Nuncio in Switzerland who recommended that provisions similar to those found in the Acts of Berlin and Brussels that gave missionaries certain rights throughout Africa should be inserted into the Convention because missionaries “are the true pioneers of civilisation.” Draft Convention on Slavery - Replies from Governments, League of Nations Doc. A.10 1926 VI.B. 3, at 9-10 (1926) [hereinafter Replies] (reply of Apostolic Nuncio, Archbishop of Caesarea).  

144. Id. It was signed by Albania, Germany, Austria, Belgium, the British Empire, Canada, Australia, South Africa, New Zealand, India, Bulgaria, China, Columbia, Cuba, Denmark, Spain (with the exception of the Spanish Protectorate of Morocco), Estonia, Abyssinia, Finland, France, Greece, Italy, Latvia, Liberia, Lithuania, Norway, Panama, The Netherlands, Persia, Poland, Portugal, Romania, the Kingdom of the Serbs, Croats and Slovenes, Sweden, Czechoslovakia, and Uruguay. Slavery Convention, supra note 11, at 255.  

145. Id. at pmbl., at 255-57.  

146. Slavery Convention, supra note 11.  

147. Id. at pmbl., at 255-57.  


149. Slavery Convention, supra note 11, art. 1, para. 1, at 263.
to being sold or exchanged and, in general, every act of trade or transport in slaves.\footnote{150}

There had been some disagreement over whether forced labor was analogous to slavery, and whether some form of forced labor should be permitted. Lord Cecil was of the opinion that forced labor was not necessary in "highly developed" civilizations but that in "less advanced" civilizations, public services had to be performed by forced labor.\footnote{151} He only feared that some forced labor conditions could easily become slavery. The Spanish delegation, on the other hand, argued that slavery and forced labor were not remotely the same thing and that "[t]he question of forced labour in so far as such labour was not slavery in the real sense of the word must be left untouched."\footnote{152}

Therefore, the provision on forced labor is separate from that regarding slavery. Article 5 of the Convention states that "compulsory or forced labor may only be exacted for public purposes" and seeks to prevent forced labor from "developing into conditions analogous to slavery."\footnote{153}

Each state agreed to take all necessary steps with respect to the "territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage," to suppress the slave trade, and to "bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms."\footnote{154} The word "progressively" was inserted because many states were concerned about the hardships and social upheavals that would be created if all slaves were suddenly liberated.\footnote{155} Some states suggested that the freed slaves should be forced to continue to work under contract for their former masters for a certain time.\footnote{156} Germany suggested that the slave owners should be compensated for their losses.\footnote{157}

The Convention did not go so far as to outlaw the slave trade as an act of piracy. Arguing that the slave trade was a crime against the human race, Britain had recommended that the transport of slaves at sea should be treated as piracy.\footnote{158} However, many members thought

\footnote{150. \textit{Id.} at art. 1, para. 2, at 263.}
\footnote{151. \textit{Slavery Memorandum}, \textit{supra} note 9, at 21.}
\footnote{152. \textit{Id.}}
\footnote{153. Slavery Convention, \textit{supra} note 11, art. 5, at 265.}
\footnote{154. \textit{Id.} at art. 2, at 263.}
\footnote{155. \textit{Report by Sixth Committee}, \textit{supra} note 148, at 1.}
\footnote{156. \textit{Id.}}
\footnote{157. \textit{Id.}}
\footnote{158. \textit{Replies}, \textit{supra} note 143, at 2 (reply from the British government). As support for its position, Britain quoted the latest edition of Oppenheim's \textit{International Law} regarding piracy. \textit{See supra} note 53 and accompanying text.}
that the application of such a law would be difficult. States continued to be leery of any encroachment on their sovereignty. France suggested inserting into the Slavery Convention an adjusted version of the enforcement provisions from the Convention on Supervision of International Trade in Arms and Ammunition and in Implements of War of June 17, 1925.

That Convention provided for the right to stop and search vessels within specified zones similar to those that had been outlined in the Brussels Act of 1890. A warship of the High Contracting Parties could stop a "presumed native vessel of under 500 tons" if the Commanding Officer had good reason to believe that the vessel was transporting any of the forbidden articles. If, after boarding and inspecting the manifest, he still suspected that the vessel was carrying contraband, a procedure was laid out whereby the vessel was to be brought to the nearest port. However, the vessel could only be tried in the courts of the Power whose flag the native vessel was flying.

In the end, the Committee decided to merely refer to the Arms Convention so as to provide "greater elasticity as to the final arrangements to be made." Thus, the Slavery Convention provides that each state "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." It also provides that the signatories agree to promulgate a convention providing for mutual rights and duties similar to those in the Arms Convention. Such an agreement, however, was never promulgated.

