The Status of Transatlantic Chattel Slavery in International Law After the 1815 Vienna Declaration

Michel Erpelding*

Introductory Remarks

A classic definition of the transatlantic slave trade describes this activity as 'a business of moving human chattels from a land where prisoners of war were slaves, to a land where slaves were *res*'.[1] While this definition seems overly restrictive with regard to the wide range of activities prohibited under 19th century international law, its insistence on the status of slaves as chattels is striking. Historians of slavery have indeed identified this status as a distinctive element of the form of slavery practiced by Western nations in their overseas possessions, notably in the Atlantic World, from the 16th century to the abolition of slavery in Brazil in 1888. This practice stood in stark contrast to the practice within Western European countries, where ownership over human beings had all but disappeared by the beginning of the transatlantic slave trade in the 16th century and where the principle of 'free soil' would be subject to reaffirmation even at the height of that trade in the 18th century.[2] International law did not contribute to the growing tensions between metropolitan and overseas practice. Quite to the contrary: during several centuries, it served as a tool that played a crucial role in supporting transatlantic slavery and the slave trade, either by organizing the supply and transfer of African captives to the Americas,[3] or by providing effective guarantees for the international protection of the rights of slave owners and the repression of slave revolts.[4]

With this context in mind, the 'Déclaration des Puissances sur l'abolition de la traite des Nègres' signed by all major European powers at the Congress of Vienna on 8 February 1815 (hereafter 'the 1815 Vienna Declaration')[5] was unquestionably a watershed in international law, at least from a Western perspective. Breaking with centuries of prior practice, it proclaimed the 'universal and definitive abolition' of the trade in Africans as slaves as the common binding goal of all 'civilised nations'. Some authors would later interpret the 1815 Vienna Declaration as heralding the emergence of an international public order at whose core lay the universal prohibition of slavery. In his 1934 *Précis de droit des gens*, the French publicist Georges Scelle (1878–1961), who had written his doctoral dissertation on the *Asiento*

* *Docteur en droit public*, Université Paris 1 Panthéon-Sorbonne, currently Scientific Guest at the Max Planck Institute Luxembourg for Procedural Law, michel.erpelding@alumni.mpi.lu.

[1] H. H. Wilson, 'Some principal aspects of British efforts to crush the African slave trade, 1807–1929', 44 *AJIL* (1950) 505–506.

[2] S. Drescher, *Abolition: A History of Slavery and Antislavery* (CUP, 2007) 22, 91–114.

[3] These treaties could take the form of a monopoly granted by one nation to another, as was famously the case of the Spanish *Asiento* treaties. See, e.g.: Tratado del asiento de negros (Great Britain, Spain), signed at Madrid on 26 March 1713, 2 Coll. Calvo, 78–101. They could also provide for a 'free trade in slaves': see, e.g., Treaty of Amity, Guarantee and Commerce (Portugal, Spain), signed at Pardo on 1st March 1778, 1 Rec. Martens, 709–21.

[4] This was the case of a treaty signed between France and Spain in 1777: Traité définitif de police entre les Cours de France et d'Espagne sur divers points concernant leurs sujets respectifs à Saint-Domingue (France, Spain), signed at Aranjuez on 3 June 1777, 5 Rec. Moreau de Saint-Méry, 771–75.

[5] Déclaration des Puissances sur l'abolition de la traite des Nègres (Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, Sweden-Norway), signed at Vienne on 8 February 1815, 3 BFSP 971.

treaties,[6] asserted that the conjunction of the 1815 Vienna Declaration with the non-recognition of slavery on metropolitan European effectively established such an international public order:

> Henceforth, the institution of slavery was no longer recognized as legal outside the colonial territories in which it survived. This resulted in the following sanctions: treaties favouring slavery had to be considered null and void; the extradition of fugitive or criminal slaves could not be granted; foreign slaves who reached the territory of the metropole had to be considered free; by policing the seas, the signatory Powers had to prevent the trade in, and the transport of, slaves.[7]

