

## Slavery and the League of Nations: Ethiopia as a Civilised Nation

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### Introduction

In 1949, the United Nations International Law Commission quietly decided to “refrain from using the expression ‘civilized countries’”<sup>1</sup> in its deliberations. An era had apparently died away, only to be resurrected as part of the discourse of the post-September 11, 2001, United States’ “War on Terror”. Despite the resurgence of rhetorical use of “civilisation”, the notion of “civilised nation” never truly left the stage of international relations, as it remains on the books today, a part of international law. Article 38(1) of the Statute of the International Court of Justice mandates that the International Court apply international law from three sources, not only treaty and customary law, but also: “(c) the general principles of law recognized by civilized nations”. This provision is a much needed window onto a bygone era, as some have said an embarrassing reminder that international law acted as an instrument of imperial design. Much needed, as at the time such a designation as “civilised nations” would have appeared neutral and benign. This begs the questions: Is international law, and does it remain, structurally biased in favour of the West and its informal empire, while couched in more benevolent, universal language of, say, human rights?

This article considers an instance of the transition from the “law of Christian nations” and the “public law of Europe” of the nineteenth century to “international law” of the twentieth century wherein non-European States were allowed to join the international *qua* European system of international relations on the basis of a fluctuating rule of “civilisation” dictated by European colonial powers. The standard of civilisation which was applied in the Ethiopian context, upon which its admission to the League of Nations was predicated and later used to justify Italian aggression, was the abolition of slavery and the slave trade on its territory. The Ethiopian experience is considered here as a vehicle to study the emergence of slavery as the “first” human right given voice internationally; the manner in which the League of Nations, having established the abolition of slavery and the slave trade as a criteria of “civilisation” moved to codify it;

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<sup>1</sup> For the International Law Commission, see Gerrit Gong, *The Standard of “Civilization” in International Society*, 1984, p. 90. For the embarrassing nature of Article 38(1) see Gong, at p. 69, where he writes: “It is an embarrassing anachronism to some that Article 38(1) of the statute of the International Court of Justice still directs the Court to apply the general principles of law recognized by civilized nations in such disputes as are submitted to it”.

and finally, the manner in which Ethiopia, though brought into the fold of the League of Nations, was denied true recognition as a part of the “community of civilised nations” as European concerns trumped the Covenant as Italy was allowed to once more take on the “savages” who previously – at Adwa in 1896 – had defeated it.

### Of Civilised Nations

The notion of “civilisation” in international relations was used as a bridge by which a public law developed in Europe among Christian princes was promulgated throughout the world in universal terms. It was this standard which in the late nineteenth century and early twentieth century allowed European States to accommodate those States it could not conquer, in their quest for Empire.<sup>2</sup> Yet, for those States of non-European stock which were accepted into the club of “civilised nations”, sovereign equality did not truly exist. As Martti Koskenniemi writes, there laid at the heart of the notion of “civilisation” a paradox: “if there was no external standard for civilisation, then everything depended on what Europe approved”, and thus: “In order to attain equality, the non-Europeans community must accept Europe as master – but to accept a master was proof that one was not equal”.<sup>3</sup> This quote develops a central tenet of the notion of civilisation which Koskenniemi points to: “No stable standard of civilisation emerged to govern entry into the ‘community of international law’”.<sup>4</sup> For Gerry Simpson, “Civilisation was a usefully elusive term. [...] the standard of civilisation was a way of imposing a particular set of values on the international legal order. Failure to meet these values meant exclusion or unequal sovereignty”<sup>5</sup> Gerrit Gong, in his seminal 1984 study *The Standard of “Civilization” in International Society*, defines “civilisation” in general terms, as “an expression of the assumptions, tacit and explicit, used to distinguish those that belong to a particular society from those that do not. [...] By] definition, those who fulfil the requirements of a particular society’s standard of civilization are brought inside its circle of ‘civilized’ members, while those who do not so conform are left outside as ‘not civilized’ or possibly ‘uncivilised’”.<sup>6</sup>

“Civilisation” as a concept, it should be made plain, become fundamental to a changing international order, one that was European in origin but sought to be universal in application. The distinction between so-called “civilised”; “semi-civilised”

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<sup>2</sup> See generally, Anthony Pagden, *Lords of all the World: Ideology of Empire in Spain, Britain, and France c. 1500-c.1800*, 1995; as well as Niall Ferguson, *Empire: How Britain Made the Modern World*, 2004; Henry Kamen, *How Spain Became a World Power 1492-1763*, 2003; and C.R. Boxer, *The Portuguese Seaborne Empire, 1415-1825*, 1969.

<sup>3</sup> Martti Koskenniemi, *The Gentle Civilizer of Nations; The Rise and Fall of International Law 1870-1960*, 2002, pp. 135-136.

<sup>4</sup> *Id.*, p. 135.

<sup>5</sup> Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*, 2004, pp. 243-244.

<sup>6</sup> See Gerrit Gong, *op. cit.* n. 1, p. 3. Note also Mark Salter, *Barbarians & Civilizations in International Relations*, 2002.

or “barbaric”; and “uncivilised” or “savage” States was at once a manifestation of a State’s ability to counter, in limited terms, European encroachment and a recognition of a State’s legal standing internationally. For those States where outright conquest did not transpire, European extraterritoriality in the guise of unequal treaties, capitulations, and protectorate regimes were put into place. For Brett Bowden, the “importance of the classical standard of civilization can not be underestimated” specifically with regard to “the violent European civilizing mission that it helped give rise to”.<sup>7</sup> Antony Anghie, for his part, points to the use of the apparently benign term “civilisation” as being used to justify the continued expansion of the European colonial project: “vocabulary of international law, far from being neutral, or abstract, is mired in this history of subordination and extinguishing alien cultures”. This is so, as Anghie notes, in reference to the work of Francisco de Vitoria:

“European practices are posited as universally applicable norms with which the colonial peoples must conform if they are to avoid sanctions and achieve full membership. Vitoria’s jurisprudence demonstrates, furthermore that the construction of the barbarian as both within the reach of the law and yet outside its protection creates an object against which sovereignty may express its fullest powers by engaging in an unmediated and unqualified violence, justified as leading to conversion, salvation, civilization. Non-European peoples have been continuously characterised as the barbarians compelling the further extension of international law’s ambit”.<sup>8</sup>

Where international law is concerned, the notion of “civilisation” was quite simply a criteria of State recognition. Gong, makes clear, having considered international instruments and conducted a genealogical study of the evolution of the concept of civilisation in the writings of leading contemporary international law publicists of the late nineteenth and early twentieth century, that the notion of civilisation, although rather fluid, was very much a principle of public international law. For his part, Georg Schwarzenberger, writing in 1955, laid out the characteristics of the principle:

“The test whether a State was civilised and, thus entitled to full recognition as an international personality was, as a rule, merely whether its government was sufficiently stable to undertake binding commitments under international law and whether it was able and willing to protect adequately the life, liberty and property of foreigners. In a multitude of treaties these minimum standards were codified into rules of international customary law”.<sup>9</sup>

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<sup>7</sup> Brett Bowden, “The Colonial Origins of International Law. European Expansion and the Classic Standard of Civilization”, *Journal of the History of International Law*, Vol. 7. 2005, p. 1.

<sup>8</sup> Antony Anghie, “Francisco de Vitoria and the Colonial Origins of International Law”, Eve Darian-Smith and Peter Fitzpatrick, *Laws of the Postcolonial*, 1999, pp. 103-104. Anghie elaborates his views on sovereignty and the exclusion of the uncivilised in Chapter 2 of Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, 2005.

<sup>9</sup> Georg Schwarzenberger, “The Standard of Civilisation in International Law”, *Current Legal Problems*, Vol. 17, 1955, p. 220.

Gerrit Gong outlines the five tenets of what was required to be considered “civilised”. Such a State would have to: 1) ensure basic rights: life, property, freedom to travel, commerce, religion; 2) have an organized political structure and the ability to act in self-defence; 3) accept the norms of international law; and 4) have the ability to carry diplomatic relations with other States. More subjectively, but of specific importance to this study: 5) “a ‘civilized’ state by and large conforms to the accepted norms and practices of the ‘civilized’ international society, e.g., suttee, polygamy, and slavery were considered ‘uncivilized’, and therefore unacceptable.”

Having elaborated these tenets, Gong, however, remained cautious, seeing in the incorporation of “civilisation” in international law a fundamental problem:

“the standard was never much more than a fairly blunt legal instrument. Even after it emerged as an explicit legal concept, the standard was still subject to the admixture of contrasting elements – political and legal, subjective and objective, explicit and implicit – associated with any doctrine of recognition”.<sup>10</sup>

It should be said that this elasticity of the concept of civilisation was most evident in regard to the legacy of the League of Nations’ actions involving Ethiopia. The standard of civilisation that was used in this instance was the rather slippery “norms and practices of the ‘civilised’ international society”, manifest in the outlawing of slavery and the slave trade. This was so as Ethiopia had, by the 1920s, met the first four tenets noted by Gong; but, its consolidation of effective control over territory from the mid-eighteenth century onwards had come as a result of warfare, which had, as a by-product, the production of slaves as prisoners *qua* spoils of war.

#### *Slavery and the Consolidation of the Ethiopian Empire*

The consolidation of the Ethiopian Empire was a long process which transpired during the second half of the nineteenth and first half of the twentieth century. Like German and Italian unification during the 1850s and 1860s, Ethiopian State-building was predicated on belligerent co-opting of the peripheries: the requirement of peaceful submission or armed conquest. In the Ethiopian context, the iconic photo of the last King of Kafa, Tato Gaki Sherocho, bound in chains after his defeat in 1897, speaks to the consolidation of modern Ethiopia.<sup>11</sup> The modern move to unify Ethiopia was brought about by Kasa Haylu, who pacified much of the country north of the Rift Valley. Having learnt his military skills through the repulsing of Egyptian troops from his fiefdom on the Ethio-Sudanese frontier in the 1830s, Kasa – upon becoming Emperor Tewodros II (1855-1868), King of Kings of Ethiopia, in 1855 – turned his attention to the southern

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<sup>10</sup> Gerrit Gong, *op. cit.* n.1, *id.* Schwarzenberger, however, continues with the following caveat:

“At the same time, the distinction between civilised and non-civilised communities served less disinterested purposes of Western imperialism and colonialism whenever it was opportune to treat communities on the fringes of the expanding Western world on a footing other than that of sovereign States”.