163. Id. at Annex II, sec. II, § 5, para. 4, at 1665-66.
164. Id. at Annex II, sec. II, § 5, para. 8(b), at 1667.
166. Slavery Convention, supra note 11, art. 3, at 263-65.
167. Id.
168. SLAVERY MEMORANDUM, supra note 9, at 26.
The only enforcement provisions in the Slavery Convention are found in Articles 7 and 8. Article 7 provides that each state forward to the League of Nations any laws and regulations that have been enacted pursuant to the Convention.\textsuperscript{169} The Assembly also passed a resolution which required the Council to prepare a yearly report of the responses received.\textsuperscript{170} Pursuant to Article 8, each state has the right to bring any dispute regarding the implementation of the Convention to the Permanent Court of International Justice.\textsuperscript{171}

By the Eighth Assembly in 1927, only fourteen states had ratified or acceded to the Convention and the Council had received reports from only five.\textsuperscript{172} By the Tenth Assembly in 1929, the Convention was in force for fourteen more states, including the United States, but few states were reporting as required.\textsuperscript{173} By the Eleventh Assembly in 1930, little success had been achieved and the British suggested that a Permanent Commission on Slavery be established to receive and organize information furnished by the signatories of the Convention and to conduct local inquires with the consent of the governments concerned. However, some states, especially Liberia and Abyssinia with the discrete support of Portugal, strongly objected on the grounds that local inquires would violate state sovereignty; the proposal was voted down.\textsuperscript{174}

By the Twelfth Assembly in 1931, forty states had ratified or acceded to the Convention; nine had signed but not ratified. However the Convention remained open to accession by twenty-three other

\textsuperscript{169} Slavery Convention, \textit{supra} note 11, art. 7, at 265.


\textsuperscript{172} \textit{Slavery Convention - Annual Report by the Council}, League of Nations Doc. A.37 1927 VI.B2 (1927); \textit{Slavery Convention - Annual Report by the Council; Report of the Sixth Committee to the Assembly}, League of Nations Doc. A.74 1927 VI.B (1927). It had been ratified by Australia, Austria, the British Empire, Bulgaria, Denmark, Haiti, Hungary, India, Latvia, New Zealand, Portugal, Spain, the Sudan, and The Union of South Africa.


\textsuperscript{174} BURTON, \textit{supra} note 120, at 259 (citing \textit{Assembly Records}, 1930 Sixth Committee, at 59-67, 72-75, 77-80; \textit{Assembly Records}, 1930 Plenary, 154-56.).
The Council appointed a Committee of Experts on Slavery to study the effects the Slavery Convention had on "putting an end to slavery." On the Committee's recommendation, a permanent Advisory Committee of Experts on Slavery was formed. It consisted of seven experts of different nationalities who were to meet every two years and submit reports to the Commission. The Committee stopped submitting reports in 1938 due to World War II.

However, the Committee's powers were limited for fear of encroaching upon state sovereignty. Its mandate was to study the reports submitted by the member states pursuant to the Slavery Convention in light of its special knowledge. It was to study possible means of eradicating slavery and examine whether it was feasible for the League to provide financial assistance to countries that needed it to solve their slavery problems. It was specifically not to deal with forced labor. When a nation that was found to have allowed slavery requested financial assistance, the Committee was charged with examining "the objects for which this financial assistance was requested, the minimum amount necessary, and the guarantees offered." It could study and make recommendations but could not supervise the implementation of any recommendations. In addition, its proceedings were to be confidential and it could not take depositions. Most significantly, the Committee could not communicate directly with non-governmental persons or organizations; all communication had to be through governments.

At the Sixteenth Assembly in 1935, extension of the Committee's powers was rejected by the same governments who had opposed such an extension in 1930 for the same reasons. The Assembly was left with stating that it hoped the governments would act upon the recom-

175. Slavery - Report by the Secretary-General Submitted in Accordance With the Resolution Adopted by the Assembly on September 30th, 1930, League of Nations Doc. A.29 1931 VI.B, at 1 (1931) [hereinafter Report by the Secretary-General].
176. Slavery Memorandum, supra note 9, at 39-41.
177. Burton, supra note 120, at 260 (citing Assembly Records, 1932, Sixth Committee, Annex 8, at 72-74.).
179. Slavery Memorandum, supra note 9, at 44.
180. Burton, supra note 120, at 260.
181. Id.
182. Slavery Memorandum, supra note 9, at 42.
183. Burton, supra note 120, at 260 (citing Assembly Records, 1932, Plenary, at 80-82.).
mandations and would communicate the necessary information to the Commission.184

B. Reports of the Advisory Committee on Slavery 1932-1938

The Committee Reports indicate that the passage of the Convention was successful in encouraging individual states to pass laws outlawing the status of slavery, slave raiding, and slave trading.185

However, the Convention only provided that the states "progressively" work towards the abolition of slavery.186 States were not required to liberate all slaves immediately. Thus, the Committee distinguished between outlawing the status of slavery, which grants the master power to exercise a claim over another human being, and compulsory manumission, whereby the state mandates the liberation of all slaves.

