

A Legal Consideration ‘Slavery’ in Light of the *Travaux Préparatoires* of the 1926 Convention

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While the issue of contemporary slavery persists, and Professor Kevin Bales estimates that there are 27 million people currently held in slavery¹; it remains true that we simply do not know how many people fit the legal definition of slavery, primarily because there has yet to appear any thorough legal analysis which examines the issue in. At the start of the Twenty-First century, the need to establish the precise definition of slavery has become acute, as the establishment of the International Criminal Court in 2002 allows for the prosecution of individuals for the crime against humanity of enslavement and sexual slavery; and sexual slavery as a war crime. Yet, as Professor Suzanne Miers has noted in her 2003 *Slavery in the Twentieth Century*, the common connotation of the term ‘slavery’, as manifest in its use by the United Nations Working Group on Contemporary Forms of Slavery is such that it “covers such a wide range of practices” so as to render it “virtually meaningless”². Professor Bales’ estimates are important at the level of providing us with a sense of the enormity of the problem of exploitation; but if we are going to end ‘slavery’, we must understand its legal parameters, the obligations which States have undertaken in this regard and devise strategies for holding States and individuals to account with regard to the specific crime of enslavement.

This Paper establishes the parameters of slavery within the confines of the 1926 League of Nations Convention on the Suppression of the Slave Trade and Slavery. Acknowledging that the definition of ‘slavery’ *per se* has not evolved since 1926; the current study does not seek to consider the expansion of forms of servitude which have been outlawed either by 1956 UN Convention or human rights instruments, while accepting that these types of exploitation, like trafficking, can slip into slavery, if a condition of ownership emerges. Instead, this Paper considers the Preparatory Works of the 1926 Convention which have been assembled for the first time, so as to demonstrate the legal parameters of the term ‘slavery’; and to show that, in fact, the term in law must be construed narrowly. That while the term ‘slavery’ has been used as an umbrella to cover so-called ‘contemporary forms of slavery’, it should be understood that the term ‘slavery’ – proper – has a very specific meaning in law, as the Preparatory Works of the 1926 Convention make plain.

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¹ See Kevin Bales, *Disposable People: New Slavery in the Global Economy*, 1999, p. 8. Note that Bales himself makes plain that, based on his own (non-legal) definition of slavery it is very difficult to establish the number of slaves beyond “rough estimates based on aggregation” of available sources broken down by country. See Kevin Bales, “The Challenge of Measuring Slavery”, *Understanding Global Slavery: A Reader*, 2005, p. 103.

² Suzanne Miers, *Slavery in the Twentieth Century*, 2003, p. 453.

Preparatory Works or *Travaux Préparatoires* have a special place in international legal circles and, with regard to 'slavery', are of fundamental importance as they establish the legal parameters of what is meant by slavery and what is entailed by a determination of 'slavery' in law. The general importance of a *Travaux Préparatoires* is found in the 1969 Vienna Convention on the Law of Treaties. That Convention lays out the rules which govern written agreements between States. The Vienna Convention notes at Article 32 that in seeking to interpret a treaty, if its meaning is "ambiguous or obscure" or one's *prima facie* understanding is "manifestly absurd or unreasonable", you may turn to "supplementary means of interpretation, including the preparatory works of the treaty [...] in order to confirm the meaning". The importance of the *Travaux Préparatoires* of the 1926 Convention is given added weight because so little actual interpretation of the treaty has taken place. This, however, may well change – and should change – as in 1998, the Statute of the International Criminal Court established that the act of 'enslavement' constituted an international crime. Thus, for the first time in the history of the anti-slavery movement there is the possibility to hold an individual – internationally – criminally responsible for slavery. Further, the knock-on effect is that if you do not wish to have your citizens tried internationally for the crime of enslavement, you must try them yourself domestically. This forces States to take seriously possible cases of enslavement or face the prospect of being embarrassed internationally for failing to act. Thus the establishment of the International Criminal Court should be understood as arguably, the most important development in the anti-slavery movement since the 1926 Convention itself³.

³ The Preparatory Works of the 1926 Convention have never been considered because, until recently, they have not yet been assembled. Yet, over the course of a number of visits to the Archives of the League of Nations in Geneva, I have established the paper-trail which explains the manner in which each of the provisions of the 1926 Convention came into being.

The most valuable preparatory material garnered from the Archives allowing for a reconstruction of the drafting process of the 1926 Convention to Suppress the Slave Trade and Slavery includes the 1925 British Draft Protocol and Viscount Cecil of Chelwood's Report of 9 September 1925 to the Assembly of the League of Nations considering the Protocol's provisions. With regard to the period between 9 September and the adoption of the 1925 Draft Convention on 26 September, 1925, the Archives have a near complete set of the working papers of the Sub-Committee and the Drafting Committee of the Sixth Committee of the League of Nations, as well as the Reports of the Drafting Committee, Sub-Committee and the Sixth Committee. Unfortunately, no minutes were recorded during the deliberations of the Sub-Committee and Drafting Committee in 1925, so that any insights gained as to why changes transpired at this stage are only to be gleaned from the second Report which Viscount Cecil presented to the Assembly on behalf of the Sixth Committee: his Report of 26 September 1925.

