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## Status obligations of a “flag state”: modern international legal regime of the slaves’ transportation suppression

### Статусні зобов’язання «держави прапора»: сучасний міжнародно-правовий режим протидії перевезенню рабів

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#### Abstract

The UN Convention on the Law of the Sea prescribes that vessels have the nationality of the State whose flag they are entitled to fly and that there must exist “a genuine link” between a “flag State” (a State which entitles a vessel to fly its flag) and the “flag vessels” (the vessels which are entitled to fly the States’ flag). But the Convention has neither definition of the term “genuine link” as a legal link “legal rights – legal obligations”, nor defines States’ and vessels’ rights and obligations. We have analyzed status obligations of a “flag State” which are related to suppression of illegal use of the “flag vessels”. The purpose of our study was to investigate modern international legal regime of the slaves’ transportation by sea suppression and to prepare the legal field to defining the full complex of a “flag State” status obligations. The methodology includes systematic, formal-legal methods, the methods of analyses and synthesis. The results highlight that the status obligations of a “flag State”, inter alia, those to suppression the transportation of slaves as an illegal use of the “flag vessels”, are those to form an integral part of the “genuine link” conception.

**Keywords:** flag State, flag vessel, genuine link, vessels’ illegal use, suppression of slaves’ transportation.

#### Introduction

Slavery is illegal throughout the world. Practices similar to slavery, such as debt bondage,

#### Анотація

Конвенція ООН з морського права передбачає, що судна мають громадянство держави, під прапором якої вони мають право плавати, і що має існувати «справжній зв’язок» між «державою прапора» (державою, яка надає судну право плавати під її прапором) та «судна під прапором» (судна, які мають право плавати під прапором відповідної держави). Але Конвенція не містить ані визначення терміну «справжній зв’язок» як правового зв’язку «юридичні права – юридичні обов’язки», ані визначення прав і обов’язків держав і суден. Ми проаналізували статусні зобов’язання «держави прапора», які пов’язані з припиненням незаконного використання «суден під прапором». Метою нашого дослідження було дослідити сучасний міжнародно-правовий режим припинення перевезення рабів морським транспортом та підготувати правове поле для визначення повного комплексу зобов’язань щодо статусу «держави прапора». Методологія включає системний, формально-юридичний методи, методи аналізу та синтезу. Результати підкреслюють, що статусні зобов’язання «держави прапора», серед іншого, щодо протидії перевезенню рабів, як різновиду незаконного використання «суден під прапором», є невід’ємною частиною концепції «справжнього зв’язку».

**Ключові слова:** держава прапора, судно прапора, справжній зв’язок, незаконне використання суден, протидія перевезенню рабів.

serfdom, forced labor, and the sale and exploitation of women and children, have long

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been on the agenda of international bodies, especially the ILO, and are prohibited in international anti-slavery conventions and multilateral treaties. in the field of human rights and fundamental freedoms.

The abolitionist movement began as an effort to stop the Atlantic slave trade and to free slaves in the colonies of European countries and in the United States. For the first time, the question of the slave trade was considered at the Vienna Congress of 1815, where the Declaration on the Abolition of the Slave Trade was adopted. The first universal treaty to combat slavery and the slave trade in the twentieth century, should be considered the Slavery Convention signed on September 25, 1926 under the auspices of the League of Nations. After the Second World War, the issue of slavery becomes the subject of UN consideration. On September 7, 1956, the Supplementary Convention on the Abolition of Slavery was adopted at the Geneva Conference.

It is generally accepted in the international maritime law to classified the suppression of the slaves' transportation by using seagoing vessels for this purpose as an intervention in the freedom of navigation in the high seas, that means the intervention in the exclusive jurisdiction of a "flag State" which it exercises over the "flag vessels" in the high seas – ocean spaces which are situated beyond the national sovereignty of any State.

But our proposition is to classify the transportation of slaves as an illegal use of the "flag vessels" and the suppression as the status obligation of a "flag State", which forms an integral part of the "genuine link" conception.

The purpose of our study is to analyze modern international legal regime which have the legal norms and legal rules related to regulation of contemporary problems of slaves, slavery and slaves' transportation by sea, namely definitions, legal characteristics and legal methods of suppression, prospects of application and the implementation of treaties.

