The International Criminal Court (ICC) became effective on July 1, 2002 after 74 countries ratified the Rome Statute of the International Criminal Court (hereinafter referred to as the ICC Statute). According to the Statute, the Court shall have universal jurisdiction over the most serious crimes of concern to the international community. These crimes include genocide, war crimes, crimes of aggression and crimes against humanity.

The ICC Statute includes trafficking in persons as a crime against humanity. Crimes against humanity are defined under Article 7 of the ICC Statute to include “enslavement,” “sexual slavery,” “enforced prostitution,” and “any other form of sexual violence of comparable gravity.” The ICC Statute further defines “enslavement” to mean “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.” The ICC Statute follows Article 7 of the 1956 Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery which defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Thus the ICC Statute explicitly recognizes trafficking in persons as a “crime against humanity” which may be prosecuted as stated by the ICC Statute “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of that act.”

The question becomes what does the ICC Statue mean by “widespread” and “systematic,” and when can an act of trafficking in persons be considered widespread and systematic? In the 1998 decision by the International Criminal Tribunal for Rwanda [Prosecutor v. Akayesu, Judgement, No. ICTR-96-4-T (Sept. 2, 1998)] the concept of “widespread” was defined as a “massive, frequent, large-scale action carried out collectively with considerable seriousness and directed against a multiplicity of victims.” The concept of “systematic” was defined as “thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.”

Consequently, for a crime to qualify as a crime against humanity, it must be thoroughly organized or committed against a substantial number of victims. In other words, the criminal act must meet either standard, but not both to qualify as a crime against humanity. [see Darryl Robinson, “Defining ‘Crimes against Humanity’ at the Rome Conference,” 93 The American Journal of International Law 43, 47, 1999]

In addition, although the criminal act must be widespread or systematic, a single act would suffice to constitute a crime against humanity. In other words, an individual committing a crime may be prosecuted for a crime against humanity if his act was of an organized nature or committed against a number of victims. This is the rule established by the International Criminal
According to the above definition, the International Criminal Court may prosecute cases of trafficking in persons, sexual slavery, and forced prostitution. Examples of similar cases include women being forced into sexual slavery in Rwanda and the Former Yugoslavia, and the enslavement of “comfort” women by the Japanese government during World War II who were subjected to forced prostitution and other forms of sexual slavery. [see Brook Sari Moshan, “Women, War, and Words: The Gender Component in the Permanent International Criminal Court’s Definition of Crimes Against Humanity, 22 Fordham International Law Journal 154, 162, 1998]. Another example is the military in Burma, which systematically uses rape of ethnic minority girls and women as a weapon of war against civilian populations in the Shan states.

While the Japanese government’s use of “comfort women” as sex slaves has not been tried before an international court, sexual enslavement of women was tried for the first time as a war crime in Bosnia by the United Nations War Crimes Tribunal. The Tribunal found three former Serb soldiers guilty of raping Muslim women and girls and convicted two of them for sexual enslavement because they kept thousands of Muslim women and girls in captivity for up to eight months, forced them to work as domestic servants, compelled them to dance naked, leased and sold them to other soldiers, raped and tortured them, and threatened to kill them if they did not comply. The three soldiers were sentenced to 28, 20, and 12 years imprisonment. The Court concluded that these acts of terror constituted a systematic attack on a civilian population and thus crimes against humanity.

Under the definition of “enslavement” of the ICC Statute, the International Criminal Court can also prosecute acts of labor trafficking. Instances where a person is trafficked for purposes of labor servitude, includes subjecting the trafficked person to conditions of involuntary servitude, restricting such person’s movement, physical restraint, or subjecting him to forced or compulsory labor or services. Any systematic or widespread acts of such a nature would constitute a crime against humanity under the ICC Statute. This broad definition of enslavement finds support in the provisions of the ICC Statute itself, which makes reference to “trafficking in persons” without limiting it to sex trafficking. Consequently, any form of trafficking in persons such as trafficking in human organs or other practices similar to slavery may constitute crimes against humanity under the ICC Statute when they meet the standards established the ICC Statute.

Any case of crimes against humanity may be prosecuted by the International Criminal Court irrespective of the amount of time that has passed since the commission of the criminal act in accordance with Article 29, which provides that “the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.” However, “no person shall be criminally responsible under this Statute prior to the entry into force of the Statute.” [Article 24]

Penalties for the crimes, which fall within the jurisdiction of the Court including crimes against humanity, may be up to 30 years imprisonment. This penalty may be enhanced to a term of life imprisonment in cases of “extreme gravity of the crimes.” [Article 77] The penalties may also include a fine and a forfeiture of proceeds, property and assets derived from the crime. The
individual circumstances of the convicted person are also taken into consideration in the determination of the sentence.

While the United Nations Tribunal did not define sexual slavery or sexual enslavement, the ICC Statute, by defining enslavement as the exercise of power of the right of ownership over a person, has broadened enslavement as a crime against humanity to include all forms of sexual slavery. By explicitly recognizing trafficking in persons as a form of enslavement, the ICC Statute has opened the door for the inclusion of not only sex trafficking but labor trafficking as a form of enslavement as well. In addition by explicitly defining “sexual slavery,” and “forced prostitution” as crimes against humanity the ICC Statute provides an extensive basis for prosecuting cases of human slavery including trafficking in persons.