NEGOTIATING THE HISTORIC RESOLUTION A/RES/80/250 - A DYNAMIC INTERPLAY OF POLITICAL LEADERSHIP AND TEAM RESILIENCE OVER LEGALISM- By Emmanuella K. Agyeman

"Truth begins with language, the power that words hold to shape conscience, perspectives and propel action"- H. E John Dramani Mahama

I borrow the words of His Excellency John Dramani Mahama in his speech delivered at the High-Level Event on Reparatory Justice, on the 24th of March, 2026, a speech which I strongly advocate be recorded as one of the iconic speeches of world leaders that defined historical turning points and inspired action. And so, with the power of language, I will take you on a time-travel from the day of the declaration of intent to operationalisation and adoption, in my capacity as a member of the four-member negotiation team, while holding brief for all three senior colleagues.

The world saw a chart displaying the number of votes, and names of countries that had voted in favour or against, abstained or voted in favour of the resolution, but what cannot be seen, unless it's told, is the process of operationalisation of this resolution, from an idea to an outcome. And so, this article will be both a narrative, in a bid to describe the negotiation process and more so, analytical, to share the ordeals faced and strategies which were deployed to overcome.

THE FOUNDATIONAL NARRATIVE

Let's set the ball rolling, with no mincing of words and false defences; *You are walking freely in your homeland, with dreams and goals for yourself and your family. Then you are captured, trafficked across thousands of miles from your home to an unknown destination, you are enslaved and reduced to objects of property of another human being, subjected to torturous labour of your strength and reproduction, thinking that one day and very soon it will all be over. But it lingers on throughout your lifetime, you look upon your children on your dying bed, praying that they will be the free ones soon. But the cycle of hopefulness and hopelessness continues, from generation to generation, from decades to decades, from century to century, backed by law and institutions…Four hundred years, twelve and a half million African men, women and children. The Trafficking of Enslaved Africans and the Racialised Chattel Enslavement of Africans is the Gravest Crime Against Humanity in recorded history! Period!*

We can now proceed from this truth…

The AU Champion on Advancing the Cause of Justice and Reparations, H.E. John Dramani Mahama, in his statement to the General Assembly during the High-Level Week of the 80th session of the UN General Assembly, served notice to the world that Ghana would submit a draft resolution declaring the Transatlantic Slave Trade as the Greatest Crime against Humanity;

The Ministry of Foreign Affairs, as the implementing institution, under the leadership of Hon. Samuel Okudzeto Ablakwa, put together a technical team made up of experts and scholars on the slave trade, for the drafting of the zero-draft text of the resolution;

The Assembly of the Authority of Heads of State of the African Union unanimously adopted the draft resolution on 14th March, 2025, as an African Union Decision, conferring upon the resolution a continental status.

Who were these ordinary men/women tasked to execute this daunting task?

Mr Jeswuni Biriesborn (Facilitator), Mrs Khalilah Hackman (Negotiator), Ms Rita Osei (Co-Negotiator) and I (Ghana's Third Committee Expert). Together, we formed the Negotiating Team on behalf of the Africa Group Experts on the Third Committee, the Committee responsible for social, cultural and human rights matters in the United Nations.

What was the mandate of the negotiation team?

At the point of regional endorsement of the draft resolution at Addis Ababa, the baton was handed over to the negotiating team to carry the adoption from a continental level to the global multilateral mechanism of the UN via informal consultations and eventual adoption, per the organisation's rules of procedure and practices. In this regard, the team was to negotiate on behalf of the Africa Group through constructive engagement with the wider UN community via informal consultations, welcome adaptable and bridging language which strengthens the objective of the resolution, make reasonable concessions to reach a middle ground while keeping in mind the objective of the resolution, and not undermine the purpose of the resolution.

What constituted the negotiation process?

Like a potter's work in his pottery, multilateral negotiations can best be described as a room filled with representatives from diverse states, expressing various comments on a text, based on different national interests, with equal voting status, in the quest to achieve a draft which is mutually reflective of a shared interest beneficial to all. In the United Nations, the highest forum of multilateralism in today's world, the text is placed before 193 Member States whose experts, like potters, skilfully mould the draft into a beautiful piece of art of our multilateral commitments.

