

## **Rough Seas: The Establishment of a Legal Regime to Abolish the International Slave Trade**

Dr. Jean Allain (j.allain@qub.ac.uk)  
School of Law  
Queen's University of Belfast

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1. The Paper I will be presenting today is the first volley of what I expect to be a treatise entitled *Slavery in International Law*. Over the last three years I have immersed myself in historical studies of the various tenets of the rise and fall of the slave trade both occidental and oriental. The task I set myself was rather ambitious – to get a grip on the histories of the European maritime Powers of the sixteenth through the nineteenth centuries, the birth and development the States of the New World, and the interaction between representatives of these countries and the local elite in Africa. In so doing, I had hoped to grasp the fundamentals of the rise and fall of slavery so as to ground my future research of the legal parameters of slavery as it exists today in general international law, the law of the sea, international human rights law, humanitarian law, labour law, refugee law, and international criminal law.

2. Before proceeding to speak about the content of my Paper I wish to pay my respects and to publicly honour those historians who have, over the last thirty years or more, spent their time in archives here in the United Kingdom and throughout the world so as to bring to life the issue of the international slave trade and save it from what George Orwell called the 'memory hole'. I have been throughout my life a keen student of history, having completed my first degree in Canadian history. Though I have moved away from the discipline, what continues to intrigue me is the many varied discussions about historiography and what it means to write 'history'. I have found, and, in many ways, what has led me to focus on slavery in international law, has been the revolution which has transpired within the discipline of History where issues of slavery and the trade are concerned. The rich vein of scholarship which has transpired, the dedication which has manifested itself in, for instance, the compilation of *The Trans-Atlantic Slave Trade: A Database on CD-ROM*, is testimony to what can only be described as the most creative, insightful, and far-reaching, research that has transpired in the discipline of History over the last thirty years.

3. As an outsider, I wish to express my debt of gratitude to those of you who have dedicate your life's work to synthesizing primary research into historical works. You have paved the way for those of us, like me, who wish to take on research in our own disciplines and who must, by necessity, turn to your studies. In my discipline scholarship is based on a melding together of law and fact. The law and its interpretation, however, are only as strong as the underlying facts which we seek to apply them to. If our understanding of the facts does not mirror the situation which has transpired, then our application of the relevant legal norms lacks a proper foundation and ultimately raises questions of scholarship not only in regard to the factual elements of our work, but our overall reputation both with regard to the facts and the law.

4. Being rather suspicious of claims of righteousness attached to dominance, I would never have embarked on a study of slavery had the discourse not left the colonial comforts of, say, W.E.H. Lecky who painted British abolition “as among the three or four perfectly virtuous pages comprised in this history of nations”<sup>1</sup>. It is clear that in the last thirty years; the discourse is much more nuanced, having originally been challenged by Eric Williams’ 1944 work *Capitalism and Slavery*, which for a period of time became the orthodoxy, and its having been displaced, though not completely discredited, where motivations of Great Britain are concerned in its move to suppress the international slave trade.

5. I would like to now turn to my study which is currently under review for publication and is entitled *Nineteenth Century Law of the Sea and the British Abolition of the Atlantic Slave Trade*<sup>2</sup>, and to draw for you the main outline of its contents; having done so, I will then conclude by seeking to bring into focus the parallels between the abolition of the international slave trade and events which transpired at the turn of the nineteenth to the twentieth century: those related to the liberal internationalist movement, and more specifically to the creation of international courts as a means of settling disputes by peaceful means. In short: a parallel between abolitionism and the international peace movements.

6. My study focuses on the seventy-five year struggle by Great Britain to gain international recognition of the outlawing of the slave trade at sea. It brings into sharp relief the divergence of opinion which existed between Great Britain and other so-called ‘civilized nations’; those States of Europe and the Americas that were recognized as forming the nineteenth-century family of nations. As early as 1815, there was an international consensus which existed that recognized the appalling nature of the slave trade. At the Congress of Vienna, the European Powers declared that they

consider the universal abolition of the trade in Negroes to be particularly worthy of their attention, being in conformity with the spirit of the times, and the general principles of our august Sovereigns, who are animated in their sincere desire to work towards the quickest and most effective of measures, by all means at their disposal, and to act, in the use of those means with all zeal and perseverance which is required of such a grand and beautiful cause<sup>3</sup>.