While states were reluctant to mandate that slaves within their territories be set free immediately, outlawing the status of slavery was relatively successful. Nations under British control quickly fell into line and outlawed the status of slavery.187 The Committee reported that, as of 1932, the only states in which slavery was a legally recognized institution were the Hedjaz and Nejd (later known as Saudi Arabia), Yemen, the Sultanates of Hadhramuth, Oman, Koweit (Kuwait), and Abyssinia.188 At the time, the Committee did not know whether slavery was still legal in Tibet and Central Asia. On the other hand, only the governments of Nepal, Burma, and Anglo-Egyptian Sudan had manumitted all slaves.189

In 1934, the Committee reported that, although the British government was attempting to abolish slavery in the Moslem states through "political agents," it was unsuccessful because slavery was a long-standing tradition and was legal in Islam.190 The Committee rec-

184. Id. at 261 (citing Assembly Records, 1935, Sixth Committee, at 56-58, 60-62.).
185. There are five reports, each of which was the result of a session in 1931, 1935, 1936, 1937, and 1938.
186. Slavery Convention, supra note 11, art. 2, at 263.
189. Id. at 7.
190. Id. at 8. Although slavery had been a long-standing tradition in Moslem states, the Committee's statement that slavery was legal in Islam was erroneous. See infra note 196 and accompanying text. For a history and description of slavery in the Middle East see Bernard Lewis, Race and Slavery in the Middle East (1990).
ommended that slavery could be abolished in the Moslem states by conditioning their membership in the League on the abolition of slavery within their borders and by making them "feel that they are being constantly watched" by the Committee of Experts. 191

As of 1935, several members of the League, including Afghanistan, still had not acceded to the Convention; nor had several nonmembers, including Saudi Arabia. 192 Other nonmembers, notably Egypt, the Sudan, Syria, and Lebanon, had acceded. 193 Slavery continued to exist in all the countries listed in the Report of 1932. 194 The Committee noted that, although few states had mandated the release of all slaves, even in the states that preferred to wait for slaves to free themselves, the process was progressing quickly as the native population became more aware of the "regime of liberty assured to it by law." 195 The Committee also corrected an error in an earlier report in which it had stated that slavery was legal in Islam. 196

In its 1936 report, the Committee reported that the only additional state to accede to the Convention was Afghanistan. 197 It requested information regarding the transit of slaves to Arabia from Egypt and the implementation of the treaties that Britain had entered into with Saudi Arabia and Yemen. 198 The Committee also urged that a clear distinction be drawn between "born slaves" and "captured slaves." 199 In its opinion, captured slaves should be liberated immediately because their liberation would not cause economic or social upheaval. On the other hand, it stressed that the manumission of born slaves necessarily should be more gradual because the economies and social structures of many countries depended upon the institution. 200

Thus, while Abyssinia was the only African country where the status of slavery was still legal, in 1936 the Committee expressed its approval that even that country was gradually eliminating the institution through laws prohibiting the transfer of slaves, laws liberating

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193. Id.
194. Id. at 9. The Hedjaz and Nejd had become known as Saudi Arabia by then.
195. Id. at 10.
196. Id. at 11.
198. Id. at 11, 15.
199. Id. at 17.
200. Id. at 17.
slaves seven years after the death of their masters, and laws liberating children born to slaves after March 31, 1924.201

Abyssinia had not been permitted to join the League until 1933, and then only after its delegation pledged to work for the eradication of slavery and to allow the League the right to intervene and to gather any information it might require. Britain had been opposed to Abyssinia's membership, ostensibly due to domestic slavery and the slave trade in the country, but probably also because of its colonial interests in Africa.202 The French and Italians believed that Britain objected because it desired to annex the source of the Blue Nile.203

In its 1932 report, the Committee of Experts reported that Abyssinia had not abolished the status of slavery but had passed legislation outlawing the enslavement of free people.204 Abyssinia was of the opinion that a sudden liberation of all slaves might unseat the government.205 The only major new development in the Committee's 1935 report was that the Abyssinian government had opened slavery departments throughout the country.206 The Italian government reported that it had freed all slaves within the parts of Abyssinia it occupied and reported that slavery and the slave trade still existed in the rest of Abyssinia.207

In 1937, the Committee hailed Saudi Arabia, an independent nation, for enacting slavery regulations whereby it became illegal to import slaves from any country, to enslave any free person or to buy any slave who was enslaved through these methods.208 In 1938, the Com-

