



DOCTRINE OF INTERNATIONAL SERVITUDE: A RECONSIDERATION

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Abstract: In the years that swiftly followed the end of the First World War, which had left the world in a state of upheaval and uncertainty, there emerged a robust and passionate discourse, teeming with debate and intellectual fervor, centered around the pivotal question of whether international servitudes truly existed or if they were merely theoretical constructs without practical grounding, an inquiry that held immense significance within the intricate and evolving landscape of international law. This lively and dynamic discussion was further ignited by a plethora of initiatives and diplomatic endeavors carried out during those tumultuous years, all aimed at bestowing upon various international waterways a designation that was intended to be both lasting and resilient, one that would remain unchanged and unaffected by the inevitable shifts in sovereignty that could arise from the neighboring nations that bordered these vital passages. After a prolonged period characterized by relative dormancy and minimal activity that lingered for several years, the concept of international servitude has now re-emerged with renewed vigor and urgency, taking center stage in contemporary discussions primarily due to two noteworthy and consequential developments; the first being the advisory opinion rendered by the esteemed International Court of Justice concerning the legal status of South West Africa, and the second revolves around the ongoing and contentious dispute between Great Britain and Egypt regarding the legal implications and standing of the strategically significant Suez Canal.

Given the substantial weight and importance that is attributed to these two pivotal issues in today's geopolitical climate, it seems not only fitting but also imperative to embark on an in-depth and thoughtful exploration of the historical background and inherent characteristics of the doctrine of international servitude, while simultaneously providing a comprehensive overview of the dispute that originally sparked extensive attention and animated debate among scholars, policymakers, and legal experts alike. By delving deeper into these intricate issues, we can gain a richer understanding of the complexities surrounding international waterways and the legal frameworks that govern their use in the face of changing political landscapes interest during the early 1930s¹.

Index Terms: Servitude, Suez Canal, International Military Servitude & Justice

I. HISTORICAL ORIGINS AND DEVELOPMENT

The notion of international servitude is, in fact, not a modern invention, as it has been acknowledged and recognized since at least the seventeenth century that sovereign states possess the capability to establish, through mutual agreements, a specific legal status over a defined territory that operates independently of the identity of the administering power². Sovereignty, as it was originally articulated, was understood as a relative concept, thereby allowing for the easy conception of a self-imposed limitation on sovereign authority over a particular territory or the establishment of a permanent and irrevocable restriction on the administrative powers of an independent state. It was only with the advent of the concept of absolute sovereignty in the nineteenth century, alongside the assertion of the limitless capacity of an all-encompassing state, that the idea of a defined territorial status began to face significant challenges and scrutiny³. The important distinction between a convention that merely creates rights and obligations in a personal capacity, as opposed to one that imposes rights and obligations on a territory in a real sense, was explicitly articulated by the eminent legal scholar Vattel, who cautioned against conflating treaties or alliances that impose obligations requiring ongoing actions from

¹ (*The doctrine of Servitudes in international law*) <<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CF5C6DB38B645456C7446C8BE4324007/S0002930000126120a.pdf/the-doctrine-of-servitudes-in-international-law.pdf>> accessed 11 November 2024

² A re-consideration of the doctrine of international servitude, <https://cbr.cba.org/index.php/cbr/article/download/1985/1985/> (last visited Nov 11, 2024)

³ Full text of "*Le droit des gens; ou, principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains*;" http://archive.org/stream/ledroitdesgensou01vattuoft/ledroitdesgensou01vattuoft_djvu.txt (last visited Nov 11, 2024)

both parties with those agreements that confer a right that is permanently acquired and exists independent of any future actions by either party.

For instance, if a nation were to grant in perpetuity to a neighbouring sovereign the right to fish in a river or to maintain a garrison within one of its fortresses, the rights of that sovereign would remain intact even in the event that the nation from which those rights were derived were to be conquered or otherwise subjected to the control of a foreign power⁴. The rights in question would not be contingent upon the continued existence of the state that originally granted them, as that state would have permanently alienated those rights, and any conqueror could only assume control over what the original state physically possessed at the time of conquest. The conqueror of a territory could only assume control over what was rightfully and actually within its possession, thus limiting the extent of its dominion to the established borders of its ownership⁵.