While the 1815 Vienna Declaration undoubtedly lies at the basis of the current universal prohibition of slavery (redefined post-1945 as the right of each individual to be free from slavery) and its status as a *jus cogens* norm and an *erga omnes* obligation, it would be an overstatement to argue that it led to the immediate outlawing of all situations created by transatlantic chattel slavery. Georges Scelle himself, despite being one of the firmest proponents of the emergence of an international anti-slavery public order after 1815, conceded that slavery had remained legal for some time in Western colonies overseas (and former colonies that had become independent from their Western metropolis), and had therefore not listed the universal prohibition of slavery itself in his list of consequences of the 1815 Declaration. International practice, as evidenced by treaties between Western states (very often negotiated at the initiative of Great Britain, the main driving force behind international efforts to repress some slavery-related practices while tolerating the persistence of others) and between Western states and non-Western states and independent polities, as well as domestic legislation and domestic and international court decisions, also indicates that the 1815 Vienna Declaration, while outlawing the process that had led to the establishment of transatlantic chattel slavery in the first place, did not lead to the immediate illegality of all situations constituted as a result of this prohibition previously to its announcement.

Analysing the legal consequences of the 1815 Vienna Declaration from a positivist perspective, this paper will examine the object and purpose of that declaration (1), identify the practices outlawed by treaties resulting from the latter (2) and analyse the impact of this practice on the legal status of chattel slavery in the Americas (3).

1. The Object and Purpose of the 1815 Vienna Declaration

a. The universal abolition of the deportation of African captives as slaves as a binding long-term objective

The 1815 Vienna Declaration started by noting that 'the commerce, known by the name of "the Slave Trade," [French original: 'la Traite des Nègres d'Afrique'] [had] been considered, by just and enlightened men of all ages, as repugnant to the principles of humanity and universal morality' and that 'at length the public voice, in all civilized countries, [called] aloud for its prompt suppression'. Alluding then to a nascent state practice, it mentioned that 'several European governments have virtually come to the resolution of putting a stop to it, and that successively all the Powers possessing colonies in different parts of the world [had] acknowledged, either by legislative Acts, or by Treaties, or other formal engagements, the duty

[6] G. Scelle, *La traite négrière aux Indes de Castille: Contrats et traités d'Assiento* (Sirey, 1906).

[7] Translation by the author. French original: 'Désormais, l'institution de l'esclavage n'étant plus reconnue comme légale, hors les territoires coloniaux où elle subsistait, les sanctions suivantes en résultaient : les traités favorisant l'esclavage devaient être considérés comme nuls ; l'extradition des nègres marrons ou des esclaves criminels ne pouvait être accordée ; l'esclave étranger qui mettait le pied sur un territoire métropolitain devait être considéré comme libre ; la police de la mer, par les Puissances signataires, devait empêcher la traite et le transport des esclaves.' G. Scelle, *Précis de droit des gens: Principes et systématique*, vol. 2 (Sirey, 1934) 57.

and necessity of abolishing it'. Recalling the commitment of Britain and France in their peace treaty of May 1814 to 'to induce all the Powers of Christendom to proclaim the universal and definitive Abolition of the Slave Trade', the signatories in turn proclaimed, 'in the name of their Sovereigns, their wish of putting an end to a scourge, which [had] so long desolated Africa, degraded Europe, and afflicted humanity'. Noting that they were unanimous in their accession to the 'principle' laid out by Britain and France in their 1814 peace treaty, they '[declared] in the face of Europe, that, considering the universal Abolition of the Slave Trade as a measure particularly worthy of their attention, conformable to the spirit of the times, and to the generous principles of their august Sovereigns, they [were] animated with the sincere desire of concurring in the most prompt and effectual execution of this measure, by all the means at their disposal; and of acting, in the employment of these means, with all the zeal and perseverance which is due to so great and noble a cause.' However, invoking the necessity of giving 'due regard to the interests, the habits, and even the prejudices of their subjects', they noted that 'the determining the period when this trade is to cease universally, must be a subject of negotiation between the Powers.'

