CHAPTER 5

The International Legal Regime of Slavery and Human Exploitation and Its Obfuscation by the Term of Art: ‘Slavery-Like Practice’*

Conceptually, focusing on slavery writ large – or better: human exploitation – in three distinct eras provides one with a better understanding of the manner in which the overall legal regime has evolved internationally and the way in which the introduction of the term of art: ‘slavery-like practice’ has obfuscated the law. This term, introduced in 1966, as a means of viscerally denouncing apartheid, quickly became synonymous, within the United Nations human rights system, with social evils as diverse as incest and female genital mutilation. ‘Slavery-like practice’ muddied the waters as its use confused the political with the legal not only where ‘slavery’ as defined by the 1926 Slavery Convention was concerned, but more so with the nomenclature of ‘practices similar to slavery’, those conventional servitudes noted in the 1956 Supplementary Convention. In so doing, the use of the term ‘slavery-like practice’ effectively grinded to a halt any evolution which might have transpired with regard to the law of human exploitation. It was only at the start of the twenty-first century, with the enumeration of types of exploitation within the trafficking conventions and the coming into force of the Rome Statute of the International Criminal Court which criminalised enslavement, that the law of human exploitation emerges from the shadows of the term ‘slavery-like practice’ to become relevant once more.

This study considers the three eras of the abolition of slavery and human exploitation: (i) 1890–1966 – the slave trade, slavery, and servitude in general international law; (ii) 1966–1998 – ‘slavery-like practices’ and human rights law; and (iii) 1998-present – enslavement and international criminal law. More so, the study focuses on the second era, from 1966–1998, to demonstrate how the United Nations turned from dealing with issues of slavery and human exploitation within a legal paradigm to ridding its legal content and equating the notion of ‘slavery-like practice’ with any perceived social evil which the

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United Nations’ Charter-based system sought to address. The era of ‘slavery-like practices’ which is now behind us and should be consigned to the dust-bin of history, obfuscated international law and demonstrated a fundamental weakness of the United Nations human rights system which, within the multilateral, charter-based system, is at its very core political. It is only with the recent criminalisation of slavery and human exploitation at the international level – manifest in the trafficking conventions and the Statute of the International Criminal Court – where it bumps up against the countervailing right of accused to know the charges against them that the law related to slavery and human exploitation re-emerges as a viable instrument for holding perpetrators accountable and by extension seeking to protecting individuals from nefarious exploitation.

1890–1966 – General International Law

The Slave Trade

The move to address slavery and human exploitation at the international level was first given voice by a declaration at the Congress of Vienna in 1815. Settling the Napoleonic Wars, the European Powers, expressed their wish to “bring to an end a scourge which has for a long time desolated Africa, degraded Europe, and afflicted humanity.” In so doing, they declared that they:

consider the universal abolition of the trade in Negroes to be particularly worthy of their attention, being in conformity with the spirit of the times, and the general principles of our August Sovereigns, who our animated in their sincere desire to work towards the quickest and most effective of measures, by all means at their disposal, and to act, in the use of those means with all zealouness and perseverance which is required of such a grand and beautiful cause.¹

Despite attempts throughout the era of the Concert of Europe to get agreement on a legal text outlawing the slave trade at sea this was not to be, as a number of maritime powers hesitated in the wake of British dominance of the seas and its zealousness in seeking to outlaw the slave trade by establishing a

¹ Declaration des 8 Cours, relative à l’Abolition Universelle de la Traite des Nègres, 8 February 1815, 3 BFSP 972. The eight Powers were Austria, Britain, France, Prussia, Russia, Portugal, Spain and Sweden.