CHAPTER FOURTEEN

SLAVERY

1. SLAVERY IN INTERNATIONAL CRIMINAL LAW

1.1. Abolition

Slavery is one of the oldest institutions practised by almost all nations of the world. The practice had legally been permitted by the European system of international law and there had not therefore been any effective movement against the institution of slavery up until the end of the nineteenth and beginning of the twentieth centuries. To sell and to buy human beings was considered an important branch of national and international trade. It was basically upon the institution of slavery that the economy of some European countries and the United States in particular developed. It must not however be ignored either that the criticisms made against this institution were also effectively started by the countries which had made a profound income from this cheap labour. The desire to abolish or maintain the institution of slavery in the United States was one of the most essential reasons for the American Civil War. This and many other movements in European societies against the institution e.g. the long struggle for the creation of the right of visit and search of vessels which were suspected of having been involved in slavery became an essential reason for the formulation of the first agreements concerning the abolition of slavery.

According to a new tradition which began in the life of navigation concerning the slow evolution of the right of visitation, trade in humans was assimilated to the crime of piracy, which meant the prosecution and punishment of those who carried slaves came under universal criminal jurisdiction. This assimilation was not even particularly useful as a whole. States which supported this practice could still engage in the trade by

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2 Id., p. 212.
3 Id., p. 213.
4 Id., p. 214.
their vessels crossing territorial or international water ways. The legal problems concerning this issue were that firstly, under national systems the institution was not abolished and secondly, vessels could still trade without being suspected of carrying slaves. Thirdly, states which legitimated the institution did not capture the vessels involved in the trade. Fourthly, the institution of slavery was not prohibited by a positive international criminal law and could therefore easily be supported by domestic legislations. Many bilateral and multilateral agreements were ratified by states from the period 1890–1938. Nonetheless, none of these agreements was effective for the international abolition and criminalization of the institution of slavery.

1.2. Criminalization

Slavery was not internationally characterized as an international crime, even with the establishment of the League of Nations in which many states officially condemned the institution of slavery. The struggle for the abolition of the institution of slavery by states finally resulted in the adoption of the 1926 Convention on slavery. The Convention was reconsidered and amended by the establishment of the United Nations in the 1953 Protocol. The new amendment of the 1926 Convention was not however, satisfactory and did not apply to all forms of slavery—including the abolition of all types of slavery. As a result a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery was adopted at the United Nations Conference in Geneva in 1956. The new Convention is the extension of the scope of the 1926 Convention on Slavery and both the Convention and the Supplementary are assumed to cover all forms of slavery at an international level.

The definition of the institution of slavery has been extended in the above instruments due to the needs of time. According to the 1926 Convention, slavery is the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised. The Convention has put more weight on the abolition of the slave trade and this is on the grounds that the slave trade has been most instrumental in

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5 Id., p. 217.
6 Id., p. 221.
7 Id., pp. 220–223.
8 Id., p. 223. The instruments on slavery have also been accompanied by other instruments for the suppression of white slavery. See id.
the development and extension of the institution of slavery. The Convention therefore divides the slave trade into four types of categories. These are i) all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him to slavery, ii) all acts involved in the acquisition of a slave with a view to selling or exchanging him, iii) all acts of the disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and, iv) every act of trade or transport in slaves. The Convention also emphasises the abolition of compulsory or forced labour and requires all state parties to take all effective measures which may seem necessary for the prevention of compulsory or forced labour extending into conditions analogous to slavery. Although the Convention has prohibited slavery and the slave trade, it does not consider the territories placed under the sovereignty, jurisdiction, protection, suzerainty or tutelage of a contracting party as a strong reason for cases of slavery. In fact the international juridical position of these territories could be compared to the slavery of one country to another. This is on the grounds that such protector states almost had total control over all the economic resources of the relevant states. However, the system of international criminal law at that time was not prepared, as it is today, to recognize that the institution of slavery can exist, even though, the elements of slavery stated in the 1926 Convention do not exist. Secondly, states were and are very cautious regarding the scope and method of applicability of the system of international criminal law, especially where the system limits their activities within their territorial jurisdictions. These and many other reasons undermined the legal position of the 1926 Convention and caused its amendment by the 1953 Protocol and finally by the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. The Convention has developed and extended the concept of the definition of slavery and its institutions.