The short-term normative implications of the 1815 Vienna Declaration were thus limited. Far from creating an immediate obligation to renounce the slave trade (let alone slavery itself), its signatories had only agreed to engage in negotiations that would fix a date for the general abolition of that trade. However, by describing the universal abolition of the slave trade as a legal 'principle', they were effectively establishing it as formally binding common goal. Moreover, by proclaiming their commitment 'to the face of Europe', rather than merely declaring it mutually binding only amongst themselves, they endowed it with a characteristic that nowadays constitutes the defining element of *erga omnes* obligations. Finally, by vowing to '[communicate] this Declaration to the knowledge of Europe, and of all civilized countries', the major European powers established a link between the commitment to fight the slave trade and the then emerging distinction of countries into 'civilised' and 'uncivilised' nations.

b. 'Civilisation' as the main rationale of the obligation to put an end to the deportation of African captives

The 1815 Vienna Declaration did not present the eventual abolition of the slave trade as a preliminary step towards the abolition of slavery itself, nor did it address this issue in any way. The Declaration's focus on the slave trade alone appears as a transposition to the international plane of British domestic colonial policies and discourses. In the 1780s, the British abolitionist movement, faced with strong resistance from the colonial lobby against the perspective of abolishing slavery itself, had decided to single out the African slave trade, i.e. the deportation of African captives to the Americas, as the slavery-related practice whose abolition they deemed the most urgent.[8] In order to persuade the British public and legislator of this urgency, the abolitionists did not only confront them with graphic descriptions of the treatment inflicted upon the hundreds of thousands of African men, women and children deported to the Americas to be exploited as slaves. They also insisted on the adverse effects this practice had on the notion of 'civilisation', which had emerged during the second half of the 18th century. This notion conveyed three ideas: first, mankind was engaged on a path of 'civilisation', i. e. a general process of orderly progress; second, some nations were further engaged on this path and therefore 'civilised', whereas others lagged behind and were therefore 'uncivilised'; third, the 'civilised' nations had the moral obligation to 'civilise' the 'uncivilised'

[8] C. L. BROWN, *Moral Capital: Foundations of British Abolitionism* (University of North Carolina Press, 2006) 27–28.

nations of the world.[9] In a major speech before the House of Commons, the leading British abolitionist William Wilberforce (1759–1833) stressed that one of the main adverse effects of the transatlantic slave trade was that it depopulated Africa and encouraged permanent slave-raiding wars there, thus preventing that continent from joining the great movement of 'civilisation'.[10] Abolishing the African slave trade would not only eliminate this obstacle to the general progress of mankind, but also, supposedly, reduce the high mortality rate and improve living conditions amongst slaves in the Antilles.[11] The 1815 Vienna Declaration closely mirrored this approach: its avowed objective was not the abolition of slavery itself, but the termination, by all 'civilised nations', of 'a scourge, which [had] so long desolated Africa, degraded Europe, and afflicted humanity'. This rationale, just as the one used in the hundreds of anti-slave trade treaties adopted by Western powers during the 19th century and the resulting domestic state practice, was decidedly Eurocentric, as it remained entirely oblivious to the legal status of slavery in African societies, and failed to question the compatibility of transatlantic chattel slavery with that status.

2. Practices Outlawed by Treaties Concluded as a Result of the 1815 Vienna Declaration

a. The prohibition of *de jure* enslavement and of the international trade in people as goods

Whereas during the Napoleonic wars Britain had been able to secure only a handful of treaties from other countries that included a general commitment to renouncing the slave trade, the 1815 Vienna Declaration quickly materialized in dozens of treaties comprising a formal prohibition of the slave trade and detailed obligations aimed at ensuring the effectiveness of that prohibition.[12] Most of these treaties did not include a precise definition of the slave trade. For instance, the Anglo–Dutch treaty of 1814 merely stated 'that no Inhabitants of that Country [Guinea, i.e. West Africa] shall be sold or exported as Slaves',[13] whereas the Anglo–Portuguese treaty of 1817 bound its parties to 'ensure that their respective subjects do not engage in the illicit traffic in slaves'.[14] However, it was generally understood that the fight against the slave trade would not question the legality of colonial slavery itself, as long as the slaves subject to this status had not been themselves victims of internationally prohibited acts of slave trading. A minority of treaties went even further in their accommodation of slavery by including only a partial prohibition of the international slave trade: the Anglo–Spanish treaty of 1817 forbade Spanish subjects 'to purchase slaves, or to carry on the slave trade, on any part of the coast of Africa, North to the Equator'.[15] While most other treaties prohibited all form of international slave trading, they sometimes included provisions formally ensuring that the international

[9] Ph. Bénéton, *Histoire de mots: culture et civilisation* (Presses de la Fondation nationale des sciences politiques, 1975) 34–35.

