

**WASHINGTON UNIVERSITY LAW  
WHITNEY R. HARRIS WORLD LAW INSTITUTE**

# **CRIMES AGAINST HUMANITY INITIATIVE**

**FINAL REPORT OF THE APRIL EXPERTS' MEETING**

**APRIL 12-15, 2009  
SAINT LOUIS, MISSOURI**

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**Washington University School of Law  
Whitney R. Harris World Law Institute  
Crimes Against Humanity Initiative**

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**Report of April Experts' Meeting  
May 26, 2009**

**St. Louis Meeting of April 12-15, 2009  
St. Louis, Missouri, USA**

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**Report**

*Introduction and Background*

1. In the Spring of 2008, the Whitney R. Harris World Law Institute of Washington University School of Law embarked upon a project to study the need for a comprehensive convention on crimes against humanity, analyze the necessary elements of such a convention, and draft a proposed treaty. This “Crimes Against Humanity Initiative” will take place in four discrete phases, over a period of two years, as follows:

- **Phase I.** Preparation of the project and methodological development, including the formation of a project Steering Committee;
- **Phase II.** Private study of the project through the commission of working papers by leading experts, the convening of expert meetings, and collaborative discussion of draft treaty language;
- **Phase III.** Public discussion of the project and adoption of the draft convention; and
- **Phase IV.** Publication and promotion of the draft treaty within the appropriate academic and diplomatic communities.

2. In addition to other public outreach efforts, the expert papers, the draft treaty, and a comprehensive commentary to the draft treaty will be published by Cambridge University Press. Given the tremendous interest in the Initiative and its goals, it is expected that the Initiative’s publications will be widely disseminated and discussed.

### ***Why A Specialized Convention on Crimes Against Humanity?***

3. Since the indictment and judgment of the International Military Tribunal at Nuremberg, there has been no specialized convention on "Crimes Against Humanity." The Crimes Against Humanity Initiative is intended to fill this gap.

4. Although the adoption of the Convention for the Prevention and Punishment of the Crime of Genocide was an important step forward in 1948, it provides little solace to the victims of modern-day atrocities. Limited by its drafters to the intentional destruction of only four groups -- racial, ethnic, national and religious -- the Genocide Convention does not apply to atrocity crimes committed against social and political groups. Indeed, of the estimated 100 million civilians killed in the past seventy years, only six to eight million have been within the reach of the Genocide Convention, as applied by international courts and tribunals. Although other treaties, such as the Apartheid Convention and the new Convention on Enforced Disappearance, condemn particular crimes against humanity, most crimes against humanity remain outside the ambit of a universal treaty, unless they involve a situation within the jurisdiction of the International Criminal Court. Even in that case, no provision for State Responsibility exists, and no mechanisms for interstate enforcement are provided for.

5. Like the Geneva Conventions of 1949 and the Genocide Convention, a crimes against humanity treaty will complement and reinforce the mission of the ICC by building upon the negotiations that led to the inclusion of crimes against humanity in the Rome Statute in 1998. At the same time, the Rome Statute provides a starting place, not an end point, when it comes to the problem of mass atrocities. While the Rome Statute provides for the investigation and prosecution of individual offenders, not all States are parties, and the Court can only prosecute a very limited number of offenders, given its size and statutory mandate. A comprehensive crimes against humanity convention could provide much-needed provisions on interstate cooperation in the investigation and punishment of perpetrators of crimes against humanity, filling both a normative gap, and providing critically important enforcement mechanisms.

6. This Initiative's goal of ending impunity for those who commit crimes against humanity is also linked to the further development of the "Responsibility to Protect" doctrine. Under international law, States must not commit certain of the most serious international crimes and may have a duty to prosecute those responsible for their commission. The emerging Responsibility to Protect principle may also require States to affirmatively intervene to protect vulnerable populations from nascent or continuing international crimes under certain circumstances. A necessary condition

precedent to the invocation of the Responsibility to Protect is a clear definition of the event which triggers that responsibility. A comprehensive crimes against humanity convention could reinforce the normative obligation not to commit crimes against humanity, as well as emphasize the duty of States to prevent the commission of atrocity crimes.

