

## **PROPOSAL**

### **TITLE:**

A Resolution of the American Society of International Law on Slavery and the Slave Trade

### **GENERAL NATURE OF THE PROPOSED RESOLUTION:**

A statement of international law on the prohibition of slavery and slave trade

### **ENDORSED BY**

Judge Patrick Robinson

Judge Gabrielle Kirk-McDonald

Professor Henry Richardson

Special Advisor Patricia Viseur Sellers

Dr. Adejoké Babington-Ashaye

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Professor Darin Johnson

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### **PRINCIPAL PROPOSER :**

Patricia Viseur Sellers

## **DRAFT RESOLUTION**

**Under the procedure set forth in Article IX of the ASIL Constitution, the following resolution was adopted at the Annual General Meeting of the American Society of International Law on April 17, 2025.**

The American Society of International Law, at its 119th annual meeting in Washington, DC, on April 17, 2025, Resolves:

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*.

## **REPORT IN SUPPORT OF THE PROPOSED RESOLUTION**

### **OVERVIEW**

This report is prepared in conformity with Section XI, paragraph 5(c) of the Regulations of the American Society of International Law (ASIL). It contains a brief statement of the facts surrounding the subject matter of the proposed resolution and a concise statement of the reasons for it, including legal points and authorities underpinning the substance of the resolution.

The facts set forth in the Report provide appropriate predicates to satisfy the criteria in Section XI, paragraphs 1 – 3 as highlighted below and elaborated upon in Sections A and B below:

**1. Exceptional circumstances exist to support the adoption of a resolution relating to the prohibition of slavery and slave trade at this time. (Section XI, paragraph 1)**

- The resolution is introduced at a significant historical juncture, marked by notable initiatives both within ASIL—such as the Richardson Report and symposia on reparations for slavery and the transatlantic slave trade—and externally, including active negotiation of the Draft Articles on Prevention and Punishment of Crimes Against Humanity and proposed amendments to the Rome Statute that recognize slavery and the slave trade as atrocity crimes. These developments, which include initiatives spearheaded by the Society itself, present ASIL with a unique opportunity—exceptional circumstances—to meaningfully contribute to international law by reaffirming the established legal principles on slavery and the slave trade.

**2. Recognizing the prohibition of slavery and slave trade is of truly fundamental importance in promoting the establishment and maintenance of international relations on the basis of law and justice. (Section XI, paragraph 2(a))**

- The existence of international treaties, customary international law, and clear jurisprudence of the International Court of Justice (ICJ) addressing slavery and the slave trade underscore the international community's commitment to eradicating slavery and the slave trade, recognizing their prohibition as a cornerstone of international legal order and a critical component in upholding human dignity and human rights. The prohibition of slavery and slave trade is not merely a moral imperative but a legal obligation that is of fundamental importance in promoting the establishment and maintenance of international relations on the basis of law and justice.

**3. The prohibition of slavery and slave trade is a matter in respect of which most members of the Society can reasonably be expected to be informed. (Section XI, paragraph 2(b))**

- The Society’s membership is fully cognizant of the prohibition of slavery and the slave trade, and of the fact that such practices constitute violations of human rights and can amount to international crimes. Although the absence of educational materials on slavery and slave trade in AJIL during pivotal moments in international law suggests that the Society may have fallen short of its mission to educate its members on these critical issues in the past, since 1980 there has been a notable increase in ASIL-sponsored publications and events addressing the subject of the resolution. Accordingly, the Society’s members are sufficiently informed on the subject of the proposed resolution.

**4. There is no significant disagreement within the Society as to the desirability of adopting a resolution on the prohibition of slavery and slave trade. (Section XI, paragraph 2(c))**

- The progressive efforts over several years by the Society to address these matters in its publications, through well-attended symposia, as well as the unanimous decision of the Executive Council at the April 2024 Annual Meeting agreeing to the resolution in principle is evidence of the absence of significant disagreement as to the desirability of adopting a resolution on the prohibition of slavery and slave trade.

