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Polnische Historische Mission an der Universität Würzburg
Am Hubland, 97074 Würzburg, Niemcy / Deutschland
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http://pmh.umk.pl/start/wydawnictwa/biuletyn/

Kontakt: *dr Renata Skowrońska*
tel. (+49 931) 31 81029
e-mail: renata.skowronska@uni-wuerzburg.de

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WYDAWCA / HERAUSGEBER
Uniwersytet Mikołaja Kopernika
ul. Gagarina 11, 87–100 Toruń, tel. (+48 56) 611 42 95, fax (+48 56) 611 47 05
www.wydawnictwoumk.pl

DYSTRYBUCJA / VERTRIEBS-SERVICE-CENTER
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ul. Gagarina 5, 87–100 Toruń
tel. (+48 56) 611 22 15
Nakład: 300 egz.

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Marta Baranowska

Uniwersytet Mikołaja Kopernika w Toruniu
E-Mail: mb1@umk.pl
ORCID ID: https://orcid.org/0000-0002-0365-1023

Paweł Fiktus

Wyższa Szkoła Prawa we Wrocławiu
E-Mail: pawel.fiktus@prawowroclaw.edu.pl
ORCID ID: https://orcid.org/0000-0002-2937-6859

An analysis and critique of the Polish political and legal thought of the interwar period regarding the Slavery Convention of 25 September 1926

Introduction

Slavery always was, is, and will be here. This statement arouses a sense of distaste and indignation in most of us, as it challenges our view of the world. After all, it seems self-evident that the progress of civilisation has brought slavery to the point of being considered an evil in itself. In this instance, it can be said that the state of the law, that is the prohibition of slavery, reflects the beliefs and will of the people. Why, then, despite such clear public opinion and legal sanctions, should the subject of slavery still be addressed? The fact is that the heritage of the past influences the shape of the present. Moreover, slave labour, forced labour, and human trafficking, especially of women and children, is sadly by no means a bygone issue. Therefore, the study of different aspects of slavery should be continued, as history shows what people are capable of and teaches sensitivity to the fact that history can repeat itself in different forms. On the legal front, scholars such as Kevin Bales and Peter T. Robbins have also pointed out that in terms of criminalising slavery, much remains to be done. They stated:

> Freedom from slavery has been defined in international law as a fundamental human right. In spite of this, however, and in spite of the fact that slavery has been subject to some of the strongest sanctions of the international community, none of the more than 300 laws and agreements written since 1815 to combat it has been totally effective.[1]

The research subject of this article will be the remarks of Polish lawyers and representatives of the Polish Ministry of Foreign Affairs (Ministerstwo Spraw Zagranicznych) concerning the *Slavery Convention* of 1926.[2] The act of ratification of this legal act by Poland on 1 September 1930[3] did not itself evoke any controversy. Nevertheless, in the 1930s, Polish lawyers specialising in public international law and criminal law presented analyses of the provisions included in the Convention and, applying the principles of legal comparison, undertook comparative analyses with other legal solutions concerning slavery. Regardless of the legal environment, representatives of the Polish Ministry of Foreign Affairs actively participated in international conferences on the application of the Convention. An analysis of the arguments appearing in the scientific and political space will help find an answer to the research question on the originality of the conclusions of these two groups.

The research is based on source texts, including those from the Archives of New Records in Warsaw (Archiwum Akt Nowych), as well as academic studies. The article will employ the historical-legal method.

General characteristics of the 1926 *Slavery Convention*

The process of the legal abolition of slavery in individual states was initiated in the 19th century. During this period, international agreements to combat slavery also began to be signed. The Declaration of the Powers, on the Abolition of the Slave Trade, signed in Vienna on 8 February 1815, is considered to be the first convention explicitly recognising the immoral practice of the slave trade. This document was later appended to the Final

[1] Bales et al.: *No One*, p. 18.

[2] *Slavery Convention*.

[3] *Ustawa z dnia 16 stycznia 1930 r.*, item 48.

Act of the Congress of Vienna of 9 June 1815.[4] Since then, several such conventions have been signed, including those at the Berlin Conference in 1885[5] and in Saint-Germain-en-Leye in 1919.[6] Fundamental to the formation of the legislation was the *Slavery Convention*. The convention was signed by 35 member states of the League of Nations on September 25, 1926, and came into force on March 9, 1927.[7] The member states pledged to eliminate slavery, the slave trade, and forced labour in their territories. The Convention comprised a preamble and 12 articles. A monograph by Jean Allain[8] comprehensively discusses both the content of the Convention and the drafts on which it was based, which is why here we will highlight only its most important provisions, which have shaped the new state of the law.