7. Yet, this unanimity in words took three quarters of a century to manifest itself in binding obligations because it came up – if I can use a nautical metaphor – against the rock shoal of an already established legal norm: the Grotian concept of the freedom of the sea. Hugo de Groot (1583-1645) – Grotius – the Dutch advocate and diplomat is seen as the ‘grandfather’ of my discipline. Grotius, who died near the end of the Thirty Years’ War, was the first to bring together the various elements of international law and to

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<sup>1</sup> See Roger Anstey, *The Atlantic Slave Trade and British Abolition 1760-1810*, 1975, p. xx; where he quotes W.E.H. Lecky, *A History of European Morals*, 1884.

<sup>2</sup> The study has been accepted for publication and will appear in the 2006 volume of the *British Yearbook of International Law*.

<sup>3</sup> *Declaration des 8 Cours, relative à l’Abolition Universelle de la Traite des Nègres*, 8 February 1815, *British and Foreign State Papers*, Vol. 3 (1815-1816), 1838, p. 972. The eight Powers at Vienna were: Austria, Britain, France, Prussia, Russia, Portugal, Spain, and Sweden.

include them in one text, his 1625 *De Jure Belli ac Pacis*. This treatise also foreshadowed (*qua* influenced) the settlement of the Thirty Years' War, the Peace of Westphalia (1648), which determined that not only were Princes to be recognized as sovereigns, but that geographic units – States – were to be understood as being holders of territorial sovereignty. Grotius thus laid the foundation for the State system which remains to this day. During Grotius' life time, however, he was probably most well known for having defended the Netherlands' interests against the Iberian States and the Catholic Church in regard to the law of the sea through his 1609 tract: *Mare Liberum*. By means of the Papal Bulls of Donation, the *Inter caetera* of 1493, Portugal and Spain were granted exclusive jurisdiction over the oceans – beyond Europe. The Netherlands, like Great Britain – both Protestant nations – but more importantly nascent maritime nations, rejected the religious edict and the 1494 Treaty of Tordesillas which sought to legitimize it. As a hired gun for the mercantilist Dutch East India Company, Grotius argued that the seas, beyond a three-mile limit of one's shore (re: the infamous 'cannonball rule'), were to be open to all, and thus, by extension, not open to appropriation by any. Interestingly, Grotius intellectual nemesis was not a Spaniard or a Portuguese jurist, but a British one, John Selden (1635 *Mare Clausum*) who advocated a closed-sea position which Great Britain sought to maintain around it and Ireland<sup>4</sup>.

8. Through piratical means, Dutch, French, and British interlopers eventually broke the Iberian monopoly, the freedom of the high seas having been recognized as fundamental principle amongst seafaring States. The only limitation on the total freedom of the high seas which would emerge during the hundred and fifty years between Grotius and the Napoleonic Wars, was that of the right to visit ships during times of war so as to ensure that neutral ships were not aiding the enemy by carrying contraband items and war materiel. Great Britain, having sunk the transport of Napoleon's Expedition Army in Egypt at the 1798 Battle of the Nile (Aboukir), and having defeated a joint French-Spanish fleet at Trafalgar, had established an overwhelming position over the seas by 1805. Thus, it was looked upon with suspicion, especially in the United States<sup>5</sup> and France when Great Britain called for the end to the slave trade and sought to suppress this activity by means of a peace-time right to visit foreign ships.

9. While domestic judgments during the Napoleonic era in Britain justified such visits on natural law grounds; the Admiralty Court, led by Lord Stowell (the former Sir William Scott) would soon move to take a clear positivist approach to international law

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<sup>4</sup> See W.E. Butler, "Grotius and the Law of the Sea", Hedley Bull *et als.* (eds.) *Hugo Grotius and International Relations*, 1990, pp. 209-220.