**A. Facts Surrounding the Subject Matter of the Proposed Resolution**

1. The proposed resolution is consonant with two well-received symposia on reparations under international law for the enslavement of African individuals in the Americas and the Caribbean co-sponsored by ASIL and the University of the West Indies (UWI) through the Centre for Reparation Research (CRR).<sup>1</sup> The inaugural symposium held in May 2021 addressed the illegal nature of transatlantic chattel slavery from an international law perspective and analyzed both its historical context and its contemporary consequences.<sup>2</sup> As then ASIL President, Catherine Amirfar, and Executive Director, Mark Agrast, stated in their joint foreword in the published proceedings of the symposium, an acknowledgement of truth is necessary “[i]n an era of denialism, falsification, and historical amnesia.”<sup>3</sup>
2. The second symposium held in February 2023 built on the first and focused on the calculation of reparations due for the violations of international law arising from and caused by

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<sup>1</sup> ASIL, Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean, <https://www.asil.org/events/Reparations>.

<sup>2</sup> Ibid.

<sup>3</sup> ASIL, Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean: Proceedings of the Symposium, May 20-21, 2021, p. 3, <https://www.asil.org/sites/default/files/reparations/2021%20Reparations%20Proceedings.pdf>.

transatlantic chattel slavery.<sup>4</sup> An Advisory Committee, comprised of Judge Patrick Robinson, Professor Chantal Thomas of Cornell University, Professor Robert Beckford of the University of Winchester, and Professor Verene Shepherd of UWI, was formed to address difficult matters relating to reparations. The Advisory Committee enlisted the services of the Brattle Group to develop an economic framework to aid the assessment of reparations.<sup>5</sup> Both symposia, co-sponsored by ASIL and the UWI, underscore the Society's strong commitment to acknowledge the historic context of slavery and slave trade and the contemporary legal status of the prohibition of slavery and the slave trade as peremptory norms.

3. The proposed resolution is also consonant with the spirit of the report of the ASIL Ad Hoc Committee Investigating Possible Exclusion or Discouragement of Minority Membership or Participation by the Society During its First Six Decades<sup>6</sup> ("The Richardson Report"). The Ad Hoc Committee was appointed by President Sean Murphy in 2018 to investigate early minority membership exclusion and recommend any appropriate redress.<sup>7</sup> The Committee reported on the Society's decades-long silent exclusion policy that targeted people of color in the United States and Puerto Rico, African-descendants in Latin America and Asians. The Committee reported upon the Society's acceptance of European and European-American women as members beginning in the 1920s. Women of color would only access ASIL membership forty years later. The Committee also found that the chain of bequests leading to the Society's acquisition of Tillar's House "arose during the time and surrounding context where rural blacks were harshly ensnared in exploitative sharecropping land tenancy and labor obligations"<sup>8</sup> and necessitates further study. These exploitative labor obligations referenced are directly linked to the enslavement of people of African descent following the transatlantic slave trade.
4. In light of the findings of the Richardson Report, the ASIL Executive Council adopted a resolution on November 11, 2021 that acknowledged the Society's "persistent failure during the first decades of its existence to embrace the participation of persons of color and members of other underrepresented groups and to actively encourage their membership in the Society."<sup>9</sup> The Executive Council resolved that, "as an organization dedicated to the advancement of international law and to the principles of equality, non-discrimination, and the inherent dignity of all persons, the American Society of International Law apologizes for its past practices that had the effect of excluding people of color and members of other underrepresented groups and discouraging them from membership and participation in its activities."<sup>10</sup>

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<sup>4</sup> ASIL, Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean, <https://www.asil.org/events/Reparations>.

<sup>5</sup> Report on Reparations for Transatlantic Chattel Slavery in the Americas and the Caribbean, 8 June 2023, <https://www.asil.org/sites/default/files/reparations/Report%20on%20Reparations%20for%20Transatlantic%20Chattel%20Slavery%20in%20the%20Americas%20and%20the%20Caribbean.pdf>.

<sup>6</sup> ASIL Ad Hoc Committee Investigating Possible Exclusion or Discouragement of Minority Membership or Participation by the Society During its First Six Decades, January 2020, [https://www.asil.org/sites/default/files/DEI/RICHARDSON\\_REPORT\\_ON\\_MINORITY\\_MEMBERSHIP.pdf](https://www.asil.org/sites/default/files/DEI/RICHARDSON_REPORT_ON_MINORITY_MEMBERSHIP.pdf).

<sup>7</sup> *Ibid.*, p. 1.

<sup>8</sup> *Ibid.*, p. 14.

<sup>9</sup> ASIL, Policy Resolution on Past Discrimination Adopted by the Executive Council, November 11, 2021, <https://www.asil.org/about/DEI>.