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9 Article 1.
10 Article 5.
11 The most relevant articles of the 1956 Supplementary Convention are as follows:

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

(a) debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the
All these agreements and many others on white slavery constitute the main instruments applicable to the international crime of slavery under the system of international criminal law. The application of these instru-

- liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- any institution or practice whereby:
  - women, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
  - the husband of a women, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
  - a women on the death of her husband is liable to be inherited by another person;
- any institution or practice whereby a child or young person under the age of eighteen years is delivered be either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Article 3: I. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

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

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

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

Article 7: For the purpose of the present Convention:

(a) ‘slavery’ means as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and ‘slave’ means a person in such condition or status;

(b) ‘a person of servile status’ means a person in the condition or status resulting from any of the institutions or practices mentioned in Article I of this Convention;

(c) ‘slave trade’ means and 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 person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.
ments has not however been fully successful due to the creation of other types of slavery under various national systems.  

Unfortunately, the institution of slavery is growing very rapidly within the international community as a whole and becoming one of the most serious reasons for the violations of the system of international criminal law and justice. One of the most effective reasons for this is the high development of technical communication and internet technology. This is especially notable in the case of the trafficking of women and children who are the subjects as well as the objects of most serious international crimes such as trafficking, crimes against humanity, war crimes, genocide, rape, crimes against women and various violations of their international human rights law. Thus, women and children are today the most recognised victims and witnesses of modern slavery under international criminal law.

2. Slavery in Islamic International Criminal Law

2.1. Manumission

According to the legal, social, economic and political philosophy of Islamic international criminal law mankind is equal in all social phenomena. Islamic jurisdiction therefore prohibits any type of action degrading a person to the statute of slavery. Therefore, slavery is ‘unlawful’ under Islamic law. We cannot disagree however with the fact that during war taking slaves was, in certain circumstances, permitted in order to prevent bloodshed. This is because the Islamic law of armed conflict basically consists of the law of battle and the humanitarian law of armed conflict. This regulation is neutralized by the command that priority is not given

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13 ‘In the time when Islamic government was not founded in Arabia, the believers had to release the slaves of the disbelievers by giving ransom to them, but when Islamic government was founded then no one could keep slaves under their possession against Islamic Law. When Islamic government was founded then the Arabian Muslims abolished slavery from many parts of the world. They released many slave subjects from the possession of the great tyrant kings. In the Holy Qur’an, God commands to the believers that they should release every kind of slaves in the path of God.’ The Glorious Holy Quran, translated by Jullundri, p. 60.
14 Id., p. iii.
to Muslims as all are equal before the divine law. Furthermore, ‘La législation islamique déclare action ‘laide’ la vente de l’homme libre, parce que le mot ‘vente’ signifie échange de biens (chooses), tandis que l’homme libre n’est pas un bien. L’homme esclave n’est pas non plus un bien. L’homme réduit à l’esclavage subit une puniton temporaire pour s’être opposé par les armes au triomphe et à l’extension de la vraie religion. La durée de son esclavage est une épreuve qu’il traverse. Il dépend absolument de lui d’abréger la durée de cette épreuve par sa conduite. Une fois affranchi, il ne diffère en rien des autres membres de la société, quelle que soit sa couleur. Il a le droit de prétendre à tout ce que l’homme peut obtenir sur terre par son mérite et son travail.’

Therefore, releasing slaves even became a custom and tradition of the Prophet Muhammad who basically condemned the killing of individuals and insisted that Muslims must, as much as possible, not conduct war and must come to peaceful solutions with their enemies. He was therefore against hostile conduct and according to him; war was against the principles of family unity. He emphasised the release of those captured during war and without taking any reward for such action. For example, after one of the most recognised Islamic Wars i.e. Badr, the Prophet ordered the release of all those who were captured during the war and did not degrade them to the statute of slavery. This order became one of the most well-known traditions of Islamic law governing the prevention of slavery and the development of Islamic international humanitarian law

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16 According to one writer, ‘It is noteworthy that the divine injunctions deal only with the means of emancipation, non provided slavery as an imperative system. This is due to the fact that Islam tries to solve the problem of slavery on a pragmatic basis. When Islam emerged, slavery was a world wide recognised institution deeply rooted in all societies to the length that any abrupt banishment of the system would result in shaking the very foundations of society. For this, Islam’s policy in putting an end to slavery is rather practical. Islam restricted the causes of slavery and widened the possibilities of freeing the slaves. Such device is capable, in the course of time, of abolishing the system of slavery without affecting the social values or entailing economic crisis.’ Al-Ghunaimi, The Muslim Conception of International Law and Western Approach, p. 191. See also id., p. 190.