<sup>11</sup> See Bahru Zewde, *A History of Modern Ethiopia 1955-1991*, 2001, p. 67.

half of Ethiopia, in essence moving the country's centre of gravity southwards and away from its Nilitic sources. It was during this southern campaign that Tewodros "made the first attempt to put an end to the slave-trade which had become endemic in Ethiopian society".<sup>12</sup>

The ever-present Egyptian threat to Ethiopia emerged again in the early 1870s, when the importance of the Horn of Africa grew as a result of the opening of the Suez Canal and Egypt's ambitions over the Nile Valley spread. Egypt's Khedive Ismail, having subjugated Sudan, justified his expansion into Ethiopia "in terms of eradication of the slave-trade".<sup>13</sup> Yet, this adventure was ultimately unsuccessful, as the Ethiopian "victories" at Gundat and Gura in 1875 and 1876 "hastened Ismail's downfall and the subsequent British occupation of Egypt".<sup>14</sup> These victories in battle, however were not consolidated in peace, as the Emperor Yohannes (1872-1889) was faced with a further threat from the north, this time from the Sudanese Mahdist movement. The cooperation undertaken with the British to suppress the Mahdist was to have a long-term price for Ethiopia as, by way of the 1885 Adwa Peace Treaty settling the war with Egypt, Britain gained what is now the Eritrean capital of Massawa which it shortly thereafter handed it over to Italy. As for Yohannes' attempts at nation-building, these were of limited success, as he sought to consolidate his power base through a "loosely united Ethiopia, with autonomous regional rulers under an emperor exercising benevolent political suzerainty".<sup>15</sup>

It was left to Emperor Menelik II (1889-1913), therefore, to consolidate the Ethiopian Empire as a sovereign State. "It was to be", historian Bahru Zewde writes, Menelik's "main claim to historical distinction that he presided over the realization of an idea that had first been kindled in the fiery mind of Tewodros. Yet the final result bore little resemblance to the initial dream".<sup>16</sup> This was so, as Tewodros had sought a rather modest Nilitic empire, one in line with a previous medieval incarnation; whereas Menelik created the Ethiopia of today, one which straddles equally both sides of the Rift Valley. Where Menelik's imperial design fell short, however, was with regard to access to the sea, as this was the era of the "Scramble for Africa" wherein European States first made claims to the African coastal regions before moving inland. Ethiopia was thus made contiguous to Italian (Eritrea and Italian Somaliland); French (Djibouti); and British (British Somaliland) territories on the Horn of Africa. It was left to the Italians, late-comers to Empire, to lay claim to Ethiopia as a colony. As a result of a dispute over the interpretation of the 1889 Wuchale Treaty of Amity (as regards its Italian and Amharic versions), Italy claimed protectorate status over Ethiopia, which was duly recognised by European powers. However, Menelik, who had refused to accept this interpretation,

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<sup>12</sup> *Id.*, p. 34.

<sup>13</sup> *Id.*, p. 50. Note, however, that R. W. Beachey writes: "Ismail was soon caught up in grand plans for territorial expansion, however, and he had little time for an anti-slave trade campaign". R. W. Beachey, *The Slave Trade in East Africa*, 1976, p. 130.

<sup>14</sup> Zewde, *op. cit.* n. 11, p. 53.

<sup>15</sup> *Id.*, p. 60.

<sup>16</sup> *Id.*

denounced the Treaty in 1893, having prepared Ethiopia for war. The outcome of the 1896 Battle at Adwa “was a remarkable victory for Menelik, and a complete defeat for his enemies”; the Italians were thus forced to agree “on 26 October, to the Peace Treaty of Addis Ababa, which annulled the Treaty of Wuchale and recognized the absolute independence of Ethiopia”.<sup>17</sup>

The Ethiopian success at Adwa, the first defeat of a European Power during the colonial period and the only complete defeat of such a Power in the African context had many a repercussion. Most important for Ethiopia, in regard to its international relations, was the consolidation of its territory vis-à-vis its European neighbours, brought on by European “apprehension of the expansive potentialities of post-Adwa Ethiopia”.<sup>18</sup> Thus, in just over a decade, between 1897 and 1908, not only were boundaries delimited on the Horn of Africa, but also with the British in regard to Sudan and British East Africa (Kenya).<sup>19</sup> With respect to internal affairs, Menelik sought to modernise the Empire, he “advanced ideas of social reform, and decreed the abolition of slavery”.<sup>20</sup> But as Jones and Monroe note in their 1935 study, Menelik’s reforms “would have been more effective had he personally supervised their execution; as it was, he was usually too busy consolidation his frontiers”.<sup>21</sup> In his autobiography, Emperor Haile Sellasie (1930-1974) considered his predecessors’ measures in regard to slavery and noted that slavery itself had “remained firmly established by custom”. “Consequently”, the Emperor – writing in exile in 1937 – stated that:

“Emperors Theodore (Tewodros), Yohannes, and Menelik, who reigned in Ethiopia from [1855-1913], had promulgated decrees against the sale and purchase of slaves in Ethiopia. But because at the time it was not customary to set up special offices for work of this kind, their intentions remained unaccomplished, as it was impossible to observe and enforce the decree on account of the vastness of the country”.<sup>22</sup>

A more detached view which has been expressed regarding Ethiopia, during the reign of these three Emperors, was that Ethiopians were not *per se* against slavery, that “the country was surrounded on all sides by slave raiders and traders”, and that no concerted effort was ever made to seek to end the trade or slavery. The failure to act resulted from the following:

“The fact that Ethiopia managed to maintain its independence throughout the nineteenth century and that Europeans were not involved in its internal affairs, left the

<sup>17</sup> A. Abu Boahen (ed.), *Africa under Colonial Domination 1880-1935*, UNESCO General History of Africa, Vol. 7, 1990, p. 125.

<sup>18</sup> Zewde, *op. cit.* n. 11, p. 113.

<sup>19</sup> For a discussion of these treaties see W.B. Stern, “the Treaty Background of the Italo-Ethiopian Dispute”, *American Journal of International Law*, Vol. 30, pp. 196-198.

<sup>20</sup> A.H.M. Jones and Elizabeth Monroe, *A History of Ethiopia*, 1935, p. 156.

<sup>21</sup> *Id.*

<sup>22</sup> Emperor Haile Sellasie I, *The Autobiography of Emperor Haile Sellasie I: My Life and Ethiopia's Progress, 1892-1937*, 1976, p. 80.

rulers to a large degree free from outside pressure to suppress the slave trade, even if they opposed it personally. They realized that they lacked both the power and the popular support to accomplish the task. For the same reason, they had no wish to abolish the institution of slavery”.<sup>23</sup>

Ultimately, by the time of Haile Sellasie’s ascendance to power as the Regent, Ras Tafari Makonnen, in 1916, Ethiopia had consolidated its external borders but had yet to effectuate control over its territory and actively seek the suppression of slavery and the slave trade. The extent to which slavery was not truly an issue in the Ethiopian context might best be exemplified by the short-lived reign of Lej Iyyasu (1913-1916) who had personally gone on a slave-raiding expedition in 1912, “a most nefarious campaign of his career. Against the Dizi in south-western Ethiopia, which ended up with the enslavement of tens of thousands of the inhabitants”!<sup>24</sup>

### “Abyssinian”<sup>25</sup> Admission to the League of Nations in 1923

Ethiopia’s admission to the League of Nations came as an attempt to shield itself from possible outside encroachment from the British, French or Italians, who had agreed in 1906 by way of a tripartite instrument to “spheres of influence” over it.<sup>26</sup> The acute nature of that threat was revealed in a 1922 Memorandum to the Council of the League of Nations by Sir Frederick Lugard, a member of the Permanent Mandates Commission which pointed to either the three Powers taking control of Ethiopia or, better yet, the League of Nations. Lugard was considered one of the leading experts on issues of slavery of the day and had been very much “in the public eye, taking an active part in the controversy over Ethiopian slavery”.<sup>27</sup> In that well-circulated Memorandum, Lugard argued that, as a result of the inability of Ethiopia to suppress the slave trade, it should be placed under a scheme which “would be little different in principle from the B class Mandates. Abyssinia would be recognised as having reached a stage where

<sup>23</sup> Alice Moore-Harell, “Economic and Political Aspects of the Slave Trade in Ethiopia and Sudan in the Second Half of the Nineteenth Century”, *The International Journal of African Historical Studies*, Vol. 32, 1999, pp. 416 and 421.

<sup>24</sup> Zewde, *op. cit.* n. 11, p. 122. Pankhurst puts the number at 40,000; writing that “half of whom died en route [to Addis] of smallpox, dysentery, hunger and fatigue”. See Richard Pankhurst, *Economic History of Ethiopia: 1800-1935*, p. 107.

<sup>25</sup> Abyssinia is considered a pejorative term by Ethiopians, but was utilized internationally up to, and including, much of the period of Ethiopia’s membership in the League of Nations.

<sup>26</sup> See Gong, *op. cit.* n. 1, p. 123. This concern for outside encroachment was also manifest in 1918, when “rumours were rife that the victorious allies might attempt to establish a mandate over Ethiopia”. See Suzanne Miers, “Britain and the Suppression of Slavery in Ethiopia”, Tadesse Beyene (ed.) *Proceedings of the Eight International Conference of Ethiopian Studies*, Vol. 2, 1989, p. 253. The 1906 instrument is the *Agreement between the United Kingdom, France and Italy, Respecting the Importation of Arms and Ammunitions into Abyssinia*, 13 December 1906; reproduced in *The American Journal of International Law*, Vol. 1, 1907, pp. 230-231.

<sup>27</sup> Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem*, 2003, p. 103.

‘its existence as a independent nation can provisionally be recognised, subject to the rendering of Administrative advice and assistance’ – not by a Mandatory, but by the League itself”.<sup>28</sup> Where Lugard’s calculations in regard to Ethiopia went wrong, however, was in regard to that State’s willingness to apply for admission to the League of Nations.<sup>29</sup> Lugard wrote less than a year before Ethiopian entry into the League of Nations that “Abyssinia has not applied, and since her chief desire is to avoid any foreign interference in her affairs – least of all the exposure to scandal – she is not likely to do so”.<sup>30</sup> Despite this threat from the League of Nations itself, Ethiopia couched its wish to join the League in terms of an isolated Christian State surrounded by Muslim “heathens”, thus seeking a collective security umbrella and wishing to maintain the peaceful co-existence it currently enjoyed with its neighbours.<sup>31</sup>

It might also be noted that Ethiopia’s attempted entry into the League coincided with the wishes of the British Anti-Slavery Society, which sought to internationalise issues of the repression of slavery but could not focus on an independent Ethiopia – which it considered the main culprit of the slave trade – as long as it was not a member of the League of Nations.<sup>32</sup> This was to have important ramifications, as France considered that the agitations of the Anti-Slavery Society was a prelude to British intervention in Ethiopia and thus precipitated its support – or as the Professor of African History, Suzanne Miers, writes “instigation” – of Ethiopia’s admission into the League of Nations.<sup>33</sup> The wish to join the League was, of course, something which was not forced upon Ethiopia, but was something it sought, as:

“[p]rominent Ethiopians, conscious of the British press campaign and the quixotic crusade of the anti-slavery societies, were alarmed that the League assembly due to convene in September 1923 would adopt measures restricting Ethiopian independence. Equally suspicious of Britain and Italy, the government in Addis Ababa had no option but France”.<sup>34</sup>

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<sup>28</sup> Frederick Lugard, *Slavery in Abyssinia*, 6 November 1922. p. 10. See League of Nations, Mandates, *The Question of Slavery*, 1922, LofN Doc. (R.61) 24628/23252.