II. CONCEPT OF DISPOSITIVE TREATIES

In the realm of international law, Westlake aptly employed the term “dispositive” to refer to treaties that are crafted with the explicit intention of bestowing upon a territory a permanent and unalterable status. This particular terminology has gained notable prominence in legal discourse⁶. In its counter-memorial regarding the case involving the Free Zones of Upper Savoy, the Swiss Government proclaimed that “dispositive treaties” serve the purpose of transferring or creating a real right. Moreover, real rights in international law pertain to those rights that are intrinsically linked to a territory and are fundamentally valid against all parties. Classic instances of such treaties can be found within those provisions that mandate the demilitarization or neutralization of specified territories, or that establish rights pertaining to water resources. It is therefore not unexpected that the notion of servitude was adopted to characterize the status that is engendered by such treaties, given the evident parallels that exist with the praedial servitude recognized in Roman law. Indeed, a dominant entity emerges, motivated by its own interests, to create a status that consequently restricts the sovereignty of a subordinate entity over the territory in question. The beneficiary of this arrangement is deemed to possess an equitable property right within the context of the relationship forged between itself and the servient state.

Typically, such a status is formally established within the legal instrument that facilitates the transfer of territory from one sovereign state to another, which is fundamentally understood as a conveyance rather than a contractual agreement, thereby leading to the understanding that the transferee, upon accepting the dispositive obligations, is perceived to hold no more rights in the future than those expressly assigned within the conveyance. Moreover, it is asserted that the covenant inherently binds any successors in sovereignty, as it is said to “run with the land”. The essence of this particular “regime” possesses a sui generis character and remains independent of the mere existence or intentions of the contracting parties. It is, therefore, quite natural that the term “servitude” would be employed to delineate a dispositive status within legal systems that draw heavily from the principles of Roman law, or at the very least in jurisdictions where Roman law significantly influences legal education. Conversely, it was also foreseeable that such terminology would incite criticism in common law jurisdictions, particularly from legal scholars who advocate for the notion of absolute sovereignty held by a sovereign state⁷. The provision of a dispositive status has been argued to represent a concession of national sovereignty, one that is dictated by the intrinsic interests of the state and sustained by its own volition. Should one eliminate the state’s interest and will, the very rationale underpinning the regime would consequently dissipate. It has been posited that the relationship between the parties engaged in a dispositive treaty is fundamentally contractual in nature, a sentiment that Professor Cavaglieri encapsulates succinctly by asserting that “the personal character of the relationship is decisive⁸”.

III. NORTH ATLANTIC FISHERIES ARBITRATION CASE

This positivistic theory found some degree of solace in the renowned deliberations that transpired during the North Atlantic Fisheries Arbitration held in the year of 1910. An Anglo-American treaty established in 1818 had officially confirmed the “liberty” of citizens from the United States to engage in fishing activities along the coastline of Newfoundland. However, as the dawn of the twentieth century approached, the need for the “regulation” of these rights became increasingly critical, and due to the absence of a consensus regarding the appropriate method for such regulation between Great Britain and the United States, the matter was subsequently referred to a tribunal for resolution. The United States contended that the rights in question constituted a servitude that was identical in essence and construction to the servitude recognized in historical legal frameworks⁹.

⁴ *Lauterpacht, Hersch, private law sources and analogies of International Law, New York, Toronto 1927 translex*, https://www.translex.org/104200/_lauterpacht-hersch-private-law-sources-and-analogies-of-international-law-new-york-toronto-1927/ (last visited Nov 11, 2024)

⁵ (1920) vol. I, p. 336; *Crusen in Recueil des cours de l'Académie de Droit International de la Haye*, vol. 22 (1928) p. 71, *Winiarski in ibid.*, vol. 45 (1933) p. 135; *Brierly in ibid.*, vol.