During the calendar year between the adoption of the 1925 Draft Convention in 1925 and the adoption of the 1926 Convention to Suppress the Slave Trade and Slavery; the most valuable documents of the Preparatory Works are the replies by States to the Assembly's request for comment on the 1925 Draft Convention. Beyond this, the work of the Sub-Committee and the Legal Section of the League of Nations in August and September 1926 are of relevance and most important with regard to the final provisions (re: Articles 9 to 12) of the 1926 Convention. Finally, the 1926 Report of the Sixth Committee, once more presented by Viscount Cecil, introducing the various provisions of the 1926 Convention to Suppress the Slave Trade and Slavery and his oral report to the Assembly as found in the minutes, are of significant importance to the generation of the *Travaux Préparatoires* of the 1926 Convention.

The Travaux Préparatoires and the Definition of Slavery

The provisions of the 1926 Convention to Suppress the Slave Trade and Slavery materialise as result of the work of the League of Nations' Temporary Slavery Commission in 1924 and a British initiative manifest in a Draft Protocol put forward in early September 1925. That 1925 Draft Protocol was thoroughly amended and adopted by the Assembly of the League of Nations in late September 1925 as a Draft Convention. This Draft Convention, was then considered by States and modified so as to ultimately emerge as the 1926 Convention to Suppress the Slave Trade and Slavery opened for signature on 25 September 1926. The starting point for considering the drafting of the provision defining slavery is Article 1 of the 1925 British Draft Protocol which, taken in its entirety, defined both slavery and the slave trade. With regard to slavery, the Article 1 reads:

For the purpose of the present Protocol, [...] slavery are defined as follows:

Slavery is a status in which one person exercises a right of property over another [...]⁴.

Viscount Cecil of Chelwood – the British Delegate to the League of Nations who played *the* fundamental role in bringing about the 1926 Convention to Suppress the Slave Trade and Slavery as he acted as Rapporteur throughout the drafting process – noted, in presenting the 1925 British Draft Proposal to the Assembly of the League of Nations, that Article 1 “merely defined ‘the slave trade’ and ‘slavery’” and that “he did not think that any objection would be raised”⁵. Yet, as we shall see, this was not so, as the transition from the 1925 Draft Protocol proposed by Great Britain to the 1925 League of Nations Draft Convention marked an overall change to the wording of the provision. In doing so, however, it should be emphasised that the fundamental element of slavery – ownership of one individual by another – remained at the heart of the definition throughout the drafting process.

When the Drafting Committee established by the League of Nations to consider the provisions of the 1925 Draft Protocol met, it expanded the definition of slavery from “a status in which one person exercises a right of property over another”, to:

Slavery is the status of a person over whom another person or group of persons exercises the power attaching to proprietorship; or in the holding of a pledge or who is compelled to serve such other person or group of persons for an undetermined time⁶.

The development of the definition came as a result of a draft which Albrecht Gohr, the Chair of the Temporary Slavery Commission, had proposed. That Proposal, used as a

⁴ League of Nations, Journal of the Sixth Assembly of the League of Nations, Geneva 1925, No. 3, 9 September 1925, p. 25.

⁵ League of Nations, Slavery: Draft Resolution and Protocol proposed by the British Government (*continuation*): Statement by Viscount Cecil, Official Journal, Record of the Sixth Assembly, Meetings of the Committees, Minutes of the Sixth Committee (Political Questions), Special Supplement No. 39, 14 September 1925, p. 14.

⁶ League of Nations, Slavery: Draft Protocol Text proposed by M.Gohr (as amended), LofN Doc. A.VI/S.C.1/5, 9 September 1925; as found in Folder R.67.D.46214 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925.

working document by the Drafting Committee was later to be amended in the following manner, first by the Drafting Committee itself:

Slavery is the status of a person over whom another person or group of persons exercises the power attaching to ~~ownership~~ [proprietorship]; or is the ~~possession~~ [holding] of a pledge or who is compelled to serve such other person or group of persons for an undetermined ~~period~~ [time]⁷.

Then by a Sub-Committee:

Slavery is the status of a person over whom another person or group of persons exercises the power attaching to proprietorship; ~~or is the holding of a pledge or who is compelled to serve such other person or group of persons for an undetermined time~~⁸.

So as to read:

Slavery is the status of a person over whom another person or group of persons exercises the powers attached to proprietorship⁹.

However, this definition would be forsaken for one proposed by Viscount Cecil¹⁰ when, on 22 September, the Drafting Committee, having once more considered the issue proposed the following definition:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised¹¹.

Thus, it was through this drafting process that the definition of slavery was established as it is this definition that finds its way, unaltered, into the 1926 Convention to Suppress the Slave Trade and Slavery as Article 1(1):

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

⁷ League of Nations, Slavery: Draft Protocol Text proposed by M.Gohr (with handwritten amendments), LofN Doc. A.VI/S.C.1/5.1926, 9 September 1925; as found in Folder R.67.D.46214 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925.

⁸ League of Nations, Slavery: Draft Protocol Text adopted by Sub-Committee of the VIth Commission on 17th of September 1925 (with handwritten amendments) LofN Doc. A.VI/S.C.1/8.1926 as found in Folder R.67.D.46214 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925.