<sup>10</sup> *Ibid.*

5. The Executive Council further resolved that the “Society pledges and commits to do everything in its power to right those wrongs of exclusion and to work to eliminate racial and other forms of discrimination.”<sup>11</sup> A resolution on the legal status of slavery and the slave trade would accord with this pledge and commitment. Such restorative efforts require recognizing and reiterating the legal prohibitions associated with the antecedent behaviors of slavery and the slave trade, which have contributed to the racial and other forms of discrimination addressed in the Executive Council’s 2021 resolution.
6. Moreover, it is crucial to emphasize that the proposed resolution is connected to broader contemporary issues of international relations, justice, and the rule of law. In July 2023, the Heads of State or Government of the European Union (EU) and of the Community of Latin American and Caribbean States (CELAC), and the Presidents of the European Council and the European Commission issued a declaration acknowledging that slavery and the slave trade are crimes against humanity. Currently, on the agenda of the United Nations General Assembly Sixth Committee are the Draft Articles of a Crimes Against Humanity Treaty<sup>12</sup> wherein Member States have proposed the inclusion of provisions for slavery/enslavement and the slave trade.<sup>13</sup> Moreover, in light of the absence of reference to the slave trade as a crime against humanity and slavery and the slave trade as war crimes in the Rome Statute of the International Criminal Court,<sup>14</sup> amendments have been proposed to correct these regrettable omissions.<sup>15</sup> The International Criminal Court’s jurisdiction and the scope of the proposed Crimes Against Humanity Treaty incorporation of provisions for slavery and the slave trade should align with well-established customary international law and the treaty law of Additional Protocol II of the Geneva Conventions.
7. The Rome Statute’s omission of slavery and the slave trade as war crimes and separate treatment of slave trade as a crime against humanity<sup>16</sup> leaves a significant accountability gap

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<sup>11</sup> Ibid.

<sup>12</sup> International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity (2019), [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/7\\_7\\_2019.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf).

<sup>13</sup> See, Statement of Permanent Mission of the Republic of Sierra Leone to the United Nations at the 78th Session of the United Nations General Assembly at the Sixth Committee, 12 October 2023, paras. 9-11, [https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/11mtg\\_sierraleone.pdf](https://www.un.org/en/ga/sixth/78/pdfs/statements/cah/11mtg_sierraleone.pdf).

<sup>14</sup> See Patricia M Muhammad, ‘The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law’ (2003) 19 Am U Intl L Rev 884, 933-946.

<sup>15</sup> 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, [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-22-29-ENG.pdf#page3](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-29-ENG.pdf#page3)

<sup>16</sup> 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, N. Siller, “‘Modern Slavery’ Does International Law Distinguish between Slavery, Enslavement and Trafficking?,” 14 JICJ (2016) 405; P. Viseur Sellers, ‘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 Journal of Trafficking and Human Exploitation (JTHE) (2019), 147-158.

at the international level. These omissions have consequences for the legal approach to addressing crimes related to slavery under international law, such as the prosecution of groups like ISIS for its slave trade and enslavement of the Yezidis, Boko Haram for the abduction and enslavement of school children, and other individuals and groups whose conduct aligns with the definition of slavery and slave trading. In other words, “vulnerable victims/survivors of ongoing slave trading and persons who are being enslaved today are barred from automatically receiving preemptory norm protections, as a person who was tortured more readily would.”<sup>17</sup>

8. Accordingly, an ASIL Resolution reiterating the prohibition of slavery and the slave trade in international law, particularly as international crimes, would hold substantial weight in the larger international law community. It is important to note that the passage of the resolution would not impose any obligations or responsibilities on ASIL. The proposed resolution sends an external message of the fundamental importance of the prohibitions of slavery and slave trade. Adoption of this resolution at the 2025 Annual Meeting would be a fitting and timely act by ASIL, for the above-described historical reasons of the Society and for its prominence as an organization dedicated to promoting the establishment and maintenance of international relations on the basis of law and justice.

