INTERNATIONAL 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. Oberschelp 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

...
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.