### **Theoretical Framework or Literature Review**

Both domestic and foreign scientists were interested in the problem of the modern slavery suppression, for example Weissbrodt (2002), Beydoun (2006).

Buckland (1908), Sawyer (1986), Watson (1991) declared that slavery was a bit of the "jus gentium" in Roman law.

Quirk (2006) explores the relationship between the historical events surrounding the legal abolition of slavery. He notes that slavery is often thought of as an obvious wrong that belongs in the past but this complacent viewpoint belies a range of complex and often longstanding problems, which fall under the rubric "contemporary forms of slavery".

It is generally accepted that the research of Bales (2012) is the first one to point the way to abolishing slavery in today's global economy.

Many researchers have paid attention to suppression of the slaves' transportation by using of seagoing vessels as an intervention in the freedom of navigation in the high seas, that means the intervention in the exclusive jurisdiction of a "flag State" which it exercises over the "flag vessels" in the high seas – ocean spaces which are situated beyond the national sovereignty of any State (Nordquist et al., 1995; Byers, 2004). But our proposition is to classify the transportation of slaves as an illegal use of the "flag vessels" and the suppression as the status obligation of a "flag State", which forms an integral part of the "genuine link" conception.

The well-known Korean author Kojima (2021), in her work «Modern Slavery and the Law of the Sea», argues that modern slavery (human trafficking, etc.) associated with the illicit maritime transportation is thriving in some parts of the world due to a lack of proper legal regulation, and in some cases complete legal uncertainty and lack of political will to eliminate it. The author has attempted to rethink the UN Convention on the Law of the Sea in order to provide additional opportunities for non-flag states to control the current practice of slavery at sea. The author seeks opportunities to increase the powers of non-flag states to take more effective action against foreign ships suspected of modern slavery on the high seas.

Angela Aparecida Roncheta Souza and Bruno Kneip Kratz (2021), in their article «Human Trafficking in Latin America», analyze the state of modern slavery in Latin America. The general conclusion of the authors is that slavery is far from eradication in Latin America, especially in the poorest countries of the region. However, the international community needs to make every effort to combat slavery in the region.

Carolina Villacampa Estiarte (2013) in her research «Modern Slavery and Its Legal-Criminal Relevance» analyzes a concept of modern slavery, its features, its forms and its

magnitude. The author addresses the question of whether the legal system incriminates sufficiently this type of behaviors, taking into consideration how this phenomenon is addressed in comparative law.

Further research into the issues under study should focus on increasing the powers of flag states to combat the transportation of slaves. In addition, it is necessary to introduce measures of responsibility for the countries concerned in the absence of control over violators of the established rules.

### Methodology

The methodology used are systematic and formal-legal methods, as well as methods of analysis and synthesis.

We applied the systematic method to show the place of the norms of certain international conventions, as well as, multilateral and bilateral in the modern international legal regime of the suppression to the slaves' transportation by sea. In this sense, we have considered that the transportation of slaves by sea is an illegal use of the "flag vessels" and there are the status obligations of a "flag State", inter alia, to suppress the abovementioned using of ships, which are the obligations to form an integral part of the "genuine link" conception. It is advisable to start considering from the studying of the groundwork laid by the League of Nations and the United Nations which has made various restatements of the definitions of the terms "slave" and "slavery".

We handled a formal legal method to demonstrate the content of the "UNCHS'1958" and of the "UNCLOS'82". As a result, must be noted that the text of the Article 13 of the "UNCHS'1958" was copied without any changes in the Article 99 of the "UNCLOS'82". Moreover, Article 99 of the "UNCLOS'82" turns over towards the "every State" but, notwithstanding, prescribes measures, which are to be taken especially by the "flag State" with reference to "flag ships" – ships authorized to fly its flag. We think, that it is important to take into consideration that such measures include the prevention of the unlawful use of its flag for that purpose, that is – to use of its flag either by ships "authorized", or ships "not authorized" to fly its flag.