The fundamental importance of this convention was that it provided the first definition of slavery that appears in an international agreement.[9] It defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[10]

[4] *Final Act of the Congress of Vienna*, pp. 200–201: "The treaties made at the Congress of Vienna contained regulations regarding three subjects of international law: the ranking and order of precedence of diplomatic agents (Regulation on the Precedence of Diplomatic Agents of 19 March 1815, 64 CTS 1), navigation on international rivers (Regulation for the Free Navigation of Rivers of 24 March 1815, 64 CTS 13–1), and the abolition of the slave trade. Whereas the Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade of 8 February 1815 (63 CTS 473) was the least concrete in terms of the legal impositions it made, it was of great historic significance. The Declaration was signed by the seven leading powers of the anti-Napoleonic coalition – Austria, Britain, Prussia, Russia, Portugal, Spain, and Sweden – as well as France. It was incorporated into the Final Act of the Vienna Congress of 9 June 1815 (64 CTS 453) as Annex XV. The Declaration was an achievement of British diplomacy, and of its major representative at Vienna, Robert Stewart, Lord Castlereagh (1769–1822)." Lesaffer: *Vienna*, p. 498.

[5] Chapter II of this Act *Declaration Relative to The Slave Trade* states that the prohibition of the slave trade is a customary norm of international law. See *General Act of the Conference of Berlin*, p. 28.

[6] *Treaty of Peace Between the Principal Allied and Associated Powers and Austria*, pp. 1–5. More on this topic, see Fischer: *The Suppression*, pp. 503–522.

[7] The Convention was registered at the Secretariat of the League of Nations on March 9, 1927, sub. Nr 1414. See Makowski: *Umowy międzynarodowe*, pp. 309–310.

[8] Allain: *The Slavery Conventions*.

[9] Bales et al.: *No One*, p. 21.

[10] *Slavery Convention*, Article 1.

According to Anne-Charlotte Martineau: "This definition made it easier for colonial authorities to close their eyes on African social mores such as domestic serfdom and servile marriage; these practices were considered either as 'soft or benevolent slavery' or as falling outside the formal definition of slavery."[11]

In the same article, it defined the slave trade as acts involving the capture, selling, or transport of enslaved people.[12] Jean Allain pointed out that, although in Article 2 the parties to the agreement committed themselves to suppress and prevent the slave trade, "but did not seek to give immediate effect to like obligations with regard to slavery."[13]

It should be added that Article 9 of the convention allowed each signatory to exempt certain of its territories from all or parts of the convention. Britain invoked this exemption for Burma and British India. Bales and Robinson pointed out that while Article 1 "may appear relatively restrictive in its definition of slavery", Article 2 uses a broader formulation, that is "slavery in all its forms".[14]

One of these forms was forced labour, which was to be allowed only for public purposes, and the signatories undertook to prevent compulsory or forced labour from developing into conditions analogous to slavery. It should be noted that the concepts of slavery and forced labour were approached differently. As Lukas Knott pointed out:

> Not only did it say that forced labor is less than slavery, but also that it can only develop into something *analogous to* slavery. It thus seems that the authors of the text wrote it under the assumption that forced labor as pub-

[11] Martineau: *The Politics of Writing*, pp. 45–46. See also Weidner, *Die Haussklaverei in Ostafrica*.

[12] "Article 1 (2) 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." *Slavery Convention*, Article 1.

[13] Allain: *The International Legal Regime*, p. 29.

[14] Bales et al.: *No One*, p. 21. "Finally, it is worth noting that during the drafting process an amendment to Article 2 was proposed to include a new paragraph aimed at abolishing practices resembling slavery, such as debt slavery, sham adoption, childhood marriage and traffic in women. However, it was not possible to reach an agreement on these slavery-like practices and the amendment was not approved." Scarpa: *Trafficking*, p. 46.

licly ordered service can never be identical to slavery as a private relation between individuals.[15]

Subsequent provisions of the Convention dealt with the identification of the competence of the Permanent Court of International Justice as the body having jurisdiction over the interpretation and application of the Convention and the alignment of national legal systems with its regulations.

The ratification process of the 1926 *Slavery Convention*

Pursuant to Article 49 of the Constitution of the Republic of Poland of 21 March 1921, agreements with other states were to be signed by the President of the Republic of Poland. However, in the case of international agreements which contained, inter alia, legal provisions containing financial obligations, the consent of the Sejm was required.[16] In the bill on the ratification of the *Slavery Convention* drafted by August Zaleski[17], the then Minister of Foreign Affairs, a statement was placed that this convention had a declaratory character, as "it constitutes a framework for the universally recognised principle of the law of nations and contemporary legislation condemning slavery."[18]

It was argued that ratification of the convention would not force Poland to change its legal system or impose any new financial obligations. As stated by Zaleski: "political considerations and the solemn declaratory character speak in favour of Poland's ratification of the *Slavery Convention*."[19] The President of the Republic, Ignacy Mościcki, ratified the Convention on 1

[15] Knott: *Unocal Revisited*, p. 217.

[16] *Ustawa z dnia 17 marca 1921 r.*, item 267.

[17] August Zaleski (1883–1972). In 1911, he obtained a degree in economics in London. After the First World War, he joined the Ministry of Foreign Affairs. Among other things, he participated in the Paris Peace Conference. In the years 1926–1932, he was Minister of Foreign Affairs (he was replaced by Colonel Józef Beck, the main architect of Polish foreign policy in the interwar period). He later worked at the Bank of Commerce in Warsaw. He served as Minister of Foreign Affairs in exile from 1939 to 1941. From 1947 to 1972, he acted as President of the Republic of Poland in exile.