<sup>5</sup> The United States' response to overtures regarding the right to visit in peace time was visceral, and it had gone to war against Great Britain in part, as a result of having witnessed the belligerent right to visit abused by the impressments of American citizens into the Royal British Navy. The extent to which this issue touched a raw nerve with the United States is made plain by the conversation in the early 1820s between Stratford Canning, the British Ambassador in Washington and John Quincy Adams, the US Secretary of State: "Canning had inquired if he could conceive of a more atrocious evil than the slave trade, to which Adams replied; 'Yes; admitting the right of search by foreign officers of our vessels upon the sea in time of peace; for that would be making slaves of ourselves'"! See Hugh Soulsby, *The Right of Search and the Slave Trade in Anglo-American Relations 1814-1862*, 1933; as found in *The John Hopkins University Studies in Historical and Political Science Collection*, Series 51(2), 1933, pp. 121-295 at p. 18 (in Soulsby's work).

by insisting that only those laws which States had consented to, could bind them, and that no higher – spiritual – order governed inter-State relations. The 1817 *Le Louis* case, which related to a French ship which was returning from Africa to Martinique when the Royal Navy attempted to board it on suspicion of being involved in the slave trade; but which resisted, resulting in the death of twelve British and three French sailors, is pivotal. The ship was captured by the British and brought to Sierra Leone where it was adjudged as prize for having been outfitted for the slave trade. In an appellat judgment of the High Court of Admiralty, Lord Stowell considered whether there existed, in fact, a right to visit foreign ships in times of peace, and concluded that international law did not prescribe such a right. Lord Stowell, then proceeded to provide the government with advice:

To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment; to force the way to the liberation of Africa by trampling on the independence of other states in Europe; in short, to procure an eminent good by means that are unlawful; is as little consonant to private morality as to public justice. Obtain the concurrence of other nations, if you can, by application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man. But a nation is not justified in assuming rights that do not belong to her merely because she means to apply them to a laudable purpose; nor in setting out upon a moral crusade of converting other nations by acts of unlawful force. Nor is it to be argued, that because other nations approve the ultimate purpose, they must therefore submit to every measure which any one state or its subjects may inconsiderately adopt for its attainment<sup>6</sup>.

10. Fearing that domestic courts would not accept a right to visit during peacetime to suppress the slave trade, Great Britain had, at the Congress of Vienna, attempted – and failed – to gain an international treaty allowing for the right to visit to suppress the slave trade. Great Britain would continue during the era of the Concert of Europe to promote the idea of a universal instrument suppressing the slave trade but to no avail, the most it gained from the recalcitrant Powers was the following ‘Resolution’, made in the name of the Powers’ respective Sovereigns at the 1822 Congress of Verona:

That they invariably persisted in their principles and sentiments which these Sovereigns manifested in their Declaration of 8 February 1815 – That they have never ceased, and will never cease to consider the commerce in Negroes – “a scourge which has for a long time desolated Africa, degraded Europe, and afflicted humanity”, and that they are ready to contribute to everything which could assure and accelerate the complete and definite abolition of this commerce.<sup>7</sup>

Having been unsuccessful at the international level in gaining agreement, Great Britain turned, for tactical reasons to the establishment of a bilateral web of treaties which sought to achieve in a piecemeal manner what it had failed to achieve in one fell swoop: establish a right of visit to suppress the slave trade. This change of tactics was reinforced at the operational level in the 1844 British instructions to its naval officers:

The Slave Trade has been denounced by all the civilized world as repugnant to every principle of justice and humanity. You are, however, to bear in mind, that Great Britain claims no rights whatever

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<sup>6</sup> *Le Louis* [1817] 2 *Dodson’s Admiralty Reports* 210, pp. 258-259.

<sup>7</sup> *Resolution relatives à l’Abolition de la Traite des Nègres*, 28 November 1822, *British and Foreign State Papers*, Vol. 10 (1822-1823), 1828, pp. 109-110. Note that unless otherwise indicated, henceforth direct quotation from French language sources have been translated by the author.

with respect to foreign ships engaged in that traffic, excepting such as the Law of Nations warrants, or as she possesses by virtue of special Treaties and Conventions with particular States<sup>8</sup>.