⁹ League of Nations, Slavery: Draft Protocol Text adopted by Sub-Committee of the VIth Commission on 17th of September 1925 LofN Doc. A.VI/S.C.1/8.1926 as found in Folder R.67.D.46214 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925.

¹⁰ See League of Nations, Slavery, LofN Doc. A.VI/SC1/ Drafting Committee/14. (this document number having been pencilled out and replaced with A.VI/6.1925), 24 September 1925; as found in Folder R.67.D.46214 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925. where it reads: "Amendments proposed by Lord Cecil to the text of draft Convention adopted by the Drafting Committee of the Sub-Committee of the VIth Commission (Document A.VI/S.C.I/ Drafting Committee 12 (1))".

¹¹ League of Nations, Sixth Committee, Sub-Committee, Drafting Committee Slavery: Synopsis of the Convention (with handwritten amendments so as to be re-entitled Sixth Committee, Slavery: Synopsis of the Convention), LofN Doc. A.VI/S.C.I/ Drafting Committee/12(1) Revised (this document number having been pencilled out and replaced with A.VI/5.1925, 22 September 1925); as found in Folder R.67.D.46214 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925.

The Archives of the League of Nations reveals little in regard to the substance of the provisions of the definition of slavery as it evolved from the British Draft Protocol to the 1925 League of Nations Draft Convention. An unexplained gap emerges as to why the definition presented by Gohr, which was considered and later modified, was subsequently replaced by the provision put forward by Viscount Cecil. Likewise, the very definition put forward by Viscount Cecil is nowhere justified or elaborated upon in the archival material. As such, while the drafting process of the 1925 League of Nations Draft Convention provides limited insights into the manner in which the provisions which are found in the 1926 Convention to Suppress the Slave Trade and Slavery came into existence, they do not assist in our understanding of State appreciation of Article 1. Instead, the value of the *Travaux Préparatoires* must lie not in the discussions of the drafters working within the inter-governmental League of Nations but, ultimately, with the manner in which States reacted to provisions put forward. Thus, it is what follows that gives juridical weight to the *Travaux Préparatoires*.

The definition of ‘slavery’ having been agreed to in the 1925 Draft Convention, it was now left to States to comment. Three States did so: Belgium, Germany, and the Union of South Africa. For Belgium, it considered that the “definition given does not appear to the Belgium Colonial authorities to be strictly accurate. They consider that the fact that any or all of the powers attaching to the right of ownership are exercised over a person does not necessarily mean that that person is a slave”¹². Where Belgium considered the definition too wide, Germany considered the definition too narrow, making plain first that it “is exceptionally difficult to define slavery, inasmuch as the legal conception of civilised States and those of the African natives do not completely coincide”¹³. Germany, then went on to say that the definition is precisely that: “too narrow, since prisoners of war derived from ancient tribal feuds are not bought, and according to the laws of many tribes, may not be sold, although they constitute a very important class of the un-free population”. As a result of this consideration, Germany put forward a proposed amendment to the definition of slavery as presented in Article 1 of the 1925 Draft Convention. While acknowledging the appropriate nature of Article 1 as it stood, that is to say, with regard to the primacy of the element of ownership, it went on to say: “it might be made clearer by adding the words ‘under private law’ after the word ‘exercised’, so that:

Article 1, Section 1 would then read as follows:

‘Slavery is the status of a person over whom any or all of the powers attaching to the right of ownership are exercised, under private law, by some other person or group of persons’¹⁴.

As for South Africa, it made a rather lengthy submission wherein it elaborated on its understanding of the term ‘slavery’:

¹² League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of Belgium, LofN Doc. A.10(a).1926.VI, 22 July 1926, p 1; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery, 1926.VI.B.3.

¹³ League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of Germany, LofN Doc. A.10(a).1926.VI, 22 July 1926, p 3; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery, 1926.VI.B.3.

¹⁴ *Id.*

No exception can be taken to the definition of ‘slavery’ [...] contained in Article 1. That definition puts as the test of slavery the status or condition of a person over whom all or any of the powers attaching to the right of *ownership* are exercised. In other words, a person is a slave if any other person can, by law or enforceable custom, claim such property in him as would be claimed if he were an inanimate object; and thus the natural freedom of will possessed by a person to offer or render his labour or to control the fruits thereof or the consideration therefrom is taken from him. The term also seems to imply a *permanent* status or condition of a person whose natural freedom is taken away, for from the proprietary interest of the other person in the person to whom that status attaches is implied a right of disposal of sale, gift or exchange¹⁵.

Further, in discussing the issue of forced labour (in regard to Article 5 of the 1925 Draft Convention), the Union of South Africa sought to make the distinction between it and slavery: “In the first case it is slavery, because the compeller has a proprietary right in respect of the compelled. In the latter case there is some element of choice or consent on the part of the compelled”¹⁶. Thus, for South Africa, the test of whether or not a person was a slave revolved around ownership.

