

The ASIL Resolution: Upholding International Law on Slavery and the Slave Trade

Introduction

At the 119th Annual Meeting in April 2025 the American Society of International Law will conduct a vote to adopt a [resolution on slavery and the slave trade](#). The [resolution](#) as admitted by the Executive Committee and approved by the ASIL Executive Council states that:

1. Slave trade is a violation of a non-derogable human right and can constitute an international crime, including a crime against humanity and a war crime.
2. Slavery is a violation of a non-derogable human right and can constitute an international crime, including a crime against humanity and a war crime.
3. The prohibitions of slavery and slave trade are peremptory norms from which no derogation is permissible. Protection from slavery and slave trade is an obligation *erga omnes*.

The topic of each paragraph of the resolution enunciates a foremost peremptory norm of international law that merits contemporary acknowledgement and reiteration by the Society. This *Insight* situates the ASIL resolution in the broader context of current efforts to criminalize slavery and the slave trade, explains how it aligns with ASIL's historical contributions to international law, and briefly summarizes the resolution's procedural history to date.

The Resolution's Importance in the Broader Context of the Draft Crimes Against Humanity Treaty and the Rome Statute of the International Criminal Court

The resolution arises at a historical juncture in international law. As ASIL conducts this vote, the United Nations stands on the cusp of negotiating the first crimes against humanity treaty.¹ Furthermore, this year the International Criminal Court's (ICC) Assembly of State Parties (ASP) will vote to enumerate the slave trade as a crime against humanity and as a war crime into the Rome Statute.² Each instrument, the Draft articles on Prevention and Punishment of Crimes Against Humanity³ and the Rome Statute, envisions the enumeration of provisions to strengthen the prohibitions of slavery and the slave trade. The proposed ASIL resolution, attuned to this historic moment, offers demonstrable recognition by the Society of the high value international law accords the prohibition of slavery and the slave trade.

Crimes against humanity emerged contentiously under the [London](#) and [Tokyo](#) Charters, as an express crime. Thereafter, it steadily obtained international customary law status through inclusion in the [Nuremberg Principles](#), the 1969 Convention on the [Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity](#), but most assuredly as recognized in Article 5 of the [Statute for the International Criminal Tribunals for Yugoslavia](#) and Article 3 of the [International Criminal Tribunal for Rwanda](#). Protection from enslavement or slavery was anchored in the crimes against humanity provision of the respective Charters and Tribunal statutes, as well as Article 7 of the [Rome Statute](#).

In 2013, the International Law Commission (ILC) placed the topic of a draft treaty for crimes against humanity on its agenda. Ten years later, General Assembly Resolution 77/249 delivered the draft articles of the treaty to the Sixth (Legal) Committee for a two-year period of debate and discussion, in order to then proceed to formulate a treaty. In December 2024, the General Assembly passed resolution 79/122 and voted to convene two Plenipotentiary Conferences, in 2028 and 2029, to elaborate and conclude a legally binding instrument on the prevention and punishment of crimes against humanity.⁴ A provision to enumerate the slave trade as a crime against humanity in the treaty has since gained wide support among UN member states across geographical regions. The

inclusion of the prohibition of slave trade is seen to align the crimes against humanity treaty with the peremptory norm framework of slavery and the slave trade as contained in the [1926 Slavery Convention](#) and underscored in the [1956 Supplementary Slavery Convention](#). The ASIL resolution enters the conversation surrounding the crimes against humanity treaty negotiations with the respectful posture of America's most prestigious international law society.

The resolution is also a timely contribution to international efforts to strengthen accountability. The Rome Statute already recognizes enslavement as a crime against humanity. However, the absence of explicit references to the slave trade as an independent crime against humanity and slavery and the slave trade as war crimes has created an accountability gap, particularly for contemporary situations of slavery.⁵ Amendments are now being discussed within the ASP to rectify this legal lacunae.⁶ The ASIL resolution directly addresses this deficiency by clearly stating the legal position that both slavery and the slave trade are peremptory norms from which no derogation is permissible. In passing the resolution, the Society will promote continued legal clarity on established principles of international law.