18 See infra.

19 See also below sections. The Prophet has also stated that “There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgement. ... a man who sold a free person as a slave and appropriated his price, and a man who employed a worker and had him do the assigned work then failed to pay him his wages.” (al-Bukhari and Ibn Majjah).
of armed conflicts. It actually opened a window for the future abolition of slavery within the Islamic nations and the respect for the high value of man before the divine jurisprudence.\textsuperscript{20}

\section*{2.2. Abolition}

Islamic international criminal law prevents acts of slavery in any form and it is a well recognised rule in the \textit{Qur'an} that in certain situations the punishment of a person who has committed a crime can be mitigated, discontinued or even neglected if he releases a slave(s). A number of verses in the \textit{Qur'an} deal with this radical matter concerning slavery and the common value of man in freedom, justice, equality and brotherhood. For example the \textit{Qur'an} states that:

\begin{quote}
And it is not lawful for abeliever to kill a believer except by mistake, and whoever kills a believer by mistake, he should free a believing slave, and blood-money should be paid to his (victim's) family, but first they should verify themselves that they are really the next-of-kin of slain person, and if the slain be from a tribe who is your foe and the slain is a believer, then a believing slave should be freed only, and, if he is from a tribe between whom and you there is a treaty, the blood-money should be paid to his (slain's) next-of-kin and a believing slave should be freed, …\textsuperscript{21}
\end{quote}

The existence of the institution of slavery under the Islamic jurisdiction must also be examined in the light of the time in which Islamic law was revealed to the Arab nations as the divine law and must be analysed and compared with the jurisprudence of various nations of the world.

\textsuperscript{20} “When Islam came, for the situations where people were taken into slavery (e.g. debt), Islam imposed Shari‘ah solutions to those situations other than slavery. For example Islam clarified in relation to the bankrupt debtor that the creditor should wait until a time of ease for the debtor to pay. The Supreme (Allah) said in the Quran: “And if he is one in difficulty then waiting to a time of ease” … It (Islam) made the existing slave and owner form a business contract, based upon the freedom, not upon slavery … It forbade the enslaving of free people with a comprehensive prohibition … So Allah will deal with the seller of the free person. As for the situation of war, Islam prevented the enslaving of captives or prisoners of war absolutely. In the second year of the Hijrah, it clarified the rule of the captive in that either they are favoured by releasing without any exchange, or they are ransomed for money or exchanged for Muslims or non-Muslim citizens of the Caliphate.” Taqiuddin al-Nabhani, \textit{l-Shakhsiyah al-Islamiyyah (The Islamic Personality)}, volume 3, Slavery Section.

\textsuperscript{21} The \textit{Qur'an}, 4:92. See also 2:177.
towards slavery such as the Greeks, Romans\textsuperscript{22} and even the practices and tendencies of the various churches.\textsuperscript{23}

It is also worth noting that the use of slaves was not prohibited in early religious practices. For instance in 595, ‘Pope Gregory the Great sent a priest, Candidus, to Britain to buy pagan slave boys (\textit{pueros Anglos}), seventeen to eighteen years old, to work on monastic estates.\textsuperscript{24} Christians in Europe considered slaves as ‘the domestic enemy’. Therefore, they treated slaves as a legally unrecognised class of people who did not enjoy the protection of domestic laws. Female slaves were often preferred to male slaves. This was probably because females were easier to control.\textsuperscript{25} They could also be used for sexual pleasures and rape.\textsuperscript{26}

Islamic law permitted the institution of slavery on the one hand and promoted its abolition in social relations on the other hand.\textsuperscript{27} This is exactly the policy of the provision which is enacted under the system of international criminal law concerning the first agreements concluded