11. Yet the building of such a bilateral network of treaties would prove to be ineffective, as long as any one maritime power remained outside the system. As noted abolitionist, the parliamentarian Tomas Buxton, would point out in 1837: “it will avail us little that ninety-nine doors are closed, if one remains open. To that outlet the whole slave trade of Africa will rush”<sup>9</sup>. For the slave trade to be truly abolished required that all maritime States join the British system, as slave traders used false flags and papers to avoid visit and capture. The following vivid example of a slave ship ‘acquiring’ a new nationality at sea, attests to this:

During the chase the captain of the *La Fortunée* had been standing on the bow of his ship with two tin boxes in his hand. As soon as the man-of-war had shown the Union Jack, the captain had dropped one of these boxes into the sea. The ship was captured and the remaining box contained only French papers. [...] Of course, it was a matter of convenience to assume that the other tin box had contained Dutch papers, but the English judges were reluctant to consider the *La Fortunée* as French and to send her to a French court at Gorée or in Senegal. The Dutch judge protested against the handling of the case, but in vain<sup>10</sup>.

Having been unable to forge a consensus to establish a universal treaty outlawing the slave trade during the Concert of Europe era, Great Britain would ultimately enter into treaties with thirty-one nineteenth century States so as to suppress the slave trade at sea<sup>11</sup>.

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<sup>8</sup> Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, *Guidance of Her Majesty’s Naval Officers Employed in the Suppression of the Slave Trade*, 1844, p. 1.

<sup>9</sup> See William Law Mathieson, *Great Britain and the Slave Trade (1839-1865)*, 1929, pp. 38-39.

<sup>10</sup> See Pieter Emmer, *The Dutch in the Atlantic Economy, 1580-1880: Trade, Slavery and Emancipation*, 1998, p. 182.

<sup>11</sup> These thirty-one States included, by chronological order of the signing of the first agreement with Great Britain: Portugal, Denmark, France, Spain, Netherlands, Sweden, Buenos Aires, Colombia, Brazil, Mexico, Confederation of Peru, Bolivia, Hanseatic Cities, Tuscany, the two Sicilies, Chile, Venezuela, Uruguay, Haiti, Texas, Austria, Prussia, Russia, The United States of America, The Kings and Chiefs of Cape Mount (Africa), Equator, Muscat, Arabs of the Gulf, New Granada, Zanzibar, Egypt. See Robert Phillimore, *Commentaries upon International Law*, 1879, pp. 420-421.

This does not include agreements with African leaders, who were not considered ‘civilized nations’. Treaties were concluded by Great Britain with leaders from the following regions of Africa up to the 1889-1890 Brussels Conference: *Central Africa*: Gando, Sokoto; *East Africa*: Brava (Somalia), Comoro, Eesa Somal, Habr-Awal, Habr-Gerhajis, Habr-Toljaala, Mohilla, Soomalees (sic), Tajowra, Warsangali, Zaila; but primarily from *West Africa*:

Abbeokuta, Abo-den-Arfo, Aboh, Acassa, Adaffie, Adinnar Cooma, Afflowhoo, Aghwey, Angiana, Badagry, Baddiboo, Bagroo River, Batanga, Bereira, Biafra, Bimbria, Biombo, Block-ouse, Bonney, Boom River, Bulola, Bussama, Cabenda, Cagnabac, Calabar, Cameroons, Camma, Cantalicunda, Cape Lopez, Cape Mount, Cartabar, Chacoonda, Congo, Cumbo, Dahomey, Dalu Mahdoo, Dobacconda, Drewin, Egarra, Epe, Fouricaria, Gallinas, Garraway River, Goom Corkway, Grand Bereby, Grand Lahou, Grand Popoe, Grand Sesters, Ivroy Bay, Joboo, Jack Jaques, Joug River, Kambia, Kinsembo, Kittam, Lagos, Little Booton, Little Popoe, Lucalla, Macbatee, Malghea, Malimba, Manna, Monney, Maricaryah, Naloes, New Calabar, New Cestos, Nyanibantang, Okeodan, Old Town (Old Calabar), Omitska, Otanda, Pocran, Porto Novo, Qua Plantations, Nio Nunez, Pongas, Ro-Woolah, St. Andrew, St. Antonio, Samo, Samoah, Sherbro, Small Scarcies River, Sugury, Soombia, Zanga Tanga.

