



University of
Nottingham
UK | CHINA | MALAYSIA



WashU Law

Whitney R. Harris
World Law Institute



INTERNATIONAL LAW ASSOCIATION
AMERICAN BRANCH
EST. 1922

SLAVE TRADE

ABILA STUDY GROUP

CRIMES AGAINST HUMANITY

NOVEMBER 14, 2025



Chair: Leila Nadya Sadat

Drafting Committee: Olympia Bekou (Chair), Sara Ciucci,
Christopher Lentz, Leila Nadya Sadat

Slave Trade Subgroup: Jocelyn Getgen Kestenbaum (Co-Chair),
Patricia Viseur Sellers (Co-Chair)

Study Group Members

Kelly Adams	Ryan Liss
Diane Marie Amann	Megan Manion
Mina Nur Basmaci	Craig Martin
Olympia Bekou	Valerie Oosterveld
Todd Buchwald	Diane Orentlicher
Sara Ciucci	Iulia Padeanu Mellon
Tom Dannenbaum	Ishita Petkar
John Devaney	Akila Radhakrishnan
David Donat Cattin	Christine Ryan
Hannah Garry	Susana SáCouto
Jocelyn Getgen Kestenbaum	Leila Nadya Sadat
Tess Graham	Michael Scharf
Sasha Greenawalt	Patricia Viseur Sellers
Christopher “Kip” Hale	Grant Shubin
Christina Hioureas	David Sloss
Diem Huong Ho	Milena Sterio
Larry Johnson	Hannah Sweeney
Michael J. Kelly	Alyssa T. Yamamoto
Christopher Lentz	

Study Group Advisors

Richard Goldstone
William Schabas

All members and advisors contributed voluntarily
and in their personal capacities

SLAVE TRADE AND ENSLAVEMENT AS CRIMES AGAINST HUMANITY

Proposed Revised Text for Article 2 of the Draft Articles on Prevention and Punishment of Crimes Against Humanity [ILC Draft]

Article 2 Definition of crimes against humanity

1. For the purposes of the present draft articles, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

[...]

(c) enslavement **and/or the slave trade**;

[...]

2. For the purpose of paragraph 1:

(c) “enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person ~~and includes the exercise of such power in the course of trafficking in persons, in particular women and children, and~~ **“the slave trade” means all acts involved in the capture, acquisition or disposal of a person with intent or knowledge to reduce that person to slavery, all acts involved in the acquisition of an enslaved person with a view to selling or exchanging that person, all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged, and, in general, every act of trade or transport of an enslaved person by whatever means of conveyance;**

Explanatory Notes

This proposal mirrors the proposal submitted by Sierra Leone to amend the concomitant provisions of the Rome Statute of the ICC.¹ It seeks to include the slave trade as a

¹ See UN, ‘Rome Statute of the International Criminal Court: Sierra Leone: Proposal of Amendments’ (16 April 2025) C.N.175.2025.TREATIES-XVIII.10 (Depositary Notification) <<https://treaties.un.org/doc/Publication/CN/2025/CN.175.2025-Eng.pdf>> Annex. See also UNGA Sixth Committee (78th Session) ‘Summary Record of the 11th Meeting’ (12 October 2023) UN Doc A/C.6/78/SR.11, para 75 (Sierra Leone).

punishable act in the Convention to close an existing impunity gap.² Proposed Draft Article 2(1) provides an effective accountability avenue for acts of the slave trade. Proposed Article 2(2)(c) offers a more concise definition of enslavement, building upon the definition set forth in the 1926 Slavery Convention and reaffirmed in the 1956 Supplementary Slavery Convention.³

1. The Draft Articles enumerate the prohibitions for enslavement and for sexual slavery;⁴ absent, however, is a provision for the slave trade. The prohibition of the slave trade is a peremptory or *jus cogens* norm with attendant *erga omnes* obligations.⁵ Additionally, the slave trade is a treaty and customary-based international crime,⁶ a crime against humanity,⁷ a war crime,⁸ and a non-derogable human rights violation.⁹

Slave Trade Defined

2. The slave trade involves intentionally or knowingly reducing a person to enslavement or acquiring or disposing of an enslaved person with a view to maintaining them in a

² This proposal expands upon a brief prepared by Patricia Viseur Sellers, Jocelyn Getgen Kestenbaum, and Alexandra Lily Kather: ‘Including the Slave Trade in the Draft Articles on Prevention and Punishment of Crimes Against Humanity’ (15 September 2023) <<https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Slavery-and-Slave-Trade-Expert-Legal-Brief-CAH-Treaty.pdf>>.

³ Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253, art 1(2); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3 (Supplementary Slavery Convention) art 7(c).

⁴ UNGA, ‘Report of the International Law Commission (71st Session), Text of the Draft Articles on Prevention and Punishment of Crimes Against Humanity and Commentaries Thereto’ (20 August 2019) UN Doc A/74/10 [hereinafter “ILC Draft Articles”], arts 2(1)(c), 2(1)(g).

⁵ See, e.g., American Law Institute, ‘Restatement (Third) of Foreign Relations of the United States’ (1987) sec 702 comment e; M Cherif Bassiouni, ‘International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*’ (1996) 59 L Contemp Probs 63, 68-73.

⁶ Slavery Convention (n 3) art 1(2); Supplementary Slavery Convention (n 3) arts 3(1), 7(c); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, art 4(2)(f); ICRC, Jean-Marie Henckaerts, Louise Doswald-Beck ‘Customary International Humanitarian Law, Volume I: Rules’ (Cambridge University Press, 2005) Rule 94 <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94>>. Many of the 19th century anti-slave trade treaties recognized the imposition of penal sanctions for slave trading, such as the Congress of Vienna, the Treaty of London, the General Act of Berlin, the General Act of Brussels, and the 1890 Treaty between Great Britain and Spain for the Suppression of the African Slave Trade. See, e.g., M Cherif Bassiouni, ‘Enslavement as an International Crime’ (1991) 23 NYU J Int’l L & Pol 445, 459-463.

⁷ Council of the European Union, ‘Declaration of the EU-CELAC Summit 2023’ (18 July 2023) 12000/23, para 10 (acknowledging that the slave trade is a crime against humanity).

⁸ Additional Protocol II (n 6) art 4(2)(f); ICRC (n 6) Rule 94.

⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc A/RES/217(III), art 4; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 8(1); American Convention on Human Rights: “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, art 6(1); African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 5.

situation of enslavement.¹⁰ It includes the abduction, kidnapping, sale, disposal, or transfer of any person, including a child and regardless of any other status, with a view to reducing or maintaining that person in enslavement.

3. A range of conduct could constitute acts of the slave trade, such as the abduction, sequestering, or rounding up of persons, including children, with the intent to enslave them as porters for a militia group; the sale and transfer of migrants; the distribution of girls and women to paramilitary fighters; and the recruitment of children to fight in armed groups or armed forces.¹¹ Likewise, the transport, transfer, sale, exchange, or disposal by any means of enslaved persons, including children, to subsequent situations of enslavement are acts of the slave trade.
4. Moreover, it is legally immaterial whether a person who is slave traded consented to being slave traded. An individual's consent or lack of consent is not an element of the crime of the slave trade. Similarly, establishing the presence or absence of coercive circumstances, custody, or duress is not determinative of the crime of the slave trade. The slave trade's proscribed conduct focuses on the perpetrator's intent or knowledge, not on the reaction, mental state, or emotion of the victim.¹²

Slave Trade's Relation to Slavery/Enslavement, Sexual Slavery, and Other Crimes

5. The slave trade and slavery/enslavement are distinct international crimes. Enslavement, as worded in Draft Article 2(2)(c), repeats verbatim the Rome Statute's provision on enslavement under Article 7(2)(c).¹³ Both articles draw upon the 1926 Slavery Convention and the 1956 Supplementary Slavery Convention's definition of slavery: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."¹⁴ Acts of the slave trade precede—or are precursors to—acts of enslavement, slavery, or sexual slavery.¹⁵
6. The slave trade might occur serially among slave traders, without resulting in slavery/enslavement or sexual slavery charges. It suffices that the perpetrator's

¹⁰ Slavery Convention (n 3) art 1(2); Supplementary Slavery Convention (n 3) art 7(c) (The slave trade means "all acts involved in the capture, acquisition or disposal of a person with intent to reduce [that person] to slavery; all acts involved in the acquisition of [an enslaved person] with a view to selling or exchanging [that person]; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in [enslaved persons] by whatever means of conveyance").

¹¹ See, e.g., ICC OTP, 'Policy on Slavery Crimes' (December 2024) <<https://www.icc-cpi.int/sites/default/files/2024-12/policy-slavery-web-eng.pdf>> paras 41-42; Patricia Viseur Sellers, Jocelyn Getgen Kestenbaum, 'Missing in Action: The International Crime of the Slave Trade' (2020) 18 J Int'l Crim Just 517, 536-537.

¹² Consent is legally immaterial for all slavery crimes, including slavery/enslavement and sexual slavery.