The ASIL resolution also pertinently affirms the importance of slavery and the slave trade as violations of the laws and customs of war, irrespective of the nature of the armed conflict.⁷ Contemporary slavery and the slave trade, especially as related to armed conflict, persist. Such situations include child soldiers in the Lord's Army,⁸ captured Yazidi women and children by ISIS,⁹ Boko Haram in northern Nigeria, and migrants traversing the Sahara Desert of Libya.¹⁰ For those reasons, Sierra Leone, together with other supportive ICC member states, proposed to amend Article 8 of the Rome Statute to include slavery and the slave trade as was crimes and Article 7 to enumerate the slave trade as a crime against humanity. Fortifying slavery crimes under the Rome Statute is responsive to current atrocity situations and hopefully will prevent the occurrence of future harms. Notably, the ASIL resolution also strongly resonates with the Prosecutor of the International Criminal Court's inaugural [policy on slavery crimes](#), which was issued in December 2024.

How the Resolution Aligns with ASIL's Historical Contributions to International Law

ASIL has consistently contributed to promoting international legal principles in alignment with its mission to “foster the study of international law and promote the establishment and maintenance of international relations based on law and justice.” The resolution furthers the fostering of such contributions *vis a vis* the international legal community as well as the upholding of a pledge to the ASIL membership.

Recent ASIL initiatives such as [The Richardson Report](#), symposia on [Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean](#), and the AJIL Unbound [symposium](#) on race, racism, and international law are some examples of the Society’s commitment to addressing the legacies of these established international crimes and the current international legal landscape. Appraisal of the legacy of *de facto* discrimination against persons of African descent by the Society includes acknowledgement and underscoring of the legal sources of such biases. The absence of learned articles in ASIL publications that could have addressed the 1926 Slavery Convention, the 1956 Supplementary Slavery Convention, or the slavery and slave trade-related provisions of the International Covenant for Civil and Political Rights, reveals an educational omission on the part of the Society. The Society’s affirmation of the prohibition of slavery and the slave trade now stands to stimulate learned reflection and conversation among ASIL membership and promote scholarship through its world-class leading publications.

The Procedural History of the ASIL Resolution

ASIL is comprised of a diverse membership of over 4,000 individuals from more than a hundred nations, with approximately 40 percent residing outside the United States. In accordance with the Society’s Constitution and Regulations, the Executive Committee reviewed the proposal and accompanying report during its sessions on March 1 and March 8, 2024. The Committee found the proposal admissible and referred it to the Executive Council for substantive review of its merits. On April 3, 2024, the Executive Council deliberated on the proposed resolution and accompanying report and determined that, in principle, the resolution met the substantive requirements of the

Society's regulations. Acting under Section XI of the Society's Regulations, the Executive Council requested that the President convene an *ad hoc* subcommittee to conduct some revisions of the proposal and accompanying report prior to final consideration for submission to the Society.

This ad hoc subcommittee collaborated closely with the principal proposer to finalize the revisions, which included a concise overview highlighting the resolution's purpose and its adherence to the Society's regulations. The revised proposal and report were subsequently presented to the Executive Council at its Midyear Meeting in Chicago on November 15, 2024. The Council unanimously approved the revised resolution and report. The resolution was circulated to the members of the Society by the Executive Director on December 10, 2024, with the indication that it will be presented before the Society at the Annual Meeting for consideration.

ASIL's Promotion of the Rule of International Law

The resolution is part of a longstanding tradition of international legal instruments that condemn slavery and the slave trade. Notable historical frameworks, such as the [1926 Slavery Convention](#), the [1956 Supplementary Convention on the Abolition of Slavery](#), and the case law of international tribunals¹¹ have reinforced these prohibitions. In the [Barcelona Traction case](#) the International Court of Justice unequivocally stated that the prohibition of slavery is an obligation *erga omnes* thereby emphasizing that all states have a legal interest in its enforcement. ASIL's passage of the resolution will serve as an unambiguous /clear internal statement to ASIL membership and as an exemplary external statement to the global community.

