CHAPTER TWO

THE SLAVE TRADE

Having considered slavery and its place within the history of international law, this Chapter follows a different course, one which is the emphasis of this book: the move towards its abolition. Like the chapters that follow, this Chapter considers one, specific, instance of human exploitation and draws out its parameters as they have evolved in international law. The focus on the slave trade bridges the gap between time immemorial when slavery was legal and the contemporary period when it has been made illegal under international law. The fundamental importance of the abolition and suppression of the slave trade at sea during the Nineteenth Century in setting the foundation for the illegality of various forms of human exploitation during the Twentieth Century cannot be overstated. That said, the provisions governing the suppression of the slave trade as found in international law today are rather limited, though behind them lie a very rich history worth recounting.

That history is predicated on the fact that no other issue during the Nineteenth Century was more fundamental to the evolution of international law than the slave trade at sea. This statement is not mere hyperbole as, in the Age of Sail, little else mandated legal intercourse amongst European Powers, newly independent States of the Western Hemisphere and emerging ‘civilised nations’ of Africa and Asia. In this context, the Nineteenth-Century law of the sea and the centrality of the slave trade to its evolution played out as the very essence of the seas – the freedom of the sea – became a battleground of law. That diplomatic warfare pitted the United Kingdom, which had emerged from the Napoleonic Wars as the unrivalled sea power, seeking to carry over a wartime right to visit ships on the high seas to peacetime as a means of suppressing the slave trade; and lesser maritime powers that demanded respect for the Grotian notion of the freedom of the seas and an unfettered right of their merchant ships to ply the oceans blue.

While attempts to establish a universal right to visit ships at sea to suppress the slave trade would only truly be successful in 1958, the move
towards its establishment in international law starts at Vienna in 1814 and leads to war, to attacks on ports and ships of non-belligerent States, to the sinking of slavers and the deaths of many a sailor and hundred score more of their human cargo. The move to establish a right to visit to suppress the slave trade would be considered during the era of the Concert of Europe; would be central to the convening of the 1890 Brussels Conference; it would make up part of the settlement of the First World War; be considered on more than one occasion during both the negotiations of the 1926 Slavery Convention and the 1956 Supplementary Convention; yet would only be accepted universally through its inclusions first in the 1958 Convention on the High Seas and later by its confirmation as part of the 1982 United Nations Convention on Law of the Sea. Parallel to the move, over a century and a half, to gain a right to visit to suppress to slave trade at sea was the limitations which this notion of a ‘right to visit’ would accrue over time. From attempts to gain universal jurisdiction to suppress the slave trade by way of a right to visit, to search, to confiscate, to detain, and to try – in essence to assimilate – the slave trade to piracy as hostis humani generis; the notion of a right to visit would become ever more circumscribed, as a result of an unwillingness, by a number, of States to allow for a policing of the seas or undue interference with their maritime commerce. However, this did not stop the United Kingdom from proposing on a recurring basis, for more than a hundred years, the assimilation of the slave trade to piracy. While the United Kingdom continued to be unsuccessful in its assimilationist venture, limits to the right to visit would manifest themselves early on by curtailing an expansive understanding of the right to visit by both its application to a specific geographical zone and to ‘native’ vessels; while being narrowed ratione materiae to a more strict right to visit and search decoupled from other possible rights (such as confiscation, detention, or trying), with the purpose of visitation ultimately being simply to verify the nationality of a ship at sea suspected of being involved in the slave trade.

Towards Abolition of the Slave Trade

During the consideration in the previous Chapter, only the voices of Bodin and Montesquieu were heard in opposition to slavery. Yet during the Eighteenth Century a movement emerged in the United Kingdom which, though in its infancy could easily be dismissed, would grow beyond individual intellectuals, to include minority religious sects (principally the