## **B. Substance of the Resolution: Legal Authorities**

9. The topic of each paragraph of the Resolution relates to peremptory norms of international law that merit contemporary acknowledgement by the Society. ASIL now is comprised of a diverse membership of over 3,800 individuals from more than a hundred nations, with some 40 percent residing outside the United States.<sup>18</sup> Adoption of the Resolution indicates that members of the Society stand by these principles and support legal clarity on the matters of slavery and slave trade.
10. The first two paragraphs of the Resolution refer to all customary and conventional law that prohibit and classify slave trade and slavery as international crimes, acknowledging them as breaches of international law that transgress the rights and fundamental freedoms of every human being. The third paragraph reaffirms the status of the prohibition of slavery and slave trade as preemptory norms with attendant *erga omnes* obligation.
11. The proposed resolution satisfies the conditions set out in Section XI, paragraph 2 of the Society’s Regulations.<sup>19</sup> First, as illustrated above, the continued acknowledgment of the

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<sup>17</sup>Patricia Viseur Sellers, The Goler T. Butcher Medal for Human Rights Lecture presented at the 117<sup>th</sup> Annual Meeting of the American Society of International Law, March 29 – April 1, 2022, p. 11.

<sup>18</sup> ASIL, Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean: Proceedings of the Symposium, May 20-21, 2021, p. v, <https://www.asil.org/sites/default/files/reparations/2021%20Reparations%20Proceedings.pdf>.

<sup>19</sup> Section XI. Resolutions of the Society

[...]

2. To this end, resolutions relating to principles of international law or international relations may not be adopted unless all of the following conditions have been satisfied:

(a) The matter is of truly fundamental importance in promoting the establishment and maintenance of international relations on the basis of law and justice;

prohibitions of slavery and slave trade are matters of truly fundamental importance in promoting the establishment and maintenance of international relations on the basis of law and justice. Second, members of the Society can be reasonably expected to be informed of the prohibitions of slavery and slave trade. Third, the prohibitions of slavery and slave trade are not controversial and there is no significant disagreement within the Society as to the desirability of adopting a resolution that is a contemporary reiteration of the law.

**Paragraph 1 of the Resolution: 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.**

12. Centered on the acknowledgement of the inherent “dignity and worth of the human person,”<sup>20</sup> recognition of slave trade as a breach of international law, a crime, and a human rights violation has been carefully codified in several important international instruments, such as the Slavery Convention (1926), the Universal Declaration of Human Rights (1948), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the International Covenant on Civil and Political Rights (1966),<sup>21</sup> and Additional Protocol II to the Geneva Conventions (1977).<sup>22</sup>
13. Article (1)–(2) of the 1926 Slavery Convention defines slave trade as all activities involving the capture, acquisition, or sale of individuals with the intent to reduce them to slavery, or any trade or transportation involving slaves.<sup>23</sup> This definition is augmented by Article 7(c) of the 1956 Supplementary Slavery Convention which provides:

“Slave trade” means and 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 person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

14. Article 3(1) of the 1956 Supplementary Slavery Convention criminalizes slave trade, noting:<sup>24</sup>

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(a) The matter is one in respect of which most members of the Society can reasonably be expected to be informed; and

(c) There is no significant disagreement within the Society as to the desirability of adopting the resolution.

<sup>20</sup> Preamble, The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), <https://www.ohchr.org/en/instruments-mechanisms/instruments/supplementary-convention-abolition-slavery-slave-trade-and>.

<sup>21</sup> UN, International Covenant on Civil and Political Rights (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>22</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>23</sup> UN, Slavery Convention (1926), <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>.

<sup>24</sup> Article 3(1), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), <https://www.ohchr.org/en/instruments-mechanisms/instruments/supplementary-convention-abolition-slavery-slave-trade-and>.



The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

In criminalizing slave trade, the 1956 Supplementary Slavery Convention refers to the UN Charter and the Universal Declaration of Human Rights (UDHR) which expressly prohibits slave trade in all its forms<sup>25</sup> as do the International Covenant on Civil and Political Rights (ICCPR)<sup>26</sup> and several regional human rights instruments.<sup>27</sup>

15. Slave trade is also prohibited as a war crime in international and noninternational armed conflicts. Rule 94 of the International Committee of the Red Cross (ICRC) study on rules of customary international law points to the fact that “various rules in the Geneva Conventions relating to the labour of prisoners of war and civilians, concerning their release and return, as well as the prohibition in the Hague Regulations of the forced allegiance of persons in occupied territory, presuppose the prohibition of slavery.”<sup>28</sup> Furthermore, Article 4(2)(f) of Additional Protocol II to the Geneva Conventions expressly prohibits subjugating persons *hors de combat* or who have laid down their arms to “slavery and the slave trade in all their forms.”<sup>29</sup> The 1987 ICRC Commentary observes that the “prohibition of slavery is now universally accepted; therefore the adoption of this sub-paragraph did not give rise to any discussion.”<sup>30</sup> Contained in the fundamental guarantees, Article 4(2)(f)’s emphasizes that the slave trade “shall remain prohibited at any time and in any place.”<sup>31</sup>
16. In addition to treaty law, customary international law condemns slave trade as a crime against humanity as evinced by *opinio juris* and state practice.<sup>32</sup> As espoused by Judge Patrick Robinson of the International Court of Justice at the 2021 ASIL Reparations Conference, there existed, throughout the entire period of transatlantic chattel slavery, “a strong undercurrent of a normative principle calling for respect of the inherent dignity and worth of the human