201. Id. at 9.
202. GEORGE SCOTT, THE RISE AND FALL OF THE LEAGUE OF NATIONS 177 (1973). The tensions between Britain and Ras Tafari, the Regent of Abyssinia who later became Emperor Haile Sellasie, continued to the point that the British eventually threatened to ask the League whether Abyssinia had fulfilled her obligations to suppress slavery. Id. at 178-79.
203. WALTERS, supra note 10, at 258. In December 1925, the British and Italians secretly agreed to basically carve up Abyssinia. The British were to build a dam on the Blue Nile and build a road. The Italians were to build a railroad from its colonies in Eritrea and Somalia; it was to run the entire length of Abyssinia. SCOTT, supra note 202, at 177-78. When Ras Tafari found out about the agreement six months later, he informed the League. This caused the Italians and British to back pedal by stating that they had not intended to pressure Tafari. Id. at 178.
205. Id. at 8.
207. Id. at 7. In 1935, Italy (Musselini) instigated a war with Abyssinia in order to occupy the country. It was successful in April 1936. HAROLD G. MARCUS, HAILE SELASSIE I 148-80 (1987).
committee enthusiastically reported that the Protectorate of Aden was also in the process of enacting regulations outlawing slave trading.209

However, from 1932 to 1938, the Committee of Experts repeatedly reported that it was difficult to effectively fight the transportation of slaves in the Red Sea, the Persian Gulf, the Indian Ocean, and along the Arabian Coast because none of the agreements mandated by Article 3 of the Slavery Convention had been promulgated.210 Since the abrogation of the rights and duties in the Brussels Convention, there was no enforcement mechanism.211 Although the United Kingdom, France, and Italy had been independently attempting to suppress the transportation of slaves at sea, the Commission strongly recommended making an agreement that allowed warships to search, and seize if necessary, vessels that sailed under no flag or under a flag not recognized by those Powers.212 Many of the countries that were involved in the slave trade were not signatories to the Slavery Convention, including Saudi Arabia and Yemen.213

In 1932, the Committee reported that the British government had concluded treaties with many of the Arab nations. The treaties granted British warships the right to pursue vessels suspected of slave trading in their territorial waters.214 Because pilgrimages to the holy sites in Arabia provided an opportunity to trade in slaves, the European powers independently implemented measures to forestall this traffic.215 For example, the Netherlands permitted the natives of its colonies in the Far East to travel on pilgrimages by sea to Arabia only on certain steamships under the government’s control.216 The French government mandated that all native pilgrims in its African territories be provided with passports that were to be held by officer-interpreters who were to travel with the pilgrims.217

In 1935, the British government reported that for many years, two sloops of the Royal Navy had been on duty in the Red Sea where
they stopped Arab dhows suspected of transporting slaves.\footnote{198} Although it reported that from January 1931 until the end of 1933, it had examined 126 dhows, a slaving dhow had not been captured for more than twelve years.\footnote{199} It reported that occasionally it found slaves on sanbqas, but those slaves were the property of the owner and were not being transported for sale in Arabia.\footnote{200} Apparently, the British did not feel entitled to set these slaves free.

The British also reported that, although the sloops were useful in suppressing the slave traffic, they were not successful in completely eradicating it. The lack of a central intelligence network to provide information on the movements of slaves before embarkation, as well as the geography of the region, hindered Britain in its efforts to completely eradicate slavery.\footnote{201} France and Italy reported that enforcement measures prevented much slave trading from taking place within the territories under their control.\footnote{202} The Committee wrote that perhaps it was not "too much to hope" that an agreement pursuant to Article 3 of the Slavery Convention would be concluded for the purpose of more coordinated activities at sea.\footnote{203}

In 1936, the British government reported that the situation in the Red Sea remained unchanged; the Royal Navy had examined twenty dhows with no result.\footnote{204} While the Committee commended the European powers for their activities within the territories under their control, it lamented that neither Egypt nor Sudan had submitted reports concerning the embarkation and transit of slaves in their countries.\footnote{205} The Committee also expressed its hope "for still closer co-operation between the European Powers concerned."\footnote{206}

In 1937, the Committee still had not received reports from the Egyptian or Sudanese governments, the European Powers continued

\footnote{208. Report of 1935, supra note 192, at 13. In 1929, it had submitted a memorandum describing its activities and stating that its sloops in the Red Sea were largely responsible for the decrease in slave traffic. 1929 Annual Report, supra note 208, at 1.}
\footnote{209. Report of 1935, supra note 192, at 13. This does not mean that such traffic did not exist. The Report of 1931 submitted by the Secretary-General to the Assembly included a letter by an Englishman who had spent a year in Arabia disguised as a Syrian. He wrote that the African captain of the dhow that brought him there said that slaves are still brought from Africa to Mecca to be sold. They either traveled as servants of their masters or as members of the crew. Letter from Mr. Eldon Rutter Concerning the Slave Trade in Arabia, in Report by the Secretary-General, supra note 175, at 11.}
\footnote{210. Report of 1935, supra note 192, at 13, 25.}
\footnote{211. Id. at 25.}
\footnote{212. Id. at 13.}
\footnote{213. Id. at 14.}
\footnote{214. Report of 1936, supra note 197, at 15, 58.}
\footnote{215. Id. at 15.}
\footnote{216. Id.}
their surveillance of the Red Sea, and no agreement had been promulgated. The British government reported that the Royal Navy had stopped eight dhows without finding slaves. In its last report in 1938, the Committee of Experts received a report from the Sudanese government claiming that it had no evidence of the slave trade across the Red Sea. The United Kingdom reported that its navy had examined thirteen dhows without result. The Committee concluded that the slave trade across the Persian Gulf no longer existed.