Therefore, in accordance with the usual practice and conduct in UN negotiations, the draft text was circulated to all 193 Member States on Friday, 20th February, 2026, for their consideration going into the informal consultations. Prior to this, pre-informal consultations and briefings, led by Ghana's Permanent Representative, Ambassador Samuel Yao Kumah, were held with some states and UN groups, including the African Group, the Permanent Observer of the European Union Mission to the United Nations, the Group of Latin American and Caribbean States (GRULAC), the Group of 77 and China, etc. Seven informal consultations were held between Thursday, 26th February 2026 and 16th March 2026. The text was opened for input, and new language from all member states until close of business on 6th March, 2026, after which the facilitator issued two revised draft texts following positive and constructive consideration of language and comments from all member states who participated in the informal consultations. In accordance with UN practices, the negotiated text was then placed under silence for 24 hours from 5 pm, Friday, 13th March to 5 pm, Monday, 16th March 2026. The final informal consultations were held on 16th March, when silence was broken by a few delegations, after which the text was returned to the proponents to be submitted to the UN for processing and adoption on 25th March, 2026.

Post informal consultations briefings, then continued with states and regional group briefings, both at the level of Permanent Representatives and Experts, to inform member states of the success of the negotiation process and mobilise unwavering support for the adoption of the resolution. The High-Level Special Event on Reparatory Justice held on 24th March was the last piece of the puzzle, which was pulled together to complete the thorough advocacy of the historical truth of the slave trade, in all its forms, and a strong call for reparations. Finally, internal assessment of coloured matrix of support was concluded, voting guidance was circulated to member states,

and with a strong sense of victory, we marched into the General Assembly Hall on the momentous day of 25th March, 2026.

NAVIGATING THE ORDEALS OF NEGOTIATION

Negotiators, either in a bilateral or multilateral setting, sit behind tables of negotiation with their mandates. These mandates may be categorised as redlines or boilerplates , which are non-negotiable national interests, relevant but negotiable interests/provisions which can be amended or altered as a gesture of compromise from parties, and then the bargaining chips, which are those matters which are negligible and kept as trade-ins throughout the negotiation process.

The negotiating team, together with all other delegations, carried mandates on various provisions of the draft negotiation, which will be examined below.

Legalism

I make this observation: The beauty of the law is also its beast! The law is either a sword or a shield. Not necessarily by the text, but specifically, its usage. Thus, the determinant lies with those who are mandated with its interpretation and application.

Legalism can be defined as the choice of the literal understanding of the law, and its tactful use as technicalities to bar the substantive and purposeful use of the law, as a mechanism to absolve liability, strike out proceedings and uphold rules as masters of the law. Legalism in legal interpretation is the strict, literal adherence to the letter of the law, statutes, or judicial precedents, often disregarding the law's broader intent, context, or specific mitigating circumstances. It treats law-following as a mechanical, formulaic process, aiming for objective application rather than equitable flexibility. It consists of literalism, mechanical application, rules- bound, less contextual approach and does not account for equity/justice and judicial discretion. And those delegations that made legal objections approached the international law framework of the resolution in these dimensions of legalism.

The Title: Declaration of the Trafficking of Enslaved Africans and Racialised Chattel Enslavement of Africans as the Gravest Crime Against Humanity

The use of a new phraseology to describe the transatlantic slave trade was objected to by some delegations who argued that what had been described in previous international law instruments, such as the Durban Declaration and the various UN resolutions like A/RES/61/19 and A/RES/62/122 as a crime against humanity was the terminology "transatlantic slave trade" which is the terminology used in academic, political and economic context to address the abbhorent act of slavery commiteed against Africans and People of African Descent. And so the new phraseology could not acquire the status of a crime against humanity. But why not the transatlantic slave trade?

A fundamental understanding of this resolution lies in the minds and hands of the visioneers, drafters, negotiators, and beneficiaries of it, who are those who were enslaved: Africans and People of African Descent. It is a basic rule of interpretation that to understand a law, you must understand the mind of the drafters. This is the most comprehensive resolution on the subject,

authored by the victims of the slave trade from their perspectives and narrations. And if one does not tell his story, nobody will do so!

For us, as proponents and negotiators, speaking on behalf of Africans and People of African Descent, the slave trade involved the forced migration and trafficking of millions of Africans without their consent across the oceans to destinations miles away, reduced to objects of property(chattel) to labour in fields and mines for centuries for capital accumulation. Moreso, the enslavement over time was translated into a hereditary racial system by law, where children born to slave women naturally acquired the status of a slave from birth. Thus, the term 'trade', which connotes a positive exchange and bargain, is an entire misrepresentation of history that needed to be corrected.