⁶ *Arnaud de Nanteuil Annuaire Français de Droit International*, https://www.persee.fr/doc/afdi_0066-3085_2015_num_61_1_4988_t49_t151_0000_1 (last visited Nov 11, 2024)

⁷ *International servitudes in law and Practice Foreign Affairs*, <https://www.foreignaffairs.com/reviews/capsule-review/1933-01-01/international-servitudes-law-and-practice> (last visited Nov 11, 2024)

⁸ *The Project Gutenberg eBook of International Law Vol. II, by Oppenheim, Lassa*, <https://www.gutenberg.org/files/41047/41047-h/41047-h.htm> (last visited Nov 11, 2024)

⁹ The North Atlantic Coast Fisheries Case (Great Britain, ...), https://legal.un.org/riaa/cases/vol_XI/167-226.pdf (last visited Nov 11, 2024)

IV. MODERN UNDERSTANDING AND PRACTICAL APPLICATIONS

A more meticulous and comprehensive examination of the authentic nature of international organizations, as well as the principles of solidarity, is widely regarded as likely to reveal that rights of a dispositive nature, as traditionally understood, can indeed be established and exist in relation to specific territories. It is also unnecessary to endeavour to find a harmonious reconciliation between such rights and the prevailing notion of absolute sovereignty, which has often been held as a paramount principle in international relations. Sovereignty, in reality, is not an absolute concept, and there exists no justifiable rationale for asserting that a specific territory ought not to be subjected to a regime that fundamentally serves as a limitation upon sovereign powers. For instance, a state that relies heavily on the collaboration of its neighbouring country for the upkeep of a hydroelectric dam situated on a boundary river would find itself in a perpetual state of uncertainty regarding its economic stability if that neighbouring state, or any future entity holding its title, were not indefinitely bound by an obligation to refrain from any form of interference with the operations of that dam¹⁰. The intricate fabric of international order necessitates that territories occasionally fulfil the vital interests of adjacent states, thereby fostering a cooperative environment for mutual benefit. Numerous instances can be cited where such correlative rights and obligations have been established and recognized in international law¹¹. One notable example includes the right of way that Germany secured over the Polish Corridor as delineated in the Treaty of Versailles, which reflects the necessity of cooperative agreements in international relations. Additionally, the irrigation provisions outlined in the same treaty granted France the right to extract water from the Rhine River, while simultaneously imposing upon Germany an obligation that served as an essential corollary to this right: namely, the obligation to refrain from constructing canals on the German side of the Rhine that would lower the water level, rendering the French irrigation efforts ineffective. There are also historical precedents concerning the neutralization and demilitarization of territories, as well as the legal status of international waterways, which will be elaborated upon in subsequent discussions¹².

V. LIMITATIONS OF INTERNATIONAL SERVITUDE

Nonetheless, it must be acknowledged that the term “servitude” carries an inherent ambiguity when applied to a status that is established under the framework of international law. This term suggests an overly rigid adherence to the technical doctrines of Roman law, and it is essential to recognize that the analogy drawn between the concept of servitude in international law and that of Roman law cannot be extended too far without losing its validity¹³. Multilateral treaties have delineated a specific territorial status that serves not merely the interests of a single sovereign power but rather those of multiple states or overarching regional organizations aimed at ensuring collective security. The territory defined under such agreements cannot accurately be described as being servient to these various powers or to the international community in the same manner that one individual's land may be considered servient to that of another individual. Rather, this status represents a restriction upon sovereignty, facilitated by the necessity for maintaining international order and stability¹⁴. However, the breakdown of the analogy with Roman law does not imply that a dispositive status is rendered moot in the face of changes in sovereignty; rather, it continues to hold relevance. Numerous examples exist of regimes that have been established solely for the benefit of one state. A historical instance can be found in the Treaty of Paris in 1763, wherein France granted British subjects the right to free navigation of the Mississippi River in perpetuity. The United States subsequently claimed to have inherited these British rights and sought to enforce them against Spain, which had become the successor state to France. Similarly, customs privileges conferred to the United States by Hanover were asserted as binding upon Prussia, the successor state to Hanover, thereby illustrating the complexities involved in the interplay of rights and obligations across different sovereign entities¹⁵.