[10] W. Wilberforce, *The Speech of William Wilberforce, Esq., Representative for the County of York, on the Wednesday the 13th of May, 1789, on the Question of the Abolition of the Slave Trade* (Logographic Press, 1789) 47–48.

[11] Ibid., 27–28, 52.

[12] For a detailed list of all anti-slavery treaties concluded between 1810 and 1914 between Western states, see: M. Erpelding, *Le droit international antiesclavagiste des 'nations civilisées' (1815-1945)* (Institut Universitaire Varenne/LGDJ, 2017) Appendix B-1-1.

[13] Convention relative to the Dutch Colonies, Trade with the East and West Indies, etc. (Great Britain, Netherlands), signed at London on 13 August 1814, 2 BFSP 370, art. 8.

[14] Additional Convention for the prevention of the Slave Trade (Great Britain, Portugal), signed at London on 28 July 1817, 4 BFSP 85, art. 1. Editor's translation. The original Portuguese version also mentions the 'commercio illicito de escravos'.

[15] Treaty for the Abolition of the Slave Trade (Great Britain, Spain), signed at Madrid on 23 September 1817, 4 BFSP 33, art. 2.

prohibition of the slave trade did not target acts of slavery that were understood as being of a purely domestic nature. For instance, the Anglo–Venezuelan treaty of 1839 and the Anglo–Ecuadorian treaty of 1841 noted that, 'for want of a proper explanation of the real spirit of the phrase "Traffic in Slaves", [the parties to the treaty in question] do here mutually declare to be understood by such traffic, such only which is carried on in negroes brought from Africa, in order to transport them to other parts of the world for sale', as opposed to purely internal transportation of slaves.[16] In a similar spirit, the Anglo–Portuguese treaty of 1842 defined the slave trade as 'the infamous and piratical practice of transporting the natives of Africa by sea, for the purpose of consigning them to slavery'.[17]

Although the 1815 Vienna Declaration had primarily targeted transatlantic chattel slavery practiced by European states and their former colonies, subsequent state practice immediately extended the aim of fighting slavery-related practices with an international dimension to non-Western nations. Already during the Congress of Vienna itself, participants had shown their intention to extend their own anti-slave trade obligations to the Maghreb states. This eventually resulted in naval expeditions against Tunis, Tripoli and Algiers, followed by treaties under which these states perpetually renounced the enslavement of Christian prisoners of war.[18] Furthermore, in the course of the following decades, Britain and France would sign more than 150 treaties with independent polities in Sub-Saharan Africa. Under these treaties, African polities would commit to participating in the repression of the transatlantic slave trade, and later even of the slave trade organized by local parties.[19]

b. The prohibition of *de facto* enslavement and of the international trade in people treated as if they were goods

From the outset, treaties for the suppression of the transatlantic slave trade included provisions that gave greater credit to the concrete treatment of the Africans found aboard slave ships than on their formal legal status. This was partly due to the abovementioned will of states parties not to question the maintenance of slavery itself within their respective domestic legal orders. For instance, based on a solution already adopted in 1815, a treaty signed in 1842 between Great Britain and Portugal expressly specified that Portuguese subjects travelling to and from Portuguese possessions off the coast of Africa had the right 'to be accompanied […] by slaves who are *bona fide* household servants'. However, these slaves had to be travelling with special passports, clad in European clothes and free of their movements aboard ship, which had to be devoid of any equipment characteristic of a slave ship.[20] Moreover, as slave traders sometimes tried to evade detention by throwing their captives overboard prior to inspection by anti-slave trade patrols, most treaties included so-called 'equipment clauses', under which the mere presence of equipment characteristic of slave ships (e.g. certain types of

[16] Treaty for the Abolition of the Slave Trade (Great Britain, Venezuela), signed at Caracas on 15 March 1839, 27 *BFSP* (1838-1839), 669, art. 1. Treaty for the Abolition of the Traffic in Slaves (Great Britain, Ecuador), signed at Quito on 24 May 1841, 30 *BFSP* (1841-1842), 304, art. 1.