***Report on Phase II – Experts' Meeting in St. Louis, Missouri***

7. From April 12-15, 2009, forty-six experts gathered at Washington University School of Law for the first public meeting of the Crimes Against Humanity Initiative. A list of expert participants is annexed hereto. The program was opened by Whitney R. Harris, the former assistant U.S. prosecutor at the 1945-46 Nuremberg International Military Tribunal and the last surviving “podium” prosecutor of the Nuremberg IMT, who reminded the group of the historical importance of the Nuremberg trials and the link between the commission of crimes against humanity and the destruction of civilization itself. Whitney received a standing ovation, as his legacy was recognized, and those present were reminded of the work that remained to be done.

8. The agenda featured fourteen commissioned papers (a list of which is annexed hereto), each of which addressed a particular aspect of the law and practice relating to crimes against humanity. The first set of papers, by Gregory Stanton and Roger Clark, addressed the social and historical context within which crimes against humanity take place, and early legal efforts to define and ultimately punish the crime. An additional paper (by David Crane) addressed the “peace and justice” issue often raised regarding attempts to prosecute perpetrators, particularly high-ranking political and military leaders for crimes against humanity, which may make peace negotiations difficult.

9. The second set of papers took up particular legal issues regarding the definition of Crimes Against Humanity and its application to particular contexts, focusing on the work of the ad hoc tribunals since 1993 (Göran Sluiter), the “policy element” and the scope of the crime (Guénaél Mettraux), gender crimes (Valerie Oosterveld), ethnic cleansing (John Hagan), immunities and amnesties (Diane Orentlicher), and modes of participation (Elies van Sliedregt).

10. The third set of papers concerned the question of new conceptual paradigms -- crimes against humanity and terrorism (Michael Scharf and Michael Newton) and a reconsideration of the “Nuremberg architecture” (M. Cherif Bassiouni).

11. The final set of issues involved enforcement -- which turned out to be one of the most important aspects of the St. Louis meeting. Three papers -- on

crimes against humanity and the International Criminal Court (Kai Ambos), crimes against humanity and the responsibility to protect (David Scheffer), and crimes against humanity and national jurisdictions (Payam Akhavan) -- formed the basis of the discussion of international criminal law enforcement in various fora and reconnected the end of the conference with the beginning by pointing out the existing lacuna in international criminal law and its enforcement.

12. On Monday evening, the group was addressed by John Clint Williamson, United States Ambassador-at-Large for War Crimes Issues, who spoke in support of the Initiative and highlighted the important work his office was doing to support international justice. He also remarked upon efforts to achieve a limited *rapprochement* between the United States and the International Criminal Court. On Tuesday evening the group visited Holmes Lounge in historic Ridgeley Hall, at Washington University, where the twelfth conference of the Inter-Parliamentary Union was held in 1904. It was there, on September 13, 1904, that the Inter-Parliamentary Union issued its appeal for peace and adopted a resolution calling for a second Hague Peace Conference, paving the way for the convening of the 1907 Hague Peace Conference.

13. On both days, a preliminary draft convention, prepared by M. Cherif Bassiouni, with comments from various participants (the "April Draft Convention"), was presented and debated. A revised draft based upon those discussions and the more general discussion below, will be presented at the June Intersessional Meeting of the Crimes Against Humanity Initiative, in The Hague (the "May Draft Convention").

### ***Major Themes Elucidated During the Discussions***

#### **A. The continuing problem of the commission of atrocity crimes**

14. A compelling case was made that the commission of atrocity crimes, and particularly crimes against humanity, is a continuing and difficult international problem. In one study of 309 conflicts from 1948 until 2008, estimates of casualties ranged from 70 to 170 million victims, most of whom were civilians. In 90 percent of those cases, impunity was the rule. While some participants voiced skepticism that "more law is good," arguing that atrocity trials do not necessarily deliver justice, others felt that punishment of individuals responsible for the commission of atrocity crimes (retributive justice) was a legitimate goal in and of itself. Most participants recognized that neither criminal trials nor alternative forms of justice such as truth commissions, reparations, lustration or indigenous models, were sufficient to address the commission of mass atrocities. Rather, it was acknowledged that

each of these mechanisms was useful and often several were needed for a particular conflict, to maximize peace and restore justice.