See *British and Foreign State Papers*.

A number of these treaties mandated the creation of mixed commissions<sup>12</sup> to condemn slavers and to settle disputes where they might arise. The early bilateral treaties allowed for the establishment of two mixed commissions, ordinarily one in West Africa, in the British Crown colony of Sierra Leone, the other in the New World. Thus, for instance an Anglo-Portuguese mixed commission, also sat in Rio de Janeiro (later in Spanish Town (Jamaica)), an Anglo-Spanish commission in Havana; an Anglo-Dutch commission in Surinam, an Anglo-American commission in New York, and an Anglo-Brazilian mixed commission was also constituted, in the newly independent capital of Brazil: Rio de Janeiro<sup>13</sup>.

12. With respect to these mixed commissions, the British were at an advantage as their naval squadrons effectively had a monopoly on captures, and worked primarily off the coast of Africa<sup>14</sup>. As a result, most captures were adjudicated in Freetown, Sierra Leone, where Great Britain already had a Vice-Admiralty Court whose officials also sat on the various commissions. Thus, while the Brazilian, Dutch, Portuguese, and Spanish Commissioners sat in waiting for one of their own nations' ships to be brought in by the Royal British Navy, the British representatives could handle cases involving slavers considered to be a flag ships of any States which had provided for jurisdiction under a bilateral treaty. Further, as Sierra Leone was a notorious 'white man's grave', non-British parties who had agreed to staff mixed commissions in Freetown had difficulty staffing them. The Anglo-Dutch Mixed Commission is a case in point. In line with the 1818 Treaty, the Netherlands appointed a judge and commissioner in 1819. When the judge left in 1820, he was never replaced; the commissioner remained until 1828, acting sometimes as judge sometimes as commissioner. However, from 1828 onwards "the Anglo-Dutch mixed courts functioned without a Dutch representative until the court was dissolved in 1871"<sup>15</sup>!

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<sup>12</sup> Mixed commissions are in essence courts of law which are composed of an equal number of adjudicators from the two parties, hence no neutral, third party is involved in the process. Such commissions survived internationally until the late nineteenth century, when much emphasis was placed on the peaceful settlement of disputes and its modalities, resulting in the creation of permanent international courts.

<sup>13</sup> Note that although Chile (1839), the Argentine Confederation (1839), Uruguay (1839), Bolivia (1840), and Ecuador (1841) ratified bilateral treaties with Great Britain allowing for mixed commissions, they "waived the right to establish mixed commissions in their own territory", instead allowing the mixed court in Sierra Leone— to which they did not appoint Commissioners — to adjudicate captures. Leslie Bethell, "The Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century", *Journal of African History*, Vol. 7. 1966, p. 83.

<sup>14</sup> Bethell notes that 95 percent of all vessels captured under the anti-slave treaties which Britain had secured from Portugal, Spain, the Netherlands and Brazil were taken by ships of the Royal [British] Navy". *Id.*, p. 83. Bethell gives a break down of the cases which were heard between 1819 and 1845: at Sierra Leone: 528, Havana: 50, Rio de Janeiro: 44, and lowly Surinam: 1. As for cases dealt with in Freetown, the Anglo-Spanish Commission heard 241, the Anglo-Portuguese Commission: 155, Anglo-Brazilian Commission: 111, and the Anglo-Netherlands Commission: 21. See *id.*, p. 84.