[18] Biblioteka Sejmowa: *Sejm Rzeczypospolitej Polskiej*, *Okres II*, *Ministerstwo Spraw Zagranicznych*, Nr P.V.1908/28: Druk Nr 233, p. 1.

[19] Ibidem.

September 1930, and the Polish instrument of ratification was deposited in Geneva on 17 September 1930, and entered into force on the same day.

The ratification process was not accompanied by any controversy. It was only during work on the ratification law that parliamentarian Irena Kosmowska[20] submitted her comments. She pointed out that a convention ordering the abolition of slavery in all its forms implies a broader scope of the phenomena being covered. In her view, Article 5 of the Convention on the prevention of the transformation of forced labour into a situation analogous to slavery could be applied, for instance, to the labour of migrant minors. Moreover, Kosmowska also criticized the possibility of exempting selected territories from the Convention, pointing to the example of the British Empire, India, Persia, and Spain, which exercised this option. Therefore, nothing changed in the territories most affected by the slave trade. Thus, the League of Nations, designed as an "ethical authority in the political life of mankind," merely made a "beautiful gesture of humanitarianism"[21] by drawing up the Convention. Kosmowska further criticised the Polish legislature for delaying the ratification act (which will be discussed later in the paper).

Senator Julian Poczętowski[22], representative of the Non-Partisan Bloc for Cooperation with the Government (Bezpartyjny Blok Współpracy z Rządem)[23], also presented his remarks during the Sejm debate, but rather

[20] Irena Kosmowska (1879–1945). She studied history and Polish literature at the University of Lviv. Before World War I, she was associated with the pro-independence left. At the same time, she led a number of campaigns to establish schools and village libraries. After 1918, she participated in the work of the Polish People's Party (PSL) Liberation. In 1918, she became Deputy Minister of Social Welfare in the cabinet of Prime Minister Ignacy Daszyński. In the years 1919–1930, she was a member of the Polish Sejm. During World War II, she was imprisoned for her participation in the independence movement. She died as a result of injuries sustained during the bombing of Berlin.

[21] Biblioteka Sejmowa: *Sejm Rzeczypospolitej Polskiej*, *Okres II*: *Sprawozdanie Stenograficzne z 57 posiedzenia Sejmu*, pp. 38–39 (Stenographic report of the 57th meeting of the Sejm of the Second Republic of Poland of 13.3.1929, c. 38–39).

[22] Julian Poczętowski (1880–1938). He graduated from the Faculty of Law in Kiev and studied social sciences in Brussels and Paris. After World War I, he worked in the judiciary and then practised as a lawyer. He was politically affiliated with the Labour Party. In the years 1928–1935, he was a senator on the list of the Non-Partisan Bloc for Cooperation with the Government (Bezpartyjny Blok Współpracy z Rządem).

[23] The Non-Partisan Bloc for Cooperation with the Government was a political organisation active between 1927 and 1935. It was founded on Józef Piłsudski's initiative,

than the Convention itself, they referred to the ratification law.[24] He saw the Convention as the next phase in the fight against slavery: from the first international initiative taken at the Congress of Vienna in 1815, he then mentioned the Brussels Convention of 1890 and the Saint-Germain-en-Laye Convention of 1919.[25] Poczętowski viewed the 1926 *Geneva Convention* as a 'step forward' compared to previous legislation, as the earlier instruments did not address combating the institution of slavery. Furthermore, he saw the Convention as a compromise between, as he put it, the 'Anglo-Saxon race' and the 'Latin race.' This compromise was necessary considering the colonial territories they held:

> […] there was a visible and clear tendency on the part of the representatives of the Latin race to treat the matter on the fundamental plane, to strive for the eradication of the institution, and not merely to combat it in practice. The tendency of the Anglo-Saxon race, on the other hand, was more towards a practical approach to the matter; to arrive, by way of evolution, at the gradual eradication of the institution of slavery in the respective colonies.[26]

An example of this compromise was to be found in Article 9 of the Convention allowing for the possibility of exemptions in dependent territories. By analogy with MP Kosmowska, he cited the example of the United Kingdom, India, and Persia. In his assessment, Article 9 contributes to the practical significance of the Convention, despite the fact that it does not contain real legal sanctions and is essentially declaratory in nature. Poczętowski summarised his position with the words: "we can join without reservation to this convention, underscoring that Poland joins the march

bringing together several political groupings supporting his government. It was dissolved on 30 October 1935, after Piłsudski's death.

[24] Biblioteka Sejmowa: *Senat Rzeczypospolitej Polskiej*, *Okres II*: *Sprawozdanie Stenograficzne z 20 posiedzenia*, pp. 5–6 (Stenographic report of the 20th meeting of the Senat of the Second Republic of Poland of 16.1.1930).

