CHAPTER 3

Fydor Martens and the Question of Slavery at the 1890 Brussels Conference*

Fydor Martens played a crucial role in the move to establish an international regime to suppress the slave trade. This may come as a surprise as there is nothing in Martens’ past which would have pointed to his involvement in issues of slavery or the slave trade during the late nineteenth century, nor was Tsarist Russian implicated, in any serious manner, in the international slave trade. It was, instead, the perception of Russia as a disinterested party on the issue of the slave trade and Martens acknowledge status as a jurist which thrust him into the spotlight during the 1889–1890 Brussels Conference where he mediation the differing interests of France and Great Britain to draft – in effect – the 1890 General Act of the Brussels Conference.

Martens play a fundamental role in the issue of the suppression of the slave trade which, though it is seldom recognised today, was the issue which had global implications during most of the nineteenth century. The fact that very little else before required coordination of European States, newly independent American States, and emerging ‘civilized nations’, meant that the suppression of the slave trade was one of the few items that – as a result of the limited inter-State intercourse during the age of sail – demanded truly international attention. The limited contact between States meant that the establishment of law regarding slavery was a slow and clumsy process which, though agreed to in principle at the 1815 Congress of Vienna, would only manifest itself in a binding universal instrument in 1890 at the Brussels Conference; and ultimately by the suppression of both the slave trade and slavery with the coming in to force of the 1926 League of Nations Convention to Suppress the Slave Trade and Slavery. It was these factors then – the interaction of European Powers with the New World, Africa and on the high seas of the Atlantic, Pacific and Indian oceans, coupled with its time span, which marked every decade of the nineteenth century; that made the suppression of the slave trade the international issue of resonance throughout the eighteen hundreds.

At the outset of this paper, it should be made plain that the lack of a developed multilateral international system during the eighteen hundreds was not

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decisive in explaining the slow pace by which the slave trade on the seas was outlawed. What was at the heart of the matter was the very essence of States' understanding of the nature of the seas. The challenge to the abolition of the slave trade on the high seas was not the slave trade *per se*; but, rather, the conflict between the Grotian notion of the freedom of the seas and attempts to establish a right to visit ships suspected of being involved in the slave trade. The introducing of a ‘right to visit’ into the corpus of international law is fundamental to understanding the move to suppress the slave trade during the nineteenth century. Over a period of eighty years, Great Britain – which was the primary actor in the suppression of the slave trade at sea – sought to advocate various understandings of the concept of a ‘right to visit’; first seeking to assimilate it to piracy, then arguing that the term was in keeping with the French notion of *droit de visite*: that is an indirect right to visit to ascertain the right to fly the flag hoisted but not to search a ship, as a way to suppress the slave trade. Ultimately, it was a diplomatic compromise marshalled by Martens in 1890 that allowed for the acceptance of the concept of a ‘right to visit’ – while limiting its application to a specific maritime zone and to the type of ship used in the late nineteenth century slave trade.

This Paper is part of a larger study, which will appear in the 2008 edition of the *British Yearbook of International Law* and focuses on British attempts, during the nineteenth century, to end the Atlantic Slave Trade and outlaw the slave trade internationally by way of a universal instrument; which it only succeeded in achieving after seventy-five years of effort. For most of the nineteenth century though, the battle lines were drawn between Great Britain on the one hand, which put forward an abolitionist agenda primed on the use of its superior naval forces; and on the other hand, lesser maritime Powers that sought to maintain freedom of commerce for their merchant fleet. The larger study brings into focus the manner in which a dominant Power, limited by normative constrains in the guise of established international law regarding the freedom of the seas, was able, over a long period of time, to reach a *modus vivendi* with those States that, by and large, were in opposition to a right to visit.

Consideration is given in that study to the failed attempts, in the early eighteen hundreds, by Great Britain to establish a universal treaty outlawing the slave trade, and the change of tactics that would ultimately prove more successful – the establishment of a web of bilateral agreements that would come to include all maritime powers. The larger study also highlights the relationship between Great Britain and Brazil, France, Portugal along with the United States of America, to demonstrate the various dynamics that were at play in getting these recalcitrant States to join the bilateral regime. It concludes with an examination of the 1890 General Act of Brussels, which