<sup>15</sup> Pieter Emmer, *op. cit.*, n. 10 , p. 181. Bethell confirms this stating that "British officials in the so-called 'mixed' commissions frequently found themselves sitting alone. Each of the three [Dutch, Portuguese, Spanish] commissions at Sierra Leone started out in 1819 with a full complement of officials, but during the next few years all foreign commissioners left, not to return". Bethell, *op. cit.*, n. 13, p. 87.

13. In the end, the mixed commissions did provide some assistance to the suppression of the trade, it having been estimated that the various mixed commissions involved in suppressing the slave trade were “responsible for the condemnation of over 620 slave vessels and the liberation of nearly 80 000 slaves”; 528 vessels appeared before the Freetown commissions, of which 501 “were condemned and nearly 65 000 slaves liberated”<sup>16</sup>. While mixed commissions were the judicial arm of the British bilateral system for the suppression of the slave trade; that system could only be truly effective if all maritime States joined it. To that end, during the late 1830s early 1840s, Great Britain signed a number of bilateral agreements with newly independent Latin American States<sup>17</sup>. However, this did not complete the system, as four States held out, thus stalling the British bilaterally system for the suppression of the Atlantic Slave Trade.

14. While Brazil and Portugal simply needed some ‘nudging’ by the British Navy to join the existing system, France and the United States of America were not so easily moved. For Brazil and Portugal, the 1845 ‘Aberdeen’ Act and the 1839 ‘Palmerston’ Act respectively were manifestations of British gunboat diplomacy which could not be resisted. In each case, the Royal Navy captured or burnt suspected slave trade ships both in international waters, but also in harbours, and forced each State to capitulate and join the bilateral system. For France and the United States, it was different, with the law of nations on their side and a Power in their own right, they remained adamant that the freedom of the seas be respected and that a legal right of visitation only existed, short of a conventional understanding, in times of war. It was only when the domestic situation in both States became favourable to abolition, that either State was willing to discuss seriously the suppression of the slave trade. While France was to concede a right to visit for a period of time (re: treaties of 1831 and 1833), it reverted to its former position, and ultimately accepted a bilateral arrangement (treaty of 1845) whereby joint naval squadrons would patrol the African Coast. For the United States, it was a war-time measure by the Northern Union during the American Civil War which ultimately allowed it to become party to a bilateral treaty (in 1863) similar to the Anglo-French treaty. Thus, one by one, these four States would become part of the web of bilateral treaties which Great Britain had been spinning since 1817. Only then, when all maritime powers had agreed to effective means to suppress the slave trade at sea was it possible to look to developing a universal instrument.

15. With the United States joining the bilateral system and, in essence, completing it; the suppression of the Atlantic slave trade was in its last phase. The last recorded slave shipment to the New World transpired in 1867. In essence, as Professor Herbert Klein writes, the 1860s were a turning point as “the pressure that led to the abolition of the trade now shifted to attacking the institution of slavery itself”<sup>18</sup>. The forced migration of

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<sup>16</sup> JP van Niekerk, “British, Portuguese, and American judges in Adderley Street; the international legal background to, and some judicial aspects of, the Cape Town Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century (Part 2)”, *The Comparative and International Journal of Southern Africa*, Vol. 37(2), 2004, p. 200.

<sup>17</sup> Buenos Aires (1839), Chile (1839), Venezuela (1839), Uruguay (1840), Bolivia (1840), Texas (1840), Equator (1841), Mexico (1841), and later, New Grenada (re: Colombia; 1851). See *British and Foreign State Papers* (Index: Volumes 1 to 93), Vol. 94 (1373-1873), 1879.

<sup>18</sup> Herbert Klein, *The Atlantic Slave Trade*, 1999, p. 202.

enslaved African labours would be supplanted throughout the Western Hemisphere in the late nineteenth century by free labour from Europe in what was the “great age of immigration”; but more importantly, by large numbers of indentured labourers from Asia – primarily from China and India – who took up employment side by side with newly freed slaves<sup>19</sup>.