[25] In the case of the Saint-Germain-en-Laye Convention of 10 September 1919, Senator Poczętowski regarded as particularly important the provisions concerning restrictions on the trade in arms especially in the so-called 'black continents.'

[26] Biblioteka Sejmowa: *Senat Rzeczypospolitej Polskiej*, *Okres II*: *Sprawozdanie Stenograficzne z 20 posiedzenia*, pp. 5.

of civilisation in the fight against slavery without reservation, with great enthusiasm."[27]

The *Geneva Convention* of 1926 in the assessment of Polish legal thought in the interwar period

Analysing the literature on the subject from 1926–1930, prior to the ratification of the Convention, it is hardly possible to find any commentaries by Polish lawyers about it. This stemmed from two main considerations. Firstly, the interest was mainly in those acts of public international law which constituted a legal guarantee of Poland's legal existence in the international arena. Secondly, owing to the lack of colonies, the problem of slavery in Poland was considered only as a purely theoretical issue. It was not until the ratification process, as well as the need to include the subject of slavery in comprehensive studies of public international law, that Polish lawyers were compelled to refer to the subject of slavery.

For instance[28], Professor Zygmunt Cybichowski[29] had a different perspective on the slave trade and the trade in women and children, to which he devoted considerably more space.[30] In the case of the slave trade, he cited the so-called Asiento Contracts, the Vienna Declaration of 8 February 1815, the resolutions of the Aix-la-Chapelle Congress of 1816 and the Verona Congress of 1822, the London Treaty of 1841, the African Conference in Berlin of 1885, the General Act of the Brussels Anti-Slavery Conference

[27] Ibidem.

[28] Among the greatest Polish jurists of the time dealing with international law, it is important to mention, for instance, Szymon Rundstein. However, he did not study this aspect of international law more extensively. More on Rundstein, see Baranowska: *International Organization*, pp. 96–101; Eadem, *In defence of international law*, pp. 41–55.

[29] Zygmunt Cybichowski (1879–1945) graduate of the University of Wrocław, lecturer in public and state international law at the Universities of Warsaw and Lviv. Author of, inter alia: *Geneza i rozwój prawa międzynarodowego* (1930), *Polskie prawo państwowe* (1925), *Międzynarodowe prawo karne* (1927). It should be added that he was an anti-Semite and nationalist, a supporter of Italian fascism and national socialism. He presented his political views in a work titled *Na szlakach nacjonalizmu. Rozważania prawno-polityczne* (1939).

[30] Cybichowski: *Encyklopedja podręczna prawa publicznego*, p. 182 ("slave trade" and "trafficking of women and children"), pp. 183–184.

of 1890, the Saint-Germain-en-Laye Convention of 1919, and the *Geneva Convention* of 1926 as the most important legal acts.

A review of the 1926 *Geneva Convention* was also made by Professor Ludwik Ehrlich.[31] In his fundamental work *The Law of Nations*, he identified the Congress of Vienna as marking the inception of the modern regulation of slavery.[32] However, in his opinion, neither the Vienna provisions nor the subsequent treaties of Berlin in 1885, Brussels in 1890, or Saint-Germain-en-Laye in 1919 had fulfilled the hopes vested in them with regard to the eradication of slavery in Asia and Africa, as well as the slave trade and so-called forced labour. As he described the material scope of the Convention, Ehrlich pointed to three points: 1) defining the concept of slavery, 2) committing the parties to the abolition of slavery and progressive abolition of slavery (regardless of the form it takes) in the territories dependent on the signatories of the Convention, and 3) prevention of the slave trade. In the case of the slave trade, Ludwik Ehrlich identified as an important point of the Convention the provision to take measures against the landing, loading, and transport of slaves on ships under the flag of countries bound by the Convention. Furthermore, Ehrlich stressed the importance of the provisions on the exchange of information on the slave trade (with the participation of the League of Nations) and noted that forced labour should be performed against payment and controlled by the central authorities of the state that had signed the Convention, lest it degenerate into slavery.[33]

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[31] Ludwik Ehrlich (1889–1968), lawyer, graduate of the University of Lviv. He continued his legal education at the universities of Berlin, Halle, and Oxford (where he obtained the title of bachelor of letters). During World War I, he taught at the University of California at Berkeley. From 1920, he taught at the University of Lviv, where he founded the Diplomatic College of the Jan Kazimierz University in Lviv – one of the few academic and didactic units in Europe at the time to educate future diplomats (among others Jan Karski was one of its graduates). From 1927 to 1928 he served as an ad hoc judge at the Permanent Court of International Justice in the Hague. After the war, he joined the Jagiellonian University in Krakow. He participated in the trials of Nazi criminals in his capacity as an expert. Author of books, including: *Prawo narodów* (1926 and 1932), *Prawo międzynarodowe* (1958), *Suwerenność a morze w prawie międzynarodowym* (1961), *Interpretacja traktatów* (1957) and *Gdańsk. Zagadnienia prawno-publiczne* (1926).

[32] Ehrlich: *Prawo narodów*, pp. 599–600.