In sum, even though a convention declaring the slave trade an act of piracy was never promulgated, the League was successful in eliminating the need for such traffic by encouraging members to outlaw slavery within the territories under their control. However, while the League successfully eradicated or at least outlawed the status of slavery in states controlled by European Powers, it found it more difficult to convince independent members and nonmembers to follow suit. The British government, through bilateral treaties, was relatively successful in at least eroding the institution in Saudi Arabia, a nonmember. As noted above, diplomatic pressure by the League was brought to bear on Abyssinia. However, in the case of Liberia, the League felt compelled to send a committee to investigate slavery and slavery-like practices.

C. The Inquiry Commission into Liberia

Liberia had sent a delegation to the Peace Conference at the end of World War I at the expense of the United States; and it was an original member of the League even though Britain and France believed it incapable of self-government and sought to have it placed under a mandate of the United States. Eventually, it was threatened with expulsion from the League if it did not eradicate domestic slavery and stop the slave trade along its shores.

Liberia had been founded as a settlement by freed American slaves in 1822 and became a nation in 1847. Article I of the American Colonization Society Constitution of the Republic of Liberia states that "[t]here shall be no slavery within this republic; nor shall

230. Id.
231. Id.
232. Walters, supra note 10, at 568.
any . . . person resident therein, deal in slaves either within or without this Republic directly or indirectly.”

In 1930, Liberia consisted of two distinct groups of people: the natives and about 10,000 “civilized” Americo-Liberians. The Americo-Liberians, who were freed American slaves and their descendants, lived in a forty-mile wide strip along the coast; the tribes lived in the interior. All the Americo-Liberians were of the “administrative class.” Most had no visible occupation save a “specious government position.” The government had instituted a “closed door” policy whereby no one was allowed to travel outside of the coastal strip into the interior without a special pass. The only contact the tribal people had with the government was through the payment of taxes and conscription into labor parties.

During the preparations of the Slavery Convention, it was discovered that slavery and slavery-like conditions were prevalent in Liberia. Several books had recently been published about this situation and the public was interested largely because the country had been founded as a refuge for freed American slaves. It was the only case where the Committee of Experts acted pursuant to the Assembly’s resolution and sent a delegation to investigate conditions within a country.

In 1930, under pressure from United States Secretary of State Henry L. Stimson, Liberia asked the League and the United States to each appoint one person to an inquiry commission. The third person was appointed by Liberia. The three members of the Commission were Dr. Cuthbert Christy, the appointee of the League, Dr. 

234. Liberian Report, supra note 20, at 12 n.1.
235. Id. at 12, 87, 87 n.1. This strip had been bought by the United States government from the native chiefs in 1822. G.E. Saigbe Boley, Liberia: The Rise and Fall of the First Republic 14-16 (1983).
236. Liberian Report, supra note 20, at 87 n.1.
237. Id. at 74.
238. Id. at 5. These included Henry Fenwick Reeve, The Black Republic (1923), Kathleen Simon, Slavery (1929), and Raymond Leslie Buell, The Native Problem in Africa (1928). Id.
240. Dr. Christy was a medical doctor who had extensive experience in the study and prevention of disease in Africa and India. See I.K. Sundiata, Black Scandal: America and the Liberian Labor Crisis, 1929-1936, at 165 n.2 (1980).
Charles Spurgeon Johnson, an American, and Arthur Barclay, an ex-President of Liberia. In 1930, the Commission traveled to Liberia where it heard witness testimony by natives and government officials, and received public and private documents. Only Drs. Christy and Johnson travelled into the interior. On September 8, 1930, it submitted a 129-page report to the Liberian government that revealed the existence of slavery, pawnng, and compulsory labor, all of which violated the Slavery Convention.

The report was divided into several sections: Common or Classic Slavery, Pawnng, Oppressive Conditions Analogous to Slavery, Forced Labor for Public Purpose, Forced Labor for Private Enterprise, and Findings and Recommendations. Each section is discussed below.