16. Great Britain had, therefore achieved its foreign policy objective by the 1870s: it had managed to totally suppress the Atlantic Slave Trade. That having been so, it looked to the east coast of Africa where the ‘Oriental Slave Trade’<sup>20</sup> came into play; it was to this trade that it turned to during the latter part of the nineteenth century. One result of the persistence in fighting the slave trade and slavery was that Great Britain would gain in 1890, in large measure, what it had failed to achieved seventy-five years previously: a universal right – established by treaty and accepted as international law – to visit ships on the high seas so as to suppress the slave trade.

17. Having laid down the rules of the game regarding what would turn into a ‘Scramble for Africa’ at the Berlin Conference in 1885, European States meet in Brussels in 1889-1890 to seek to establish an international agreement on the suppression of the slave trade not only on the seas but also within Africa. It was said that the suppression of the slave trade at sea, however, was the “most awaited and most delicate point”<sup>21</sup> to be considered; it was, in fact, the point upon which the Conference hinged<sup>22</sup>. While there was general agreement regard the establishment of a right to visit, in line with British wishes; and British diplomats had taken the initiative in presenting proposal which called for the creation of a *cordon sanitaire* around “the most dreadful pest which has ever gnawed on humanity”<sup>23</sup>. The age-old Anglo-French rivalry would, however, once again rear its head, this time as a result of African colonial ambitions, as anti-British sentiment in France would remained high – and vice-a-versa – throughout this period (from the 1881 ‘Easter Question’ through to Fashoda in 1891<sup>24</sup>). In a Declaration made on 20 December 1889, the French representatives in Brussels stated categorically that if the right to visit was placed on the agenda, that they were not authorized to participate in such discussions. On 6 February 1890, the British Delegation responded to a French counter-proposal in a positive light and sought to accommodate French concerns as far as possible, and thus was willing to concede that the “right to visit established in the existing

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<sup>19</sup> *Id.*

<sup>20</sup> This slave trade (also referred to in the literature as the ‘Arab Trade’, the ‘Islamic Trade’ or ‘Sahara Trade’), may be termed ‘oriental’, so as to juxtapose it with the western trade on the Atlantic Ocean. The Oriental Slave Trade was an older, more ingrained, slave trade which had existed for more than a millennia before it was outlawed in the late nineteenth, and early twentieth, century. The Oriental Slave Trade, as opposed to the western oriented, capitalist driven trade, which generally enslaved two women for every man, with the final destination being domestic service in the homes or concubines of North Africa or what is today termed the Middle East. This trade, like that of the Atlantic, focused on the enslavement of inhabitants of sub-Saharan Africa, with the main means of transportation eastward being, not ocean going caravels, but camel caravans crossing the Sahara Desert.

<sup>21</sup> Henry de Montardy, *La Traite et le Droit International*, 1899, p. 141.

<sup>22</sup> Henry Queneuil, *La Conférence de Bruxelles et ses Résultats*, 1907, p. 132.

<sup>23</sup> Annex 2, Protocol 10, “Project présenté par les Plénipotentiaires de la Grande-Bretagne”, 28 November 1889, *Actes de la Conférence de Bruxelles (1889-1890)*, p. 149.

<sup>24</sup> See, generally, H. L. Wesseling, *Divide and Rule: The Partition of Africa 1880-1914*, 1996.

treaties be limited to the zone determined [which would be set at 20 miles off most of the Africa coast], and to limit the exercise of this right to ships of less than 500 tons [i.e.: tantamount to 'native' Africa vessels exclusively]<sup>25</sup>. It fell to the great Russian jurist Fyodor de Martens to mediate a settlement which was almost in its entirety accepted by the Parties and introduced into the 1890 General Act of the Brussels Conference.