While the German proposed amendment was not taken on board, nor were its, nor Belgium’s comments considered fundamental enough to change the definition as found in the 1925 Draft Convention; the South African intervention does give scope to one’s understanding of the provisions of what became Article 1(1) of the 1926 Convention to Suppress the Slave Trade and Slavery. In seeking to gain an understanding of the provisions of Article 1, so as to make a larger argument, the submission by the Union of South Africa provides a rewording of the Article, thus, providing a supplementary means of interpreting the term ‘slavery’ as found in the 1926 Convention. It is thus worth reproducing here once again the relevant section of the South African Reply to the request by the Assembly of the League of Nations to comment on the 1925 Draft Convention:

a person is a slave if any other person can, by law or enforceable custom, claim such property in him as would be claimed if he were an inanimate object;

The result of this enslavement as noted in the Reply of the Union of South Africa, as provided by the South African High Commissioner, Jacobus Smit, was that:

the natural freedom of will possessed by a person to offer or render his labour or to control the fruits thereof or the consideration therefrom is taken from him.

Providing further understanding of the parameters of the definition of slavery as put forward in the 1925 Draft and accepted as such in the 1926 Convention, in regard its *ratione temporis* and to the implication to be drawn from the fundamental element of ownership are as follows:

¹⁵ League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of the Union of South Africa, LofN Doc. A.10(a).1926.VI, 22 July 1926, p. 5; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery, 1926.VI.B.3. Emphasis in the original.

¹⁶ League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of the Union of South Africa, LofN Doc. A.10(a).1926.VI, 22 July 1926, p. 5; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery, 1926.VI.B.3. See *supra*. Article 1(1).

The term also seems to imply a *permanent* status or condition of a person whose natural freedom is taken away, for from the proprietary interest of the other person in the person to whom that status attaches is implied a right of disposal of sale, gift or exchange¹⁷.

This then is the added significance of having examined the records of the Preparatory Works leading to the creation of the definition of slavery as established by the 1926 Convention to Suppress the Slave Trade and Slavery.

Contemporary Understanding of Slavery in Light of the *Travaux Préparatoires*

Having developed the *Travaux Préparatoires* and its relevance with regard to the definition of slavery, a firm foundation has been created to examine contemporary scholarship in regard to 'slavery'. Consideration turns to the most authoritative pronouncement on slavery developed thus far during the Twenty-First century, the United Nations Sub-Commission of Human Rights' Working Paper prepared by Professor David Weissbrodt and Anti-Slavery International entitled *Contemporary Forms of Slavery: Update review of the implementation of and follow-up to the conventions on slavery*. This May 2000 study requested by the United Nations Working Group on Contemporary Forms of Slavery sought the preparation of "a comprehensive review of existing treaty and customary law covering all the traditional and contemporary slavery-related practices and relevant monitoring mechanisms" and was meant to provide an update of the previous studies by members of the UN Sub-Committee, the 1966 Awad and the 1984 Whitaker Reports¹⁸.

In considering the definition of slavery, the Weissbrodt and Anti-Slavery International Report seeks to expand the definition of 'slavery' so as to consider it as a *concept*, thereby creating an umbrella under which 'various forms of slavery' can seek shelter. The Report states:

In order for the United Nations or any other international body to carry out a mandate concerned with slavery effectively, it is necessary to develop an international consensus on what practices are included within the concept of slavery¹⁹.

It then points to the findings of the Temporary Slavery Commission in 1924 which included in its Report discussions of "Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery, as examples:

¹⁷ League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of the Union of South Africa, LofN Doc. A.10(a).1926.VI, 22 July 1926, p. 5; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery.1926, 1-7. Emphasis in the original.

Note that beyond State pronouncements on the 1925 Draft Convention, the legal Committee of the Assembly of the League of Nations, having taken into consideration the work of the committees drafting the 1926 Convention, considered the obligations flowing from having established a definition of slavery and provided its own interpretation of the term 'slavery': "the maintenance by a private individual of rights over another person of the same nature as the rights which an individual can have over things". See *id.*

¹⁸ United Nations Sub-Commission on the Promotion and Protection of Human Right, *Contemporary Forms of Slavery: Updated review of the implementation of and follow-up to the conventions on slavery*, Working Paper prepared by David Weissbrodt and Anti-Slavery International, UN Doc. E/CN.4/Sub.2/2000/3, 26 May 2000, p. 3.

¹⁹ *Id.*, p. 4.

1. (c) Slavery or serfdom (domestic or predial);
2. Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery, as for example:
 - (a) Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs;
 - (b) Adoption of children, of either sex, with a view to their virtual enslavement, or the ultimate disposal of their persons;
 - (c) All forms of pledging or reducing to servitude of persons for debt or other reason ... [and]
4. System of compulsory labour, public or private, paid or unpaid.

The Weissbrodt and Anti-Slavery International Report then goes on to say:

By referring to “any or all of the powers of ownership” in its definition of slavery, and setting forth as its stated purpose the “abolition of slavery in all its forms” the Slavery Convention covered not only domestic slavery but also the other forms of slavery listed in the Report of the Temporary Slavery Commission²⁰.