[33] Ibidem. It is worth mentioning that the analysis of the 1926 *Geneva Convention* presented by Ludwik Ehrlich in his study *Prawo narodów* was also included in the post-war edition of this work, under the modified title: *Prawo międzynarodowe* (*International law*), pp. 621–622.

Slavery and its legal aspects were also examined by Professor Julian Makowski.[34] His popular work, *International Law*[35], discussed the evolution of the legal system pertaining to the slave trade. Analogically to the previously presented Polish jurists, he considered the Declaration adopted in 1815 at the Congress of Vienna as the first legal act prohibiting the slave trade. Contrary to his predecessors, however, he added that the objective of the Declaration was to universally condemn the slave trade, and "to put an end to this 'wickedness.'"[36]

In Makowski's view, despite its confirmation by the Congress of Aix-la-Chapelle of 1818 and the Verona Congress of 1822, it had remained merely a theoretical act, inapplicable to international relations, given the numerous commercial interests of states. As a turning point in the issue of the slave trade, he recognised the end of the Civil War in 1865 in the United States, as well as the subsequent agreements concluded by individual states, which resulted in the elimination of slavery in the Persian Gulf and the Indian Ocean area. As another significant moment in the abolition of slavery, Makowski saw the General Act of the Berlin Conference of 26 February 1885[37], which established the legal statutes of the Congo Convention Basin. The Polish jurist paid particular attention to Article 9, which included the declaration that "the slave trade and related operations on land and sea shall be prohibited by the law of nations."[38] Furthermore, it provided for the need

[34] Julian Makowski (1870–1959). He studied at the Higher Institute of Commerce in Antwerp, the School of Political Science in Paris, and the Faculty of Law at the Jagiellonian University. He obtained his master's degree at the University of Warsaw and his doctorate at the Adam Mickiewicz University in Poznań. In his teaching activities, he was affiliated with the Higher School of Commerce and the School of Political Science in Warsaw. From 1919, he was also employed by the Ministry of Foreign Affairs, participating in negotiations with Czechoslovakia, Lithuania, and the Free City of Gdańsk. From 1931, he was a lecturer at the Academy of International Law in The Hague. During the interwar period, he participated in numerous treaty negotiations to which Poland was a party. He was the author of a textbook on international law, which was reissued several times and was very popular. In his works, he devoted much space to the problems of the Free City of Gdańsk. Other publications should be mentioned: *O konsulach i konsulatach* (1916), *Teoria i technika zawierania umów międzynarodowych* (1931), *Umowy międzynarodowe Polski* (1935) and *Organa państwa w stosunkach międzynarodowych* (1957).

[35] Makowski: *Prawo międzynarodowe*, pp. 138–142.

[36] Ibidem, p. 138.

[37] Ibidem.

[38] Ibidem.

to apply criminal sanctions to those involved in the transportation as well as the trade of slaves.

Unlike previous commentators, Makowski made a very thorough description of yet another piece of legislation relating to the abolition of slavery. This was the General Act of the Brussels Anti-Slavery Conference of 2 July 1890, which contained very detailed provisions, albeit relating exclusively to the African slave trade. Makowski believed that the material scope of this Act concerning the prosecution of the slave trade, both at the so-called point of origin, that is where the slave state originated, and during transport by land and sea, merited particular attention.[39] As a solution of interest arising from this Act, Makowski considered the establishment of a Maritime Office in Zanzibar (Articles 24 and 27 of the Act), which was tasked with collecting data on the slave trade. Meanwhile, Article 81 of the Act provided for the establishment of a Special Office in Brussels, which was to be assigned the task of exchanging and evaluating all information related to slavery.[40]

The next step towards the abolition of slavery was the Saint-Germain-en-Laye Convention of 1919. Bearing in mind the characteristics of this act, as well as juxtaposing it with the description of the two previous acts (that is the Berlin and Brussels Conventions), one may conclude that Makowski did not attach particular attention to it. He limited himself to pointing out two issues. First, Article 13 of the Convention repealed all provisions of the Berlin and Brussels Conventions). Secondly, it was only in Article 11 that it obliged all powers to abolish slavery in all its forms and prohibited the slave trade. The Polish jurist sought to explain the reasons behind such

[39] Ibidem, p. 139. It is noteworthy that the actions to be taken in relation to this Act at times departed significantly from its core subject matter. They included: 1) the organisation of military outposts, 2) the construction of roads and iron railways (linking the sea coast with the mainland and its farther reaches), 3) the maintenance of communication by steamships on rivers, 4) the establishment of telegraph lines, 5) the dispatch of military expeditions and flying columns, 6) the restriction of the transport of improved weapons, 7) the prosecution and punishment of slave traders (inter alia, by means of amending national regulations), 8) the provision of care for escaped slaves, 9) the introduction of a Suspicious Zone, which would cover the Indian Ocean (including the Red Sea and the Persian Gulf) from Quilimane to Baluchistan (excluding Madagascar), where cruisers belonging to the signatories of the Act could intercept and search suspicious vessels, 10) states where slavery still existed were obliged to prohibit it.