<sup>29</sup> Note that Pankhurst states that Ethiopia had been interested in joining the League of Nations from its inception, stating: “Ethiopia was prevented from joining the League of Nations at its inception in 1919 because of the existence of slavery”. Pankhurst, *op. cit.*, n. 24, p. 112.

<sup>30</sup> Lugard, *op. cit.*, n. 28, p. 4.

<sup>31</sup> League of Nations, *Request for Admission to the League of Nations from Abyssinia*, LofN Doc. A.55.923.VI, 6 September 1923. The Ethiopian Note is dated 12 August 1923.

<sup>32</sup> Miers, *Slavery in the Twentieth Century*, *op. cit.*, n. 27, p. 73.

<sup>33</sup> Miers, “Britain and the Suppression of Slavery *op. cit.* n. 26, p. 256. This assertion is also repeated in: Miers, “Slavery and the Slave Trade as International Issues 1890-1939”, *Slavery and Abolition*, Vol. 19, 1998, p. 25.

<sup>34</sup> See Antoinette Iadarola, “Ethiopia’s Admission into the League of Nations: An Assessment of Motives”, *The International Journal of African Historical Studies*, Vol. 8, 1975, p. 614.



The fact that the Anti-Slavery Society supported Ethiopia's admission should not be confused with British support of Ethiopia's bid, as the British Government "strongly opposed Ethiopian admission to the League, believing that her application was a French plot to flood the country with arms on the pretext that they were needed to fight slavery".<sup>35</sup> Further, Miers' relates that the "British were outraged. They thought Ethiopia was 'unfit' for membership and that its admission would mean that in the future there would be 'no ground for excluding anybody'".<sup>36</sup> This lack of British support for Ethiopia's application was made evident by the British Delegate to the League of Nations, Mr. Wood, when he ventured that there were two conflicting motives to be taken into consideration when contemplating the admission of Ethiopia to the League:

"on the one hand, the desire to help Abyssinia to raise herself in the scale of civilisation, which it was possible she might do more effectively if she became a Member of the League, and on the other hand, the feeling that the well-being of the League depended on the level of public opinion in each of the Member States. It was most important that [we] should consider very carefully from this point of view whether Abyssinia was in a position to make a worthy contribution to the League".<sup>37</sup>

Ethiopia's request for admission to the League of Nations was considered by the Sixth Committee (Political) of the Assembly of the League of Nations, which delegated that power to a sub-committee to investigate the issue. The Sub-Committee used a questionnaire that had been employed previously when considering other applications to the League. Gerrit Gong writes that the questions were a "codified expression of the standard of 'civilization' and a predecessor in some ways to the [1933] Montevideo Convention" on the Rights and Duties of States.<sup>38</sup> In its Report back to the Sixth Committee, the Sub-Committee dealt summarily with the first three questions:

- "1. Is Abyssinia's request for admission into the League of Nations in order?
2. Is Abyssinia recognised *de jure* or *de facto*, and by what States?
3. Does the country possess a stable government and well-defined frontiers?"

The Sub-Committee noted that questions one and three returned affirmative answers, while question two elicited the following response: "the Sub-Committee notes that Abyssinia is recognised by and has concluded treaties with several Powers".<sup>39</sup>

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<sup>35</sup> Miers, "Britain and the Suppression of Slavery ...", *op. cit.* n. 26, p. 256.

<sup>36</sup> Miers, *Slavery in the Twentieth Century*, *op. cit.*, n. 27, p. 79.

<sup>37</sup> League of Nations, *Record of the Fourth Assembly, Meetings of the Committee, Minutes of the Sixth Committee (Political Questions)*, 19 September 1923, p. 15.

<sup>38</sup> See Gong, *op. cit.* n. 1, p. 125.

<sup>39</sup> League of Nations, *Record of the Fourth Assembly, Meetings of the Committee, Minutes of the Sixth Committee (Political Questions)*, Report of the Second Sub-Committee of the Sixth Committee, Abyssinia's Application for Admission to the League, Annex 5, 14 September 1923, p. 34.

As for the fourth question: “Is it full self-governing?”, the Sub-Committee noted that it “was unable to determine exactly the extent of the effective control of the central authority over the provinces remote to the capital” but, nevertheless, “is of the opinion that Abyssinia is fully self-governed”.<sup>40</sup>

Finally, the fifth question, although couched in general terms, allowed the Assembly to condition Ethiopia’s admission to the League of Nations on the suppression of slavery and its willingness to provide any information which the Council of the League might request on the matter. The fifth question reads as follows:

“5. What have been the acts and declarations of Abyssinia (a) as regards her international obligations, (b) as regards the stipulation of the League with reference to armaments?”

Clearly, the question as posed did not point to issues of slavery nor to any international obligation which Ethiopia might have undertaken on the matter, as it was party to neither the 1890 Final Act of the Brussels Conference<sup>41</sup> or the 1919 Treaty of Saint-Germain-en-Laye;<sup>42</sup> those instruments not having been open to its possible accession. Nevertheless, the Sub-Committee noting Ethiopia’s good will, proposed that it be required to sign the following Declaration before being considered for admission:

“1. Abyssinia adheres to the obligations formulated in Article 11, paragraph 1, of the Convention of Saint Germain-en-Laye on September 10th, 1919, amending the General Act of Berlin dated February 26th, 1885, and the General Act and Declaration of Brussels dated July 2nd, 1890.

2. Abyssinia, recognizing as binding the system at present established with regard to the importation of arms and ammunition, undertakes to conform to the principles set forth in the Convention and Protocol signed at Saint Germain-en-Laye on September 10th, 1919, and in particular to the stipulations contained in Article 6 of the said Convention.

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<sup>40</sup> *Id.*

<sup>41</sup> The 1889-90 Brussels Conference dealt with arms agreement and the traffic in spirits but focused, above all else, on the suppression of the African slave trade on land and at sea. Its General Act established a maritime zone of the high seas skirting much of sub-Saharan Africa wherein States had a right to visit, search, and detain ships of a certain tonnage suspected of involvement in the slave trade. See the General Act of the Brussels Conference relative to the African Slave Trade, 2 July 1890, Sir E. Hertslet, *The Map of Africa by Treaty*, Vol. 2, 1967, p. 499.

<sup>42</sup> 1919 Convention of Saint Germain-en-Laye abrogates the general acts of both the 1885 Berlin and 1889-90 Brussels Conferences but mandated that colonial powers in Africa seek to suppress slavery in all its forms. See Article 11, *Convention revising the General Act of Berlin of 26 February 1885 and the General Act and Declaration of Brussels of 2 July 1890*, 10 September 1919.

3. Abyssinia declares herself ready now and hereafter to furnish the Council with any information which it may require, and to take into consideration any recommendations which the Council may make with regard to the fulfillment of these obligations, which she recognizes that the League of Nations is concerned".<sup>43</sup>

With regard to the first paragraph of this Declaration, Ethiopia had to agree by way of Article 11 of the *Convention of Saint Germain-en-Laye* "to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being"; but more specifically, it had to: "endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea". It was on this basis that Ethiopia's application for admission to the League of Nations rested. For its part, the link between the issue of slavery and "civilisation" was articulated by the Italian member of the Sixth Committee, Count Bonin-Longare, as he noted that the Sub-Committee:

"had thought it right to ask, and had asked, for one guarantee, namely, that she should accept the principles adopted by the other States with regard to slavery in their most recent contractual form, namely, that found in the Convention of St. Germain. That request contained nothing to wound Abyssinia's susceptibilities, since other States, which had arrived at a higher degree of civilisation, had already consented to undertake special engagements not included in the Covenant".<sup>44</sup>

Ethiopia's response to this conditional acceptance of membership was sent by telegraph to the Secretary-General of the League of Nations on 20 September 1923, informing him that the "Imperial Government accepts the undertakings proposed by the Sixth Committee and has the honour to inform you that it fully empowers its Delegation to sign such undertakings in its name".<sup>45</sup> This being so, the way was clear for Ethiopia's unanimous admission to the League of Nations on 28 September 1923; Britain, "not wanting to be the lone dissenter [...] accepted the inevitable".<sup>46</sup>

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<sup>43</sup> This second paragraph was moot; as the Permanent Advisory Commission of the League dealing with issues of disarmament declared that it was "of the opinion that, from a military, naval and air point of view, the present military, naval and air forces of Abyssinia do not constitute an objection to her admission to the League of Nations". League of Nations, Abyssinia's Military, Naval and Air Forces. Opinion of the Permanent Advisory Commission, *Record of the Fourth Assembly, Meetings of the Committee, Minutes of the Sixth Committee (Political Questions)*, Appendix to the Report of the Second Sub-Committee of the Sixth Committee, Abyssinia's Application for Admission to the League, Annex 5, 14 September 1923, p. 35. Article 6 of the 1919 Treaty related to the importation of arms reads in part; "The High Contracting Parties reserve the right to grant, in respect of arms whose use is not prohibited by international law, export licences to meet the requirements of the Government [...]".

<sup>44</sup> League of Nations, *Record of the Fourth Assembly, op. cit.* n. 37, p. 18.

<sup>45</sup> *Id.*, p. 22.

<sup>46</sup> Miers, *Slavery in the Twentieth Century, op. cit.* n. 27, p. 79.