VI. BRITISH-RUSSIAN TREATY CASE STUDY

Recent explorations and thorough investigations that have been meticulously carried out within the vast and extensive repositories of the Foreign Office have brought to light a particularly noteworthy perspective that has been articulated by the esteemed Law Officers of the Crown, which serves to explicitly highlight and delineate the crucial distinction that exists between personal conventions, which are more informal agreements, and dispositive agreements, which are formal treaties with binding legal implications. To illustrate this point more clearly, it is essential to note that a treaty that was established in the year 1825 between the historically significant nations of Great Britain and Russia conferred upon British subjects the enduring and perpetual right to navigate freely the rivers that originate in the expansive territories of Canada and flow through the rugged landscapes of Alaska on their way to the vast and open waters of the Pacific Ocean. In the wake of the formal cession of Alaska from the control of Russia to the burgeoning influence of the United States in the year 1867, a particularly pertinent and pressing question emerged regarding

¹⁰ The heart of seeding first nations sovereignty – teela reid Griffith Review, <https://www.griffithreview.com/articles/the-heart-of-seeding-first-nations-sovereignty/> (last visited Nov 11, 2024)

¹¹ [recueil de traités]: *Nouveau Recueil de tra traités ... depuis 1808 : Martens, Georg Friedrich von, 1756-1821 : Free download, Borrow, and streaming Internet Archive*, <https://archive.org/details/recueiltrait08martuoft> (last visited Nov 11, 2024)

¹² U.S. Department of State, <https://history.state.gov/historicaldocuments/frus1912/d1643> (last visited Nov 11, 2024)

¹³ U.S. Department of State, <https://history.state.gov/historicaldocuments/frus1863p2/d607> (last visited Nov 11, 2024)

¹⁴ *Catalog record: Table générale du recueil des traités de g.f. de martens et de ses continueurs. 1494-1874. recueil (1re édition), 7 volumes-suppléments, 4 volumes-recueil (2e édition), 8 volumes-nouveau recueil, 16 volumes-nouveaux suppléments, 3 volumes-nouveau recueil général, 20 volumes Catalog Record: Table générale du Recueil des traités... | HathiTrust Digital Library*, <https://catalog.hathitrust.org/Record/010445353> (last visited Nov 11, 2024)

¹⁵ *Series A: Collection of judgments (1923-1930) Series A: Collection of Judgments (1923-1930) | INTERNATIONAL COURT OF JUSTICE*, <https://www.icj-cij.org/pcij-series-a> (last visited Nov 11, 2024)

the status of the rights that had been granted to British subjects, specifically whether these rights had been nullified or otherwise compromised by the stipulations outlined in Article 26 of the Treaty of Washington¹⁶, which was negotiated in the year 1871 and granted British subjects the right to navigate freely only three of these significant and vital rivers¹⁷.

In light of this intricate and complex legal issue, the Government of Canada, in a bid to seek much-needed clarification, referred the matter to the British Foreign Office, which then sought the expert and authoritative opinion of the Law Officers, posing an inquiry concerning whether the Government of Canada could still maintain and assert its claim against the United States for the unimpeded navigation of all rivers and streams that, in their natural and unaltered courses toward the Pacific, may intersect with the demarcation line that had been established in the Treaty of 1825.

In response to this inquiry, the Law Officers provided a definitive and unwavering assertion, stating that “the rights conferred by the Treaty of 1825 were not, in our view, affected by the cession to the United States, inasmuch as Russia could cede only what she had,” thus affirming the enduring and unassailable nature of these rights despite the significant geopolitical changes that had transpired in the interim. Furthermore, the classical instances of servitudes that have been instituted solely in the interests of a single state are vividly exemplified by those delineated along the borders of Switzerland in the treaties that were enacted to restore the status quo of that nation following the dramatic and tumultuous conclusion of the Napoleonic Wars, illustrating the lasting impact of historical treaties on contemporary international relations.