[17] Treaty for the Suppression of the Traffic in Slaves (Grande-Bretagne, Portugal), signed at Lisbon on 3 July 1842, 30 *BFSP* (1841-1842) 527, art. 1.

[18] Declaration of the Bey of Tunis, relative to the Abolition of Christian Slavery (Great Britain,Tunis), signed at Bardo on 17 April 1816, 3 BFSP 513; Declaration of the Bey of Tripoli, relative to the Abolition of Christian Slavery (Great Britain, Tripoli), signed at Tripoli on 29 April 1816, 3 BFSP 515; Declaration of the Dey of Algiers, relative to the Abolition of Christian Slavery (Algiers, Great Britain), signed at Algiers on 28 August 1816, 3 BFSP 517.

[19] For a comprehensive list of these treaties, see Erpelding, op. cit., Appendix B-3-1.

[20] Treaty for the suppression of the slave trade (Great Britain, Portugal), signed at Lisbon on 3 July1842, 30 BFSP 527, art. 5. See also: Treaty for the restriction of the Portuguese Slave Trade and for the annulment of the Convention of Loan of 1809 and Treaty of Alliance of 1810 (Great Britain, Portugal), signed at Vienna on 22 January 1815, 2 BFSP 348.

shackles) would justify the detention of a ship.[21] Based on these treaty provisions, courts deciding on suspected cases of slave trading developed a non-formalistic approach to decide whether Africans transported on European ships were indeed victims of the illegal slave trade. For instance, in the *Uniao* case decided in 1844, the Anglo–Portuguese Mixed Commission at the Cape refused to consider certificates of manumission issued to potential victims of the slave trade, relying instead on a standard of treatment.[22] Another example of this approach was the *Charles-et-Georges* case, which developed between December 1857 and October 1858 and nearly caused France to subject Lisbon to naval bombardment. In this case, a Portuguese court in Mozambique had decided that a ship flying the flag of France (which had abolished slavery in 1848) and sailing under the surveillance of a French official could still be held guilty of engaging in illegal slave trading. The ship had embarked Africans after having them sign contracts of indenture and had been about to deport them to the French colony of La Réunion. After the ship had been towed to Lisbon pending appeal of the judgment before a higher court, emperor Napoleon III, who had condemned the detention of the ship as a slave trader as an insult to an abolitionist nation, sent a French flotilla to the Tagus, thus forcing Portugal to release the ship. However, the French recognized that their practice of recruiting African 'contractual' workers under dubious circumstances was indeed problematic, and consequently renounced it.[23]

3. The Impact of the Prohibition of the Transatlantic Slave Trade and Related Practices on the Legal Status of Chattel Slavery in the Americas

a. The obligation to ensure the effective liberation of victims of the slave trade

The conclusion of anti-slave trade treaties did not only limit or abolish the possibility for states or their nationals to engage in acts of enslavement and slave trading overseas and on the high seas; it also precluded them from exploiting, or even tolerating the exploitation of, victims of the slave trade on their own territory. Treaties for the suppression of the slave trade were also based on the premise that states had the obligation to guarantee the effective freedom of the slaves they had liberated.[24] Almost all instruments for the repression of the slave trade concluded after 1817 included an express provision obliging state parties to guarantee the freedom of any African found on board a condemned slave ship.[25] The relevant provision usually added that liberated slaves were placed at the disposal of the government on whose territory adjudication had taken place, and that the government in question had the right to employ them as servants or 'free' labourers.[26] Recruitment into the armed forces was also an option. However, it was understood that the new vocations of the former slaves must not give rise to treatment characteristic of slavery. As this was often not the case, Britain persuaded

[21] For a comprehensive list of the treaties that included such a clause, see Erpelding, op. cit., Appendix B-1-1.

[22] All files relating to the case can be found in: 29 British Parliamentary Papers: Slave Trade, class A, n° 260, 611.

[23] All files relating to this case can be found in: 49 BFSP 599.