Methods of analysis and synthesis are used to generalize and draw conclusions about results of the study. Methods of analysis and synthesis,

which allow us to identify elements of the subject of study for more thorough study and then combine them, enriching the phenomenon under study with new knowledge, allowed us to draw conclusions about the inadequacy of international legal mechanisms to combat slavery at sea.

### Results and Discussion

#### *Preliminary notes*

Although slavery has existed since ancient times the Declaration Relative to the Universal Abolition of the Slave Trade (Oxford University Press, 1815) was the first international instrument to condemn it (Weissbrodt, 2002).

"Yet more than twenty-seven million people" are still trapped in one of history's oldest social institutions (Bales, 2012; Weissbrodt, 2002). Employing a macro-historical perspective, J. Quirk take up the complex relationship between the historical and contemporary, introducing the concept of an "Anti-Slavery Project", which "builds upon the notion that the present status quo can be traced to both the remarkable achievements, and substantive limitations, of legal abolition (Quirk, 2006; Beydoun, 2006). The thorough analysis of the definition of slavery was made by Bales and Robbins (2001). The authors have attempted to build on theories and examples to clarify the identification of slavery by focusing on an irreducible core of three elements and have noted that assessing "the presence of all three can then be applied to a variety of social relationships: first, the complete control of one personal by another; second, appropriation of labor power; and third, the enforcement of these conditions by threats or acts of violence".

For the purposes of this article we will understand the term "obligation" – as a legal duty and the term "status" – as a person's legal standing or capacity – the term, which derives from Roman law, in which "it referred to a person's freedom, citizenship, and family rights (Martin, 1994).

#### *The United Nations Convention on the High Seas, 1958 and The UN Convention on the Law of the Sea, 1982*

The United Nations (1982) Convention on the Law of the Sea (generally known as UNCLOS'82) is among the conventions with universal implication, inter alia, on the suppression of slaves' transportation by sea

(further referred to as the “UNCLOS’82”). Every State which have ratified the “UNCLOS’82” obtain certain subjective rights, juridical obligations and responsibilities and, therefore, legal status – State Party – “state, which have consented to be bound by this Convention and for which this Convention is in force” (“UNCLOS’82”. Part I “Introduction”. Article 1 “Use of terms and scope”, paragraph 2 (1). Thus, States Parties “shall fulfil in good faith the obligations assumed” under the “UNCLOS’82” and “shall exercise the rights, jurisdiction and freedoms” recognized in this Convention in a manner which would not constitute an abuse of right (“UNCLOS’82”. Part XVI. “General Provisions”. Article 300 “Good faith and abuse of rights”).

According to Article 99 “Prohibition of the transport of slaves” (“UNCLOS’82”. Part VII “High seas”. Section 1. “General provisions”) every State Party “shall take effective measures”: 1) to prevent the transport of slaves in ships authorized to fly its flag; 2) to punish the transport of slaves in ships authorized to fly its flag; 3) to prevent the unlawful use of its flag for that purpose. Article 99 turns over towards the “every State” but, notwithstanding, prescribes measures, which are to be taken especially by the “flag State” with reference to “flag ships” – “ships authorized to fly its flag”. We think, that it is important to take into consideration that such measures include the prevention of “the unlawful use of its flag for that purpose”, that is – to use of its flag either by ships “authorized”, or ships “not authorized” to fly its flag. Article 99 defines that any slave taking refuge on board any ship, whatever its flag, “shall ipso facto be free” (“ipso facto” – with reason of the fact – legal form which claims that consequences of an action arose without any additional facts; “ipso jure” – with reason of a law – legal form which claims that consequences are arose logically from a law) (Osipov, 2009).

Earlier in the United Nations Convention on the High Seas, 1958 (United Nations, 1958) (further referred to as the “UNCHS’1958”) it was declared that “every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free” (“UNCHS’1958”. Article 13). So, it must be noted that, the text above was copied without any changes in the Article 99 of the “UNCLOS’82”. But it generally accepted that the “UNCLOS’82” have made “most important contribution” in the

struggle with slaves’ transportation by sea, “as far as, Article 99 wind up the gap between the norms of international law, which are abolished slavery, and the law of the sea (Nordquist et al, 1995).