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<sup>25</sup> Article 4, UDHR: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

<sup>26</sup> Article 8(1), ICCPR: “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.” <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>27</sup> See e.g., Article 6(4) of the American Convention on Human Rights (1969), Article 5, African Charter on Human and Peoples Rights (1981), Article 2, Arab Charter of Human Rights (2004).

<sup>28</sup> [https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#Fn\\_26480E89\\_00002](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#Fn_26480E89_00002) See, Third Geneva Convention, Articles 49–68 and Articles 109–119; Fourth Geneva Convention, Article 40, Articles 51–52, Articles 95–96, and Articles 132–135; Hague Regulations, Article 45.

<sup>29</sup> Article 4(2)(f), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>30</sup> <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-4/commentary/1987?activeTab=undefined>.

<sup>31</sup> Article 4(2), <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-4?activeTab=undefined>.

<sup>32</sup> See ICRC, Rule 94 ICRC Study on Customary Rules of International Humanitarian Law, [https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#Fn\\_26480E89\\_00001](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#Fn_26480E89_00001). See also Judgment, *Kunarac, Kovač and Vuković* (IT-96-23-T & IT-96-23/1-T), Trial Chamber, 22 February 2001. Referencing the substantive provisions on slavery and slave trade in the 1926 Slavery Convention, the ICTY Trial Chamber in *Kunarac* held in para. 520 that, “[t]he customary international 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.”

person.”<sup>33</sup> Indeed, the parties to the 1815 Declaration Relative to the Universal Abolition of the Slave Trade (Congress of Vienna) recognized that the transatlantic slave trade was, at all times, repugnant to the principles of humanity and universal morality,<sup>34</sup> and thus imposed a four-pronged obligation to prohibit, prevent, prosecute, and punish those involved in the transatlantic chattel slave trade.<sup>35</sup> It is relevant to note that the transatlantic chattel slave trade was distinctly different from both contemporary slavery and historical practices such as serfdom.<sup>36</sup>

**Paragraph 2 of the Resolution: 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.**

17. Slavery is defined by the 1926 Slavery Convention as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>37</sup> Through the preamble of the 1926 Slavery Convention, the international community unwaveringly commits to the “complete suppression of slavery in all its forms and of the slave trade by land and sea[.]”<sup>38</sup> This commitment mirrors the goals articulated in prior international agreements, such as the 1919 Convention of Saint-Germain-en-Laye,<sup>39</sup> which sought to amend the General Act of Berlin from 1885, and the General Act and Declaration of Brussels from 1890.<sup>40</sup> This historical context underscores the enduring global consensus on the imperative of combating slavery.
18. By treating slavery and slave trade separately, the 1926 and 1956 Conventions recognize that although slavery and slave trading may occur in tandem, they are nevertheless distinct under international law necessitating separate and individual condemnation.<sup>41</sup> Slavery is condemned

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<sup>33</sup> Patrick Robinson, Final Observations and Concluding Remarks, Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean: Proceedings of the Symposium, May 20-21, 2021, p. 3, <https://www.asil.org/sites/default/files/reparations/2021%20Reparations%20Proceedings.pdf>.

<sup>34</sup> Declaration Relative to the Universal Abolition of the Slave Trade (‘Congress of Vienna, Act XV’) 2 Martens 432 (8 February 1815), reprinted in 63 Parry’s 473.

<sup>35</sup> Ibid.

<sup>36</sup> See e.g., ASIL, Reparations under International Law for Enslavement of African Persons in the Americas and the Caribbean: Proceedings of the Symposium, May 20-21, 2021, <https://www.asil.org/sites/default/files/reparations/2021%20Reparations%20Proceedings.pdf>.

<sup>37</sup> Article 1(1), 1926 Slavery Convention.