[24] For a more detailed analysis of this question, see: M. Erpelding, 'Evidence Requirements before 19th Century Anti-Slave Trade Jurisdictions and Slavery as a Standard of Treatment' in H. Ruiz Fabri (ed.), *International Law and Litigation: A Look Into Procedure* (Nomos, 2019) 205–232. Online (open access) at: https://doi.org/10.5771/9783845299051-205.

[25] The only exception to this rule was the Anglo-French treaty of 1845: Convention for the Suppression of the Traffic in Slaves (Great-Britain, France), signed at London on 29 May 1845, 33 BFSP 4.

[26] This clause first appeared in art. 7 of the Regulations for the Mixed Commissions annexed to the 1817 Anglo-Portuguese and Anglo–Spanish treaties, as well as in art. 6 of the Anglo–Dutch treaty of 1818. Another example of it can be found in art. 11 of the Anglo–French treaty of 1833, which was later joined by six other countries. Supplementary Convention for the more effectual Suppression of the Traffic in Slaves (Great Britain, France), signed at Paris on 22 March 1833, 20 BFSP 286.

Spain, Portugal, and several Latin American states to agree to regulations fleshing out the meaning of the effective liberation clause. These regulations took two forms. A shorter version, comprising eight articles, obliged its signatories to ensure the 'permanent good treatment' of liberated Africans, as well as their 'full and complete emancipation' (after 1839, this expression was replaced by 'full and complete freedom'), adding that this should be done 'in conformity with the humane intentions of the High Contracting Parties'.[27] A second type of regulations can be found as annexes to the Anglo–Uruguayan treaty of 1839 and the Anglo-Portuguese treaty of 1842.[28] Comprising 33 articles, they organized a transitional regime during which the former slaves were to familiarize themselves with salaried work, based on coercion on the one hand and protection against abuses characteristic of slavery on the other hand.[29]

b. The obligation to return individuals who could not claim to be victims of illegal international trading in people

Conversely, for most of the 19th century, the signatories of the 1815 Vienna Declaration and the ensuing anti-slave trade treaties held the view that they had no right to fight foreign slavery or slavery-related practices that they deemed to be of a purely domestic nature. Already in the 1814 Treaty of Ghent—which was signed at the very moment when the major European powers were drafting the Vienna Declaration and included a provision by which the United States committed itself to joining the fight against the slave trade—Great Britain and the United States had provided for the mutual restitution of 'any Slaves or other private property'.[30] Subsequent practice provides additional proof of the view that Western states did by no means consider that the prohibition of the slave trade automatically entailed the illegality of domestic chattel slavery, both in the Americas and elsewhere. The abovementioned provisions by which some treaties expressly acknowledged the legality of travelling with 'slaves who are *bona fide* household servants' were one such example. Another example can be found in arbitral awards regarding fugitive slaves. As a matter of fact, even after several Western countries had already abolished slavery domestically, several arbitral awards held that fugitive slaves who had not been victims of acts of slave trading that were illegal under international law had to be returned to their foreign owners.[31] The first international treaty formally excluding any restitution of

[27] Titled 'Regulations for the good treatment of liberated negroes', this kind of regulation was introduced by Article 13 and Annexe C of the Anglo-Spanish treaty of1835. Such an Annex C was equally mentioned in Article 12 of the Anglo–Chilean treaty of 1839, in Article 11 of the Anglo-Argentinean treaty of 1839, in Article 12of the Anglo–Bolivian treaty of 1840, and Article 12 of the Anglo–Mexican and Anglo–Ecuadorean treaties of 1841.

[28] Ibid., Annex C: Regulations in respect of the treatment of liberated negroes.

[29] Ibid.

[30] Treaty of peace and amity (Great Britain, United States), signed at Ghent on 24 December 1814, 2 BFSP 357.