### **B. The obstacle of semantic indifference**

15. Several experts underscored the difficulties of rallying international attention and support, both as to prevention and punishment, for crimes against humanity. Many noted that unless a crime was described as “genocide,” its commission somehow seemed less of a problem, and required no international response. Many participants were frustrated by this “semantic indifference” to the commission of crimes against humanity, which resulted in the victimization of millions of human beings. It was also noted that in the case of the position of the United Nations Special Advisor on the Prevention of Genocide, recommendations had been made to expand the title to “Prevention of Genocide and Mass Atrocities;” however, ultimately, the decision was made not to include the words “Mass Atrocities.” This was perhaps due to fears that, as one participant put it, states are conscious of crimes against humanity as cutting too close to the bone. One participant suggested shortening the definition of the crime, to make it more easily understandable to the general public, in the way that the genocide convention uses a short definition.

### **C. Capacity building as an important dimension of the issue**

16. Several participants noted that one critical issue for societies addressing the problem of mass atrocities and post-conflict justice was the need for additional capacity building of local institutions. Many participants offered useful suggestions as to how a crimes against humanity convention might address this problem, and noted that the anti-trafficking convention seemed particularly helpful in the case of Vietnam, and the ILO Convention on the Worst Forms of Child Labour seemed to stimulate state responses in many cases. Other experts suggested the establishment of a secretariat or other treaty body associated with the convention that could assist with state capacity building. Another alternative was the creation of a voluntary fund for states, such as is found in many environmental treaties where reallocation of resources from wealthy to poorer nations has become important.

### **D. Relationship of a Crimes Against Humanity Convention and the International Criminal Court**

#### **i. Importance of the International Criminal Court**

17. A great deal of conference time was devoted to thinking about the relationship between the International Criminal Court and a new treaty condemning crimes against humanity. Unanimous support was expressed for

the idea that the treaty in no way hamper, but instead, support the ICC and build upon the ICC Statute. Many experts referred to the long and arduous process of negotiating the Rome Statute, the fragile compromises achieved, and the current difficulties of the Court, particularly as regards political support from African states, as reasons to rely heavily upon the ICC Statute for definitional purposes, and to ensure that a new treaty providing for interstate enforcement and state responsibility would complement the ICC regime.

**ii. The normative relationship between article 7 of the Rome Statute and the proposed convention**

18. A fundamental question for the meeting was what to do with the definition in article 7. Several participants wrote superb papers proposing changes in the article 7 definition. These proposals included dropping the “civilian population” requirement; deleting the “policy” element; expanding the list of gender crimes; including ethnic cleansing as a separate head of crime; and writing a new, shorter definition, harkening back to article 6(c). Others noted that in spite of the thoughtful arguments raised to the effect that the Rome Statute was not a codification of custom, but treaty law for the International Criminal Court, 108 states had already ratified the Rome Statute, and were adopting domestic legislation tracking its provisions in order to fulfill their “complementarity” obligations. Therefore, as a practical matter, changing the Rome definition seemed impossible for those states, and even implicated the law of treaties. Many experts continued to struggle with this question, as many believed the Rome definition to be inadequate for the purposes of a multilateral interstate convention, and were concerned that an international convention building upon it would not permit customary international law to evolve in a progressive manner. At the end of the day, however, two possibilities emerged from the discussions that met with general approval.

19. First, the suggestion was made that the proposed convention could essentially leave the definition open-ended. A variation of this is found in article 5 of the new Convention on Enforced Disappearance, which defines crimes against humanity as:

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

20. A similar proposal is included as option 2 in article 2 of the May Draft Convention. This solution preserves flexibility -- States Parties to the Rome Statute could incorporate the Rome Statute definition verbatim, or, as some

states have already done, modify it slightly. Concerns about the legality principle caused some discomfort with this proposal for some participants, who suggested instead incorporating article 7 of the Rome Statute verbatim, but with some modifications given the definition's inclusion in a separate treaty. This is option 1 in article 2 of the May Draft Convention.

### **iii. The possibility of a protocol**

21. One idea that emerged during the two days of meetings was the possibility of a protocol to the Rome Statute, as an alternative to a separate multilateral convention. It was suggested that this could put the Convention on a shorter track and would certainly signify support for the Rome Statute itself. Other crimes within the Rome Statute might also be included in such a Protocol, which would then require adoption by the ICC Assembly of States Parties. It was noted, however, that adoption by the Assembly of States Parties (which would clearly require a supermajority vote) might bog the convention down in a long process and might not offer the shorter track envisaged. Moreover, although it would be possible for ICC non-States Parties to ratify such a protocol, ICC non-States Parties might not be able to participate fully in the initial discussions of the Protocol if the venue were the ICC Assembly of States Parties, as opposed to a United Nations conference open to all.