### The 1926 Convention to Suppress the Slave Trade and Slavery

The general prohibition against slavery and the slave trade in international law emanates from a wish to consider the issues specifically in regard to Ethiopia. In 1922, Sir Arthur Steel-Maitland, the Delegate from New Zealand submitted two Resolutions to the Assembly of the League of Nations, the first requesting an inquiry into slave-trading in Ethiopia; the second with slavery in Africa, more generally. Ultimately, a single, rather general, resolution was adopted: “to refer to the appropriate Committee the question of the recrudescence of slavery in Africa in order that it be considered and propose the best methods for combating the evil”.<sup>47</sup> “This all-embracing resolution”, Miers writes, “was intended to disarm suspicions that it was an attack on one country”.<sup>48</sup> With Ethiopia’s subsequent admission as a Member of the League one year later, the attention of the League of Nations with regard to the issue of slavery turned toward the promotion of an international instrument to end slavery and the slave trade. This call for a treaty flowed from the fact that States had shown little interest in responding to a 1922 questionnaire that had been sent out on behalf of the League of Nations by a sub-committee of the Assembly. A year later that sub-committee sought to have the Council of the League “entrust to a competent body the duty of continuing the investigation [of the question of slavery] with a view to obtaining further information on the subject”.<sup>49</sup>

As a result, the Council of the League of Nations created, on 14 March 1924, the Temporary Slavery Commission, a body that would exist for only two years but would fundamentally change the emphasis of the League’s work in the area of slavery from compiling information, to legislating the international suppression of slavery.<sup>50</sup> The Temporary Slavery Commission, in its final report of 25 July 1925, called on States to consider the “abolition of the legal status of slavery”. To that end, it emphasised that the “most important measure for the gradual abolition of slavery is that the status of

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<sup>47</sup> League of Nations, Motion Proposed by Sir Arthur Steel-Maitland, Delegate for New Zealand, on September 7, 1922, Third Assembly of the League of Nations, 7 September 1922, LofN Doc. 23253 (A/47/1922).

<sup>48</sup> Miers, *Slavery in the Twentieth Century*, *op. cit.* n. 27, p. 73.

<sup>49</sup> League of Nations, Report of the First Sub-Committee to the Sixth Committee, *Record of the Fourth Assembly, Meetings of the Committees, VI Minutes of the Sixth Committee (Political Questions)*, Annex 10, p. 40. Note that parallel to work of the Assembly, the Council of the League of Nations instructed the Secretary-General to circulate letters to the League Members “asking them to supply the Council with any information on the existing situation as regards the matter of slavery”, which he did in 1922 and 1923. Again, acting at the behest of the Council, the Secretary-General, in 1923, also sought information regarding slavery in “colonial possessions”. See League of Nations, Memorandum by the Secretary-General, *The Question of Slavery*, 4 August 1924, LofN Doc. 38385 (A/25/1924).

<sup>50</sup> Note that Lugard draws a direct line between slavery in Ethiopia and the establishment of the Temporary Slavery Commission: “The ultimate result – as regards slavery – was the appointment of the present Committee”. See League of Nations, Temporary Slavery Commission, *Slavery and Other Systems Restrictive of Liberty*, Memorandum by F. D. Lugard, Annex 3, “Conditions in Abyssinia” May 1925, LofN Doc CTE 36, pp. 1-2.

slavery should no longer be recognised in the eye of the law". Furthermore, the Commission sought to define what it meant by the notion of abolition of the legal status of slavery:

"The 'abolition of the legal status' means that every slave has the right to assert his freedom, without ransom and without going through any formal process of fulfilling any prior condition, by simply leaving his master if he desire to do so. He enjoys and can exercise all the civil rights of a free man – *e.g.*, can sue and be sued in court, can prosecute his master for ill-treatment, and can bequeath and inherit property".<sup>51</sup>

While the Commission gave voice to issues regarding the slave trade, slave-raiding, serfdom, and forced labour in its Report; its most enduring contribution was the call for an international convention on slavery.<sup>52</sup> As Viscount Robert Cecil of Chelwood would later relate, when that Report of the Temporary Slavery Commission was delivered to the Assembly of the League of Nations, the Sixth Committee of the Assembly had picked up on this notion of an international instrument and had prepared one for consideration by the Assembly. Viscount Cecil proposed a resolution to the Assembly that the 1925 Draft Convention be sent to Governments and considered with an eye to representatives being given Full Power by the next annual meeting of the Assembly "to sign the Convention with or without alteration".<sup>53</sup>

The 1925 Draft Convention which Viscount Cecil would lay before the Assembly was penned by none other than Sir Frederick Lugard, who had been appointed as a member of the Temporary Slavery Commission. Using the Lugard Draft as a basis, the British Government prepared its own "watered down version of the treaty".<sup>54</sup> That 1925 Draft Protocol was considered by the League of Nations Assembly after having been modified by the "Sixth Committee, with the help of a Sub-Committee and a small Drafting Committee".<sup>55</sup> In presenting the 1925 Draft Convention, Viscount Cecil understood that what had emerged was not as strong as it might otherwise have been, noting to the Assembly that what was on offer was "general principles which might be adopted usefully by all civilized nations as a minimum code in the matter of slavery"<sup>56</sup>. By the wording of the Resolution adopted by the Assembly, it was clear that its wish

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<sup>51</sup> League of Nations, Temporary Slavery Commission, *Report of the Temporary Slavery Commission adopted in the Course of its Second Session, July 13<sup>th</sup>-25<sup>th</sup> July, 1925*, 25 July 1925, LofN Doc A.19.1925. VI, p. 3.

<sup>52</sup> *Id.*, p. 2.

<sup>53</sup> League of Nations, Records of the Sixth Assembly: Text of Debates, *League of Nations Official Journal (Special Supplement 33)*, Nineteenth Plenary Meeting, 26 September 1925, p. 156.

<sup>54</sup> Miers, "Slavery and the Slave Trade", *op. cit.* n. 33, p. 28.

<sup>55</sup> League of Nations, Question of Slavery: Report of the Sixth Committee to the Assembly, *League of Nations Official Journal (Special Supplement 33)*, Annex 29, 26 September 1925, LofN Doc. A.130.1925.VI, p. 435.

<sup>56</sup> League of Nations, *Journal of the Sixth Assembly of the League of Nations*, Geneva 1925, No. 3, 9 September 1925, pp. 24-25.

was that States would accept the 1925 Draft Convention in the form it was presented, as far as possible; thus avoiding the need to convene an *ad hoc* conference to negotiate and adopt the instrument. In the course of the subsequent year a number of States made observations in regard to the 1925 Draft Convention and ultimately a revision of its provisions took place within the League of Nations in 1926. For its part, the 1925 Draft Convention was sustained *grosso modo* and found the light of day through its incorporation in the 1926 Convention to Suppress the Slave Trade and Slavery.

Where the actual definition of “slavery” is concerned, the definition which was adopted in the 1925 British Protocol was modified over the rather short period between 9 September and 26 September 1925, when the Assembly of the League of Nations adopted the 1925 Draft Convention. As originally conceived by the British Protocol, the definition of slavery read: “is a status in which one person exercises a right of property over another”.<sup>57</sup> However, this definition would be forsaken for one proposed by Lord Cecil,<sup>58</sup> when on 22 September 1925, the Drafting Committee having 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 exercised”.<sup>59</sup>

This definition of slavery – unaltered – would find its way into the 1926 Convention to Suppress the Slave Trade and Slavery. Where the *travaux préparatoires* are instructive in regard to the definition of slavery is to be found in a submission made by the Union of South Africa which provides a re-phrasing of the definition of “slavery”, thus providing a supplementary means of interpreting the term as found in the 1926 Convention. Consider the relevant section of the South African submission:

“[...] 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 such enslavement as noted in the Reply of the Union of South Africa was that:

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<sup>57</sup> *Id.*, p. 25.

<sup>58</sup> See League of Nations, Slavery, 24 September 1925, LofN Doc. A.VI/SC1/ Drafting Committee/14. (this document number having been pencilled out and replaced with A.VI/6.1925) as found in Folder R.67.D.46241 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))”.

<sup>59</sup> 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), 22 September 1925, 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. As found in Folder R.67.D.46241 entitled *La question de l'esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925.

“[...] 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”.<sup>60</sup>

One further element in regard to the definition of “slavery” as developed by the League of Nations might be mentioned. In his Report to the Assembly of the League of Nations in 1926 Viscount Cecil sought, in a rather back-door manner, to voice the Sixth Committee’s understanding of a wider definition of slavery. Speaking in regard to Article 2 – which will be considered shortly – he noted that the emphasis in that Article on “domestic slavery and similar conditions” had been omitted “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 necessary”. Cecil went on to say that:

“This applies not only to domestic slavery but to 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.”

To his credit, however, Viscount Cecil did qualify this pronouncement saying that “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”.<sup>61</sup> For their part, States did not recognise this expanded definition of slavery as being imbedded in Article 1 of the 1926 Convention; it would take the signing of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery for this to transpire.

With regard to the definition of the “slave trade”, its evolution within the League of Nations was without much difficulty or discussion. It was, as Viscount Cecil noted, “primarily the result of the work of legal experts, and is based on the minimum provisions of existing colonial legislation and on the previous international convention on this subject.”<sup>62</sup> Taking the lead from the 1925 British Draft Protocol which sought to indicate the various elements of what constituted the slave trade, the Sixth Committee of the Assembly of the League of Nations put forward a definition in September 1925<sup>63</sup>

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<sup>60</sup> League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of the Union of South Africa, 22 July 1926, LofN Doc. A.10(a).1926.VI, p. 5; as found in League of Nations, Publications of the League of Nations, VI.B.Slavery.1926, 1-7. Emphasis in the original.

<sup>61</sup> League of Nations, Slavery Convention: Report presented to the Assembly by the Sixth Committee, 24 September 1926, 24 September 1926, 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, pp. 1-2.

<sup>62</sup> League of Nations, “Question of Slavery: Report of the Sixth Committee to the Assembly”, *op. cit.* n. 55, p. 435.

<sup>63</sup> League of Nations, Question of Slavery: Draft Report Presented to the Sixth Assembly by the Sixth Committee, 23 September 1925, LofN Doc. A.VI/6.1925 as found in Folder R.67.D.46214 entitled *La question de l’esclavage: Discussions, y relatives, de la VIe Assemblée*, 1925, p. 2.

which would ultimately be accepted with very little comment by States and included in the 1926 Convention as the definition of the slave trade. That definition reads:

“The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”.

While the definitions of slavery and the slave trade did not raise much concern with States in the drafting process of the 1926 Convention to Suppress the Slave Trade and Slavery; the provisions of Article 2, which sought to establish the obligations flowing from those definitions elicited more attention. Article 2 of the 1926 Convention reads:

“The 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:

- (a) To prevent and suppress the slave trade;
- (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”.