Then, to the legal terminology, ***Crimes Against Humanity***

This was not so much of a contentious issue in the negotiation process as the Durban Declaration and Programme of Action, 2001, twenty-five years ago, stated in its paragraph 13 that the slave trade is and should have always been a crime against humanity. Although, until the adoption of this resolution, the Durban Declaration was applauded as the closest form of international recognition and accountability of the nature and harm caused by the slave trade, its paradox is also argued as creating inconsistency on the subject matter. Subsequently, the affirmation in preambular paragraphs 5 and 6 of resolution A/RES/61/19 of 2006, calling the slave trade a crime against humanity, was also a significant indication in that regard.

However, students of legalism may still argue that all these instruments are not legally binding in nature and are merely declaratory and persuasive in application and effect. So we may have to go through the process of the law to establish the slave trade within the legal definition of crime against humanity as stated in Article 7 of the Statute of the International Criminal Court(The Rome Statute). Article 7(1) sets out a list of acts when committed as part of a systemic or widespread attack directly against a civilian population, with the knowledge of the attack. Such conduct includes murder, extermination, enslavement, deportation or forcible transfer of population, torture, rape, forced pregnancy, etc. Article 7 (2)(a) explains that this attack against the civilian population must mean a course of conduct involving the multiple commission of the acts referred to in subsection 1 in furtherance of a State or organisational policy to commit such attack. Applying the facts to the law, as in basic IRAC, the transatlantic slave trade involved multiple commissions of many barbaric acts, including the forcible transfer of population, enslavement, rape, torture, etc., which were directed at Africans with the full knowledge of their systemic nature by the perpetrators, as backed by legislation and policies enacted by states, institutions, and organisations.

Without doubt, the slave trade constitutes a crime against humanity, both in law and in political declarations.

The superlative, "Gravest", and the so-called assumption of hierarchy of crimes

Now we come to the most rigorous and contentious provision of the resolution, which saw a dramatic linguistic word play and legal interpretations from all sides. The assumption voiced by concerned delegations was that since the terminology " crime against humanity" was a legal term, any attempt to qualify it with a superlative generated legal meaning and effect, in essence, introducing categorisation of such crimes, which was not a pre-existing element of the crime,

taking into consideration the ongoing negotiations of the UN Convention on Crimes Against Humanity on the 6th Committee.

In response, the proponents explained the word "Gravest" was used as a factual qualification of the slave trade based on its nature(trafficking, forced labour, commodification, hereditary), scale (about 12 and a half million Africans), duration(400 years)and enduring legacies and consequences(systemic and institutional racism, social inequalities, economic disparities of Africans and People of African Descent), which were explained in Operative Paragraphs 2 and 3 of the Resolution. Ultimately, the resolution was a political declaration and not a legally binding instrument.

However, as the mechanical interpretation of law may have it, some delegations, although acknowledging the factual justifications of the slave trade as the gravest crime against humanity, could not resolve it being qualified as the gravest and resorted to proposing other expressions. Other renditions were proposed, but none could fully express the truth the proponents sought to establish. Perhaps there are overarching reasons which could not warrant the acceptance of the term "gravest" by some!

The defence of non-retroactivity

A fundamental rule of law, in its diverse forms and applications, is the principle of legality, which establishes that no person can be prosecuted or punished for actions that were not defined as crimes at the time of commission. It embeds within itself legal elements such as "Nullum crimen sine lege"- No crime without law, and "Nulla poena sine lege"- no punishment without law. Thus, an act or an omission is not criminalised or punishable unless established by the law at the time of commission.

A consequential outcome of this principle is the non-retroactive application of present law to conduct/acts committed in the past, which were not deemed as crimes. Laws are applied prospectively unless an express exception is made for retroactive application. There were many aspects of the transatlantic slave trade, including the legal structure, which legitimised the abhorrent acts, expanded the system, protected the slave masters, institutions and state and more so, kept enslaved Africans and People of African Descent and their offspring as chained commodities and chattels.

And this is the strongest argument of opponents and delegations who chose to be rules-bound rather than advocates of equity and justice, which is another feature of legalism. These principles of no doubt ensure legal certainty, however, the morality of the law has made exceptions to this rule in matters which constitute serious international crimes, such as the Nuremberg Trial, where the courts allowed the retrospective application of law.

Predominantly, the proponents argued that the description of the transatlantic slave trade and enslavement as a crime against humanity is based on jus cogens, which are preemptory norms of international law, from which no derogation is allowed. They are a creation of customary international law, which creates erga omnes, mandatory obligations owed to the general international community. These norms are further codified as posited law in Articles 53 and 64 of the Vienna Convention on the Law of Treaties 1969. However, it is of legal reasoning that jus cogens norms, irrespective of their legal potency, are subjected to the principles of non-retroactive application of law, which is established as the doctrine of intertemporal law in international law.