This argument, however must be rejected. It is clear that States, in negotiating the content of the 1926 Convention, did *not* intend to widen the scope of ‘slavery’ by subsuming within it other items which went beyond the “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Likewise, having considered the *Travaux Préparatoires*, it is factually inaccurate to say that “the Slavery Convention covered not only domestic slavery but also the other forms of slavery listed in the Report of the Temporary Slavery Commission”. In fact, the Drafting Committee and States which made comments did not accept this possibility, instead maintaining the requirement of ownership as being fundamental to slavery.

While the Preparatory Works do not explain what is meant by “any or all of the powers of ownership”, they do go into detail with regard to what is meant by “abolition of slavery in all its forms”. This phrase is part of Article 2(b) of 1926 Convention which sets out the obligation flowing from the definitions in Article 1; it requires that “High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps: [...] (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”. As originally proposed by Great Britain in its 1925 Draft Protocol, a distinction was made between slavery and “domestic and other slavery”²¹. As Viscount Cecil of Chelwood noted in presenting the 1925 British Draft

²⁰ *Id.*, p. 5. Emphasis in the original.

²¹ Article 2(b) of the 1925 British Draft Protocol reads:

Provide for the eventual emancipation of all slaves in their respective territories, and also for as speedy an elimination of domestic and other slavery as social conditions will allow.

Protocol, the British Government “recognized that, with regard to domestic slavery, a very difficult question arose, and therefore [as opposed to slavery] all that they could ask States to agree to was the desirability of getting rid of domestic slavery, and to do so as and when the opportunity offered”²².

The provisions of what would become Article 2(b) of the 1926 Convention as originally presented by Great Britain were amended by the League of Nations in their 1925 Draft Convention to read: “To bring about progressively and as soon as possible the disappearance of slavery in every form, *notably in the case of domestic slavery and similar conditions*”²³. In his Report to the Assembly of the League of Nations on the 1925 League of Nations Draft Convention, Viscount Cecil considered the notion of ‘domestic slavery and similar conditions’ which he noted was meant to “include all forms of ‘debt slavery’, the enslaving of persons disguised as the adoption of children, and the acquisition of girls by purchase disguised as payment of dowry, etc. as mention in the report of the Temporary Slavery Commission”²⁴. Viscount Cecil noted in 1925 that such similar conditions “approach very close to and are, in fact a form of slavery, but are not usually included in the simple term slavery. With respect to all those, we [re: the Drafting Committee] ask for their abolition, we ask all the nations to agree to their abolition, which will be carried out, as all reform must necessarily be carried out, as progressively as may be possible, and as soon as possible”²⁵.

Viscount Cecil, did not however, report that the Belgium Delegate had proposed that the provisions of Article 2(b) remove the distinction between ‘slavery’ and ‘domestic slavery’ so that it would simply read: “to bring about progressively the disappearance of slavery in every form”²⁶. In fact, in a rather contradictory manner, Viscount Cecil himself opposed this change, noting that he “would be sorry to see this alteration; he thought the terms ‘domestic slavery and similar conditions’ were usually understood as distinct from slavery, though they might possibly be considered as a form of slavery. M. Gohr, Chairman of the Temporary Slavery Commission had also thought that it was desirable to have some reference to domestic slavery in this article”²⁷. As a result of this intervention, the Belgium Delegate withdrew his proposal. Thus, at the end of the drafting process in 1925, it was rather unclear as to whether there was a distinction to be made between ‘slavery’ proper

League of Nations, Journal of the Sixth Assembly of the League of Nations, Geneva 1925, No. 3, 9 September 1925, p. 25.

²² League of Nations, Slavery: Draft Resolution and Protocol proposed by the British Government (*continuation*): Statement by Viscount Cecil, Official Journal, Record of the Sixth Assembly, Meetings of the Committees, Minutes of the Sixth Committee (Political Questions), Special Supplement No. 39, 14 September 1925, p. 14.

²³ League of Nations, Annex: Draft Convention, League of Nations Official Journal (Special Supplement 33) Records of the Sixth Assembly: Text of Debates, 26 September 1925, p. 439. Emphasis added.

²⁴ *Id.*

²⁵ League of Nations, Question of Slavery: Report of the Sixth Committee; Resolution, League of Nations Official Journal (Special Supplement 33) Records of the Sixth Assembly: Text of Debates, Nineteenth Plenary Meeting, 26 September 1925, p. 156.

²⁶ League of Nations, Slavery: Examination of the Report of the Sub-Committee and of the Draft Convention, Official Journal, Special Supplement No. 39, Record of the Sixth Assembly, Meetings of the Committees, Minutes of the Sixth Committee (Political Questions), 24 September 1925, p. 28.

²⁷ *Id.*

and ‘domestic slavery and similar conditions’. Yet, this was not the last word with regard to the phrase ‘domestic slavery and similar conditions’, as it would once more come under scrutiny during the drafting process of the 1926 Convention where it would, ultimately, be omitted.