The Convention to Suppress the Slave Trade and Slavery, 1926 and The Protocol amending the Slavery Convention signed at Geneva on 25 September 1926. The Convention to Suppress the Slave Trade and Slavery known as the “Slavery Convention, 1926”, was signed on September 25, 1926 and entered in to force on 7 March 1927 (further referred to as the “Slavery Convention”). This convention was created under the auspices of the League of Nations and serves as the foundation for the prevention and suppression of the slave trade. The High Contracting Parties have decided to conclude a Convention and have agreed on Article 2, but: 1) taking into consideration the General Act of Berlin (britannica,1885); the General Act and Declaration of Brussels (Oxford University Press, 1890); the Convention of Saint-Germain-En-Laye (University of Oregon, 1921) and 2) desiring: i) to complete and extend the work accomplished under the “Brussels Act”; and ii) to find a means of giving practical effect throughout the world to such intentions as were expressed in regard to slave trade and slavery by the signatories of the “Convention of Saint-Germain-en-Laye”, and recognizing that it is necessary to conclude to that end more detailed arrangements than are contained in that Convention. Thus, this Convention was “the first, really worldwide agreement on human rights” (Yegorova, 2005).

With the “Slavery Convention”, concrete rules and articles were decided upon, and slavery and slave trade were banned; so, the High Contracting Parties undertake to adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon all vessels flying their respective flags (Article 3). We want to note that the last part of the Article 3 is dedicated to the “flag vessels” and, thus to the “flag States”.

The “Slavery Convention” states that “the slave trade” includes: i) all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; ii) all acts involved in the acquisition of a slave with a view to selling or exchanging him; iii) all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; iv) in general, every act of trade or transport in slaves (Article 1, paragraph, 2). We have to notice that the

definition of the term “slave” was not agreed upon in the “Slavery Convention” and used now in the “UNCLOS’82” also without definition (see Art. 99); on our opinion, this term could mean “a person whose status or condition may be classified as the “slavery”. The “Slavery Convention” was amended in 1953 and 1955 (United Nations, 1953).

The essence of the term slavery is further refined and extended by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (further – “Supplementary Convention”) (United Nations, 1957). The States Parties to the Convention had decided that the “Slavery Convention”, which remains operative, should be augmented by the conclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery and the slave trade. “Slave” means a person in such condition or status (Section IV. “Definitions”. Article 7). Article 3 (Section II. “The slave trade”) prescribes that the States Parties: 1) shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose (Article 3, paragraph 2 (a);..... 3) the act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties and persons convicted thereof shall be liable to very severe penalties (Article 7, paragraph 1).

### Conclusions

The purpose of our study was to investigate modern international legal regime of the slaves’ transportation by sea suppression. The results found highlight that the transportation of slaves by sea is an illegal use of the “flag vessels” and there are the status obligations of a “flag State”, inter alia, to suppress the abovementioned using of ships, which are the obligations to form an integral part of the “genuine link” conception.

The modern international legal regime of the suppression to the slaves’ transportation by sea is formed by the norms of certain international conventions, as well as, multilateral and bilateral. Moreover, the groundwork laid by the League of Nations and the United Nations has made various restatements of the definitions of the terms “slave” and “slavery”.

Article 99 (“UNCLOS’82”) turns over towards the “every State” but, notwithstanding, prescribes measures, which are to be taken especially by the “flag State” with reference to “flag ships” – “ships authorized to fly its flag”. We think, that it is important to take into consideration that such measures include the prevention of “the unlawful use of its flag for that purpose”, that is – to use of its flag either by ships “authorized”, or ships “not authorized” to fly its flag. At the same time, it must be noted that, the text of the Article 13 of the “UNCHS’1958” was copied without any changes in the Article 99 of the “UNCLOS’82”. But it is generally accepted that the “UNCLOS’82” have made most important contribution in the struggle with slaves’ transportation by sea, as far as, Article 99 wind up the gap between the norms of international law, which are abolished slavery, and the law of the sea.

With the “Slavery Convention” and the “Supplementary Convention” concrete rules and articles were decided upon with the purpose to the slavery and slave trade be banned. Moreover, all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves are to be taken by all States. So, we want to note that this provision is dedicated, inter alia, to the “flag vessels” and, thus to the “flag States”.

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