The Haitian Delegation, for instance, sought to move beyond the parameters of simply dealing with slavery and the slave trade by proposing that paragraph (b) read: “To endeavour to bring about as soon as possible the disappearance of all voluntary or involuntary subjections”.<sup>64</sup> this proposal, however, was not taken up by the various committees drafting the 1926 Convention. Furthermore, while the Drafting Committee toyed with the inclusion of “abolition” in paragraph (a) of Article 2 to accompany “prevent and suppress”,<sup>65</sup> this was quietly dropped at the level of the Sixth Committee.<sup>66</sup>

Overall, the provisions of Article 2, from the 1925 British Draft Protocol to its inclusion in the 1926 Convention, proposed clearer obligations with regard to the slave trade but more nuanced obligations in regard to slavery. In proposing the 1925 Draft Protocol, Viscount Cecil noted that obligations being sought with regard to slavery were “very cautiously worded”.<sup>67</sup> With regard to the actual provisions of Article 2

<sup>64</sup> 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.

<sup>65</sup> League of Nations, Sixth Committee, Sub Committee 1, Drafting Committee, “Slavery, Synopsis of the Convention”, 22 September 1925, LofN Doc. A.VI/S.C.1/Drafting Committee/12(1), p. 2.

<sup>66</sup> League of Nations, Question of Slavery: Draft Report Presented to the Sixth Assembly by the Sixth Committee”, *op. cit.* n. 63, p. 3.

<sup>67</sup> 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*,



found in the 1926 Convention, Viscount Cecil sought to explain the cautious nature of the wording of Article 2(b):

“The Sixth Committee was of the opinion that the abolition of slavery could only be successfully brought about with due regard to the maintenance of order and the well-being of the peoples concerned. This accounts for the use of the word “progressively” employed in paragraph (b) for it was recognised that in certain cases in the past the attempt to do away with slavery and other similar conditions in an abrupt manner, although noble in its inspiration, has resulted in unforeseen hardships for the individuals whose conditions it was sought to alleviate, and even in grave social upheavals”.

Viscount Cecil continued by saying that it “must be left to the judgement of the Government responsible”, as circumstances varied from State to State; and that the Committee was ready to concede that “in certain cases there could be an arrangement whereby freed slaves in possession of all their natural and civil rights might be obliged to continue to serve their former masters for a certain time, but only subject to the obligations and rights consequent upon a labour contract”.<sup>68</sup> By way of an overall assessment of Article 2, Cecil concluded that the Sixth Committee “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 things”.<sup>69</sup>

Thus, what originally started as a process to investigate slavery in the Ethiopian context developed ultimately into an international instrument governing the suppression of slavery and the slave trade. In bringing 1926 Convention to Suppress the Slave Trade and Slavery into existence, the League of Nations did not abolish slavery or the slave trade *per se*; instead it called upon consenting States to be bound by the Convention to “prevent and suppress the slave trade” and to bring about “progressively and as soon as possible” the “complete abolition of slavery in all its forms”. This incremental means of abolishing the slave trade and slavery was to be important in the context of Ethiopia as – although it would not become party to the 1926 Convention during the League era – it took the Convention’s lead in seeking to demonstrate from even before it joined the League of Nations that it was actively, though slowly, seeking to abolish both slavery and the slave trade.

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*Meetings of the Committees, Minutes of the Sixth Committee (Political Questions)*, Special Supplement No. 39, 14 September 1925, p. 14.

<sup>68</sup> League of Nations, Slavery Convention: Report presented to the Assembly by the Sixth Committee, 24 September 1926, 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, pp. 1 and 2.

<sup>69</sup> *Id.*, pp. 1-2.

### Ethiopia, Slavery and the League of Nations

In April 1924, less than a year after having been admitted to the League of Nations, the Regent Ras Tafari provided a Report to the League of Nations in regard to the question of slavery in Ethiopia on behalf of his Government. He emphasised that the suppression of the slave trade could now be considered as the Empire had been consolidated: “Only when the unity of the Empire was attained under the Emperor Menelik II, and the chiefs of the provinces as well as the chiefs of the Kingdom under the suzerainty of the Emperor were definitely subjected to his authority, could the slave trade be effectively suppressed”.<sup>70</sup> The Report followed by saying that the “present Government, which adopts energetic and ruthless methods against slave dealers, has succeeded in almost totally suppressing the trade. [...] It may be said that at the present time the slave trade no longer exists in Abyssinia, except in isolated cases which are becoming increasingly rare”. With respect to slavery, “immediate abolition does not seem possible, but the Abyssinian Government has issued regulations which will, it is hoped, produce the best results”.<sup>71</sup> Those Regulations, issued in March 1924 were far reaching as they mandated the emancipation of slaves for the first time in Ethiopian history. However, as historian Richard Pankhurst notes, the new law was “limited in scope, it envisaged the gradual and ultimately complete liberation of all slaves”.<sup>72</sup>

Article 1 of the Regulations for the Emancipation of Slaves and their Conditions of Life sought to justify this gradual approach noting that if all slaves were to be freed at once, “they might become thieves, bandits and malefactors, thereby disturbing the public peace. They shall accordingly remain in the hands of their masters”. The Regulations then set out the circumstances under which slaves would be set free or considered as being free, such as all children born after 1924 and all other slaves seven years after the death of their master. In addition, it regulated and limited the ability of masters to reclaim runaway slaves; it set out penalties for slave trading; and created slave courts throughout Ethiopia. As Suzanne Miers relates; “on paper, therefore, a significant advance had been made”,<sup>73</sup> although the reality was that slavery and slave trading would persist for some time in Ethiopia. The Regulations, however had an effect beyond the borders of the Empire, as the “Ethiopian reforms of 1924 defused criticism at the TSC”<sup>74</sup> – the Temporary Slavery Commission of the League of Nations. Within the works of the Temporary Slavery Commission, Sir Frederick Lugard had annexed to a general consideration of slavery a specific study of Ethiopia. In that Memorandum, entitled “Conditions in Abyssinia”, Lugard noted that Ras Tafari “though sincere and eager for reform, has not the means at his command” to suppress issues related to slavery and

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<sup>70</sup> League of Nations, Report of the Abyssinian Government to the League of Nations on the Question of Slavery, 14 May 1924, LofN Doc. C.209.M.66.1924.VI, p. 1.

<sup>71</sup> *Id.*, p. 2.

<sup>72</sup> Pankhurst, *op. cit.* n. 24, p. 114. See also, generally, A.L. Gardiner, “The Law of Slavery in Abyssinia”, *Journal of Comparative Legislation and International Law*, Vol. 15, 1933, pp. 189-202.

<sup>73</sup> See Miers, “Britain and the Suppression ...”, *op. cit.* n. 26, p. 257.

<sup>74</sup> Miers, “Slavery and the Slave Trade ...”, *op. cit.* n. 33, p. 25.

he noted that “the evidence shows that slavery, slave-dealing and occasional slave-raiding, still exist in Abyssinia”. As such, he drew the conclusion that the “conditions of admission to Membership of the League have not therefore been carried out, and in present circumstances there seems little prospect of their fulfilment”. Lugard called upon the League to establish a commission of enquiry which would travel to Ethiopia to report on the “existing conditions in regard to slavery and forced labour, and to make recommendations”.<sup>75</sup>

The Temporary Slavery Commission for its part, did not see fit to pursue this line of inquiry. Instead, it suggested, in its 1925 Report, regarding to the legal status of slavery, that:

“The Abyssinian Government could hardly be asked to do more in this respect for the moment. In order, however, to hasten the liberation of slaves so far as circumstances permit, the attention of this Government might be called to certain transitional measures which have been successfully applied in other countries with this object, such as:

To encourage the principal chiefs in the provinces to set an example by liberating their own slaves [...];

To register slaves and to liberate those who by a certain date have not been registered. This measure would, it is true involve the recognition of the status of slavery – a status which, however, is still recognised by the Government of Abyssinia;

On the other hand, to ‘abolish the legal status of slavery’, [...] but with the reservation that the person thus legally freed might be obliged for a fixed period to continue to serve their former master as if they were bound by a contract of labour”.<sup>76</sup>

As far as issues of the slave-trade were concerned, the Temporary Slavery Commission supported the Ethiopian call for the colonial Powers which occupied the coastal regions of the Horn of Africa to cooperate and coordinate their activities if the trade in Ethiopia was to ultimately be suppressed. In presenting the Report to the Sixth Committee, the Chairman of the Temporary Slavery Commission, Albrecht Gohr, noted in regard to Ethiopia that “the Committee recognised that the general customs and political situation in that country rendered it very difficult to abolish slavery in one stroke”.<sup>77</sup> Yet, it

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<sup>75</sup> See League of Nations, Temporary Slavery Commission, *Slavery and Other Systems Restrictive of Liberty*, Memorandum by F. D. Lugard, Annex 3, Conditions in Abyssinia, LofN Doc CTE 36, May 1925, pp. 10-11.

<sup>76</sup> League of Nations, Temporary Slavery Commission, *Report of the Temporary Slavery Commission adopted in the Course of its Second Session, July 13th-25th, 1925*, 25 July 1925, LofN Doc A.19.1925. VI, p. 3.

<sup>77</sup> League of Nations, Slavery: Report of the Temporary Slavery Commission, Statement by M. Gohr, Chairman of the Temporary Slavery Commission, *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. 11.

did sound a warning shot across Ethiopia's bow in linking the existence of slavery in Ethiopia to membership, albeit, to application for future membership to the League of Nations: "Further, the Committee suggested that the League of Nations should admit in the future States not Members only when they have given proof of their desire to abolish slavery. If these abolitions could not take place at once, certain transitional measures were recommended".<sup>78</sup>

As the Temporary Slavery Commission gave way to a move to establish an international instrument in regard to issues of slavery, and a British proposal gave way to the 1925 Draft Convention prepared by the League of Nations, Ethiopia felt compelled – and was the only State to do so – to make a Declaration, which was attached to the minutes of League's Sixth Committee's consideration of the provision of that 1925 Draft Convention:

"Gentlemen, we, the Abyssinian delegation, fully and entirely concur with the lofty humanitarian principles embodied in the Protocol proposed by Viscount Cecil of Chelwood, and together with our eminent colleagues on the Sub-Committee [which drafted the 1925 proposal], we have voted wholeheartedly for the adoption of its fundamental articles.