### **E. General theoretical and normative concerns**

22. Many experts focused on the overall quality and theory underlying crimes against humanity, particularly as related to its definition and enforcement. As one participant remarked, perhaps the question was not whether the problem to be solved can be addressed in practice, but whether it works in theory. To put it another way, the question of what should be in a crimes against humanity convention depends upon which social interests one is trying to protect. It was observed that crimes against humanity turn the normal state of affairs "on its head," because the state has turned against its own citizens. In that sense, crimes against humanity has a "state policy" requirement, because it is about state power. Additional theories, however, ground crimes against humanity either in international humanitarian law, as an additional protection for civilians during war time, or in human rights law, which provides the broadest and most universal grounds for the protection of human dignity.

### **F. The question of universal jurisdiction**

23. Many participants noted that crimes against humanity were traditionally considered "universal jurisdiction" crimes. Indeed, one paper suggested that a central feature of a crimes against humanity convention



would be the inclusion of provisions on universal jurisdiction that would substantially strengthen the interstate enforcement regime applicable to the crime. The biggest gap in international enforcement of crimes against humanity is that, while complementarity focuses on national court jurisdiction, it only requires national courts to act in conjunction with a request from the ICC. If the Court's jurisdiction is not somehow engaged, there is no duty to extradite or try in the absence of legislation so providing. At the same time, substantial debate ensued as to the desirability of putting mandatory universal jurisdiction provisions in a treaty, as some states would be wary of ratifying a treaty instrument with provisions on universal jurisdiction, and the April Draft Convention included a clause suggesting that universal jurisdiction would be exercised only in limited circumstances. After prolonged discussion of the proposed provision, it was decided to put jurisdictional clauses in the crimes against humanity convention that tracked those already present in existing treaties, such as the Torture Convention, the Convention for the Suppression of Terrorist Bombings, and the new Convention against Enforced Disappearance.

24. There was also considerable discussion of the failures of universal jurisdiction to materialize as a significant threat to "traveling tyrants," in part due to financial concerns. The example of Senegal was advanced, noting that it had argued its inability to prosecute Hissène Habré due to the financial burden that such a trial would impose. The difficulty of convincing African states to ratify a new convention if there would be a duty (rather than an option) to exercise universal jurisdiction was also evoked.

### **G. The problem of selectivity in international criminal justice**

25. Many participants noted the problem posed by the objections of some African states to the issuance of the International Criminal Court's arrest warrant against Sudanese President Al Bashir, which has been viewed in some quarters as an attack upon African dignity. The same issue was evoked with respect to the exercise of universal jurisdiction by "northern courts," which may promote criminal justice, but may not be seen as legitimate to the extent they are perceived as selectively targeting only those crimes committed in the southern hemisphere. Others responded that crimes against humanity are not committed lawfully by any sovereign, and that all victims, whether African, Asian, European or Latin American, are entitled to justice, both when they are victimized by their own states directly and when their states are unwilling or unable to protect them from being victimized by other actors. At the same time, it was acknowledged by the group that the perception of selectivity is cause for concern, and that consideration must be given as to how a crimes against humanity convention might address the issue.

## **H. Codification of crimes against humanity and its relationship to customary international law**

### **i. Contributions of the case law of the ad hoc tribunals on the definition of the crime**

26. This topic was the subject of a paper as well as a recurring theme throughout the discussions. The paper focused upon the ongoing difficulties in defining crimes against humanity, and noted that even though the ICC Statute is an important codification, the legal team of the U.N. Secretary-General built upon, but modified, the ICC definition in developing the Statute for the Special Court of Sierra Leone. Thus, the paper concluded, it is likely that there are still uncertainties surrounding the crime and its definition. The paper also noted that in the summer of 1998, when the Rome Statute was adopted, only the *Tadic* jurisdictional decision (October 1995) and judgment (May 1997) had been decided, meaning that the case law from the ICTY and ICTR could not have had much influence on the ICC codification, although there was considerably more jurisprudence by the time the elements of crimes were adopted in 2002. As to the post-Rome experience, a vigorous discussion ensued as to whether the contributions of the ad hoc tribunals had developed the law on crimes against humanity in a positive manner. Questions as to methodology, particularly in the “discovery” of customary international law were raised, with the larger question remaining as to the overall relationship between the law of the ICC and customary international law.