VII. THE ST. GINDOLPH ZONE CASE

The geographical region that is widely recognized by the name Zone of St. Gindolph found itself enveloped within the extensive territorial landscape that had been officially relinquished by the illustrious Kingdom of Sardinia to the Republic of France during the momentous year of 1859, an occurrence that undeniably signified a pivotal reconfiguration of political sovereignty and authority within that particular geographical area. As a designated customs-free zone, this unique territory was effortlessly assimilated into the broader and more complex framework of the Zone of Gex, which had been explicitly acknowledged in the prestigious Treaty of Paris as a distinct area that would eternally remain free from customs duties, a stipulation that was made with the clear intention of honouring the interests and status of the Canton of Geneva, thereby laying down a solid legal foundation for its recognized status and privileges¹⁸. Both the regions of Gex and St. Gindolph basked in the extended benefits of an exemption from the rigorous enforcement of French customs regulations, a cherished privilege that persisted unwaveringly until the momentous year of 1919, at which point the French government took the initiative to propose to the Swiss authorities that a formal agreement be reached to acknowledge that the exceptional status of these historically significant zones had, in practice, ceased to exist and function as they once did.

The subsequent exchanges of correspondence between the governments of France and Switzerland were ultimately woven into the fabric of Article 435 of the illustrious Treaty of Versailles, wherein it was articulated with great clarity that the restrictions that had previously governed these zones were no longer in harmony with the contemporary conditions and realities prevailing at that specific juncture in history. Switzerland, in a robust response, raised significant objections, vehemently asserting that the article in question could not be regarded as effective or enforceable in the absence of a mutual and amicable agreement to formally terminate the existing regime, which ultimately led to the referral of this intricate matter to the esteemed Permanent Court of International Justice, a body renowned for its deliberative authority. This distinguished tribunal engaged in a meticulous and exhaustive examination of the precise nature of the obligations that had been imposed upon the administrative governance of the districts under consideration, leaving no stone unturned in their investigation. It became abundantly clear that the court lent its support to the interpretation that rights in rem, specifically pertaining to Switzerland, had been firmly established and were to be regarded as permanently affixed to the land in question as a matter of legal principle.

The Manifesto of 1829 was ultimately determined to have definitively established, with binding authority and clarity, the objective legal principles that were to govern the conduct of the involved parties, a determination that was reached entirely independently of any personal interests or subjective considerations that might have otherwise clouded the issue at hand.

VIII. ANGLO-IRANIAN OIL DISPUTE

The eloquent and harmonious alignment of intentions, as meticulously articulated and documented within the various treaties, was ultimately interpreted in a manner that conferred upon the careful delineation of the Zone of St. Gindolph a distinctly robust character of a legally binding treaty obligation, which France, as the rightful successor to Sardinia in terms of territorial sovereignty, was thus inherently bound to honor, respect, and uphold with the utmost diligence and fidelity. When it comes to the Zone of Gex, the court expressed its opinion in a manner suggesting that an "actual right" had been firmly established, indicating a robust

¹⁶ Territory of Washington, <https://leg.wa.gov/CodeReviser/documents/sessionlaw/1871pam1.pdf> (last visited Nov 11, 2024)

¹⁷ Russia: Pacts and treaties Russia: Pacts and Treaties - EuroDocs, https://eudocs.lib.byu.edu/index.php/Russia:_Pacts_and_Treaties (last visited Nov 11, 2024)

¹⁸ Zone V. Fremont St. Experience LLC, 458 p.3d 360 | casetext search + citator, <https://casetext.com/case/zone-v-fremont-st-experience-llc-2> (last visited Nov 11, 2024)

territorial right or a right in rem that had been duly recognized and sanctioned by the authoritative judicial body, which underscores the importance of such rights in the broader context of international law.