The dynasty descended from David and Solomon will leave nothing undone to ensure that the Protocol shall be given the widest possible application with the help and grace of God".<sup>79</sup>

Yet, this Declaration rings hollow against Ethiopia's 1926 reply to the League's request to make comments on the substance of the 1925 Draft Convention; as in effect it was reported that the Emperor's "efforts are directed towards ensuring the strictest possible enforcement of [domestic] anti-slavery ordinances", and, as such, "will therefore, not be in a position to furnish this month sufficiently detailed replies indicating among the whole of the text accepted *de plano*, those concerning which some few provisional reservations might possibly have to be made".<sup>80</sup> Ethiopia, however ultimately did not need to make any reservations to the 1926 Convention during the League era, as it would only ratify it in 1969, though it was an original signatory on 25 September 1926.<sup>81</sup>

Despite not being party to the 1926 Convention to Suppress the Slave Trade and Slavery, Ethiopia's dealing with issues regarding slavery remained on the agenda of the League of Nations, in part, as a result of a Resolution adopted by the Assembly on

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<sup>78</sup> *Id.*, p. 11.

<sup>79</sup> League of Nations, Draft Convention on Slavery: Declaration by the Abyssinian Delegate, *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. 32.

<sup>80</sup> League of Nations, Draft Convention on Slavery, Replies of Governments, Reply from the Government of Abyssinia, 2 July 1926, LofN Doc. A.10.1926.VI, p. 1; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1926.

<sup>81</sup> See League of Nations, Slavery Convention, 25 September 1926, LofN Doc C.586. M.223.1926. VI, p. 8.

the same day as the signing of the 1926 Convention, that noted: “the League of Nations should continue to interest itself in securing the progressive abolition of slavery and conditions analogous” and thus requested the Council to gather information, not only from the Parties to the 1926 Convention as required by Article 7; but also “any supplementary information which the Members of the League may be disposed spontaneously to furnish with regard to the measures taken by them to this end”.<sup>82</sup> In 1927, the Sixth Committee had expressed its hope that Ethiopia would provide information in light of the previous year’s Resolution<sup>83</sup> and; indeed, acknowledge receipt of such information, as the Ethiopian Government provided the League of Nation with a Note that included a “nominal” list of individuals who had been freed as a result of the 1924 Ethiopian Regulations and those that had been convicted since its coming into force. As far as the eleven hundred individuals who had been freed were concerned, not only was the number small compared to the two million slaves which the Regent considered to still exist in Ethiopia, but the estimates, it would emerge many years later, were the “equivalent to ‘guess’”.<sup>84</sup> Nevertheless, the Note concluded by stating that “it should be observed that, despite considerable distances and enormous difficulties, a considerable step forward has been taken on the road of civilisation and human liberty”.<sup>85</sup>

While no notable mention of the issue of slavery in regard to Ethiopia was made before the League of Nations between 1927 and 1931; as a result of a League inquiry into issues of slavery in Liberia and fearing such a measure might be imposed on Ethiopia – the former Ras Tafari – now Emperor Haile Selassie I, undertook an action which “successfully disarmed criticism” by the newly established League of Nations’ *ad hoc* Committee of Experts on Slavery.<sup>86</sup> “In 1931”, historian Suzanne Miers relates, “Haile Selassie was alarmed lest the new League committee might try to send out a commission of inquiry. He feared that the slavery issue might be made a pretext for an attack on Ethiopian independence. Prompted by Lord Lugard (as he had become), the Emperor, in order to forestall any League action, asked the [British] antislavery society for help”.<sup>87</sup> The Anti-Slavery Society sent a delegation in 1932 headed by Lord Noel-Buxton, who gained a promise from the Emperor that slavery would end within

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<sup>82</sup> League of Nations, Slavery Convention, Resolution adopted by the Assembly at its meeting held on September 25th, 1926, LofN Doc. A.123.1926.VI; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1926.

<sup>83</sup> League of Nations, Slavery Convention, Annual Report by the Council, Report of the Sixth Committee to the Assembly, 17 September 1927, LofN Doc A.74.1927, VI; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1927.

<sup>84</sup> Pankhurst, *op. cit.* n. 24, p. 119.

<sup>85</sup> See League of Nations, Slavery Convention, Annual Report by the Council, 15 September 1927, LofN Doc A.37(b).1927.VI, p. 3; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1927.

<sup>86</sup> Miers, “Britain and the Suppression of Slavery ...”, *op. cit.* n. 26, p. 258.

<sup>87</sup> *Id.*

twenty years.<sup>88</sup> This along with the establishment of a new Slavery Department “meant to supervise the slavery laws, register slaves, run the slavery courts, look after freed slaves and run its own police force”, was enough to satisfy the Committee of Experts on Slavery which simply provided suggestions to the Ethiopian Government, recognising that “the special situation in Abyssinia shows that it is at present impossible for the Abyssinian Government to abolish slavery by a stroke of the pen and that it is necessary that the Government should only advance by stages”.<sup>89</sup> This gradual approach, it should be noted as an aside, was very much in line with the obligations which States that had ratified the 1926 Convention to Suppress the Slave Trade and Slavery had undertaken. Further, the Committee noted that a letter from the Emperor which was forwarded to the Committee by Lord Lugard included proposals “to take measures which forestall some of the recommendations of the Committee”.<sup>90</sup> The recommendations which the Committee had made, it should be noted, were hardly intrusive. Supporting the Ethiopian incremental approach to the end of slavery, it noted that:

“The main objective, however, should be to make the Abyssinians themselves realise fully the reprehensible character of slavery and the merit of spontaneous acts of liberation. Though laws may help to transform customs, the laws themselves are only fully applied if, in their conception, they reflect the sentiments of the general mass. It would appear that great progress has been made in this direction”.

As such, the Government should seek the clergy’s support in setting an example by freeing their slaves, and “for instance”, bestowing “rewards on those who voluntarily free their slaves”<sup>91</sup>

By the same token, the permanent body which replaced the *ad hoc* Committee of Experts on Slaves, the Advisory Committee of Experts, was rather supportive of Ethiopia’s attempts to gradually end slavery, pointing to a further quantitative submission made by the Ethiopian Government in 1934, regarding slaves freed and individuals convicted.<sup>92</sup> While Professor Pankhurst pointed to a number of factors in the economic development of Ethiopia – as it related to the relationship between master and slave

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<sup>88</sup> Note that while Noel-Buxton was sympathetic to the manner in which Haile Selassie was dealing with the issue of slavery, but in “his efforts to keep up the pressure, he proceeded to sour the relations with tactless talk and articles”. Miers, *Slavery in the Twentieth Century*, *op. cit.* n. 27, p. 179. For one such article, see Lord Noel-Buxton, “Slavery in Abyssinia”, *International Affairs*, Vol. 11, 1932, pp. 512-526.

<sup>89</sup> League of Nations, Slavery, Report of the Committee of Experts on Slavery provided for by the Assembly Resolution of September 25th, 1931, 1 September 1932, LofN Doc. C.618.1932.VI, p. 9; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1932 and 1935.

<sup>90</sup> *Id.*, p. 10.

<sup>91</sup> *Id.*, p. 9.

<sup>92</sup> See League of Nations, Slavery, Report of the Advisory Committee of Experts, 10 April 1935, LofN Doc. C.159.M.113.1935.VI, pp. 9-10; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1932 and 1935.

– which “accelerated the emancipation process”; which meant that slavery, by “the early thirties, was thus at last beginning to be brought under control”;<sup>93</sup> the Ethiopian Governments pointed elsewhere. In its 1934 submission it noted that:

“The opening up in recent years of several motor-tracks radiating from the capital, together with the quartering in many parts of the country of Central Government troops, trained according to the principles of modern military science, will certainly make it easier to stamp out the slave trade, while facilitating the general strict application of the Imperial laws for the liberation of slavers”.<sup>94</sup>

In its 1936 Report, the Advisory Committee of Experts simply noted, for the record, the legislation which had been passed to date by the Ethiopian Government in regard to the abolition of slavery by Ethiopia. It did so as events in Ethiopia had fundamentally changed, with the invasion and annexation of Ethiopia by Italy in 1935-1936.

### **Annexation of Ethiopia by Italy in 1936**

The road to Italian annexation of Ethiopia began in the Ogaden region, at Walwal, on 5 December 1934, when Ethiopian and Italian troops clashed as a result of a dispute over Italian claims to an oasis. By Italian admission; some years earlier “Wal-Wal and other points along the border were occupied by the Italians, and the Abyssinian Government made no protest”,<sup>95</sup> this despite the assertion by Professor Pitman Potter – who had been one of the arbitrators appointed by Ethiopia to consider the incident – that title by occupation could not have been made effective over the short period of four years, and moreover, that “[a]ll documentary evidence indicates that the frontier in this region [though never demarcated] lay one hundred or more kilometres east of Wal Wal”,<sup>96</sup> that is: well within Ethiopian territory.

The Walwal Incident was settled by pacific means. An arbitration panel – which included Potter (later to be a Judge of the International Court of Justice), as well as noted international jurists Geouffre de la Pradelle and Politis – determined in September 1935 that responsibility for the confrontation, which left one hundred and sixty dead,

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<sup>93</sup> Pankhurst, *op. cit.* n. 24, p. 123.

<sup>94</sup> League of Nations, Slavery, Report of the Advisory Committee of Experts, Annex 7, Communication, dated August 15th, 1934, from the Ethiopian Government to the Secretary-General of the League of Nations, Comprising a Report of the Application of the Ethiopian Laws for the Abolition of Slavery in Ethiopia, 10 April 1935, LofN Doc. C.159.M.113.1935.VI, p. 94; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1932 and 1935.

<sup>95</sup> See Commendatore Luigi Villari, “Abyssinia and Italy”, *Journal of Royal African Society*, Vol. 34, 1935, pp. 369.

<sup>96</sup> Pitman Potter, “The Wal Wal Arbitration”, *American Journal of International Law*, Vol. 30, p. 42.

could not be imputed to either State.<sup>97</sup> By the time the Walwal Incident was settled, however, the precipitation towards war was already well in advance. Italian stalling tactics before the arbitration panel meant that the dispute, which had mushroomed beyond the simple issue of Walwal, could not be considered by the political organs of the League of Nations as long as it remained in the hands of the arbitrators functioning not on the basis of the Covenant, but on a 1928 Ethio-Italian bilateral treaty of amity.<sup>98</sup> Such delays were in Italy's interest, as it used the interim period to amass troops in East Africa who, in any case, could not be mobilised until the end of the Ethiopian rainy season, which transpired towards the end September 1935.