1. Common or Classic Slavery

The Commission found that the Liberian government did not enforce Article 1 of the Liberian Constitution among the tribes in the interior. Domestic slavery as defined in the Slavery Convention existed even though "classic" slavery (i.e. slave markets and dealers) did not. It reported that domestic slavery was found in many forms of inter- and intra-tribal relationships. Captives of inter-tribal wars had historically been the chief source of slaves and continued to be slaves. The captive slaves could be redeemed by relatives or others for payment. The Commission did not report on this type of slavery in depth because it believed that the Liberian government had already recognized these problems and was working to remedy them. Even though it reported that slaves could appeal to the courts for their re-

243. Id. at 7-8.
244. Id. at 8.
245. SLAVERY MEMORANDUM, supra note 9, at 38.
247. Id. at 83.
248. Id. at 12.
249. Id. at 13.
250. Id. at 13, 13 n.1.
lease, the only evidence found of actual release involved cases of bad treatment.251

However, the Commission found that Americo-Liberians had virtually enslaved natives through abuse of the native system of pawn- ing.252 Pawning was a native West-African custom whereby a person, usually a child relative, was given to a third party in servitude for an indefinite period. Money passed between the two principles. The pawned person was never compensated, was held without rights, and in practice, could never redeem himself.253 The Commission found that this system was being abused in order to circumvent the constitutional prohibition against slavery.254 The price paid for a pawn was the same as that for a slave and the only distinction between the two was the passing of a token—a leopard’s tooth for a free-born and a piece of metal or mat for a born slave.255

The Report included testimony regarding the devastating effects of this practice. One headman pawned two sons in order to pay a fine for “road delinquencies” and failure to provide people to act as carriers of goods and people.256 Another pawned his wife and child to pay a fine.257 In one county, it was the practice among Americo-Liberians to gather a group of pawned women to attract men, who were then seized, fined for having intimate relations with the women and made to work on the farm for the amount of the fine.258 They essentially became slaves.

2. Conditions Analogous to Slavery and Tending to Acquire the Status of Classic Slavery

This section of the Report dealt almost exclusively with the recruitment and shipment of native labor to the Spanish Colony of Fernando Po.259 Since about 1890, a “contract labor” system had been in

251. Id. at 83.
252. Id. at 14.
253. Id. at 14-15.
254. Id. at 15.
255. Id. at 14.
256. Id. at 16, 83. Tribal headmen were responsible for providing laborers or money for building roads. See infra notes 268-76 and accompanying text.
257. Id. at 15.
258. Id. at 16, 83.
259. Fernando Po (now known as Bioko), a part of Equatorial Guinea, is an island off of Cameroon that was sighted by Fernao do Po in about 1472. In 1778, the Portuguese ceded it to Spain in an effort to give that nation its own source of slaves in Africa. The Spanish withdrew in 1781 after a period of yellow fever. In 1827, Spain leased parts of the coast to the British Empire to use as bases for the suppression of the slave trade. In 1858, Spain expelled the British and began using the island as a penal colony for Cubans. Equatorial Guinea proclaimed its indepen-
place under which the Liberian government recruited and supplied indigenous labor for foreign employers. For example, in 1890, the French sent Liberian laborers to work on the Panama Canal and to serve in the French Colonial Army. In 1897, the Liberian Legislature granted a German firm a labor recruiting concession, whereby the firm was permitted to recruit laborers from the tribal population. In 1900, the owners of the Spanish Cocoa Plantation on Fernando Po, a Spanish colony, began recruiting Liberian laborers. In 1908, the Legislature forbade such recruitment but only in two coastal counties.

In 1928, an agreement was made between a group of Liberians, who were to act as recruiting agents, and Messrs. Barclay and Barclay, Liberian attorneys who represented the Spanish Cocoa Plantation. One of the Barclays, Edwin James Barclay, was the Secretary of State of Liberia at the time. Pursuant to the agreement, the recruiting agents were to recruit and ship specified numbers of "boys" to the colony. The colony was to pay them and provide food, housing, and medical services. They were to work for a period of two years.

The Commission found that the laborers were being recruited "under conditions of criminal compulsion scarcely distinguishable from slave raiding and slave trading and frequently by misrepresenting the destination." It heard testimony and read documents indicating that few if any natives voluntarily went to Fernando Po. Natives were captured, flogged, and tied by government soldiers and then shipped to the colony. Chiefs were ordered to furnish a certain number of "boys" to the recruiting agents. When they failed to furnish enough, they were fined.

Officially, the laborers were to be paid a certain amount each month plus food. Half of the amount was to be given on the island and half upon return to Liberia. However, the Commission reported
that laborers rarely, if ever, received payment and when they did, they were paid much less than what they were due.269

3. Forced Labor

Pursuant to Article 5 of the Slavery Convention, the Commission distinguished forced labor for the purposes of building public infrastructure such as roads from forced labor for private purposes.270 The Commission found that the Liberian government was using forced native labor for the building of an extensive network of roads. The government justified this practice on the grounds that the roads would help the natives but that the natives were not willing to pay taxes.271 Although the use of labor for this purpose was not forbidden under the Convention, the Commission reported that the road-building was a colossal waste of money and labor since the roads were not built pursuant to surveys and often led to only military stations.272