18. On the basis of the 1890 General Act, as Henry Queneuil noted, it looked like the “latent and disquieting conflict”<sup>26</sup> which had persisted between France and Great Britain regarding the right to visit to suppress the slave trade had been put to rest. But had it? Professor Susan Miers writes that an “unforeseen and serious difficulty”<sup>27</sup> arose as the France indicated that while its diplomats had signed the General Act, the French Chamber of Deputies was unwilling to give it consent. France then proposed a reservation to the General Act whereby it opted out of the provisions regarding the right to visit but then established a *modus operandi* with Great Britain (based on the already existing 1867 Naval Instructions<sup>28</sup>) which did not allow the Royal Navy to visit French ships to attempt to suppress the slave trade, but instead to ensure that any apparent French ship had the right to fly the *tricolour*. In so doing Great Britain had effectively gained a suppression of the overall African slave trade on the seas; as all other States agreed to a right to visit, while slavers could not hope to hide behind a faults French flag.

19. While the debate about the motives of Great Britain, regarding its attempts to suppress the slave trade, remains lively today; what can not be disputed is that Great Britain did, in fact, lead and shoulder most of the responsibility in ending the slave trade and slavery itself. Historically, this is indisputable. Over the last thirty years, historians have busied themselves uncovering much about the means and modalities of a trade which persisted for nearly three and a half centuries. While we know much more today about the slave trade and the manner in which it was undertaken, historians have in no way displaced the centrality of Great Britain to its abolition.

20. This then concludes the substance of the outline of my study. By way of conclusion, I would like to consider the British Abolitionist Movement with that of the Peace Movement which forced the 1899 and 1907 Hague Peace Conferences, where a number of agreements were reached regarding the laws of war and the peaceful settlement of international disputes through the creation of international courts and would ultimately spur on the internationalist movements manifest in the League of Nations and the United Nations<sup>29</sup>. Like the Abolitionist Movement, the Peace Movement emerged from individual intellectuals and minority religious sects (principally the Quakers); who could, early on, be easily dismissed. Yet in both instances, the domestic political system had yet

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<sup>25</sup> Annex 5, Protocol 10, “Déclaration des Plénipotentiaires de la Grande-Bretagne”, 6 February 1890, *Actes de la Conférence de Bruxelles (1889-1890)*, p. 159.

<sup>26</sup> Queneuil, *op. cit.*, n. 21, p. 148.

<sup>27</sup> Suzanne Miers, *Britain and the Ending of the Slave Trade*, 1975, p. 293.

<sup>28</sup> See “Instructions as to Vessels under the French Flag”, *Documents relatives à la Répression de la Traite des Esclaves publiés en execution des Articles LXXXI et suivants de l'Act Général de Bruxelles*, 1892, pp. 272-274.

<sup>29</sup> See the first chapter of my study: *A Century of International Adjudication: The Rule of Law and its Limits*, 2000.

to come to grips with popular movements which, with the increases in literacy and leisure time brought about by the Industrial Revolution, would be allowed to become a major factor in politics. Note that I say were ‘allowed’, not that they ‘became’ a major factor. Both with respect to the abolitionist and peace movements, their growth in influence in the political arena can not be put down to the virtue of their cause *per se*, but because their cause also “reflected the needs and values of the emerging capitalist order”,<sup>30</sup> and thus successive Governments were able to benefit from these constituencies in carrying out their foreign policy objectives. In both cases, those not associated with the State, would be sidelined as being “idealistic and popular”, and the lead proponents come to be parliamentarians who were deemed to be “positive and practical” and, thus, able to avoid “exaggerations and speculations” in moving a public agenda forward<sup>31</sup>. In other words, the interests of the British State would be allowed to take, above all else, proper consideration as to how far Great Britain wished to go in riding the crest of the abolitionist and peace movements’ waves. It seems to me that as a result of the studies which have been undertaken in the last thirty years, that consideration might be given to the extent to which the British Establishment did, in fact, co-opt the Abolitionist Movement as opposed to considering the manner in which successive Governments were forced into action by abolitionists.

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<sup>30</sup> See Heuman putting forward David Brion Davis’ view; in Gab Heuman, “Slavery, The Slave Trade, and Abolition”, Robin Winks (ed.) *Oxford History of the British Empire*, Vol. 5 (Historiography), 1999, p. 324.

<sup>31</sup> See A.C.F. Beales, *The History of Peace: A Short Account of the Organised Movements for International Peace*, 1931, p. 194.