Ethiopia, as early as March 1935, realising that Italy was moving troops and war materiel to its possessions on the Horn of Africa, asked that the overall dispute be considered by the Council of the League of Nations on the basis of Article 15, with a look to having the League provide a solution to what John Spencer, a former advisor to the Ethiopian Ministry of Foreign Affairs, termed the "threatening military situation in East Africa".<sup>99</sup> For its part, the Council, noting the declared pacific intentions of the parties, differed to on-going arbitration until that panel made its award on 3 September 1935. The Council then established a "Committee of Five" (France, Poland, Spain, Turkey, and the United Kingdom) which sought to act as a conciliator between the conflicting parties, making quite intrusive recommendations in regard to Ethiopia, calling on it to reorganise various tenets of its government; though it did hold out the possibility for territorial adjustment which would have granted it access to the sea via an Italian port.<sup>100</sup> These suggestions, the Council reported, "were accepted by Ethiopia as a basis of negotiation, but were rejected by Italy".<sup>101</sup> As a result, the Council moved on 26 September to establish a committee of all its members minus Italy (Committee of Thirteen) to report on the larger issue unfolding in East Africa. The previous day, Emperor Haile Sellasie notified the League that his instruction to pull back Ethiopian troops to thirty kilometres from its borders, so as to ensure no incidents might take place and to clearly demonstrate who might well be the aggressor if war was to break out, had now been carried out. On 3 October 1935, the Council received notice from Italy that:

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<sup>97</sup> See "Italo-Ethiopian Commission of Conciliation and Arbitration: Award of September 3, 1935", *The American Journal of International Law*, Vol. 29, 1935, pp. 690-698.

<sup>98</sup> See Alfred Zimmern, "The League's Handling of the Italo-Abyssinian Dispute", *International Affairs*, Vol. 14, 1935, p. 754.

<sup>99</sup> John Spencer, "The Italian-Ethiopian Dispute and the League of Nations", *The American Journal of International Law*, Vol. 31, 1937, p. 617.

<sup>100</sup> Leon Halden, "The Diplomacy of the Ethiopian Crisis", *The Journal of Negro History*, Vol. 22, 1937, p. 183.

<sup>101</sup> League of Nations, "Dispute between Ethiopia and Italy: Report of the Council of the League of Nations under Article 15, Paragraph 4, of the Covenant", 5 October 1935, as reproduced in *The American Journal of International Law*, Vol. 30 (Supplement: Official Documents), 1936, p. 14.



“the warlike and aggressive spirit in Ethiopia had succeeded in imposing war against Italy and had found its latest and complete expression in the order for general mobilization announced by the Emperor on September 28. That order stated the Italian Government, represented a direct and immediate threat to the Italian troops with the aggravating circumstances of the creation of a neutral zone [re: the thirty kilometre buffer zone] which, in reality, was only a strategic movement intended to facilitate the assembly and the aggressive preparation of the Ethiopian troops. As a result of the order for general mobilization, the continual and sanguinary aggression to which Italy had been subjected in the last ten years manifestly involved grave and immediate dangers against which it was essential for elementary reasons of security to take action without delay [... has] found itself obliged to authorize the high command in Eritrea to take the necessary measures of defence”.<sup>102</sup>

Italian “self-defence” had thus commenced.

Italian motivation for attacking Ethiopia can be traced back to a number of factors. The first was manifest in Italy’s opening act of war: the symbolic (though deadly) bombing of Adwa, the site of its humiliating defeat of 1896.<sup>103</sup> In geopolitical terms, Italy saw itself as having been unfairly deprived by the territorial settlement of the First World War, after being promised by France and Great Britain that if they were to benefit territorially at the expense of Germany in Africa, that “equitable compensation, particularly as regards the settlement in her favour of the questions relative to the frontiers of the Italian colonies of Eritrea, Somaliland, and Libya”<sup>104</sup> would be forthcoming – though this never materialised. This grievance resulted in the fact that Italy saw itself as having come “last into the field of colonial expansion and was only able to pick up the scraps”.<sup>105</sup> As a result, Italy could not adequately address the apparent *Zeitgeist* of the era: the need for *Lebensraum*. As the Italian Ambassador, Luigi Villari, was to write in the Journal of the Royal African Society, Italy “needed expansion more than almost any other country. Her rapidly growing, hard-working and industrious population was limited to a metropolitan area half the size of France [...] it lacked the raw material necessary for industry, and even a proportion of the foodstuffs for feeding the people had to be imported from abroad. [...] The] situation was unsatisfactory and unstable, and the necessity for the occupation of colonial territories became ever more urgent”.<sup>106</sup>

In a newspaper piece attributed to the Italian Prime Minister, Benito Mussolini, it noted “that slavery exists in Abyssinia ... but it is not for that reason that Italy is preparing herself for action ... Nor is an essential argument the question of race ... Not even civilisation is the object that Italy has in view”; instead the “vital needs of the Italian people” to land was important, but the “decisive” reason for war was “security in East Africa”:

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<sup>102</sup> *Id.*, p. 15

<sup>103</sup> See, for instance: George Baer, *Test Case: Italy, Ethiopia, and the League of Nations*, 1976, p. 156.

<sup>104</sup> Halden, *op. cit.*, n. 100, p. 166.

<sup>105</sup> See Villari *op. cit.*, n. 95, pp. 366-367.

<sup>106</sup> *Id.*, p. 367.

“The solution of the problem can only be totalitarian. Any action of expansion or any protectorate must be accomplished by military measures. Italy is the only judge of her security in East Africa. But in military terms, the Italo-Abyssinian problem is simplicity and logic itself. The problem admits of only one solution with Geneva, without Geneva, or against Geneva”.<sup>107</sup>

And yet, the notions of civilisation attached to issues of slavery remained a strong element of rhetoric in the Italian justification for war, especially before the League of Nations. A month before the start of their campaign, the Italian Representative had submitted to the Council of the League of Nations a long memorandum which sought to de-legitimise Ethiopia as a less-than-equal State, as unworthy of membership in the League of Nations. Ethiopia, the Memorandum stated “had by her conduct placed herself openly outside the pact of the League of Nations and has made herself unworthy of the trust accorded to her when she was admitted”. As a report in *The Times* of London noted:

“The memorandum turns to the alleged violations of the special pledges made by Abyssinia towards the League, especially that regarding the repressions of slavery, the survival of which “constitutes not only an atrocious offence to civilization and a manifest violation of Article 23 of the Convention, but represents a flagrant violation of the particular obligations assumed by the Abyssinian Government at the time of her admission”. Only if the obligations are observed, adds the memorandum, ‘can Abyssinia be sufficiently entitled to remain a member of the League’”.<sup>108</sup>

The Italian point of view, however, failed to carry the day; on the 5 October 1935, the Council of the League of Nations established the so-called Committee of Six “to study the situation and report to the Council so as to enable it to take decisions with full knowledge of the matters involved”.<sup>109</sup> While the above noted Committee of Thirteen provided a narrative of the dispute between Ethiopia and Italy and made rather banal recommendations in “that any violation of the Covenant should immediately be brought to an end”,<sup>110</sup> the Committee of Six sought to consider whether the war had transpired in violation of the Covenant. The Committee, while noting obligations under the 1928 Pact of Paris (re: Briand-Kellogg Pact), focused on the provisions of Article 12 while

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<sup>107</sup> Halden, *op. cit.*, n. 100, p. 179.

<sup>108</sup> Geneva Correspondent, “Italian Case: Charges against Abyssinia, Memorandum to League”, *The Times*, 6 September 1935, p. 7.

<sup>109</sup> League of Nations, “Report of the League of Nations Council Committee”, 7 October 1935, as reproduced in *The American Journal of International Law*, Vol. 30 (Supplement: Official Documents), 1936, p. 37. The Committee consisted of Chile, Denmark, France, Portugal, Romania and the United Kingdom.

<sup>110</sup> League of Nations, “Dispute between Ethiopia and Italy: Report of the Council of the League of Nations under Article 15, Paragraph 4, of the Covenant”, 5 October 1935, as reproduced in *The American Journal of International Law*, Vol. 30 (Supplement: Official Documents), 1936, p. 26.

making reference to Articles 13 and 15 of the Covenant of the League of Nations.<sup>111</sup> It noted that League Members are:

“not entitled, without having first complied with the provisions of Articles 12, 13, and 15, to seek a remedy by war for grievances they consider they have against other members of the League. The adoption by a State of measures of security on its own territory [re: the thirty kilometre buffer zone] and within its international agreements does not authorize another State to consider itself free from its obligations under the Covenant.”

As such, the Committee of Six drew the following conclusions: “that the Italian Government has resorted to war in disregard of its covenants under Article 12 of the Covenant of the League of Nations”.<sup>112</sup> The Report was agreed to by each of the Members of the Council of the League with the exception of Italy. The implications of this determination were far-reaching, as the collective security system of the League of Nations required, under Article 16, that should “any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League”, mandating trade sanctions and the possibility of military action.

While the Italian campaign persisted in Ethiopia, the Assembly of the League of Nations moved to establish sanctions, agreeing on 18 November 1935 to five proposals with regard to, *inter alia*, financial measures, import and export of goods; and the reversal of a longstanding arms embargo against Ethiopia and the placing of such an embargo on Italy. Further agreement was reached, in principle, in regard to a petroleum embargo.<sup>113</sup> Yet, the petroleum embargo was never to be, as it was the string which ultimately unravelled the overall sanction regime and caused the abandonment of Ethiopia by the League of Nations. To avoid the oil sanctions – a *causa belli* for Italy – the British and French sought to propose a settlement. The so-called Hoare-Laval Plan was mooted to the Council in December 1935, however, it caused a major uproar when made public, leading to the resignation of both its authors, the British Foreign Secretary and the French Prime Minister, due to the fact that it “confirmed Italian military gains

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<sup>111</sup> Article 12 of the Covenant of the League of Nations reads:

“The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute”.

<sup>112</sup> League of Nations, “Report of the League of Nations Council Committee”, 7 October 1935, as reproduced in *The American Journal of International Law*, Vol. 30 (Supplement: Official Documents), 1936, pp. 39 and 40.

<sup>113</sup> See *Note on Proposal for the Application of Sanctions against the Italian Government*, in Zimmern, *op. cit.* n. 98, pp. 765-768.

made up to that time, giving Italy parts of Ogaden and Tegra, as well as an economic protectorate over a large part of the rest of Ethiopia".<sup>114</sup> As Historian George Scott noted "Haile Selassie was being called upon to pay a crippling bill for the privilege of being invaded by Italy and protected by the League of Nations".<sup>115</sup> Ethiopia's reaction to the proposal, delivered by the Emperor, was emphatic:

"We desire to state, with all the solemnity and firmness that the situation demands today, that our willingness to facilitate any pacific solution on the basis of the Franco-British proposals would not only be cowardice towards our people, but a betrayal of the League of Nations and of all States that have thought up to now they could have confidence in the system of collective security.