Intertemporal law in international law holds that legal disputes are evaluated under the rules in effect at the time the events occurred, rather than under current, later-developed standards. This doctrine, as solidified by Max Huber in the 1928 Island of Palmas case, merges the two fundamental legal principles of legality and the non-retroactive application of law, as explained above in the application of law, including to jus cogens norms. This doctrine is posited in modern-day international law in Article 13 of the Draft Articles on State Responsibility for International Wrongful Acts 2001.

The claim for Reparations

The struggle and fear is not the declaratory nature of the heinous acts committed in the slave trade as the gravest Crime Against Humanity, by all! Rather, it is the power of enforceability of consequential claims/results that such a declaration generates! This is the test of wills!

One pivotal and central tenet of Resolution 80/250 is its structured advocacy in both preambular and operative paragraphs for a reparatory justice framework for Africans and People of African Descent as a consequential claim for the injustices suffered and caused by the slave trade. The resolution cites the various forms of remedies provided in the Draft Articles on State Responsibility, including reparations, restitution, satisfaction, etc. The resolution sets out the foundation and justification for reparations, in all forms, as part of the ongoing work of the Caribbean Community(CARICOM) Ten-Point Plan for Reparatory Justice and the African Union's Reparatory Justice framework. Ultimately, from the legal normative set above, which reflects the arguments of both sides, three overarching thresholds are observed;

i. ***Moral permissive justification***- The effect of the principle of intertemporal law, as provided in the Draft Articles, precludes a strict legal obligation on the perpetrating states of the slave trade. Article 19 then gives a moral caveat to Responsible States to pursue remedies irrespective of retroactivity. Professor Charles Jalloh, in the delivery of his paper on the legal dimension during the 24th High-Level Event, emphasised the caveat in Article 19 that Article 13 was without prejudice to voluntary state responsibility or remedial actions by states.
ii. ***Legal justification***- Where there is a demonstration of the continuing acts/nature and enduring consequences of the slave trade to date. Here, a nexus of causation would be demonstrated to establish the ongoing causal effects exemplified by systemic racism, economic disparity and social inequalities as expressed in preambular paragraph 8 of resolution A/RES/61/19. This satisfies the requirement of prospective application of law.
iii. ***The "Moral Justice" justification***- This is a legal justification which applies the morality of the law, where an exemption is made to the intertemporal law based on the intensity of the catastrophic violations of human rights that shocked the moral sense of mankind, as applied in the Judgement of the Nuremberg Tribunal. It's quite obvious that there is no need for any further factual or legal demonstration that barbaric acts of the slave trade and the inhumane injustices suffered by its victims and states fit squarely in this categorisation.

Regardless of the diverse and interesting perspectives on reparations held by states, organisations, and individuals, it remains an inescapable fact, embedded in the overall architecture of any discussion, work, resolution, etc., on the slave trade. Whether from a purely moral perspective, legal evidence-based arguments or a fine balance of both, reparatory justice in all its forms will always be on the table of negotiations. This is not a form of generational attribution of liability, an

anti-white sentiment or a black supremacy agenda. On the contrary, there is a huge vacuum that needs to be filled, and there are wounds that need healing! There are current realities of psychological dispositions, structural racism, economic inequalities and social incohesions in communities and lives which are resultant effects of the slave trade. Posterity must not just come and hear how this abominable act was practised, but more so, they must read and be told how the world collectively corrected this grave error and made amends!

THE ULTIMATE DUO: POLITICAL LEADERSHIP AND TEAM RESILIENCE

Politics makes news, Political leadership makes history!

The intensity and exhaustion of multilateral negotiations reflect the rigour with which delegations articulate their national positions on the subject matter of the negotiations. From substantive study to the theatrical play in verbal lingo and semantic interpretations, experts undergo a series of informal consultations that comprise proposals for inputs/language based on national preferences, to bridge language to accommodate all sides, and, finally, a compromised text that translates raison d'être into objectifs communs partages.

This rigour was not new to members of the negotiation team, who all have served and continue to serve as experts on various committees representing Ghana at the UN. The team put their nose to the grindstone in holding coordination meetings with Third Committee Experts of the African Group, which could close at 3 am the following morning, to technical review with the Global Experts on Reparations for guidance on contentious matters, internal debriefing among ourselves and with the Ministry's Committee on the Resolution. From weekly negotiations to working weekends spent behind laptops in active mode, the team skillfully considered in good faith the inputs received, concerns raised, and carefully arrived at a balanced text without undermining the objective of the resolution.