This particular and nuanced interpretation of the legal ramifications that arise from the illustrious Manifesto of 1829 presents a noteworthy and significant precedent for the United Kingdom as it navigates the current, and often contentious, situation it finds itself embroiled in with Iran concerning the highly sensitive and consequential issue of the nationalization of the Persian oil industry—an issue that carries with it substantial geopolitical implications that reverberate across the international landscape. The concession that was meticulously granted to the Anglo-Iranian Oil Company was the result of careful and thorough negotiations that took place in the pivotal year of 1932, serving as a carefully considered resolution to a prior dispute that had arisen between the United Kingdom and Iran over the rights and entitlements to the rich oil resources contained within Iranian territory¹⁹.

Following Iran's unequivocal expression of intent to unilaterally revoke and abrogate the existing concession, the British government took decisive action by elevating the issue onto the agenda of the prestigious Council of the League of Nations, which consequently appointed Dr. Benes to serve as rapporteur, a role entrusted with the important responsibility of facilitating an amicable and peaceful resolution to the ongoing conflict. Ultimately, the settlement was achieved independently of Dr. Benes's involvement, occurring at a time when the dispute still remained officially under judicial consideration, which adds layers of complexity to the situation. In the contemporary context, Great Britain asserts with confidence that the concession established in 1932 effectively operates as a memorandum of settlement that imposes a dispositive obligation upon the territory of Iran, thereby adding further layers of complexity to an already intricate matter that requires careful navigation.

In support of this particular assertion, Great Britain invokes and draws upon the well-established precedent set by the Permanent Court of International Justice regarding the status and implications of the Manifesto of 1829, which similarly operated as a memorandum of settlement and was adjudged to possess significant dispositive effects, thereby intertwining and drawing parallels between legal interpretations across these distinct yet intricately related international issues that demand careful consideration and analysis.

IX.COMMITTEE ANALYSIS OF INTERNATIONAL SERVITUDE

It is certainly a well-documented fact that the committee undertook an exhaustive investigation followed by a series of probing inquiries into the very essence and validity of the concept of servitude, especially in relation to how it fits within the broader framework of international law as we understand it today. However, it seems that the committee's primary objective was not to categorically reject the legitimacy of this concept outright, but instead to convey a certain level of scepticism regarding whether the praedial servitude, as defined and elaborated upon in the intricate and complex context of Roman law - what one might call the "authentic technical interpretation of the term" - had been effortlessly assimilated into the domain of international law without undergoing any necessary modifications or adaptations to fit the contemporary legal landscape. In fact, the committee appeared to demonstrate a distinct preference for recognizing the existence of rights in rem within the intricate tapestry of international law, regardless of whether these rights happen to be explicitly classified as servitudes or fall into other legal categories entirely²⁰.

X.THE AALAND ISLANDS CASE

According to various reports that have surfaced, the provisions articulated in the convention of 1856 were purportedly designed to create a unique international status, one that is fundamentally intertwined with military considerations, particularly in relation to the Aaland Islands, which have captured international attention. As a result, it becomes abundantly clear that until such a time arrives when these particular provisions are appropriately replaced or rendered obsolete by new agreements, any nation that has a vested interest in this matter possesses the indisputable right to demand unwavering compliance with the obligations that have been clearly delineated within that framework²¹.

Moreover, it follows logically that any nation currently exercising sovereignty over the Aaland Islands is obligated to adhere to the legal responsibilities that emanate from the demilitarization framework, which was robustly established by the aforementioned provisions and remains in effect. The committee continued to emphasize that the acknowledgment of any state within the international community must necessarily be conditional upon the assurance that the state in question will faithfully respect and fulfil the obligations that have been placed upon it, whether these obligations arise from the fundamental tenets of general international law or from specific international treaties that pertain to territorial issues.