¹³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(2)(c) ("Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children").

¹⁴ Slavery Convention (n 3) art 1(1); Supplementary Slavery Convention (n 3) art 7(a).

¹⁵ Sellers, Kestenbaum, 'Missing in Action: The International Crime of the Slave Trade' (n 11) 536-537.

mens rea and *actus reus* is to intentionally reduce or maintain a person, eventually, in enslavement, including sexual slavery,¹⁶ to establish the slave trade.

7. The ICC's Elements of Crimes assists the Court in the interpretation and application of crimes under its jurisdiction consistent with the Rome Statute and clarifies that enslavement requires for the perpetrator to "exercise any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."¹⁷ Accordingly, the Rome Statute, and consequently the Draft Articles, only provide legal redress for acts of the slave trade that concurrently entail the exercise of powers attaching to the right of ownership and, thus, constitute enslavement. As a result, neither the Draft Articles nor the Rome Statute presently provides adequate redress for the slave trade.

Enslavement and the Slave Trade's Relation to Trafficking in Persons

8. Draft Article 2(2)(c), replicating the Rome Statute's Article 7(2)(c) definition of enslavement, refers to "trafficking in persons"¹⁸ as an example of conduct that may constitute indicia or evidence of enslavement's first element, the exercise of any or all the powers attaching to the right of ownership over a person.¹⁹ As an international crime, the slave trade is distinct from the transnational crime of trafficking.
9. Trafficking in persons is not an international crime; it is a transnational crime and a human rights violation.²⁰ Like the Rome Statute, the Draft Articles will not expressly provide for jurisdiction over prohibitions of trafficking in persons.
10. Acts of trafficking in persons may factually resemble acts of the slave trade or enslavement; thus, leading to their legal conflation, and often an erasure of the international crime of the slave trade.²¹ Importantly, the slave trade, unlike trafficking, does not require proof of the use of force or other coercive or deceptive circumstances, or exploitation, nor does the slave trade differentiate between the

¹⁶ The ILC Draft Articles contain a provision for sexual slavery in Draft Article 2(1)(g) that mirrors Article 7(1)(g) of the Rome Statute. The enumerated crime of "sexual slavery" under the Rome Statute is defined identically to slavery or enslavement (a perpetrator exercises any of the powers attaching to the right of ownership over a person), with the additional burden of proof that the perpetrator "cause[s] such person or persons to engage in one or more acts of a sexual nature." Elements of Crimes (2013) art 7(1)(g)-2 element 2.

¹⁷ ICC, Elements of Crimes (n 16), art 7(1)(c) element 1. See also Rome Statute (n 13) art 9(1).

¹⁸ Compare Rome Statute (n 13) art 7(2)(c) ("'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children"), with ILC Draft Articles (n 4) art 2(2)(c) (same).

¹⁹ Elements of Crimes (n 16) art 7(1)(c) element 1.

²⁰ See, e.g., Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 6; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 35.

²¹ Harmen van der Wilt, 'Trafficking in Human Beings, Enslavement, Crimes Against Humanity: Unravelling the Concepts' (2014) 13 Chinese J Int'l L 297, 303.

age of victims to determine the relevance of consent.²²

11. While evidence of the slave trade might encompass conduct of trafficking in persons, such as transport, recruitment, or disposal, it is a distinct international crime that should be enumerated in the Draft Articles.

Modification to the Definition of Enslavement in the Draft Articles

12. Accordingly, this proposal suggests deleting from the definition of enslavement the words “and includes the exercise of such power in the course of trafficking in persons, in particular women and children.” The list of indicia or evidence for the exercise of any or all of the powers attaching to the right of ownership is non-exhaustive.²³ The current wording seemingly prioritizes trafficking in women and children. The proposed deletion would enhance the clarity of the non-exhaustive list of conduct that may serve as indicia of enslavement and align the provision with relevant treaty language.

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319, art 3(b)-(c) (providing that, absent abusive or deceptive circumstances described in Article 3(a), consent may be a relevant consideration as to whether an adult is a trafficking victim, whereas no such allowance is made with respect to a child).

²³ “Indicia to determine enslavement include control or restrictions of movement; measures to deter or prevent escape; control of physical environment; psychological control or pressure; force, threat of force or coercion; control of sexuality and reproductive autonomy; assertions of exclusivity; control over breeding; forced administration of contraception, forced gestation, control of breastfeeding, starvation; forced labor; torture; subjugation to medical experimentation; removal of organs; menstrual verification; impregnation; and cruel treatment and abuse.” OTP ICC, Policy on Slavery Crimes (n 11) para 68.