<sup>38</sup> Preamble, 1926 Slavery Convention. See Viseur Sellers, Patricia and Getgen Kestenbaum, Jocelyn, The International Crimes of Slavery and the Slave Trade: A Feminist Critique (December 2, 2020). Cardozo Legal Studies Research Paper No. 622, Gender and International Criminal Law, Edited by Indira Rosenthal, Valerie Oosterveld and Susana SáCouto Oxford University Press, 2022, Available at <https://ssrn.com/abstract=3741454>.

<sup>39</sup> 1919 Convention Revising the General Act of Berlin, 26 February 1885, and the General Act of the Declaration of Brussels (‘Treaty of Saint-Germain-en-Laye’) 8 L.N.T.S. 25, 49 Stat. 3027, T.S. 877 (10 September 1919), reprinted in 14 Martens (3d) 12.

<sup>40</sup> See J.S. Martinez, *The Slave Trade and the Origins of International Human Rights* (Oxford University Press, 2012); J. Allain, ‘Nineteenth Century Law of the Sea and the British Abolition of the Slave Trade’, in *British Yearbook of International Law* 2007 (Oxford University Press, 2008), at 342-388; M.C. Bassiouni, ‘Enslavement as an International Crime’, 23 *NYU Journal of International Law and Policy* (NYUJIntlLPol) (1991), at 454 (‘In making the trade an international crime, treaties allowed states to search and detain vessels if the ships were thought to be carrying slaves.’).

<sup>41</sup> 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).

as a distinct crime in Article 6(1) of the Supplementary Slavery Convention (1956), which provides:<sup>42</sup>

The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

19. The proscription of slavery as a war crime can be found as early as the Lieber Code (1863).<sup>43</sup> Slavery as a violation of international humanitarian law is codified in Additional Protocol II to the Geneva Conventions and firmly entrenched as a rule of customary international law.<sup>44</sup> The prohibition of slavery as a crime against humanity is recognized in various international legal instruments such as the Nuremberg Principles,<sup>45</sup> the Rome Statute of the International Criminal Court under the term enslavement,<sup>46</sup> as well as the jurisprudence of international criminal courts and tribunals.<sup>47</sup> Finally, that slavery is a non-derogable human right violation is established in the UDHR,<sup>48</sup> the ICCPR<sup>49</sup> and various regional human rights instruments.<sup>50</sup>

**Paragraph 3 of the Resolution: 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.**

20. The proposed ASIL Resolution is consonant with international law's acknowledgement of the prohibitions of slavery and slave trade as having obtained *jus cogens* status and constituting

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<sup>42</sup> Article 6(1), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).

<sup>43</sup> General Order No. 100, at art. 58, available online at [https://www.loc.gov/rr/frd/Military\\_Law/Lieber\\_Collection/pdf/Instructions-govarmies.pdf?loc=bloglaw](https://www.loc.gov/rr/frd/Military_Law/Lieber_Collection/pdf/Instructions-govarmies.pdf?loc=bloglaw).

<sup>44</sup> ICRC, Rule 94 ICRC Study on Customary Rules of International Humanitarian Law, [https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#Fn\\_26480E89\\_00001](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule94#Fn_26480E89_00001).

<sup>45</sup> Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal (1950).

<sup>46</sup> Article 7(1)(c), Rome Statute.

<sup>47</sup> See e.g., Judgment, Kunarac, Kovač and Vuković (IT-96-23-T & IT-96-23/1-T), Trial Chamber, 22 February 2001; Judgment, Kunarac, Kovač and Vuković (IT-96-23; IT-96-23/1-A), Appeals Chamber, 12 June 2002.

Prosecutor v. Dominic Ongwen, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment", ICC-02/04-01/15 A, 15 December 2022.

<sup>48</sup> Article 4 of the UDHR: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

<sup>49</sup> Article 8(1) of the ICCPR: "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited." <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. Article 4(2) of the ICCPR: "No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision." See also, articles 4 and 15(2) of the European Convention on Human Rights [https://www.echr.coe.int/documents/d/echr/Convention\\_ENG](https://www.echr.coe.int/documents/d/echr/Convention_ENG); articles 6 and 27(2) of the American Convention on Human Rights <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

<sup>50</sup> See e.g., Article 4, European Convention on Human Rights (1950); Article 6(4) of the American Convention on Human Rights (1969), Article 5, African Charter on Human and Peoples Rights (1981); Article 11(a), Cairo Declaration on Human Rights in Islam (1990); Article 5, EU Charter of Fundamental Rights (2000); Article 2, Arab Charter of Human Rights (2004).

human rights from which no derogation is permissible. It further reflects that protection from slavery and slave trade are obligations *erga omnes*, i.e., obligations owed by States to the international community as a whole. Additionally, as non-derogable human rights, the prohibition of slavery and slave trade is applicable in all circumstances including in international and non-international armed conflicts.