Notwithstanding these laudable technical efforts of the negotiation team, the steadfast political commitment and guidance of our leaders was out of this world.
Not only was President Mahama a mouthpiece for the declaration to the world, but, more importantly, he was the channel for the transfer of a personal conviction into an institutional assignment, which was translated into a regional African initiative and, finally, a global commitment. The confidence of the team was the "overnight miracle" where experts could change their arguments on the floor of the informal consultations upon receipt of instructions from their capitals, which symbolised ongoing high-level engagements, both at the presidential and ministerial level and the potent power of political will, when states choose such over fine points and ingrained positions. From daily/weekly reports on the controversial matter of the title to the number of co-sponsors, the negotiation team was critically guided and fully backed by efficient political leadership. It was not for the optics! It was a bold political decision executed with a deep sense of responsibility. And for the negotiation team, this was not yet another official assignment. It was an honourable task performed with inner persuasion and urgency.

Political Will

Ronald Dworkin, in his American School of Realism, one of the theories of the jurisprudence of law, creates a utopian figure known as the ***"Judge Hercules",*** who is responsible for the comprehensive interpretation and application of posited law in its spirit and purpose. In this regard, scholars of this theory argue that judicial law-making and interpretation of posited law

remain the most pivotal and beneficial applications of law, where judges have the opportunity and authority to go into the mind of the lawmaker and apply the text of the law, taking into consideration its wider context and circumstances beyond the foresight of the drafter.

In today's multipolar global politics, I proclaim, Political Will, as the Judge Hercules of our multilateral system and the very stalemates it faces. Political Will is the very competent response to legalism, entrenched national interests and positions, and irreconcilable gridlocks. The adoption of this resolution by 123 member states and 74 states as main and co-sponsors, is proof to the world that, whether it be matters of international peace and security, such as nuclear disarmament and non-proliferation or the delicate balance of human rights and national sovereignty in international migration, global consensus based on compromises on technicalities and legalism to uphold justice, human rights and global cooperation is possible.

Slavery, including the transatlantic slave trade, is agreed as an abominable act, although it was legal at the time of its commission. In essence, law is not necessarily right,…and more so, must not be used as a barrier to that which is right!

Partus sequitur ventrem*(status follows the womb),* a law enacted by the House of Burgesses in Virginia in 1662, legitimised the abuse of the reproductive rights of the slave woman, which rendered slavery as a natural occurrence by birth and a phenomenon of law as a sustainability measure. Slave masters could deny paternity of their black children and include them as part of their estate. And so the white child of the slave master inherits his father's properties, which includes his stepbrother or sister. The white child obtains an inheritance, the black child/sibling becomes one of the commodities bequeathed. The white child became a master, the black child/sibling becomes his slave…such repugnancy, all sanctioned by the law!

And so years after its abolishment, the law was not going to be used once again as a barrier to moral conscience, historical truth and justice! In the words of Albert Gore, the 45th President of the United States, Political Will is a renewable resource, and everyone can have it if they so choose… 123 countries chose such! And it's never too late for all others to do the needful.

In conclusion, I ponder on what truly is the true win for this resolution? The declaration of the transatlantic slave trade as the gravest crime against humanity, or the call for reparative justice in all its forms? For me, the ultimate win of this resolution is the sensitisation of the world on the respect for racial dignity and the diversity of our human race…*there is no such thing as a slave; they were human beings who were trafficked and then enslaved by people who believed they could own those human beings as chattel, as their personal property- President John Mahama.* A friend once told me that racism is not about supremacy, but it's about superiority. It's the tendency for a human being to look at another human being and conclude that the existence of differences in colour, language, practices, geographical location, etc., creates a preference and dominance of one or a group over the rest. It is the inability to embrace and comprehend the basic truth of racial diversity as a natural phenomenon, rather than a hierarchy of mortal predilection of the human species. Whether it is the Pacific Islanders of Oceania, which includes indigenous groups such as the Maori and the Tokelauans or the unique click sounds in the language of the Khoisan and Khoeke peoples of South Africa, or the Arab hospitality/pride in paying bills after a sumptuous meal in a restaurant, or the café culture of Western folks, we are simply many threads of one tapestry. And this resolution will continually serve as a stark reminder of the calamity of the past, the reconstruction work of the present and the future guiding light to posterity, that all human beings are born free and equal in dignity and rights!