XI.COLLECTIVE INTEREST IN TERRITORIAL SETTLEMENTS

The Report generated by the Committee possesses tremendous significance, not merely for its clear and direct proclamation that unequivocally acknowledges the presence of the notion of dispositive obligations as a fundamental aspect of international law, but

¹⁹ Anglo-Iranian Oil Co. (United Kingdom v. Iran), <https://www.icj-cij.org/case/16> (last visited Nov 11, 2024)

²⁰ Full text of "The collected papers of John Westlake on Public International Law," https://archive.org/stream/collectedpaperso00west/collectedpaperso00west_djvu.txt (last visited Nov 11, 2024)

²¹ Aaland Islands case SpringerLink, https://link.springer.com/10.1007/978-3-319-68846-6_658-1 (last visited Nov 11, 2024)

also for its vigorous declaration that any territorial arrangement established with the collective benefit of nations in mind carries an intrinsic right to acknowledgment by every “interested State” involved in the matter at hand²². This particular entitlement arises naturally as a direct result of the historical reality that, tracing back to the year 1815 and especially following the conclusion of various pivotal peace treaties, numerous sovereign powers have made concerted efforts to create a genuinely objective legal framework, thereby establishing a substantial political status whose effects resonate far beyond the immediate concerns of the contracting parties directly engaged in the agreements.

An exhilarating and renewed enthusiasm has undeniably been ignited concerning the intriguing concept of servitude, which has been specifically established with the noble intention of enhancing and promoting international collaboration between nations, a revitalized attention that has been significantly influenced by the extraordinary and dissenting viewpoint presented by the esteemed Sir Arnold McNair, whose articulate and compelling arguments were brought forth to the highly regarded International Court of Justice in the pivotal year of 1950, particularly with respect to the highly debated and contentious status of the territory known as South West Africa.

The court found itself profoundly immersed in the essential undertaking of diligently scrutinizing the intricate obligations that South Africa had willingly undertaken in connection with this territory, obligations that were rooted in the mandate system originally crafted by the League of Nations, a framework specifically designed to guarantee the well-being and appropriate governance of territories that fell under the purview of international oversight and administration. In light of the unfortunate and consequential dissolution of the League of Nations, it became critically imperative to ascertain whether the foundational principles that initially underpinned the mandate system had likewise vanished into obscurity, and whether South Africa still retained the responsibility of managing its diplomatic and administrative relationship with the territory based on the original mandate agreement that had been meticulously delineated.

Sir Arnold passionately articulated the viewpoint that the sovereignty over the territory in question was, in fact, severely constrained, and that a distinctive and unique status had been irrevocably tied to the territory itself, a singular standing that existed autonomously and independently of both the presence and absence of the legal framework that had been initially employed to establish it, along with the international organization to which the obligations of the mandatory were originally bound.

XII. INTERNATIONAL WATERWAYS AND LEGAL STATUS

It is irrefutably clear that, within a theoretical framework, a legal standing that possesses a decisive character can undoubtedly be established with respect to the oversight and governance of waterways that traverse various regions. The various interpretations and perspectives that have been articulated by legal experts regarding the rights and entitlements afforded to Canadian citizens over the vast and magnificent waterways that are located in the great expanse of Alaska have already been subjected to extensive scrutiny and detailed evaluation in discussions that have taken place in the past.

Furthermore, one might choose to highlight the legal position of the illustrious Elbe River as outlined meticulously in Article 331 of the Treaty of Versailles, in addition to the provisions that are articulated within the Barcelona Convention on Waterways, both of which sought to craft a coherent legal framework that would achieve objectives akin to those accomplished through a convention that is dispositive in nature. However, the most pivotal and far-reaching declaration concerning the legal status of international waterways can be traced back to the groundbreaking ruling issued by the highly esteemed Permanent Court of International Justice in the historic S.S. Wimbledon case, which stands as the first legal matter ever to be brought before this distinguished judicial institution²³.