21. In its 1970 judgment concerning the *Barcelona Traction* case, the International Court of Justice (ICJ) acknowledged that the protection from slavery was an example of an obligation concerning all States, the protection from which “all States can be held to have a legal interest[.]”<sup>51</sup> The Third Restatement on Foreign Relations of the United States defines *jus cogens* as encompassing, at the very least, the prohibitions of slavery and slave trade.<sup>52</sup> The International Law Commission cited the ban on slavery as a peremptory norm of general international law in its commentary on draft article 26 of the articles regarding the responsibility of States for internationally wrongful actions.<sup>53</sup> The jurisprudence of international, regional, and domestic courts further confirms the prohibition of slavery and slave trade and the accompanying obligations.<sup>54</sup>

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<sup>51</sup> International Court of Justice, *Barcelona Traction, Light and Power Company, Limited*, Judgment, I.C.J. Reports 1970, paras. 33 - 34, <https://www.icj-cij.org/sites/default/files/case-related/50/050-19700205-JUD-01-00-EN.pdf>. See also, Inter-American Court of Human Rights, *Workers of Fazenda Brasil Verde v Brazil* (Preliminary Objections, Merits, Reparations and Costs) (2016) 318 Series C.

<sup>52</sup> See Restatement (Third) of Foreign Relations of the United States § 702 cmts. d-i, § 102 cmt. k (1987). See also, E.J. Criddle and E. Fox-Decent, ‘A Fiduciary Theory of *Jus Cogens*’, 34 *Yale Journal of International Law (YJIL)* (2009), available online at <http://digitalcommons.law.yale.edu/yjil/vol34/iss2/3> (visited 27 September 2019), at 331; M.C. Bassiouni, ‘International Crimes: *Jus Cogens* and *Obligatio Erga Omnes*’, 59 *Law and Contemporary Problems (LCP)* (1996), available online at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1016&context=lcp>, at 70-71.

<sup>53</sup> International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), p. 85, [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf); See also, Fifth Report on Peremptory Norms of General International Law (*Jus Cogens*) by Dire Tladi, Special Rapporteur, para.214, UNDoc. 270 A/CN.4/747 (2022).

<sup>54</sup> See e.g., Judgment, *Kunarac, Kovač and Vuković* (IT-96-23-T & IT-96-23/1-T), Trial Chamber, 22 February 2001; National Commissioner of the South African Police Service v. Southern African Litigation Centre and Another, Judgment, South African Constitutional Court, 30 October 2014, South African Law Reports 2015, vol. 1, p. 315, para. 37 (“Along with torture, the international crimes of piracy, slave-trading [...] require states, even in the absence of binding international treaty law, to suppress such conduct because ‘all states have an interest as they violate values that constitute the foundation of the world public order’; Attorney-General and 2 Others v. Kenya Section of International Commission of Jurists, Judgment, Court of Appeal of Kenya, 16 February 2018, available at <http://kenyalaw.org/caselaw/cases/view/148746/> (“Some of the largely accepted examples of those norms from which no derogation is permitted but are obligatory equally upon State and non-State actors include prohibition of[:] genocide, crimes against humanity, war crimes[,] torture, piracy and slavery”); Uganda v. Kwoyelo HCT-00-ICD-SC-02 OF 2010 (2024) UHCICD 10 13 August 2024, p. 176-177 at <https://ulii.org/akn/ug/judgment/ughcicd/2024/10/eng@2024-08-13>; *Hadijatou Mani Koraou v. The Republic of Niger*, ECW/CCJ/JUD/06/08, Economic Community of West African States (ECOWAS): Community Court of Justice, 27 October 2008, available at: [https://www.refworld.org/cases,ECOWAS\\_CCJ,496b41fa2.html](https://www.refworld.org/cases,ECOWAS_CCJ,496b41fa2.html); European Court of Human Rights, Case of Siliadin v. France (Application no. 73316/01), ¶ 112, 26 July 2005, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-69891%22%7D>.