While the Commission was investigating, the President of Liberia suspended the road-building program. However, the Commission observed one road crew, of which about half looked to be below the age of sixteen.273 As with the Fernando Po situation, chiefs had to meet quotas of laborers274 and laborers were not paid. The laborers also had to provide their own tools and their own food. Fines were levied for failure to meet quotas, tardiness, lack of tools, and unfinished tasks.275 There was also evidence of flogging as well as other forms of torture.276

The Commission found a similar situation with relation to the building and maintenance of government buildings. These work gangs were made up of men and women, and reports of rape were frequent.277 Virtually any Americo-Liberian could demand on a moment’s notice that natives carry him in a hammock throughout the country.278

The last area that the Commission looked into was forced labor for private enterprise. It found that there were no government farms

269. Id. at 44.
270. Id. at 47.
271. Id. at 48.
272. Id. at 49.
273. Id. at 50.
274. Id. at 58-60.
275. Id. at 60.
276. Id. at 61-69.
277. Id. at 71-72.
278. Id. at 74.
or plantations. However, most high government officials owned huge plantations of rubber, coffee, cocoa, rice, or vegetables. Much of the labor for these plantations was conscripted. The natives considered work on these farms indistinguishable from work on roads or government buildings.279

The only large private enterprise in Liberia at the time was the Firestone Plantation Company. Harvey S. Firestone, Sr. decided to plant rubber in Liberia in an effort to destroy what was a British monopoly in rubber. At the time, Britain controlled the production of 80 percent of the world's rubber and the United States consumed 70 percent.280 Firestone initially leased the Mount Barclay rubber plantation for experiments at the price of a dollar an acre the first year with an annual renewal option for ninety-nine years. The yearly rental cost was a total of two thousand dollars.281

Mr. Firestone concluded that Liberia offered the best of "natural advantages" due to the abundance of "indigenous labor" that was "practically inexhaustible."282 He then requested a six-year lease for an additional million acres at the yearly rate of five cents an acre with the understanding that the government would give "reasonable cooperation in securing sufficient labor for the efficient operation of the Plantation."283

On September 16, 1925, Liberia signed an agreement with the Firestone Rubber Company and the Finance Corporation of America, a company set up by Firestone. Firestone agreed to loan the Liberian government five million dollars at 7 percent interest. In exchange, he acquired a lease for an additional million acres in an area selected by Firestone. All products of the plantation and all machinery and other supplies were exempt from customs duties and internal taxes except for a revenue tax on rubber exports. The exemption did not apply to employees or laborers, who were subject to a tax.284

The Liberian government was required to supply 50,000 laborers annually under a "contract system."285 Accordingly, the government set up a Labor Bureau which sent out "requisitions to each native and

279. *Id.* at 75-76.
280. *Id.* at 38.
281. *Id.*
282. *Id.* at 39.
283. *Id.*
284. Firestone also agreed to construct and maintain a harbor in Monrovia; the government was to repay the construction cost at a rate of 7 percent per year. However, he immediately decided not to construct the harbor because it was too expensive. *Id.* at 40-41.
285. *Id.* at 41.
District Commissioner who in turn divided up the contingents among the Chiefs.” For each “boy” supplied, Firestone paid one cent per day to the Government Bureau and one cent per day to the chief who supplied him. The agreement created a recruitment system virtually indistinguishable from those used for government work and Fernando Po. The Commission found evidence that native laborers did not distinguish between the three. They did, however, distinguish between going to Firestone voluntarily and being forcibly recruited.

The Commission found “no evidence that the Firestone Plantations Company consciously employs any but voluntary labour in its leased rubber plantation.” The Commission noted that when recruiting was under the control of the government, all labor was not voluntary. However, the laborers could leave the Firestone plantations at any time. Although laborers reported that they were sent to Firestone but were not paid, the Commission had “considerable difficulty in understanding” these assertions because Firestone had meticulously kept books showing “pay-offs.” In its opinion, this case was distinguishable from the recruiters in the Fernando Po agreement who stated that they did not keep books.

4. Results of the Commission’s Report

In sum, the Commission found that, although “classical” slavery was minimal in Liberia, the native population was being impoverished and abused through a system of intimidation and extortion. It made several recommendations, including education for the native population, an end to the “closed door policy” and a reorganization of the political structure. It also recommended that the government take strong steps to eliminate all of the slavery-like conditions found by the Commission. It made a veiled threat that, if this was not done, the country would “discover that its place in the community of civilized nations is jeopardized.”