Continued acknowledgment of the prohibition of slavery and slave trade is therefore more than a moral imperative; it is a legal obligation that is of fundamental importance in promoting the establishment and maintenance of international relations on the basis of law and justice. ASIL President Mélida Hodgson, recently exhorted against a retreat from international law and urged a commitment for a more just world under international law.¹² The Society's resolution on slavery and the slave trade constitutes such a commitment.

About the Authors:

Patricia Viseur Sellers, an international lawyer, is on the law faculty of the University of Oxford. She is the former Special Advisor for Slavery Crimes to the Prosecutor of the International Criminal Court and was awarded the Goler T. Butcher Medal in Human Rights by ASIL in 2023.

Adejoké Babington-Ashaye is an international lawyer, consultant, and Co-Chair of Blacks of the American Society of International Law (BASIL). She currently serves as a Senior Research Fellow at the Soufan Center.

¹ See [United Nations Diplomatic Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity](#).

² See [International Criminal Court Assembly of States Parties, Report on the Working Group on Amendments, Assembly of State Parties](#), ICC-ASP/22/29, paras. 13-15.

³ [International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries \(2019\)](#).

⁴ [G.A. Res. 79/122](#), U.N. Doc. A/RES/79/122 (Dec. 4, 2024), art. 4.

⁵ See Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law*, 19 AM. U. INT'L L. REV. 884, 933-946 (2003). Article 7(2)(c) of the Rome Statute appears to merge three separate crimes of slavery, slave trade, and human trafficking into the term “enslavement.” However, the Court does not currently have jurisdiction over the slave trade. Human trafficking is a domestic, trans-national crime, not an international crime. According to Sellers and Kestenbaum, “While a thin overlapping factual line exists between subjugation to exploitation and reduction into slavery, salient legal differences distinguish slave trade from human trafficking.” See Patricia Viseur Sellers and Jocelyn Getgen Kestenbaum, *Missing in Action: The International Crime of the Slave Trade*, 18 J. INT'L CRIM. JUST. 517 (2020), p. 19. See also, Nicole Siller, ‘Modern Slavery’ Does International Law Distinguish between Slavery, Enslavement and Trafficking? 14 J. INT'L CRIM. J. (2016) 405; Patricia Viseur Sellers, *Slave Trade Q&A – The Nexus Between Conflict-Related Sexual Violence and Human Trafficking for Sexual Exploitation in Times of Armed Conflict During Court Proceedings: An Insider’s View*, 3 J. TRAFFICKING & H. EXPLOITATION (2019), 147-158.

⁶ See [International Criminal Court Assembly of States Parties, Report on the Working Group on Amendments, Assembly of State Parties](#), ICC-ASP/22/29, ¶¶ 13-15.

⁷ Rule 94 on [Slavery and the Slave Trade of ICRC Customary Law Study](#).

⁸ Prosecutor v. Dominic Ongwen, ICC-02/04-01/15- 2022-Red, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment” (Dec. 15, 2022).

⁹ See [The Hasna A. case](#) in The Netherlands, December 11, 2024.

¹⁰ Modern Slavery in Libya, [Global Slavery Index \(2023\)](#).

¹¹ See e.g., Judgment, Kunarac, Kovač and Vuković (IT-96-23-T & IT-96-23/1-T), Trial Chamber (Feb. 22, 2001); Judgment, Kunarac, Kovač and Vuković (IT-96-23; IT-96-23/1-A), Appeals Chamber (June 12, 2002). Prosecutor v. Dominic Ongwen, supra note 8.

¹² [Statement of ASIL President Mélida Hodgson Regarding the United States and the International Rule of Law](#) (Feb. 13, 2025).