CHAPTER 18

The Definition of ‘Slavery’ in General International Law and the Crime of Enslavement within the Rome Statute*

For more than two hundred years, the antislavery movement has had a monopoly on what ‘slavery’ means. Over the last eighty years, this has meant that the definition of ‘slavery’ in law has lived in the shadowlands of disuse resulting from the anti-slavery movement’s messianic ambitions to rid the world of human exploitation. Yet, this ambition has meant that ‘slavery’ as propagated by the anti-slavery movement has become an ever-growing phenomena, so that for instance, the UN Working Group on Contemporary Forms of Slavery has examined issues such as apartheid, colonialism and incest, under the guise of slavery. In proportion to slavery’s growth in breadth, has been its diminishing legal worth, to the extent that the leading academic (and President of the NGO Free the Slaves) in the field, Kevin Bales, has discarded the legal definition for his own, one based on “three key dimensions: loss of free will, the appropriation of labor power, and the use or threat of violence"; and a recent study on Modern Slavery in the United Kingdom defined it as “severe economic exploitation; the lack of a human rights framework; and control of one person over another by the prospect or reality of violence.” The anti-slavery ownership of the term slavery, however, no longer holds true, as ‘slavery’ in the twenty-first century comes up against a countervailing human right: the right of an accused to “be informed promptly and in detail of the nature, cause and

The coming into existence of the International Criminal Court in 2002 and the right of the accused to know the content of the charge of enslavement requires a precise understanding of what ‘slavery’ means in general international law and what the parameters of ‘enslavement’ are within international criminal law. Emerging from the shadowlands then is the 1926 League of Nations definition which remains – much to the chagrin of advocates of the end of exploitation – the agreed-upon definition of slavery in international law. That definition, which is repeated in the 1956 United Nations slavery convention also finds its way into the ‘legislation’ of the International Criminal Court. The 1926 definition, found at Article 1(a) of the 1926 Convention to Suppress the Slave Trade and Slavery, reads:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

That definition is added to under Article 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as follows:

“Slavery” means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and “slave” means a person in such condition or status.

Finally, under the Rome Statute, ‘enslavement’ is deemed a crime against humanity under Article 7(1)(c) and defined at Article 7(2)(c) as:

“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.

What remains consistent in each of these definitions is the phrase: “the powers attaching to the right of ownership.” The notion of ‘ownership’ thus appears to be the sine qua non of slavery in international law – yet this is not an accurate reading of the phrase. This paper considers the evolution of the definition

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