In the broader context of the Treaty of Versailles²⁴, which was instituted following the culmination of World War I, Germany had unquestionably committed to ensuring that all nations would be granted unimpeded access to the Kiel Canal, thereby promoting and enhancing international maritime navigation. In light of the developments that unfolded subsequently, and with sound justification, Germany asserted that it possessed legitimate grounds to deny passage to a British vessel that was carrying munitions intended for Poland, which subsequently resulted in the emergence of a legal claim for damages that necessitated a judicial examination of the precise status of the canal in question. During the court's deliberations, it was articulated in the ruling that the Kiel Canal had effectively evolved into an international waterway, which was designed to provide, under the auspices of a treaty guarantee, improved accessibility to the Baltic Sea, thereby serving the collective interests of all nations across the globe. Nevertheless, despite the viewpoints presented by Judge Schticking, who contended that the Treaty of Versailles had indeed imposed

²² Collective titles - the future of land rights for informal settlements? World Habitat, <https://world-habitat.org/news/our-blog/collective-titles-the-future-of-land-rights-for-informal-settlements/> (last visited Nov 11, 2024)

²³ International Waterways - Straits, canals, Rivers Straits, Canals, Rivers - Law, Passage, Panama, and Seas - JRank Articles, <https://law.jrank.org/pages/7748/International-Waterways.html> (last visited Nov 11, 2024)

²⁴ Research guides: Treaty of versailles: Primary documents in American history: Introduction Introduction - Treaty of Versailles: Primary Documents in American History - Research Guides at Library of Congress, <https://guides.loc.gov/treaty-of-versailles> (last visited Nov 11, 2024)

a servitude over the canal, the overwhelming sentiment among the members of the court was one of hesitation to definitively categorize the status of the canal as a fully established international waterway.

XIII. MODERN IMPLICATIONS

They steadfastly maintained their unwavering determination to proclaim, with great conviction, that a regime characterized by impartiality and fairness had been rigorously instituted over the canal, with the paramount objective of catering to the collective needs and interests of the entire global community of nations, no matter the circumstances surrounding the original instrument that either might have been rendered void or remained in force. When one deliberates the notion of the Kiel Canal regime as an intricate web of international servitude that obligates nations to adhere to specific responsibilities, it naturally leads to the conclusion that the status of the Suez Canal, which is regulated under the stipulations of the Convention of Constantinople that was enacted in the year 1888, should likewise be perceived as a variant of servitude, complete with all the profound ramifications and consequences that such a classification inevitably brings along with it. In truth, the ruling made by the Permanent Court regarding the status of the Kiel Canal was, in part, shaped and guided by the comparable circumstances surrounding the Suez Canal, highlighting a critical intersection of international maritime law²⁵.

XIV. CONCLUSION

In order to harmoniously blend the concept of authority with the broader interests of the community, it is imperative for a global legal framework to encompass the notion of servitude, which has historical roots and contemporary implications. In the contemporary context following the tumultuous postwar era, it has become quite commonplace to discuss the limitations imposed on national sovereignty, as these restrictions are essential for the sustenance and flourishing of any well-organized international society that aims to thrive in a complex world. For an impartial and universally applicable rule of law to genuinely take root in the international arena, it must necessarily incorporate definitive territorial agreements, which serve as fundamental limitations upon the exercise of sovereign power by nations. The concept of servitude, when examined through the lens of its parallels in ancient Roman jurisprudence, emerges as a vital instrument for creating a fair equilibrium in economic exchanges that occur between governments sharing a geographical border or nearby territories. Thus, the interplay of these legal and economic principles not only shapes the dynamics of power but also fosters a sense of responsibility among nations to engage in cooperative interactions that prioritize the collective good. In this intricate dance of sovereignty and the common welfare, the historical understanding of servitude becomes not just a relic of the past, but a relevant framework for navigating the complexities of modern international relations and economic collaborations.



²⁵ East and west of Suez: The Suez Canal in history 1854–1956, the Suez Contractors and the Suez Canal in peace and war 1869–1969 OUP Academic, <https://academic.oup.com/ia/article-abstract/46/4/840/2569947> (last visited Nov 11, 2024)