[31] In addition to the decisions of the mixed courts established pursuant to several British anti-slave trade treaties, which regularly returned slaves to their owners where no internationally wrongful act of slave trading had occurred, see, most notably, the two widely quoted decisions in the *Enterprize* and *Creole* cases. In these cases, a mixed commission established pursuant to the 1853 Anglo–American Convention for the settlement of outstanding claims held that Britain had not been justified in liberating slaves from American ships that had been sailing from one American port to another but had stranded by accident in the the Bahamas. In the first case, the mixed commission noted that: 'No one can deny that slavery is contrary to the principles of justice and humanity, and can only be established in any country bylaw. At the time of the transaction on which this claim is founded [i. e. in 1834], slavery existed bylaw in several countries, and was not wholly abolished in the British dominions. It could not, then, be contrary to the law of nations, and the Enterprize was as much entitled to protection as though her cargo consisted of any other description of property. The conduct of the [British] authorities at Bermuda [i. e. freeing the slaves] was a violation of the laws of nations, and of those laws of hospitality which should prompt every nation to afford protection and succor to the vessels of a friendly neighbour that may enter their ports in distress.' *Brig 'Enterprize' v. UK*, 23 December 1854, in V. Coussirat-Coustère and P.-M. Eisemann, *Répertoire de la jurisprudence arbitrale internationale* (Martinus Nijhoff 1989) vol. 1, no 1189, 201–202. In the second case, the mixed commission similarly stressed that: 'slavery, however odious and contrary to the principles of justice

fugitive slaves was only concluded in the 1860s, although dozens of others would soon follow until 1914.[32]

Conclusion: The End of Transatlantic Chattel Slavery and the International Prohibition of Purely Domestic Forms of Slavery

The 1815 Vienna Declaration quickly resulted in a widespread state practice that outlawed not only the international trade in Africans considered as chattel under the colonial legislation of Western powers or the domestic legislation of their now independent former colonies, but also other forms of slavery-related practices. These practices, which were subject to express prohibitions as early as the late 1810s, included the enslavement of individuals (including as prisoners of war), the overseas transfer of nominally free individuals treated as if they were slaves, and the exploitation of liberated victims of illegal slave trading under conditions characteristic of those imposed upon *de jure* slaves. In regard of this well-established state practice, countries that had signed the Vienna Declaration and some of the subsequent anti-slave trade treaties but were failing to implement them effectively (e.g. by tolerating that illegal slave trading continued under their flag or by letting plantation owners exploit 'freed' Africans just as if they were slaves) were doubtlessly committing internationally wrongful acts.

By contrast, none of the signatories of the Vienna Declaration and the ensuing anti-slave trade treaties considered that these texts had any adverse effect on slavery practices understood as having a purely domestic dimension. Not only did Western powers maintain the institution of chattel slavery on their territory (or in some of their overseas possessions) for several decades after the adoption of the Vienna Declaration. They also continued to enforce foreign claims for the return of fugitive slaves for additional several decades after they had abolished the institution in their own domestic legal order. It was only after several major Western powers had abolished slavery internally that one witnesses the conclusion of treaties targeting slavery practices without any reference to their international dimension. After abolishing slavery in its own colonies, Great Britain concluded a small number of treaties with non-Western polities that included provisions targeting purely domestic manifestations of slavery.[33] It also conditioned its recognition of Boer Republics of the Transvaal and the Orange Free State to their effective renunciation of slavery and the slave trade.[34] Similarly, in order to have Britain recognize its 'historical rights' over the Congo in 1883, Portugal had to commit to effectively ending slavery in its possessions there.[35] This practice eventually opened the way for the unilateral commitment of all major Western powers to end slavery in Africa pursuant to article 6 of the 1885 Final Act of the Berlin Conference.[36] In light of this general practice,

---

and humanity, may be established by law in any country; and, having been so established, in many countries, it can not be contrary to the law of nations'. *Brig 'Creole' v. UK*, 9 January 1855, ibid., no. 1190, 202–203.

[32] Treaty for the extradition of criminals (United States, Mexico), signed at Mexico on 11 December 1861, 12 United States Statutes at Large 1199–1203.

[33] See, e.g.: Treaty of Peace (Ashanti and Fante chiefs [Ghana], Great Britain), signed at Cape Coast Castle on 27 April 1831, 48 BFSP 887 (prohibition of debt slavery); Convention for the Suppression of the Slave Trade (Egypt, Great Britain), signed at Alexandria on 4 August 1877, 68 BFSP 5 (prohibition of trading slaves from one family to another).