27. In particular, many participants noted the tension between the universality of the ICC Statute -- in aspirational terms, because the Statute has not yet achieved universal acceptance, and in practical terms, because of the possibility of Security Council referrals regarding situations in non-States Parties -- and the idea that the customary international law regarding crimes against humanity could continue to evolve outside the Statute, including in other international courts and tribunals. At the same time, it was noted that article 10 of the ICC Statute itself anticipates such a situation, and that “fragmentation” was perhaps not an undesirable structural consequence of the international legal order in all its diversity. The debates on these ideas resulted in the alternative formulation for article 2 of the May Draft Convention.

### **ii. Gender crimes**

28. The paper on gender crimes argued that in order to be relevant to the nature of current and future armed conflicts, a treaty codifying crimes against humanity should reflect a range of gender-based prohibited acts. Additionally, the paper critiqued the definition of gender in the Rome Statute, and suggested that perhaps the term, if included in a crimes against humanity

convention, should not be defined or, if defined, that an approach tracking that of various U.N. entities be used. Both the paper author and discussant argued for further specification of gender violence in a crimes against humanity convention, noting that using umbrella terms like "other inhumane acts," did not adequately capture the specific nature and horror of gender crimes. Others noted the difficulty of modifying the Rome Statute definition to provide for additional gender-based crimes, for the reasons noted along the lines of part D(ii) above.

**I. State responsibility, the critical importance of prevention, and the responsibility to protect**

29. Although no paper was commissioned specifically on the issue of State Responsibility, the question was discussed throughout the two and one-half days of meetings. Participants seemed to be in widespread agreement that the principal goal of a crimes against humanity convention should be to end impunity for those who commit crimes against humanity, especially where those individuals use the apparatus of the state as an instrument of victimization. As one participant noted, the principal evil of a crime against humanity is the insidious way in which the territory of a state is transformed from a place of refuge into a trap. Recalling recent international criminal prosecutions of former heads of state, as well as former governmental and military leaders, participants agreed that the goal of ending impunity seems best served by focusing on the individual criminal responsibility of those actors instrumental to the commission of crimes against humanity.

30. Noting that criminal prosecutions are primarily reactive, several participants highlighted the problem of prevention and suggested various useful additions to the draft convention along those lines. Obviously it is hoped, but not empirically demonstrable, that the prosecution of atrocity crimes will deter future atrocity crimes; indeed, it was observed that given the paucity of enforcement of the norms against genocide, war crimes and crimes against humanity, impunity remained the rule, rather than the exception. At the same time, the paper on the Responsibility to Protect suggested language that would go further than requiring states to criminalize and prosecute individuals for committing crimes against humanity, and which would prohibit, and thus render illegal, the commission of crimes against humanity by any State-Party, and require States-Parties to the convention to act in accordance with the Responsibility to Protect principles set forth in the 2005 World Summit Outcome document. While some participants were supportive of including such provisions in a crimes against humanity convention, others were more hesitant, questioning whether the principles enunciated are clear enough, or opining that inclusion of such principles could hinder the adoption of a convention.

## **J. The question of amnesties and immunities**

31. Echoing the conclusions of the commissioned paper on the subject of amnesties and immunities, several participants agreed that a crimes against humanity convention should include a specific prohibition on immunities, but should not include a blanket prohibition of amnesties. For immunities, the question for the participants was not whether to include such a prohibition, but what form the prohibition should take. Much of the discussion centered on the state of the law as it exists following the *Arrest Warrant* case, with some participants suggesting that an immunity prohibition in a crimes against humanity convention should seek to progressively define the scope of immunity *ratione personae*. It was also suggested that a specific immunity prohibition should include a sentence excluding crimes against humanity from being considered official or public acts, which could serve to clarify what one participant described as the “ambiguous” language of the *Arrest Warrant* case regarding private acts vis-à-vis immunity *ratione materiae*. Finally, it was suggested that any immunity prohibition should not be limited to criminal prosecutions but should extend to civil and administrative actions as well.

32. Although there seemed to be widespread agreement that amnesties for crimes against humanity are generally unlawful, it was felt that the inclusion of an amnesty provision in a draft convention could prove to be particularly troublesome for states. It was pointed out that the attempt to include a similar provision in the convention on enforced disappearances proved impossible as consensus could not be reached. Moreover, it was noted that drafting an “appropriate” amnesty provision might be particularly difficult in that a blanket prohibition could sweep too broadly, yet crafting appropriate exceptions could be problematic. Finally, it was agreed that it may simply be unnecessary to include a specific prohibition on amnesties provided that the convention imposes a duty on states to prosecute those who commit crimes against humanity, as some treaties have interpreted such a duty as prohibiting amnesties. Moreover, it could actually be counterproductive to include a prohibition on amnesties, as such could imply that no prohibition currently exists as a matter of customary international law in the absence of a treaty provision.