[40] Ibidem, p. 139.

a far-reaching change, characterised by the repeal of multifaceted acts and their replacement by the laconic formulation:

> […] the territories are now under an authority deserving of confidence, in that they have established administrative institutions corresponding to local conditions, and finally because the cultural development of the indigenous population is making increasing progress.[41]

He added that slavery in Africa was disappearing, as was human trafficking.

Despite the elimination of the Berlin and Brussels Conventions from legal circulation, together with the Saint-Germain-en-Laye Convention, these three acts laid the foundation for a much more elaborate piece of legislation, the 1926 Convention. Its enactment was initiated not by individual states, but by the League of Nations, which, on 12 June 1924, established a Commission on Slavery for this purpose. Makowski reviewed the Convention in terms of the application of the relevant legislative principles, which was the subject of his scholarly interest.[42] Of note to the Polish jurist was the definition of slavery and the slave trade. It was only later that other solutions followed, albeit subjectively determined by the definitions mentioned, such as the fight against the slave trade, the abolition of slavery, and all forms of slave transport. Makowski appreciated the fact that the Convention referred to forced labour, the need to bring domestic legislation into conformity with its provisions, and the establishment of controlling bodies in the form of the Permanent Court of International Justice, the Permanent Court of Arbitration in The Hague, or a different court of arbitration.[43]

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[41] Ibidem, p. 140.

[42] See Makowski: *Teoria i technika zawierania umów międzynarodowych*. He stressed, inter alia, that the adoption within a single piece of legislation of concepts that would be binding on all signatories was a very challenging task. In one of his first works, he described the way in which definitions are understood in the law-making process from the perspective of the Anglo-Saxon, German, and French schools. See Idem: *Rozwój i przyszłość prawa międzynarodowego*, pp. 44–45. About the law-making process see also Makowski: *O zawieraniu umów międzynarodowych*.

[43] Makowski: *Prawo międzynarodowe*, pp. 140–141; Makowski: *Podręcznik prawa międzynarodowego*, pp. 206–209.

Professor Cezary Berezowski[44] analysed the slave trade regulations from a criminal law perspective. He drew attention to the absence of a uniform legal basis upon which various states could act uniformly.[45] In his analysis, Berezowski only mentioned the aforesaid Brussels Convention and assessed the Saint-Germain-en-Laye Convention negatively, as, in his opinion, it limited itself to only a general statement on the abolition of slavery. In support of his thesis, he singled out the far-reaching particularism of individual states in punishing the slave trade. For instance, the Venezuelan law of 1903 envisaged prosecution only of foreign slave traffickers, while in the United States, it applied to any person engaged in the slave trade, while in England, a slave trader was treated on a par with a pirate (similarly in France since 1841).[46]

Activities of the Ministry of Foreign Affairs

When describing the work of the Polish Ministry of Foreign Affairs (MFA) on the *Slavery Convention* and the process of its ratification, it is important to mention a very significant problem relating to the state of Polish documents, which had become depleted during World War II. The person responsible on the part of the MFA for the implementation of the ratification process was Professor Julian Makowski, who at the time acted as Head of the Treaty Division.

The Polish representation at the League of Nations appreciated the adoption of this convention. Notwithstanding the fact that it was consid-

[44] Cezary Berezowski (1898–1970). Graduated in law from the University of Warsaw, where he defended his doctorate and took up a post at the Department of State and International Law and later at the Department of Public International Law. Before World War II, he also worked at the Ministry of Social Welfare and the Legal Office of the Presidium of the Council of Ministers. In addition, he was a lecturer at the Hague Academy of International Law. The most important books are: *Powstanie państwa polskiego w świetle prawa narodów* (1934), *W sprawie istoty umowy międzynarodowej* (1935), *Zagadnienia zwierzchnictwa terytorialnego* (1957), *Międzynarodowe prawo lotnicze* (1964).

[45] Berezowski: *O polskim projekcie*, pp. 25–26. It should be emphasised that international criminal law issues at that time were only just beginning to receive the attention of the international community. See Rappaport: *Zagadnienie prawa karnego międzypaństwowego*; Idem: *Tendencje rozwojowe prawa karnego międzynarodowego*.

[46] Ibidem.

ered that slavery and the slave trade referred only to colonial matters and did not apply to Poland, the representative to the League of Nations considered that "it would be advisable for Poland to accede to the Convention."[47] Further, it was emphasised that the Convention represented an elaboration and supplementation of the earlier provisions contained in the Brussels and Berlin Conventions (although they were eliminated from legal circulation in 1919) as well as the Treaty of Saint-Germain-en-Laye. It was also stressed that measures should be found to eliminate the slave trade, and that forced labour should not lead to slavery-like conditions.[48]

An analysis of the surviving documents of the MFA also provided an answer to the question as to why the ratification process took so long, even though we are dealing with an act of public international law that would appear a neutral act for Poland. The instrument of ratification was not deposited until 17 September 1930. A letter from the Treaty Division of the Ministry of Foreign Affairs dated 24 July 1930 states that the document containing the text of the Convention was mistakenly sent to the Senate of the Free City of Gdańsk, which refused to accede to the Convention. Furthermore, in the same letter, Makowski made an enquiry as to why the convention had not been delivered to the Polish MFA.[49] Notably, the Polish MFA also took steps to persuade the Senate of the Free City of Gdańsk

[47] Archiwum Akt Nowych w Warszawie: *Zbiór Ministerstwa Spraw Zagranicznych* (further AAN): IL. No. 2567/26, Sygn. mf. B 29651, p. 74.