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\textsuperscript{22} According to Professor Weeramantry ‘slavery as practised in Greece, Rome or modern America was a condition of rightlessness which had no parallel in Islamic law … The master’s authority was not unlimited or free of the control of the state as it was under the Greeks, the Romans or indeed in America. Further, the slave had equal rights before the criminal law and any body who committed his murder suffered capital punishment.’ Weeramantry, \textit{Islamic Jurisprudence: An International Perspective}, pp. 138–139.
\textsuperscript{23} As mentioned in the previous section, it was from the middle of the nineteenth up to the beginning of the twentieth centuries that the abolition of slavery was encouraged by the European law of Nations.
\textsuperscript{24} Daniel Evans, ‘Slave Coast of Europe’, \textit{Slavery & Abolition}, vol. 6, no. 1 (1985), p. 43.
\textsuperscript{25} Id., p. 47.
\textsuperscript{27} See section below.
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on the abolition of slavery. Furthermore, one must always remember that the slave trade and slavery existed well before Islamic law and that the latter has, not only not promoted the institution of slavery, but is also, strictly speaking, against its practice. For example, when a slave woman has breastfed the baby of a Muslim woman who cannot herself provide milk, she must be given freedom immediately and should be regarded as if she had never been a slave. Islamic international criminal law, in order to abolish the institution of slavery, provided certain priorities for a Muslim slave to be given amnesty. Thus, one could give mercy or quarter which meant the act of giving life to a defeated enemy.

2.3. Protection

In order to gradually abolish slavery Islamic jurisprudence recognised certain rights for slaves and by this methodology proselytized non-Muslims. It recognises equality between a slave and his master with regard to food, clothing and a place of dwelling. Simultaneously, it must be emphasised that ‘Islam does not allow compulsion to convert even slaves to Islam.’ The Qur’an (the main source of Islamic international criminal law) has not only exhorted the liberation of slaves but has also emphasised that Muslim states should allot part of their budgets for the manumission of slaves. This meant that the income from taxation was to be paid to the masters of the slaves in order to release slaves from that condition. In other words, Islamic law has long struggled against the institution of slavery and insisted that the institution is a common problem and cannot be solved in isolation from other social phenomena. An old interpretation of this rule of the Qur’an governing the liberation of slaves by manumission from state income was that a master should not refuse a suggestion by a slave who wishes to work and return his value. For the purpose of a quick abolition of slavery the Prophet decreed that Arabs could not be enslaved. According to one view the:

Islamic classical institution of slavery is distinguished by two main characteristics, i.e. (I) the human treatment of the slave with the view to raise his morale. A slave should be treated on the same footing with his master

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29 Rechid, 'L'Islam et le Droit des Gens', p. 476.
30 See chapter twenty-seven, section 4.
31 Hamidullah, The Muslim Conduct of State, pp. 210–211.
as regards food, clothing and dwelling and, (II) the wide possibility given to the slave to be emancipated. Both the Qur’an and the tradition exhort pious Muslims, against considerable worldly and heavenly rewards, to free their slaves. The slave has also, under certain conditions, the chance of claiming his own freedom ... slavery in traditional Islam was virtually meant to be an adequate medium of proselytizing non-Muslims rather than denigrating some individuals. Yet history records some deplorable incidents which occurred in spite of the legal precepts that Islam has advanced with a view to minimize slavery. Slavery however, persisted in some Muslim societies until recently when it was legally abolished in those countries.34

Although one cannot disagree with the fact that the Muslim Arabs (like many other generic groups) have taken slaves during wars with non-Muslims, this was exercised by all nations and was an old customary rule. One must not either forget that one of the core reasons for this practice in Islamic law was that the law was principally against the killing of individuals in any way and since prisoners of war under the old traditions could be killed,35 Islam privileged the institution as long as it could be effective in stopping bloodshed.36 One essential historical difference between the concept of slavery in the system of international criminal law and Islamic international criminal law is that according to the former the taking of slaves was lawful at all times whereas according to the latter the taking of slaves was only permitted in connection with and in the course of a war.37