In providing comments on the 1925 League of Nations Draft Convention, the Union of South Africa observed that the proposed “Convention as drafted goes somewhat further than seems necessary for the abolition of slavery and the slave trade”²⁸. The argument put forward revolved around the final clause of sub-paragraph (b): “notably in the case of domestic slavery and similar conditions”, which the Union considered as an attempt to extend the definition of slavery as spelled out in Article 1 of the Draft Convention. It pointed out that in the comments provided by the Sixth Committee that ‘domestic slavery and similar conditions’ is to be understood as “‘debt slavery’, the enslaving of persons disguised as the adoption of children, and the acquisition of girls by purchase disguised as payment of dowry”; and went on to raise the following legal issue which speaks to the element of ownership being central to the definition of slavery:

Now either such persons are *sui juris* [re: a separate category] or they are not. If they are *sui juris*, they can only become subject to domestic slavery or similar conditions by a voluntary act, and the essential element of slavery is absent. If they are not *sui juris*, they can only be subject to domestic slavery or similar conditions by the acts of those who by law are their guardians, and it is no more than a form of paternal power. If, further, they have become domestic slaves or persons in similar conditions in the manner indicated, that can only be because others have acquired a right of property in them, and they are therefore slaves as defined in Article 1.

The South African observation continued:

There seems no reason, then, to differentiate them from the person in a condition of slavery defined in that article. If, on the other hand, no right of property in them exists, the scope of the draft Convention seems to be extended to compel the signatories to undertake to interfere in social customs. It would seem to be desirable that these social customs which signatories are to undertake to interfere with should be more clearly defined.

In concluding, the Union of South Africa requested that “the provisions of Article 2(b) [...] should be deleted or considerably modified or clarified”²⁹.

Germany for its part, proposed that this distinction between ‘slavery’ and ‘domestic slavery’ should be done away with, and that instead sub-paragraph (b) should simply read: “to abolish slavery in all its forms”³⁰. Its basis for making this proposal was that it appeared that States were backtracking on what had been agreed to at Saint Germain-en-Laye in 1919, which Germany noted: “was concluded seven years ago and whose signatories undertake to assure the complete suppression of slavery in all its forms, [which]

²⁸ League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of the Union of South Africa, LofN Doc. A.10(a).1926.VI, 22 July 1926, p. 5; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery.1926, VI. B. 3.

²⁹ *Id.*

³⁰ League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of Germany, LofN Doc. A.10(a).1926.VI, 22 July 1926, p. 4; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery.1926, VI. B. 3.

seemingly goes further than the present proposal”³¹. Germany then proposed a new sub-paragraph, saying that a number of “conditions resembling slavery” existed and as such the notion of servitude could be addressed by accepting the following amendment:

To endeavour, as far as possible, to bring about the disappearance of conditions of servitude resembling slavery, *e.g.* debt slavery, sham adoption, childhood marriage, traffic in women, etc³².

This proposal, like the one made by the Delegate of Haiti (“To endeavour to bring about as soon as possible the disappearance of all voluntary or involuntary subjections”)³³ was not taken up by the Sixth Committee. Thus, there was an unwillingness to include mention of servitude in the Convention. Yet, the provisions of sub-paragraph (b) were in fact modified as Viscount Cecil, for his part, reported to the Assembly of the League of Nations in 1926:

A slight change has been made in the drafting of sub-paragraph (b) of this article, the words “notably in the case of domestic slavery and similar conditions” being now omitted. This modification was made because it was believed that such conditions came within the definition of slavery contained in the first article and that no further prohibition of them in express terms was necessary³⁴.

Viscount Cecil then went on to enumerate these types of domestic slavery and similar conditions as “all those conditions mentioned by the Temporary Slavery Commission and to which I referred to last year, *i.e.*, “debt slavery”, the enslaving of persons disguised as the adoption of children, and the acquisition of girls by purchase disguised as payment of dowry, etc.” Yet Viscount Cecil here is not quoting the Temporary Slavery Commission verbatim, instead he has re-termed the items so as to include elements of ownership within them. So instead of quoting from the Temporary Slavery Commission Report of 1924 as the Weissbrodt and Anti-Slavery International Report does, and pointing to all “forms of pledging or reducing to servitude of persons for debt or other reason”, Viscount Cecil speaks of “debt slavery”; instead of using the language of the Temporary Slavery Commission: “considering conditions analogous to slavery, as for example:” the adoption “of children, [...] with a view to their virtual enslavement” or the acquisition “of girls by purchase disguised as payment of dowry”, the Cecil Report speaks of the “enslaving of persons disguised as adoption of children and the acquisition of girls by purchase disguised as payment of dowry”. Finally, in line with the observations made by the Union of South Africa and Germany, Viscount Cecil did make plain that the requirement of ownership had to be present:

Even if, as is possible, these last practices do not come under the definition of slavery as it is given in Article 1, the [Temporary Slavery] Commission is unanimously of the opinion that they must be combated. In a more general way, it interprets Article 2 as tending to bring about the disappearance from written legislation or from the custom of the country of everything which admits the maintenance by a

³¹ *Id.*

³² *Id.*

³³ League of Nations, Draft Convention on Slavery and Proposed Amendments, LofN Doc. A.VI/S.C.1/1, 10 September 1926; as found in Folder R.77.D.46781 entitled Draft Convention on Slavery: Discussion at the 7th Assembly; 1926.