## **K. Crimes against humanity and terrorism**

33. Following some discussion, there seemed to be widespread agreement among the participants that it is unnecessary and potentially problematic to include terrorism as a crime against humanity. Although some advantages could be envisioned, such as providing for universal jurisdiction over terrorist acts not currently covered by any of the existing terrorism conventions, it was felt that any attempt to include terrorism as a crime against humanity would suffer from the same definitional problem that has plagued states in this area;

it is difficult to imagine states reaching a consensus on a general definition of terrorism. Moreover, the vast majority of those specific *acts* for which consensus could be achieved are already prohibited in one of the many existing terrorism conventions. Some of them are also already subsumed within the definition of a crime against humanity (i.e., mass murder under certain circumstances). Finally, it was also pointed out that the Rome Statute does not include terrorism as a crime against humanity, such that the inclusion of terrorism in a crimes against humanity convention raises the same concerns repeatedly voiced that a convention should seek to complement the ICC, rather than to complicate its operations in any way.

**L. Interstate cooperation and mutual assistance in penal matters**

34. It was widely agreed among the participants that bridging the enforcement “gap” should be one of the primary functions of a crimes against humanity convention. This must include fostering the notion that states have an obligation to prosecute rather than merely a discretionary ability to prosecute. Such an obligation, however, must be coupled with providing the realistic capacity to prosecute which, for many states, will necessarily involve prosecutions requiring interstate cooperation in the form of mutual legal assistance.

**M. Modes of participation**

35. Much of the discussion of how a crimes against humanity convention should address modes of participation and individual criminal responsibility centered on two distinct issues: superior responsibility and joint criminal enterprise. There was widespread agreement that a distinct provision on superior responsibility should be included in the convention and that this should incorporate the developments of the jurisprudence on this issue at the ad hoc international criminal tribunals, and that the existing provision in the Rome Statute represents the best current option. Although it was pointed out that there are still some open questions regarding modes of participation and individual criminal responsibility arising from the existing jurisprudence, and that some aspects of the jurisprudence have been controversial, it was generally considered that most of these are not questions to be directly addressed in the text of a convention.

36. It was widely acknowledged that, although some form of extended liability is necessary to address the “system criminality” inherent in crimes against humanity, the development of joint criminal enterprise at the ad hoc international criminal tribunals has been problematic. The doctrine should not be stretched to the point that it becomes a threat to international criminal law. One suggestion made was that participants should consider whether

conspiracy should be included as a mode of participation. Although there was no consensus reached that the inclusion of conspiracy is desirable, it was pointed out that the concept of conspiracy has become more palatable to civil law countries with the spread of anti-terrorism legislation.

**Washington University School of Law  
Whitney R. Harris World Law Institute  
Crimes Against Humanity Initiative**

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**Report of April Experts' Meeting  
Annex #1: List of Participants**

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**List of Participants**

*Steering Committee Members*

Chair: Professor Leila Nadya Sadat, Washington University in St. Louis School of Law; Director of the Whitney R. Harris World Law Institute

Professor M. Cherif Bassiouni, DePaul University College of Law; President Emeritus of the International Human Rights Law Institute

Ambassador Hans Corell, former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations

Justice Richard Goldstone, Fordham University School of Law; former Chief Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda

Mr. Juan Méndez, President, International Center for Transitional Justice

Professor William Schabas, Director, Irish Centre for Human Rights, National University of Ireland, Galway

Judge Christine Van den Wyngaert, International Criminal Tribunal for the Former Yugoslavia; International Criminal Court

**Expert Participants**

Professor David Akerson, Sturm College of Law

Professor Payam Akhavan, McGill University Faculty of Law

Professor Diane Marie Amann, University of California Davis School of Law

Professor Dr. Kai Ambos, Georg-August-Universität, Göttingen

Ms. Elizabeth Andersen, American Society of International Law

Ms. Evelyn Ankumah, Executive Director, Africa Legal Aid

Dr. Kelly Dawn Askin, Open Society Justice Initiative

Professor Elizabeth Borgwardt, Washington University in St. Louis

Dr. Frank Chalk, Concordia University

Professor Roger S. Clark, Rutgers University School of Law-Camden

Professor David Crane, Syracuse University College of Law

Ms. Margaret deGuzman, Irish Centre for Human Rights, National University of Ireland, Galway

