



INTERNATIONAL
NUREMBERG
PRINCIPLES
ACADEMY

Programme

Nuremberg Forum 2022

The International Criminal Court 2002–2022: A Court in Practice

13–15 October 2022

Courtroom 600, Nuremberg Palace of Justice
Bärenschanzstraße 72, 90429 Nuremberg
Germany





Nuremberg Forum 2022

The International Criminal Court 2002–2022: A Court in Practice

Welcome Address

On behalf of the International Nuremberg Principles Academy, we welcome you to the Nuremberg Forum 2022, entitled: “The International Criminal Court 2002–2022: A Court in Practice”. This conference pays tribute to the 20th anniversary of the International Criminal Court (ICC) and reflects on its twenty-year practice.

In 1998, the approval of the Rome Statute and its subsequent coming into force in 2002 were heralded as turning points in the evolution of international criminal justice. After 20 years in existence, the ICC and the larger Rome Statute system are seen as an essential part of ending cycles of violence. Significant obstacles have however plagued the Court in different spheres of its work. Despite the ICC’s potential for global influence, the basic political concerns ingrained in the exercise of its authority frequently confine the Court. It has become increasingly obvious that the ICC is dependent on State cooperation, particularly when it comes to locating and apprehending suspects. Moreover, the ICC’s perceived lack of legitimacy is a crucial issue that still interferes with its work.

In recent years, many advocacy and civil society organisations have called for the ICC to get more involved in crisis situations, such as the crises in Myanmar/Bangladesh and Ukraine. In this context, on 14 November 2019, ICC Pre-Trial Chamber III gave the Prosecutor permission to begin an investigation into the alleged crimes that fall under its purview in the circumstance in Myanmar/Bangladesh. On 2 March 2022, an investigation of the situation in Ukraine was started based on referrals by 43 States Parties.

Such instances serve as a constant reminder of the ICC’s growing importance in the world today. Therefore, what can the ICC and the international community do to strengthen the work of the Court? What can be considered a workable system that would ensure compliance and enforcement of the Nuremberg Principles? By reflecting on the ICC’s major achievements and challenges over the past 20 years, this conference will shed light on the Court’s practice so far in achieving the Nuremberg Principles’ aspirations and how it is advancing the common fight against impunity for core international crimes.

We are honoured to host eminent experts, academics and practitioners whose work in international criminal law continue to shape and foster the growth of the ICC and the field of international criminal law in general. We appreciate everyone’s participation and ongoing support of our work and shared goal: fighting impunity and promoting sustainable peace through justice.

Klaus Rackwitz
Director
International Nuremberg Principles Academy



Day 1: 13 October 2022

- 3.00–3.30 pm **Opening Remarks**
Dr Christophe Eick, Legal Advisor, Director-General for Legal Affairs, Federal Foreign Office of Germany
Dr Nasser Ahmed, City Councillor, City of Nuremberg, representing the Lord Mayor of the City of Nuremberg
Dr Navi Pillay, President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, United Nations (UN) High Commission for Human Rights; former Judge, International Criminal Tribunal for Rwanda (ICTR) and ICC
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- 3.30–5.30 pm **Keynote Addresses**
H. E. Christian Wenaweser, Ambassador, Permanent Mission of the Principality of Liechtenstein to the UN
Luis Moreno-Ocampo, former Prosecutor, ICC
Dr Fatou Bensouda, High Commissioner to the United Kingdom, The Gambia; former Prosecutor, ICC
Brigid Inder OBE, Former Executive Director, Women's Initiatives for Gender Justice
-
- 7.30 pm **Welcome Dinner**

Day 2: 14 October 2022

Morning Session

- 10.00–10.20 am **Opening Remarks**
Dr Thomas Dickert, President of the Higher Regional Court of Nuremberg
Judge Piotr Hofmański, President, ICC
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- 10.20–12.15 am **Panel I: ICC's Major Achievements**
Chair:
William R. Pace, former Director, Coalition for the International Criminal Court
Speakers:
Judge Sang-Hyun Song, former President, ICC
Judge Piotr Hofmański, President, ICC
Judge Chile Eboe-Osuji, former President, ICC
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- 12.15–1.15 pm **Lunch**
-
- 1.15–3.00 pm **Afternoon Session**
Panel II: Complementarity: Universal Aspirations Versus Tangible Results
Chair:
Prof. Diane Orentlicher, Professor of International Law, American University's Washington College of Law
Speakers:
Judge Silvia Fernández de Gurmendi, President, ICC Assembly of States Parties (ICC ASP), former President, ICC
Tamara Taraciuk Broner, Deputy Director for the Americas, Human Rights Watch
Prof. Dire Tladi, Professor of International Law, University of Pretoria
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- 3.00–3.30 pm **Coffee Break**