[48] AAN: Sygn. mf B 29632.

[49] AAN: 12629/30, Sygn. mf B 29632. Unfortunately, no reply explaining the reasons for the delay has survived in the extant MFA documentation concerning the Treaty Division of the MFA or the Free City of Gdańsk. The only information that can be found is that the General Commissioner of the Republic of Poland in Gdańsk, in a letter dated 30 July 1930, reported receiving League of Nations prints on the Slavery Convention on several occasions. Ibidem, p. 99. Presumably, the correspondence was sent by mistake, being addressed both to the Senate of the Free City of Gdańsk and to the Polish diplomatic post. As commentary on the situation with the mistakenly sent correspondence, it is worth quoting the words of Stanisław Kutrzeba (1876–1946) professor of legal history, long-time lecturer at the Jagiellonian University, who described Polish foreign policy in the following fashion: "in general, the hallmark of our foreign policy to date has been to work from incident to incident." Kutrzeba: *Nasza polityka*, p. 128. A very similar opinion was given by Prof. Henryk Tannenbaum (pseud. Rykten; 1881–1946), professor of economics at the Warsaw School of Economics, who claimed that on the international arena Poland was among the "ill-mannered" states, and that "this is the reason for the considerable inconvenience to our political action on the international arena." See Tannenbaum: *Polska w polityce światowej*, p. 20.

to adopt the *Slavery Convention*. In a letter dated 19 August 1930, ref. P.V.1828/30, referring to Section IV of the Polish-German Agreement of 1 September 1923, the Ministry officially forwarded the text of the convention to the Senate of the Free City of Gdańsk in an attempt to act as an intermediary between the League of Nations and the Free City of Gdańsk, alas without success.[50]

Another important episode concerning the activities of the Polish MFA, which also makes it possible to explain the delay related to the ratification process, concerned the analysis of the positions of other countries and their reactions concerning the Convention. Special attention should be paid to the Hungarian government's assessment of the Convention's provisions on forced labour. In a letter from the Ministry of Justice dated 16 March 1929, ref.: I.U.50/29, the following remark is found:

> […] the reservation made by the Hungarian Government is superfluous as there can be no doubt whatsoever that the conclusion of the Convention on 'slavery' cannot hinder the issuing in each Convention State, in accordance with its internal civil legislation, of coercive orders aimed at enforcing on a party the obligations undertaken in labour contracts.[51]

Although the primary subject of the Convention, slavery, was a topic alien to the political and social reality of the time, it seems that the last remark quoted above is highly relevant (we believe that the episode with the Free City of Gdańsk resulting from a clerical oversight and mistakenly sent correspondence should be omitted). The reason for this is that forced labour (from the perspective of the Convention verging on slavery) was then applied in the rehabilitation of prisoners. In this case, the regulation of the Convention may have conflicted with the provisions of the national legal system.

[50] Ibidem, k. 102.

[51] AAN: I.U.50.29, Sygn. mf. 13191, pp. 19–20.

Conclusion

As stated by Corin Morcom and Andreas Schloenhardt: "From the beginning of the 19th Century the moral condemnation surrounding slavery and the slave trade facilitated the development of international agreements in relation to these practices."[52] The *Slavery Convention* was the instruments of international law to fight against slavery, the slave trade. This was another stage in the process of international condemnation of slavery that started with the first declarations and conventions of the XIX century. It should be added that a Protocol amending the Convention was signed in 1953, with, inter alia, the Secretary-General of the League being replaced by the Secretary-General of the United Nations. On the other hand, on 7 September 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery includes debt bondage, serfdom and any other institution or practice whereby a woman or a child may be transferred by a person to another among the practices similar to slavery that have to be abolished as well[53], was signed in Geneva under the aegis of the United Nations. In legal terms, it was an addendum to the 1926 Convention, while Max Schreiber posited that, historically, it represented a new stage in the fight against slavery.[54] In later years, similar conventions were adopted in the framework of the UN or the Council of Europe.

The significance of the *Slavery Convention* was primarily based on the introduction of two key definitions: slavery and the slave trade. Allain emphasised:

> While it can be said that, *lex pasterior legi priori derogate*, the obligation flowing from the 1926 *Slavery Convention* have been superseded by provisions of contemporary international human rights law, what remains are the normative definitions of slavery and the slave trade as set out in Article 1 of the 1926 *Slavery Convention* […] As was noted in the Judgment of the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia in the 2002 Kunarac et als. case: The customary international

[52] Morcom et al.: *All about Sex?!*, p. 5.