Professor Mark Drumbl, Washington & Lee University School of Law

Mr. Mark Ellis, International Bar Association

Dr. John Hagan, Northwestern University

Professor Hurst Hannum, Tufts University, The Fletcher School

Mr. Whitney R. Harris, former prosecutor for the International Military Tribunal at Nuremberg

Ambassador Feisal Amin Rasoul al-Istrabadi, Indiana University School of Law

Mr. Larry Johnson, former United Nations Assistant Secretary-General for Legal Affairs

Professor David Luban, Georgetown University Law Center

Professor Larry May, Washington University in St. Louis

Mr. Guénaél Mettraux, former associate legal officer and former defense counsel, International Criminal Tribunal for the Former Yugoslavia

Professor Michael A. Newton, Vanderbilt University Law School

Ms. Laura M. Olson, American Society of International Law

Professor Valerie Oosterveld, University of Western Ontario Faculty of Law



Professor Diane Orentlicher, American University Washington College of Law

Professor Mark Osiel, T.M.C. Asser Institute, University of Amsterdam

Professor Naomi Roht-Arriaza, University of California, Hastings College of the Law

Mr. Leonard Rubenstein, Physicians for Human Rights

Professor Michael P. Scharf, Case Western Reserve University School of Law

Professor David Scheffer, Northwestern University School of Law

Ambassador Thomas A. Schweich, Washington University in St. Louis School of Law

Professor Elies van Sliedregt, Vrije Universiteit Amsterdam

Professor Göran Sluiter, University of Amsterdam

Dr. Gregory H. Stanton, Genocide Watch

Professor Jane Stromseth, Georgetown University Law Center

Mr. B. Don Taylor III, International Criminal Tribunal for the former Yugoslavia

Professor Melissa Waters, Washington University in St. Louis School of Law

Mr. John Clint Williamson, Ambassador-at-Large for War Crimes Issues

### **Student Rapporteurs**

Kate Allen, Harvard Law School

Joseph Vincent Barrett, Harvard Law School

McCall Carter, Washington University in St. Louis School of Law

Miriam Gouvea Cohen, Harvard Law School

Margaret Wichmann, Washington University in St. Louis School of Law

**Washington University Law and Harris World Law Institute Personnel**

Amitis Khojasteh, Cash Nickerson Fellow

Linda McClain, Assistant Director, Harris World Law Institute

Michael Peil, Associate Dean for International Programs, Washington  
University Law

Leila Nadya Sadat, Henry H. Oberschelp Professor of Law, Washington  
University Law; Director, Harris World Law Institute

Kent D. Syverud, Dean & Ethan A.H. Shepley University Professor,  
Washington University Law

B. Don Taylor III, Executive Director, Harris World Law Institute; Cash  
Nickerson Fellow

**Washington University School of Law  
Whitney R. Harris World Law Institute  
Crimes Against Humanity Initiative**

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**Report of April Experts' Meeting  
Annex #2: Agenda**

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**AGENDA**

**SUNDAY, APRIL 12, 2009 – ANHEUSER-BUSCH HALL FACULTY SEMINAR  
ROOM 320**

Arrival of Participants

6:30 p.m.      Welcome Dinner at the residence of Leila Sadat and Andrew Ruben

**MONDAY, APRIL 13, 2009 – ANHEUSER-BUSCH HALL FACULTY SEMINAR  
ROOM 320**

8:30 a.m.      Opening Remarks: Whitney R. Harris, Nuremberg Prosecutor

                    Welcome Remarks: Leila Nadya Sadat, Washington University School of Law, Henry H. Oberschelp Professor of Law; Director, Harris World Law Institute

**Section I: Legal, Social and Historical Context**

9:00-9:45      History of Efforts to Codify Crimes Against Humanity  
                    Roger S. Clark, Rutgers University School of Law, Camden (Author)  
                    Frank Chalk, Concordia University (Discussant)

9:45-10:30     Why A Crimes Against Humanity Convention?  
                    Gregory H. Stanton, Genocide Watch (Author)  
                    Mark Drumbl, Washington & Lee University School of Law (Discussant)

