On the Curious Disappearance of Human Servitude from General International Law

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Hindsight is a great thing: that the Universal Declaration of Human Rights paved the way for the Covenants and, in their wake, international and regional human rights law standards is today a given; but in 1956, during the negotiations of the Supplementary Slavery Convention, it was not. The Covenants were still in embryonic form and where they were concerned “it was considered that there was apparently no intention of taking further action”. Yet during those 1956 negotiations, despite the possibility of no human rights treaties ever seeing the light of day, the Universal Declaration was the elephant in the room. It forced States negotiating the Supplementary Convention to move to expunge the term ‘servitude’ from the operative provisions of an instrument meant to deal with that exact issue. This was because a number of States were unwilling to go as far as the 1948 Declaration which pledged that “no one shall be held in slavery or servitude”; in contrast, the 1956 Supplementary Convention simply requires States to take all practicable measures to bring about “progressively and as soon as

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possible the complete abolition or abandonment” of the types of servitude specified in that Convention.

This study considers the drafting history of Article 4 of the Universal Declaration of Human Rights and its impact on the negotiations of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. The latter instrument, it bears noting, was originally drafted in 1954 as the Draft Supplementary Convention on Slavery and Servitude. The unwillingness of States to abolish servitude outright in 1956 led to a fragmentation of international law, which is reflected today in both the 2001 United Nations and 2005 Council of Europe instruments related to human trafficking – which reproduce the same definition of ‘trafficking in persons’ and enumerate various types of exploitation to be suppressed.

Amongst those types of exploitation are included both practices similar to slavery and servitude. Yet, the ‘practices similar to slavery’ are no different than ‘servitude’ in their nature, but in law they have been divided, with the former forming part of general international law as manifest in the 1956 Supplementary Convention, the latter in international human rights law as ‘servitude’ left undefined. Thus practices similar to slavery are those four conventional types of servitude established in general international law in 1956: debt-bondage, serfdom, servile marriage, and child exploitation; while servitude has not been defined by an international instrument though it has been given content in large measure through the pronouncement of bodies supervising human rights treaties.

1. Of Slavery and Servitude

Servitude should be understood as human exploitation falling short of slavery. That is to say, such exploitation which does not manifest powers which would normally be associated with ownership, whether de jure or de facto. The definition of slavery established by the 1926 Slavery Convention

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2) See United Nations, Economic and Social Council, The Draft Supplementary Convention of Slavery and Servitude Submitted by the Government of the United Kingdom and Comments Thereon (Memorandum by the Secretary-General), UN Doc. E/AC.43/L.1, 2 December 1955, p. 1. Emphasis added.

3) For the application of the 1926 definition of slavery to both de facto and de jure slavery, see The Queen v Tang, High Court of Australia, [2008] HCA 39, 28 August 2008; and Jean