³⁴ League of Nations, Slavery Convention: Report presented to the Assembly by the Sixth Committee, LofN Doc. A.104.1926.VI, as found in League of Nations, Publications of the League of Nations, VI.B.Slavery.1926, VI. B. 5, 24 September 1926, p. 1.

private individual of rights over another person of the same nature as the rights which an individual can have over things³⁵.

In other words, Viscount Cecil accepted that ‘slavery in all its forms’ required the demonstration of the power of ownership over an individual as established by the definition of slavery in Article 1 and conceded as much in his 1926 Report to the Assembly. As the German proposed amendment to Article 2 pointed out, such institutions as the Temporary Slavery Commission had highlighted as being ‘domestic slavery’ were in fact “conditions of servitude resembling slavery”, not slavery³⁶. This dichotomy between slavery and servitude was not addressed by the 1926 Convention; instead *servitude* – that wider umbrella of forms of ‘slavery’ put forward by Weissbrodt and Anti-Slavery International Report – was only legally suppressed with the coming into force of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Or put differently, had serfdom, forced marriage, child adoption, or debt bondage been subsumed within the definition of Article 1 of the 1926 Convention, *per se*, there would not have been a need to establish the 1956 Convention. While the 1956 Convention acknowledges that these instances of servitude could metamorphosis into slavery if the power of ownership over an individual was present, it sought to band servitudinal practices “whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926”.

Further issue should be taken with the presentation by the Weissbrodt and Anti-Slavery International Report of the definition of slavery. Turing once more to the argument that:

By referring to “any or all of the powers of ownership” in its definition of slavery, and setting forth as its stated purpose the “abolition of slavery in all its forms” the Slavery Convention covered not only domestic slavery but also the other forms of slavery listed in the Report of the Temporary Slavery Commission³⁷;

The Report provides, as means of clarifying Article 2(b) of the 1926 Convention, the following quotation of the “report to the Sixth Committee of the League of Nations Assembly in 1926” in a footnote:

that the words “notably in the case of domestic slavery and similar conditions” were being omitted on the grounds that “such conditions come within the definition of slavery contained in the first article and that no further prohibition of them in express terms was necessary. This provision applies not only to domestic slavery but to all those conditions mentioned by the Temporary Slavery Commission ... i.e. debt slavery, the enslaving of persons disguised as adoption of children and the acquisition of girls by purchase disguised as payment of dowry”³⁸.

The Weissbrodt and Anti-Slavery International Report goes no further, yet the passage, as noted earlier, continues by stating that:

³⁵ *Id.*, pp. 1-2.

³⁶ *Id.*

³⁷ *Id.*, p. 24, f.n. 14.

³⁸ *Id.*, p. 5. Emphasis in the original.

Even if, as is possible, these last practices do not come under the definition of slavery as it is given in Article 1, the Commission is unanimously of the opinion that they must be combated.

In a more general way, it interprets Article 2 as tending to bring about the disappearance from written legislation or from the custom of the country of everything which admits the maintenance by a private individual of rights over another person of the same nature as the rights which an individual can have over things³⁹.

Thus the omission in the Weissbrodt and Anti-Slavery International Report fails to point to the fact that 1) it was possible that domestic slavery and similar conditions” did not come under the definition of slavery; 2) that this was a *voeu* or wish of the Temporary Slavery Commission, not a binding obligation on States or the express wish of States commenting on the provision; and, 3) that the obligation to suppress slavery was in regard to “everything which admits the maintenance by a private individual of rights over another person of the same nature as the rights which an individual can have over things”: that is, as defined in Article 1(2) but nothing more, or less, than that.

Thus far, this section has considered the argument put forward in the Weissbrodt and Anti-Slavery International Report that “the Slavery Convention covered not only domestic slavery but also the other forms of slavery listed in the Report of the Temporary Slavery Commission”, and sought to demonstrate how the Preparatory Works of the 1926 Convention fail to substantiate this claim. The *Travaux Préparatoires*, as noted earlier are considered by the 1969 Geneva Convention on the Law of Treaties as a supplementary means of interpretation. To consider the general rules of treaty interpretation one must turn to Article 31 of the Vienna Convention, which notes that a “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. These four elements – good faith, ordinary meaning, in context, and in light of the object and purpose of the treaty – are the DNA of treaty interpretation. Leaving aside good faith, which turns to the motivation of a party interpreting a treaty; the ordinary meaning of slavery as defined in the 1926 League of Nations Convention on the Suppression of the Slave Trade and Slavery establishes a status turning on ownership of one by another (“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”). The drafting process of Article 1 by the League of Nations in 1925 makes this clear, as it sought to get the element of ownership into an agreeable format for consideration by States. Further, the section of the *Travaux Préparatoires* touching on Article 2(b) makes plain that there was agreement amongst States that ‘slavery’ did not include “conditions of servitude resembling slavery”, but focused on this notion of slavery as ownership. Though Viscount Cecil sought to include servitudinal items in the provisions of Article 1 he made plain that he was doing so where they had slipped into ‘slavery’.