Those proposals are, in Ethiopian eyes, a negation and abandonment of the principles upon which the League of Nations was founded. They would consecrate the amputation of Ethiopia's territory and the disappearance of her independence for the benefit of a State that has attacked her [...]".<sup>116</sup>

As the proposed petroleum embargo was relegated to a technical committee of the League of Nations in the early months of 1936, it became apparent that not only were oil sanctions not to be implemented, but that the situation in Europe was such that interest in maintaining any sanctions against Italy was waning. Meanwhile Italy was making territorial gains in Ethiopia. John Spencer provides the following pithy narrative of Italian gains in the pages of the *American Journal of International Law*: "During the month of March, 1936, by means of gas attacks on the northern front, the Italian army was able gradually to demoralize the Ethiopian forces, and, by the end of March, to break their resistance so that the gradual advance [...] became, during the month of April, a rout of Ethiopian troops".<sup>117</sup> On 3 May 1936, the Emperor fled into exile, two days later, Italian troops occupied Addis Ababa; and on the 9 May the Italian Prime Minister, "Mussolini publicly proclaimed the unqualified annexation of Ethiopia and conferred upon King Victor Emmanuel III the title of Emperor of that country".<sup>118</sup> With European Powers turning their attention to the situation in Europe and the rise of an aggressive National Socialist party in Germany, the issue of Ethiopia fell to the wayside, the League in essence accepting a *fait accompli*:

"With regard to the question of the continuation of sanctions, agreement of the delegates was, with the outstanding exception of South Africa, unanimously in favour of

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<sup>114</sup> Zewde, *op. cit.* n. 11, p. 166.

<sup>115</sup> George Scott, *The Rise and Fall of the League of Nations*, 1973, p. 347.

<sup>116</sup> Special Correspondent, "The Emperor's 'No' Reply To Paris Proposals, 'Betrayal of the League'", *The Times*, 17 December 1935, p. 14.

<sup>117</sup> Spencer, *op. cit.* n. 99, p. 630.

<sup>118</sup> George Scott, *The Rise and Fall of the League of Nations*, 1973, pp. 357-358.

the removal of such measures for the reason that military action alone could change the *de facto* situation created in Ethiopia”.<sup>119</sup>

On 30 June 1936, above the heckling of Italian journalists, Emperor Haile Sellassie became the first Head of State to address the League of Nations:

“I, Haile Sellassie, Emperor of Ethiopia, am present here today to ask for the impartial justice due to my people and for the help which fifty-two nations had undertaken to extend to it when they affirmed, eight months ago, that a war of aggression, in violation of international law, was being waged against Ethiopia”.

The Emperor made a noble and impassioned plea for the respecting of the Covenant of the League of Nations, and the territorial integrity of small and weak States, culminating his speech with the following questions:

“I ask the fifty-two nations who have given a promise to the Ethiopian people that they would come to their aid at the time of the aggression against them, in order to prevent the aggressor from defeating them – I ask these fifty-two nations for their support by upholding their promise. What are you willing to do for Ethiopia?

You, Great Powers, who have promised to give guarantees of collective security, lest small nations be extinguished and the fate which has overtaken Ethiopia should befall them as well, have you considered what kind of assistance to provide, so that Ethiopia’s liberty shall not be destroyed and her territorial integrity shall be respected?

You representatives of the world assembled here! I have come to you to Geneva to carry out the saddest duty that has befallen an Emperor. What answer am I to take back to my people”?<sup>120</sup>

The response was, of course, a deafening silence. Ethiopia, though it would retain its membership in League of Nations, would remain under Italian occupation until 1941.

The Italian annexation of Ethiopia meant that ultimately, the issue of slavery stopped being of concern to the League of Nations. This transpired as first, the League was unwilling to recognise the annexation, and thus the Advisory Committee of Experts failed to reproduce those sections related to Ethiopia of the 1936 Italian submission in its Annual Report; and second, that Italy failed to make a further submission in 1937, and withdrew from the League of Nation in 1938. Returning to the 1936 submission of Italy: in occupying Ethiopia, it sought to justify its action retroactively by, *inter alia*, pointing to issues of slavery over territory it now deemed to be part of its Empire. In its submission to the League of Nations Advisory Committee of Experts on issues of Slavery, it pointed to Notes of March and April 1936 in which it announced the “general freeing of slaves in the Ethiopian territories – adjacent to Eritrea and Somaliland

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<sup>119</sup> Spencer, *op. cit.* n. 99, pp. 637-638.

<sup>120</sup> Sellassie, *op. cit.* n. 22, pp. 311-312.

– which have been occupied by Italian troops”. The Advisory Committee of Experts noted this in its introduction; however, under a procedure which allowed one State to report on issues of slavery in another State, and thus decoupled it from the report which Italy had prepared for the Committee. Yet, despite this unwillingness to recognise the Italian claim to Ethiopia, the Committee surprisingly included in its Report a section of the Italian submission which quoted from the pre-war long memorandum already mentioned which Italy had re-submitted having originally provided it to the League’s Council in September 1935 in an attempt to justify its move to conquer Ethiopia. The Advisory Committee of Experts reproduced, without comment, the damning conclusions drawn from the section of the Italian memorandum dealing with the “question of the attitude of Ethiopia to the special engagements assumed by that country towards the League of Nations in regard to slavery”:

“ (a) That Ethiopia recognises slavery as a legal condition;

That raids for the capture of individuals for purposes of slavery are continuing on large scale, especially in the southern and western regions of Ethiopia;

That the slave trade still persists;

That the Ethiopian Government participates directly in the slave trade by accepting slaves as payment of taxes and allowing detachments of regular troops to capture slaves;

That, in addition to slavery proper, there exists the institution known as ‘gebber’, to which the population of non-Ethiopians regions are subject and which is a form of servitude akin to slavery;

That the Ethiopian Government taken no account of the recommendations made to it by the Committee of Experts on Slavery, more particularly as regards the abolition of the legal status of slaves, as appears further from the report submitted to the League of Nations in May 1935”.<sup>121</sup>

The reproduction of Italy’s pre-war claims regarding the attitude of Ethiopia towards the undertaking it had accepted upon entry into the League of Nations was the last words spoken about the issue of slavery within the League of Nations in regard to Ethiopia. A rather sad ending to what may well be considered the saddest episode of the League of Nations – the failure to prevent the annexation of Ethiopia by Italy.

## **Conclusion**

The failure to stop or reverse the Italian annexation of Ethiopia stemmed from an unwillingness of the European Powers of the League of Nations to truly challenge Italy

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<sup>121</sup> League of Nations, Slavery, Report of the Advisory Committee of Experts, 15 May 1936, LofN Doc. C.189(1).M.145.1936.VI, p. 7; as found in League of Nations, *Publications of the League of Nations*, VI.B.Slavery.1936.

during the mid-1930s, as they sought to avoid war with that Fascist State which was being pushed into the camp of Adolf Hitler of Germany. Ethiopia for its part could be sacrificed as it was considered by those European Powers as less than a member of the League of Nations. This was made evident from its inception when Ethiopia sought to avoid European and League encroachment by seeking admission, in 1923, to the League of Nations; wherein the British Government saw it as being “unfit” for membership, though it recognised that joining the League might assist Ethiopia in its desire “to raise herself in the scale of civilisation”.<sup>122</sup>

The standard of civilisation which was applied in the Ethiopian case was that of the suppression of slavery and the slave trade, which was attached as conditions for its admission to the League of Nations. Requiring Ethiopia to accept the obligations of the 1919 Treaty of St. Germain – the most up-to-date provisions regarding the suppression of the slave trade and slavery – would not, in the words of an Italian delegate, wound its “susceptibilities, since other States, which had arrived at a higher degree of civilisation, had already consented” to such undertakings.<sup>123</sup> Ethiopia, for its part, ultimately decided that it was better to be part of the League than to be a non-Member, despite having to be admitted with reservation. The admission of Ethiopia had unintended consequences for the League of Nations, as it led to the drafting of what is often considered the first international human rights instrument, the 1926 Convention to Suppress the Slave Trade and Slavery. Despite the fact that the provisions of the 1926 Convention would not apply to Ethiopia during the League era, the Convention acted as a benchmark both as an established definition of slavery and the slave trade, and provided breathing space for Ethiopia in seeking to end slavery and the trade in a progressive manner. This was so as the 1926 Convention did not require the immediate abolition of slavery and the slave trade, but instead called for their gradual disappearance, something which Ethiopia much appreciated and sought to constantly demonstrate to the League through its submissions. For its part, the supervisory bodies of the League, both the Committee of Experts on Slaves and the Advisory Committee of Experts, recognised the progress, however slow, that Ethiopia was making with regard to suppressing slavery and the slave trade.

Ultimately, however, Ethiopia’s conditional acceptance as a “civilised nation” was challenged when Mussolini’s Italy developed territorial ambitions in East Africa. Time and again during the dispute between Ethiopia and Italy – the League of Nations through its Committee of Five, and the European Powers by way of the Hoare-Laval Plan – mediation proposals required that Ethiopian independence be sacrificed to appease Italy. Italian attempts to de-legitimise Ethiopia in the lead-up to its act of aggression were in large part focused on issues of slavery which resulted in arguing that Ethiopia openly placed “herself outside the pact of the League of Nations”.<sup>124</sup> The criteria of civilisation which mandated Ethiopia’s conditional admission to the League of Nations was nowhere made more evident than in the long memorandum placed before the League of Nations by Italy in September 1935:

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<sup>122</sup> See the British Delegates comments at n. 37.

<sup>123</sup> See n. 44.

<sup>124</sup> See n. 108.

“The admission of Ethiopia to the League was a political act based on the belief that, through participation in the system of international co-operation represented by the League, Ethiopia could be led to make by herself the efforts necessary to approach, even though only gradually, the level of civilisation of the other peoples belonging to the international community. [...] Ethiopia has shown that she does not possess the qualifications necessary to enable her to obtain, through participation in the League, the impulse required to raise herself by voluntary efforts to the level of the other civilised nations. The League would be defeating its own ends and its own mission if it did not take to heart this lesson of experience”.<sup>125</sup>

Although the League of Nations did not accept the Italian submission, and despite the personal pleas of the Ethiopian Emperor, the League of Nations was unwilling to carry out its collective security obligations as against a European Power. Despite having labelled Italy the aggressor, European Powers abandoned Ethiopia to its fate, as the geo-politics of Europe meant that the “civilised nations” concentrated on positioning themselves for the barbary of what would come to be termed: the Second World War.

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<sup>125</sup> League of Nations, “Situation in Ethiopia. Memorandum by the Italian Government dated 4 September 1935, and Documents relating Thereto”, 4 September 1935, LoN Doc. C.340. M.171.1935.VI, as found in League of Nations, *Official Journal*, 88th and 89th Council Sessions, Annex 1571, November 1935, p. 1416.