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34 Al-Ghunaimi, The Muslim Conception of International Law and Western Approach, pp. 149–150.
35 For instance, after the battle of Badr, 'The prisoners were ... treated in an exemplary manner in spite of the fact that the Muslims had least to favour them. The Prophet distributed them among his soldiery for safe custody, and enjoined them expressly to treat them well. The command did not remain unheeded: those of the prisoners who had no clothes were provided with dress ... Some of the Muslims fed them with their bread and contented themselves with mere dates in view of the good treatment enjoined. Tabariy, History, p. 1337.' Hamidullah, The Battlefieldsofthe Prophet Muhammad, p. 17.
36 Id., p. 17. Therefore, ‘according to the Holy Quran to make men or captives, slaves are not lawful for the believers. Everywhere in the Holy Qur’ân God commands the believers that they should release even the slaves of the disbelievers by giving ransom to their masters, then how those believers could keep their own slaves under their possession, so they at once freed their slaves in the way of God without taking ransom. God also commands about the prisoners of war that they also should be freed under obligation after the end of the war when the enemy lays down its arms.’ The Glorious Holy Quran, translated by Jullundri, p. 60.
37 It must therefore be emphasised that ‘The object of permitting slavery in (pre-practice of) Islam is not the exploitation of an unfortunate follow-being. Far from that, its aim is first to provide shelter to the prisoners of war who have lost everything, and for
It was also admissible that if a Muslim or non-Muslim who fought for a Muslim army was taken prisoner by the enemy for the purpose of slavery, they should be recognised as a freeman again when they were released from the jurisdiction of the enemy state. Islamic law also provided a similar rule for prisoners taken by Muslim armies but who actually succeeded in coming under another jurisdiction and even though they were ‘slaves’ were thereby recognised as freemen.

As we have stated elsewhere, the virtue of Islamic law (including Islamic international criminal law) is that these laws can adapt themselves to various historical changes. Alterations can be made to Islamic international criminal law by specific and relevant interpretations of its certain principles, approaches and applications, while the basic philosophies and aims of this law remain unchanged. The early practices of Islamic international criminal law regarding the treatment of slaves in order to gradually abolish slavery can be seen in the light of its core principle concerning the equality of all man before the law and especially the promotion of the principle of brotherhood for all irrespective of race, colour, language, religion, ethnic origin, social position or political view.

2.4. Criminalization

The principles of Islamic international criminal law regarding the institution of slavery have the character of the methods used in the treatment of criminal behaviour in the science of criminology. In fact one can assert that the concept of Islamic international criminal law is principally characterized as criminological law. This is a law which has not only the rules and regulations governing the prohibition, prevention, prosecution and punishment of criminals, but also has the methods by which criminals and criminal behaviour may be cured and rehabilitated. It is in the light of these different types of values that the criminalization of slavery, slave trade and institutions similar to slavery come under a consolidated principle in Islamic international criminal law. For confirmation of this one can simply refer to the constitutions of all states which have in one way

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some reason or other are not repatriated; and secondly to educate them and give them the opportunity of acquiring culture in Islamic surroundings, under the government of God. Slaves are obtained only in legitimate war, waged by a government. Private razes, kidnapping or even sale of infants by their parents have no legal sanction whatsoever.’

Publications of Centre Culturel Islamique—Introduction to Islam, p. 63.

38 See also part two, chapters twenty-seven and twenty-eight.

or another been affected by the principles of Islamic law and have ratified all relevant international conventions on the prohibition of slavery. A principal virtue of Islamic international criminal law is the modernization of its principles through adaptation and interpretations. Today, the abolition and criminalization of all types of slavery is a fact and reality in Islamic international criminal law which cannot be denied by any juridical, theological or philosophical argument.

However, this does not mean that the individuals of Islamic nations or states do not engage in slavery and slavery trade. Violations of the principles of Islamic international criminal law and the system of international criminal law regarding the prohibition of slavery are indeed very high and the most serious victims of this international crime are women and children. In addition, the sex trafficking of women and children including girls and boys is really high. This is particularly notable concerning those Islamic regimes which are ironically the banner of freedom and Islamic democracy. In addition, some Moslem nations have treated women worse than slaves and these violations are continued in contrary to the principles of human rights law in Islam and public international law.