With regard to the element of ‘in context’ in treaty interpretation, an understanding of Article must be considered in reference to the analysis which has thus far been provided in

³⁹ The Weissbrodt and Anti-Slavery International Report quotes this passage from the “Report of the Temporary Slavery Commission to the Council of the League of Nations (A.17.1924.VI.B), 1924, quoted in *The Suppression of slavery: Memorandum submitted by the Secretary General to the Ad Hoc Committee on Slavery, 1951, para. 22*”. see p.24, f.n. 13. Note that I have here retained the format as it appears in the source quoted by Weissbrodt and Anti-Slavery International.

regard to Article 2(b) of the 1926 Convention. Beyond this Article 31 of the Vienna Convention on the Law of Treaties goes on to say that in interpreting one “shall take into account”:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

Since the coming into force of the 1926 Convention, there has been no subsequent agreement, practice, or relevant rules of international law which might assist in giving context to the definition of slavery as noted in Article 1(1) of the League of Nations Convention. For its part, the Weissbrodt and Anti-Slavery International Report notes that the “United Nations has made various restatements of the definition but in the international legal context the definition has not been altered substantially since 1926”. For my part, I would remove the modifier ‘substantially’ and say that the definition has not been altered since 1926. Finally, with regard to considering ‘context’ in treaty interpretation, one could take into consideration “A special meaning shall be given to a term if it is established that the parties so intended”. Here it is clear that the parties to the 1926 Convention on the Suppression of the Slave Trade and Slavery did not make their intentions known that there was a ‘special meaning’ to be attached to the term ‘slavery’ beyond that accepted as Article 1(1). The work of the Temporary Slavery Commission two years before the conclusion of the 1926 Convention is irrelevant both *ratione temporis* but more importantly *ratione personae* to the interpretation of the Convention. Thus the contextual element of treaty interpretation as noted in the Vienna Convention precludes the fundamental approach taken in the Weissbrodt and Anti-Slavery International Report; that is: States, having defined a term in law, have agreed, though not expressly in the provisions of the treaty, to a tacit expansion of that definition on the basis of a study conducted two-years previous to the conclusion of the 1926 Convention.

The final element of treaty interpretation is that “treaty shall be interpreted [...] in the light of its object and purpose”. The Weissbrodt and Anti-Slavery International Report claims that the “stated purpose” of the 1926 Convention is the “abolition of slavery in all its forms”, yet the Convention sets a lower ambition, in that it speaks in the Preamble not of the abolition of slavery and the slave trade but of its *suppression*:

Whereas the signatories of the Convention of Saint-Germain-en-Laye of 1919, to revise the General Act of Berlin of 1885, and the General Act and Declaration of Brussels of 1890, affirmed their *intention of securing the complete suppression of slavery in all its forms and of the slave trade by land and sea*.

Further, with regard to the slave trade, the obligations which Parties have undertaken is to “prevent and suppress”, not abolish; while with regard to slavery the Convention reads: “to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”. Despite this, the issue of the object and purpose of 1926 Convention can not be taken in isolation and must form the alchemy of treaty interpretation by also mixing with

the three other elements of Article 31(1) of the 1969 Vienna Convention to reflect both the States' intention in drafting the instrument and any evolution which has transpired since the mid-1920s that might modify the stated intension of the parties to define slavery with regard to ownership as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". This, to my knowledge, has not taken place.

Conclusion

By developing and considering the *Travaux Préparatoires* of the 1926 Convention on the Suppression of the Slave Trade and Slavery, this paper establishes the a legal of what 'slavery' means in international law. In so doing, it has provided the first building block in seeking to hold a State or an individual accountable for enslavement on the international plane. This is of vital importance as the issue of enslavement has now been established as an international crime for which individuals may stand accused before the International Criminal Court. The definition of slavery as noted in Article 1(1) of the 1926 Convention as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" remains the established definition in law. The Preparatory Works of the Convention, both in the manner in which the Drafting Committee sought to define slavery in 1925, and with reference to the comments made by the Representatives of Germany, Union of South Africa, along with Viscount Cecil of Chelwood, demonstrates that the issue of ownership is the *sine qua non* of the definition of slavery in law. While the definition of slavery in law has been shown to be a narrow one, it is one which is, for instance commensurate with the finding of the European Court of Human Rights when it considered for the first time in 2005 a true case of severe exploitation and determined that it amounted to servitude because the element of ownership was not part of the equation⁴⁰. Yet, this is what 'slavery' means in law. That is not to say that forms of servitude, be it forced or bonded labour or serfdom, can not be considered slavery – if issues of ownership can be demonstrated; or be used to hold States responsible for human rights violations. It does however mean that such violation of international law would be on the basis of violations of the norm of servitude and not slavery and, for instance, would not entail individual criminal responsibility before the International Criminal Court. If anything, what this paper has sought to show is that the term 'slavery' has a very specific connotation in international law; the fact that attempts have been made to expand its ambit must be considered as falling beyond the express wishes and dictates of States, which are, at the end of the day, the entities which determine, interpret and apply international law. We may not like it, but there it is. This Paper presents the parameters within which advocates must work, if they wish to combat slavery (as opposed to servitude) using the tools available to them by virtue of in international law.

⁴⁰ See *Siliadin v France* (Application 73316/01) 26 July 2005.