

# Crimes Against Humanity Initiative to Draft International Treaty



MARY BUTKUS

**I**NTERNATIONAL CRIMINAL AND HUMANITARIAN LAW experts have been wrestling with issues related to crimes against humanity and composing the first draft of a proposed treaty, as part of an ambitious, two-year project. Leila Nadya Sadat, the Henry H. Oerschelp Professor of Law and director of the Whitney R. Harris World Law Institute, is heading the Crimes Against Humanity (CAH) Initiative, which is under the auspices of the law school's Harris Institute.

During the past year, the experts gathered first at the law school and then at The Hague to address key aspects of the draft convention. The CAH Initiative will culminate with a global conference in Washington, D.C., in spring 2010 at which the final draft of the multilateral treaty will be discussed.

CAH Steering Committee member Richard Goldstone, former justice of the South African Constitutional Court and former chief prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia, notes that “while treaties exist to address genocide and war crimes—the Genocide Convention of 1948 and the Geneva Conventions of 1949 together with their Optional Protocols of 1977—there is currently no treaty on ‘crimes against humanity.’ The Crimes Against Humanity Initiative is designed to fill this important gap in international humanitarian law.”

William Schabas, Steering Committee member and director of the Irish Centre for Human Rights of the National University of Ireland, Galway, observes that the initiative addresses a significant omission in international law, namely the lack of an international treaty that sets out the obligations of States in terms of preventing and prosecuting crimes against humanity.

“Many obligations, such as the duty to cooperate in prosecution and extradition, and the responsibility to prevent the

Whitney R. Harris, a former Nuremberg prosecutor, addresses an experts’ meeting.

crime, are said to be enshrined in customary international law,” he says. “However, it is important to take such vague commitments a step further, and incorporate them into a binding treaty.”

The most recent gathering of the CAH Steering Committee and other invited experts and commentators was convened June 11–12, 2009 at Leiden University’s Campus Den Haag.

“The setting in The Hague facilitated the participation of leading judges and practitioners, including those from the International Criminal Court, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, Khmer Rouge Tribunal, and Special Tribunal for Lebanon,” says Sadat, CAH Steering Committee chair. “The CAH Initiative’s Steering Committee benefited greatly from their counsel. Significant progress also was made on the specific language for the treaty draft.”

At the opening of the June session, J.J. van Aartsen, mayor of the City of The Hague, welcomed participants to the international city of peace and justice. He noted that it was “a great honor” for the city to host the meeting, and remarked in closing: “Where lawlessness and absence of rights prevail, people cannot live in peace. Where injustice goes unpunished, old conflicts keep flaring up again.”

**THE CRIMES AGAINST HUMANITY INITIATIVE** is guided by a blue-ribbon Steering Committee:

- Leila Nadya Sadat, chair;
- M. Cherif Bassiouni, the Distinguished Research Professor of Law and president emeritus, International Human Rights Law Institute, DePaul University;
- Ambassador Hans Corell, former United Nations Under-Secretary for Legal Affairs;
- Justice Richard Goldstone, former justice of the South African Constitutional Court and former chief prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia;



Judge Christine Van Den Wyngaert



Hans Corell



Leila Nadya Sadat



From left: Evelyn Ankumah, Elizabeth Borgwart, William Schabas and Juan Méndez



M. Cherif Bassiouni

MARY BUTKUS PHOTOS

Over the course of the meeting, panel discussions addressed the need for a crimes against humanity convention, the particular problems of enforcement, and the relationship between the proposed convention and the International Criminal Court. The meeting built on the progress of the experts' session held in St. Louis in April 2009. Highlights of the April session included remarks by Clint Williamson, U.S. Ambassador-at-Large for War Crimes Issues; Whitney R. Harris, a former Nuremberg prosecutor; and Steven Cash Nickerson, JD '85, MBA '93, who is generously helping to fund the project.

In addition to hearing commentary from a wide range of experts, the Steering Committee at the June meeting held a technical advisory session on the draft treaty language. Gareth Evans, former Foreign Minister of Australia and current president of the International Crisis Group, delivered the keynote address. Evans movingly recalled his association as a student with young Cambodians, all of whom later died in the mass atrocities committed by Pol Pot's regime. He noted that the memory of what must have happened to these young men and women haunts him to this day.

That experience, Evans says, is what makes him "intensely committed to the great enterprise on which this panel of experts is now engaged ... to draft and secure the ultimate adoption of a new Convention on Crimes Against Humanity." He observes that the treaty will "fill a gap that has all too obviously become apparent in the array of legal instruments available to deal with atrocity crimes, notwithstanding the emergence of the International Criminal Court."

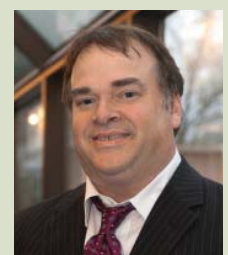
B. Don Taylor III, Harris Institute executive director and Cash Nickerson Fellow, says: "As a result of the invaluable input during the two experts' meetings, we are attempting to incorporate into the draft convention not only the mutual legal assistance and extradition obligations necessary to make it a successful enforcement mechanism, but also to address other important considerations. These include capacity building, compliance inducement mechanisms, issues of state responsibility, and the responsibility to protect." ■■■

For more information on the CAH Initiative, visit [law.wustl.edu/crimesagainsthumanity](http://law.wustl.edu/crimesagainsthumanity).

- Juan Méndez, former president of the International Center for Transitional Justice and former president of the Inter-American Commission for Human Rights;
- William Schabas, director of the Irish Centre for Human Rights of the National University of Ireland, Galway; and

- Judge Christine Van Den Wyngaert of the International Criminal Court.
- The project is being generously funded by a leadership grant from alumnus Steven Cash Nickerson and the United States Institute of Peace. The experts' meeting

in the Netherlands also received support from Leiden University's Grotius Centre for International Legal Studies, the Netherlands Institute for Advanced Study in the Humanities and Social Sciences, and the City of The Hague. Cambridge University Press will publish the project papers, a full draft of the treaty, and an accompanying commentary. ■■■



Cash Nickerson