



INTERNATIONAL
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ACADEMY



20th anniversary
THE WORK LEFT TO DO



The 75th anniversary of the International Military Tribunal Judgement

A bright red thread
through history

On 30 September and 1 October 2021, the International Nuremberg Principles Academy and the Robert H. Jackson Center hosted two high-profile roundtable discussions, commemorating the 75th anniversary of the final Judgement of the International Military Tribunal, and considering the Judgement's ongoing impact on modern international criminal law. The roundtables comprised most of the currently active international prosecutors from the various ad hoc tribunals and the permanent International Criminal Court, as well as three former prosecutors.

Speakers addressed five common themes, reinforcing the conviction that the Nuremberg Judgement remains an essential part of international law, both in its foundations and in its daily practice.

First, they addressed politics as a “bright red thread” that runs through international criminal law, and that while the international tribunals may be “creatures of political compromise”, political consensus made the Nuremberg trials possible, and is essential for today's tribunals and courts. In this way, Nuremberg represents the intersection of law and politics, *par excellence*. Nuremberg might seem inevitable now, but it almost didn't happen. The same can be said for modern tribunals; their existence is highly contingent, owing to the alignment of the political stars.

On a related note, speakers addressed the moment in which we find ourselves, where the age of accountability (the years from approximately 1993 to 2015) seems to be giving way to the “age of strong men.” There seems to be political stasis, with less interest in international justice as the world steps away from the hard work thus far done. This has translated into a struggle for sufficient resources; there was discussion about what constitutes high cost, considering that Nuremberg spent approximately US\$25 million per defendant in today's dollars.

Second, another speaker suggested that “Nuremberg represents a stubborn attempt to hold onto values greater than us.” One of those, linked to the concept of political consensus, is that of balance. Nuremberg was about “humanity at the bar”, as Justice Jackson argued, and not about the interests of any single nation. The balance of national traditions and of competing considerations began at Nuremberg and with the parallel UN War Crimes Commission in the 1940s and remains at the heart of international justice. That balance includes civil vs. common law practices, types of evidence used (American Nuremberg prosecutor Justice Jackson preferred documentary evidence, but video and tech-based evidence is increasingly common), how to preserve evidence for later when justice can't be done now, and balancing expediency versus the interests of victims. Balance was also flagged in terms of the need for gender balance in staffing, in particular in leadership roles, which remains elusive. Finally, balance is about length of proceedings; while the International Military Tribunal lasted less than a year, it isn't realistic to do such short trials now. Nuremberg had procedural flaws and shortcomings that would not be acceptable under current circumstances. But there is a danger that overly long trials are being normalized in The Hague. There must be balance. The commonality amongst different systems and approaches is the search for truth, which binds a tribunal together. Speakers urged innovation and creativity in meeting the challenges facing international investigations and prosecutions but reminded viewers that there is “no silver bullet” and as with Nuremberg, such trials are not easy and likely never will be. They pointed out that law follows technology, it doesn't drive it, and there will always be a love/hate relationship between the two. For modern tribunals to be successful, it is essential to show that the concept works and that cases are possible. Those building the modern tribunals were likened to bricklayers, building a foundation of precedent upon which the tribunals must rely to justify their survival.

Third, speakers addressed the fact that the law is not static. They talked about the possible addition of new crimes (ecocide, expansion of crimes against humanity) and generally the need to innovate and be creative.

Fourth, speakers addressed the idea of narrative and the role of international tribunals in building narratives about conflicts. The speakers acknowledged that part of the legacy of tribunals is via storytelling or helping others to “believe the unbelievable.” But controlling the narrative is not an easy thing to do, and the tribunals finally may have limited capacity to do so. One speaker noted that writing the truth of the case is not the same as writing the history of the conflict. But the tribunals are embodiments of victims' expectations, so the effort must continue.



One speaker noted that in relation to Nuremberg, defendant Hermann Göring argued he could only be tried by the German people, and that the Nuremberg Trials would be forgotten in 15 years, which turned out to be untrue. Nuremberg built an undeniable record, but this process takes time, even generations, and cases can't be the only avenues. It took the years of East German experiences and the Yugoslav conflict, with its images of emaciated men behind barbed wire, to make the German public finally come to a fuller realization of the meaning of Nuremberg. Now Germany accepts Nuremberg as a legal and moral mandate and undertakes universal jurisdiction cases to support justice elsewhere.