286. Id. at 42.
287. Id. at 78-79.
288. Id. at 79.
289. Id. at 79.
290. Id. at 84.
291. Id.
292. Id. at 82.
293. Id.
294. Id. at 85-89. One of the more interesting recommendations was that immigration from the United States of “the best types of educated Negro” should be encouraged. Id. at 89.
295. Id. at 88.
The Report resulted in a warning from the United States,296 the resignation of the Liberian President, Vice President, and several other high officials, and the adoption of laws and decrees prohibiting many of the abuses.297 In one observer's opinion, these laws were only “window-dressing.”298 There were reports that in 1932 Liberian troops had massacred many of the native Kru people. The alleged massacre was either retaliation for Kru testimony before the international commission or a reaction to a revolt by the Kru. The Kru had revolted after allegedly being informed that the white man was going to take over the country as a result of the international inquiry.299

Liberia also requested the League's expert and financial assistance in carrying out the reforms. Accordingly, the Council set up an eight-member Liberian Committee, in which the United States participated.300 The Committee dispatched three more experts to Liberia who submitted a report in August 1931 confirming the first report.301 It also submitted a Plan of Assistance for reorganization of the country through the aid of foreign advisors and foreign loans. The Council Committee and the Liberian Secretary of State, Louis Grimes, discussed the proposed scheme, but took no immediate action.302

Negotiations between the Committee and the Liberian government continued for three years.303 One problem that delayed action was money; the other was that neither Firestone nor the Liberian government really wanted reforms.304 The loan contract between the Liberian government and the American Finance Corporation forbade Liberia from borrowing elsewhere without its permission. The Committee sought to renegotiate the contract. However, the United States State Department claimed to have no direct authority over the Corpo-

296. Walters, supra note 10, at 569. In a statement to the League, the United States professed that it was “profoundly shocked” by the revelations and stated that it was convinced that Liberia would remedy the situation out of embarrassment. Communication from the Government of the United States of America, League of Nations Doc. C.L.3 1931 VI.B.2 (1931).

297. Slavery Memorandum, supra note 9, at 38; Raymond Leslie Buell, Liberia: A Century of Survival 1847-1947, at 36 (1947); Walters, supra note 10, at 569.

298. Buell, supra note 297, at 36.

299. Id. at 36; Walters, supra note 10, at 570. It is unclear whether or not any massacre really occurred. The Liberian government denied the reports. It is clear, however, that the troops used at least some excessive force in repressing the revolt. Buell, supra note 297, at 36.

300. Resolution of Jan. 24, 1931, 12 League of Nations O.J. 219 (1931); Walters, supra note 10, at 569.

301. 13 League of Nations O.J. 1413 (1932). The three experts consisted of an expert on African administrative problems, one on colonial finance, and one on public health. Walters, supra note 10, at 569.

302. Walters, supra note 10, at 569.

303. Id. at 571.

304. Id. at 569-70.
ration; it also did not like the Plan of Assistance. It wanted a single United States Commissioner to oversee the restructuring. However, the Committee had already agreed with Liberia that it would not appoint an American, Frenchman, or Englishman to the Post of Chief Advisor due to those countries' territorial interests in Africa. In any case, this person was not to have overriding power; he was to be given authority to act only with the consent of the Liberians.305

After long negotiations, the Corporation finally agreed in 1933 to modify the contract, but Liberia nonetheless continued to stall any implementation of the changes.306 The Liberian rulers continued to place obstacles in the way of any real reform and in 1934, the Committee formally resolved that Liberia had rejected the Plan of Assistance and withdrew its offer.307 The British representative made a speech to the League stating that the members had the power to expel Liberia since Liberia had violated Article 23(b).308 The threat caused Liberia to eventually execute part of the Plan. The government called in some foreign advisors and made a temporary agreement with the Finance Corporation similar to the one proposed by the Council, but nothing much came of it.309 There is no record of any more appeals for help.

The case of Liberia was the first time an international organization sent an inquiry mission into an independent and sovereign nation and attempted to redesign its financial and political structure. However, while the inquiry mission was apparently successful in abolishing "classic" slavery in Liberia, it was less so with respect to restructuring the country. The world's consensus that slavery was wrong overcame objections by the Liberian government, but there was no corresponding consensus as to the proper distribution and use of national resources. Americo-Liberians, supported by huge foreign corporations, had no interest in changing the political and economic structures to include the native tribes, and the League did not possess the will or the power to force them. Moreover, certain forms of forced labor were not universally considered contrary to international law. The concept of equal rights was still foreign to most of the world. On the other hand, the concept of freedom from classic enslavement had become accepted by most of the world as a fundamental and universal right.

305. See Buell, supra note 297, at 37-46.
306. Walters, supra note 10, at 570.
307. Slavery Memorandum, supra note 9, at 39; Walters, supra note 10, at 571.
308. Buell, supra note 297, at 41.
309. Walters, supra note 10, at 571.
The League established slavery as a violation of customary international law by bringing about the abolition of the institution throughout almost the entire world. Under the auspices of the League, all but a few states passed legislation preventing internal slavery and the importation of slaves. Even those states that continued to accept slavery limited the practice.

The League's work in eliminating slavery also convinced the world that the rights of individuals are properly part of international law. Until that time, international law dealt almost exclusively with the relationships between sovereigns and nations. The Slavery Convention of 1926 was the first of a continuing series of international conventions concerned with the welfare of individuals. 310