[34] Convention of Peace, Commerce, Slave Trade, etc. (Boers of the Transvaal, Great Britain), signed at Sand River on 17 January 1852, 54 BFSP 1112; Convention for the Recognition of the Orange Free State (Great Britain, Orange Free State), signed at Bloemfontein on 23 February 1854, 15 HCT 850.

[35] Treaty respecting the Rivers Congo and Zambesi, and the Territory on the West Coast of Africa between 8° and 5° 12' of South Latitude (Grande-Bretagne, Portugal), signed at London on 26 February 1884 75 BFSP 476 (not ratified).

[36] Under this provision, the signatory states vowed to 'veiller à la conservation des populations indigènes et à l'amélioration de leurs conditions morales et matérielles d'existence et à concourir à la suppression de l'esclavage et surtout de la traite des noirs'. Acte général de la Conférence africaine (Austria, Belgium, Denmark,

the situation of states that had not yet abolished transatlantic chattel slavery by the 1860s might seem questionable even from the point of view of international law as it was then understood by Western states.

However, the situation of these states, but also of Western states in general, might even appear more contentious if one were to adopt a broader perspective, relying not merely on the colonial laws of the major Western powers, but also systematically taking into account non-Western views on transatlantic chattel slavery. While many African polities did play an active role in the transatlantic slave trade,[37] they also regularly took active measures to stop, or at least restrict, the deportation of African captives overseas.[38] Such negative African attitudes toward transatlantic chattel slavery (as opposed to more traditional forms of slavery not relying on the large-scale deportation of Africans overseas) might cast doubt on the legality of mass deportations resulting in the depopulation of whole regions. The uneasy discussions on chattel slavery before domestic courts in Europe, as well as the recognition by the signatories of the 1815 Vienna Declaration 'that the commerce, known by the name of "the Slave Trade," has been considered, by just and enlightened men of all ages, as repugnant to the principles of humanity and universal morality', might further encourage this interpretation. Under this view, the contrary state practice of European maritime powers (as illustrated by treaties such as the *Asiento* and domestic legislation regarding the organization of colonial chattel slavery and its protection in the metropole) would constitute a regional practice at variance with the universal law of nations. Similarly, the European international anti-slavery rules that slowly emerged after 1815 could then no longer be presented as a major humanitarian turning point in the history of the law of nations, but rather as the beginning of the end of a centuries-long European exception. This would certainly constitute a major break with the classic narrative adopted by both Western publicists (e.g. Oppenheim or Scelle) and historians (e.g. Drescher or Grenouilleau).

Given its far-reaching implications, such a claim, in order to be sustained, would require a much deeper and systematic examination of customary law at various periods and in various locations, both in Africa and beyond. Such a comparative analysis would have to highlight the differences and similarities between transatlantic chattel slavery and the forms of slavery used in other contexts, especially when these forms of slavery also gave rise to the long-distance deportation of foreign captives subjected to racial stereotypes.[39]

Germany, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Spain, Sweden-Norway, Turkey, United States), signed at Berlin on 26 February 1885, in : France, Ministère des Affaires étrangères, *Documents diplomatiques: Affaires du Congo et de l'Afrique occidentale* (Imprimerie Nationale, 1885) 295.

[37] See, e.g., F. Fuglestad, *Slave Traders by Invitation: West Africa's Slave Coast in the Precolonial Era* (OUP, 2018); R. Shumway, *The Fante and the Transatlantic Slave Trade* (University of Rochester Press, 2011).

[38] J. Thornton, *Africa and Africans in the Making of the Atlantic World*, 1400–1680 (CUP, 1992) 110–12; Paul E. Lovejoy, *Transformations in Slavery: A History of Slavery in Africa* (3rd edition, CUP, 2012) 101–102.

[39] One major example of such forms of slavery would be those practiced in regions governed by Islamic rulers in Northern Africa and the Middle East. While the deportations of Sub-Saharan Africans to these regions were arguably less intense than those to overseas Western colonies, and the forms of slavery in usage there allowed for considerable upward social mobility, notably for state slaves, they also gave rise to very harsh forms of plantation slavery, such as the one that resulted in the *Zanj* (Bantu) slave rebellion in 9th century Iraq.