10:45-11:30    Peace and Justice  
                    David Crane, Syracuse University College of Law (Author)  
                    Richard Goldstone, Harvard Law School (Discussant)

## **Section II: Legal Issues**

- 11:30-12:15 The Jurisprudence of the Ad Hoc Tribunals Since 1993 and Their Contribution to the Legal Definition of Crimes Against Humanity  
Göran Sluiter, University of Amsterdam (Author)  
William Schabas, National University of Ireland, Galway (Discussant)
- 12:15 Conclusion of Morning Session  
Kent Syverud, Washington University Law, Dean and  
Ethan A.H. Shepley University Professor
- 12:30-1:30 Lunch – Knight Center, 3<sup>rd</sup> Floor
- 1:45-2:30 Continuing Definitional Issues Regarding Crimes Against Humanity, Including the Policy Element and the Scope of the Crime  
Guénaél Mettraux, formerly International Criminal Tribunal for the Former Yugoslavia (Author)  
Mark Osiel, T.M.C. Asser Institute, University of Amsterdam (Discussant)
- 2:30-3:15 Gender Crimes  
Valerie Oosterveld, University of Western Ontario Faculty of Law (Author)  
Kelly Dawn Askin, Open Society Justice Initiative (Discussant)
- 3:15-4:00 Ethnic Cleansing  
John Hagan, Northwestern University (Author)  
Larry Johnson, former United Nations Asst. Secretary-General, Legal Affairs (Discussant)
- 4:15-5:30 Plenary Session – Introduction of Draft Convention
- 6:30 Evening Gala – St. Louis Art Museum  
Remarks: Chancellor Mark S. Wrighton, Washington University  
Keynote: Clint Williamson, Ambassador-at-Large for War Crimes Issues

**TUESDAY, APRIL 14, 2009 – ANHEUSER-BUSCH HALL FACULTY SEMINAR  
ROOM 320**

**Section II: Legal Issues (continued)**

- 8:30-9:15 Immunities and Amnesties  
Diane Orentlicher, American University, Washington  
College of Law (Author)  
Naomi Roht-Arriaza, University of California, Hastings  
College of the Law (Discussant)
- 9:15-10:00 Modes of Participation  
Elies van Sliedregt, Vrije Universiteit Amsterdam (Author)  
Laura M. Olson, American Society of International Law  
(Discussant)

**Section III: New Conceptual Paradigms**

- 10:15-11:00 Crimes Against Humanity and Terrorism  
Michael P. Scharf, Case Western Reserve University  
School of Law (Author)  
Michael A. Newton, Vanderbilt University Law School  
(Author)  
Melissa Waters, Washington University Law (Discussant)
- 11:00-11:45 Revisiting the Architecture of Nuremberg? Crimes Against  
Humanity and International Criminal Law  
M. Cherif Bassiouni, DePaul University College of Law  
(Author)  
David Luban, Georgetown University Law Center  
(Discussant)
- 12:00-1:00 Lunch – Knight Center, 3<sup>rd</sup> Floor

**Section IV: Enforcement Issues**

- 1:15-2:00 Crimes Against Humanity and the International Criminal Court  
Kai Ambos, Georg-August-Universität, Göttingen (Author)  
Betsy Andersen, American Society of International Law  
(Discussant)

- 2:00-2:45 Crimes Against Humanity and the Responsibility to Protect  
David Scheffer, Northwestern University School of Law  
(Author)  
Diane Marie Amann, University of California Davis School  
of Law (Discussant)
- 2:45-3:30 Crimes Against Humanity and National Jurisdictions  
Payam Akhavan, McGill University Faculty of Law  
(Author)  
Evelyn Ankumah, Africa Legal Aid (Discussant)
- 3:45-5:45 Plenary Session – Resumed Discussion of Draft Convention
- 6:00-6:45 Photo Session – Group Photo
- 7:00 Dinner – Whittemore House

**WEDNESDAY, APRIL 15, 2009 – SEIGLE HALL: GREEN SEMINAR ROOM 111**

- 8:30-10:00 Executive Session (Steering Committee Members only)
- 10:00-12:00 Open Session: Reports to Crimes Against Humanity Steering  
Committee Rapporteurs, Drafting Committee, and Plenary  
Session Summary
- 12:00 Lunch – Knight Center, 3<sup>rd</sup> Floor

Departure of Participants