[53] *Supplementary Convention on the Abolition of Slavery*.

[54] See Schreiber et al.: *Convention supplémentaire*, pp. 547–557.

> law status of these substantive provisions is evinced by the almost universal acceptance of that Convention and the central role that the definition of slavery in particular has come to play in subsequent international law developments in this field. While the definition of the slave trade has remained uncontested, the definition of `slavery` has been interpreted in at least three ways.[55]

The importance of The *Slavery Convention* was equally evident on yet another level. The turn of the nineteenth and twentieth centuries was a time of codification of public international law and attempts to engage in this process a wide range of states. This was particularly true of the so-called international law of war, exemplified by the Hague Conventions, as well as international law. Although the prohibition of the slave trade had already been regulated by a number of legal instruments, it was not until the 1926 Convention, which was signed by 35 states, that the problem of slavery and the slave trade was so clearly regulated.

An analysis of the deliberations of Polish politicians and lawyers dealing with international law in the 1920s and 1930s indicates that they studied the *Slavery Convention* and sought to chart the trajectory of the development of the prohibition of slavery and the slave trade. While they drew attention to the Convention's most obvious shortcomings, such as the possibility of excluding dependent territories from its scope, none of these jurists demonstrated a more in-depth and original view of slavery. They did not transcend the confines of their era and, in line with the common view of the time, considered that this problem did not pertain to Poland. While this opinion of the majority at the time may not come as a surprise, one might, nevertheless, have expected more from the legal elite. For instance, they failed to delve into the subject of forced labour or the situation of the lowest social groups in general, whose situation was often very similar to that of slave labour.[56] Nor should the situation of children of the time be overlooked, particularly orphans, who were not infrequently treated in

[55] Allain: *The International*, p. 29. More on the three ways of understanding the concept of slavery in contemporary legal discourse.

[56] It is worth indicating the example of the Polish lawyer Leopold Caro (1864–1939), who analysed the legal situation of the lowest social groups and perceived their near-slave status. See Baranowska: *Leopold Caro's criticism of the servantship law*, pp. 36–52; Baranowska et al.: *Emigration*, pp. 289–310.

terms of property rights. None of these Polish jurists of international law had ventured to analyse the very concept of slavery and the broader view of this social problem. And, sadly, slavery was, is, and always will be here. Hence the need to continually debate this issue and seek ways of combating it in an effective manner.

Analiza i krytyka *Konwencji w sprawie niewolnictwa* z dnia 25 września 1926 roku w polskiej myśli polityczno-prawnej doby dwudziestolecia międzywojennego

Streszczenie

Przedmiotem badawczym artykułu jest analiza uwag polskich prawników i przedstawicieli Ministerstwa Spraw Zagranicznych dotyczących *Konwencji w sprawie niewolnictwa* z 1926 roku. Ze względu na brak kolonii problem niewolnictwa w Polsce był traktowany jako zagadnienie czysto teoretyczne. W artykule omówiono wypowiedzi czołowych polskich prawników, między innymi profesorów Ludwika Ehrlicha i Juliana Makowskiego.

Analyse und Kritik des *Sklavereiabkommens* vom 25. September 1926 im polnischen politischen und juristischen Denken der Zwischenkriegszeit

Zusammenfassung

Forschungsgegenstand des Beitrages ist die Analyse der Kommentare polnischer Anwälte und Vertreter des Außenministeriums zum *Sklavereiabkommen* von 1926. Aufgrund des Mangels an Kolonien wurde das Problem der Sklaverei in Polen als ein rein theoretisches Thema betrachtet. In dem Beitrag wurden Äußerungen führender polnischer Juristen, darunter der Professoren Ludwik Ehrlich und Julian Makowski, besprochen.

Übersetzt von
Renata Skowrońska

An analysis and critique of the Polish political and legal thought of the interwar period regarding *the Slavery Convention* of 25 September 1926

Summary

The research subject of the article is analysis of the remarks of Polish lawyers and representatives of the Ministry of Foreign Affairs concerning the *Slavery Convention* of 1926. Due to the lack of colonies, the problem of slavery in Poland was

considered as a purely theoretical issue. The paper discusses the comments of leading Polish lawyers, including professors Ludwik Ehrlich and Julian Makowski.

Słowa kluczowe / Schlagworte / Keywords

- *Konwencja w sprawie niewolnictwa* (Genewa, 25 września 1926 r.); prawo międzynarodowe; niewolnictwo; polscy prawnicy; Ludwik Ehrlich (1889–1968); Julian Makowski (1875–1959)
- *Sklavereiabkommen* (Genf, 25. September 1926); internationales Recht; Sklaverei; polnische Juristen; Ludwik Ehrlich (1889–1968); Julian Makowski (1875–1959)
- *Slavery Convention* (Geneva, on 25 September 1926); international law; slavery; Polish lawyers; Ludwik Ehrlich (1889–1968); Julian Makowski (1875–1959)

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