But the work of building on this legacy is never done. By comparison, in the former Yugoslavia, more than 40 war crimes prosecutors are running more than 3,000 cases and the International Residual Mechanism for Criminal Tribunals (IRMCT) is handing over thousands of pages and documents per year. But there is still national pride in war criminals, buildings named after them, different history books in the same school, and worsening regional cooperation than ten years ago.

As Justice Jackson noted in a 1949 address, not long after the close of the trials,

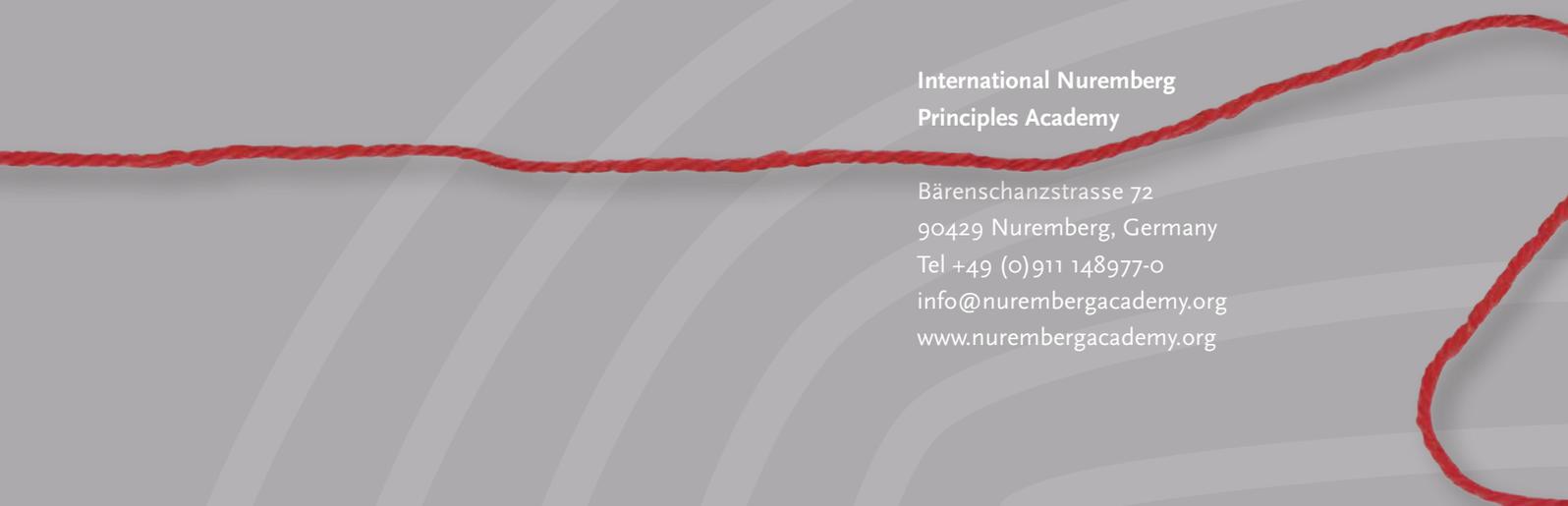
"It is much too early to appraise the influence of Nuremberg. But I would disclaim any expectation that it alone is enough to prevent future wars. When stakes are high enough and chances of success look good enough, I suppose reckless leaders may again plunge their people into war, just as men still resort to murder, notwithstanding the law's penalty. But I do think that we have forever laid to rest in the minds of statesmen the vicious assumptions that all war must be regarded as legal and just, and that while the law imposes personal responsibility for starting a street riot, it imposes none for inciting and launching a world war...Like much legal work, ours at Nuremberg has far-reaching implications rarely apparent to laymen and often missed by lawyers. Its value to the world will depend less on how faithfully it interpreted the past than how accurately it forecasts the future."

Fifth and finally, the discussion touched on the idea that the "living legacy" of Nuremberg is the community that endeavors to make international justice a reality today.

See the following YouTube link for a video of the full proceedings:

<https://www.youtube.com/watch?v=1eg1BsLqqeA> (panel 1) and

<https://www.youtube.com/watch?v=oXuyMeqYX8Q> (panel 2).



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