3.30–5.15 pm **Panel III: Goal Setting: How Deterrent is the ICC in Reality**

- Chair:
Judge Richard Goldstone, former Judge, Constitutional Court of South Africa and former Prosecutor, International Criminal Tribunal for the Former Yugoslavia (ICTY) and ICTR (remote participation)
Speakers:
Judge Kuniko Ozaki, S.A. Professor of International Law, Chuo University; former Vice-President and Judge, ICC
Mame Mandiaye Niang, Deputy Prosecutor, ICC
Prof. Beth A. Simmons, Andrea Mitchel Penn Integrates Knowledge Professor of Law, Political Science and Business Ethics, University of Pennsylvania in Philadelphia

7.30 pm **Dinner**

Day 3: 15 October 2022

Morning Session

- 10.00–12.00 am **Panel IV: Justice is Interconnected and Does Not End with a Sentencing: the Experiences of Victims, Witnesses and the Accused Before the ICC**
Chair:
Prof. Betty Kaari Murungi, Professor of Practice, SOAS University of London
Speakers:
Chief Charles Achaleke Taku, Lead Defence Counsel, ICC
Dr Phuong N. Pham, Assistant Professor, Harvard Humanitarian Initiative

12.00–1.00 pm **Lunch**

Afternoon Session

- 1.00–3.00 pm **Panel V: Whose Outreach and to Whom?**
Chair:
Dr Sarah Finnin, International Criminal Lawyer and Victims' Rights Expert
Speakers:
Sonia Robla, Chief of Public Information and Outreach Section, ICC
Ibrahim Sorie Yillah, Vice Chairman of the Board of Directors, ICC Trust Fund for Victims (TFV)
Judge Raul Pangalangan, former Judge, ICC

3.00–3.30 pm **Coffee Break**

3.30–5.30 pm **Panel VI: The ICC in the Next Five, Ten and 15 Years**

- Chair:
Prof. Claus Kreß, Director of the Institute of International Peace and Security Law, Universität zu Köln
Speakers:
Prof. Paola Gaeta, Professor of International Law, the Graduate Institute of International and Development Studies (remote participation)
Prof. Carsten Stahn, Professor, Leiden University
Prof. Leila Nadya Sadat, James Carr Professor of International Criminal Law, Washington University School of Law

5.30–6.00 pm **Closing Remarks**

- Klaus Rackwitz**, Director, International Nuremberg Principles Academy



Opening Remarks

Dr Christophe Eick

Legal Adviser, Director-General for Legal Affairs, Federal Foreign Office of Germany

Dr Christophe Eick is the Chairperson of the Foundation Board of the International Nuremberg Principles Academy. In July 2018, he was appointed as Legal Adviser and Director-General for Legal Affairs at the Federal Foreign Office. He studied law, completing the first state examination in 1986 (Bonn) and the second state exam in 1990 (Cologne). He obtained an LLM from McGill University in 1987 and a PhD from the Universität Bonn in 1993. Dr Eick joined the German Federal Foreign Office in 1991.

Dr Nasser Ahmed

City Councillor, City of Nuremberg, representing the Lord Mayor of the City of Nuremberg

Dr Nasser Ahmed was, prior to running for the City Council in 2014, Chairman of the Jusos in Nuremberg – the Social Democratic Party's (SPD) Youth Division. Since 2021, he is Chairman of the local SPD. In the City Council of Nuremberg, he acts as a specialist for issues of public transportation and is Senior Advisor to his faction on sports policy. Dr Ahmed holds a Master's degree in Political Science. He holds a PhD from Friedrich-Alexander-Universität Erlangen-Nürnberg, Germany. His dissertation examined the construction of the political perspectives in the work of Michel Foucault and Ernst Jünger.

Dr Navi Pillay

President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, UN High Commission for Human Rights; former Judge, International Criminal Tribunal for Rwanda and International Criminal Court

Dr Navi Pillay served as High Commissioner for Human Rights at the UN from 2008 to 2014. She has championed many human rights issues with which she had direct experience, having grown up as a member of the non-white majority under the Apartheid regime in South Africa. After studying law in Natal, South Africa, Dr Pillay worked on behalf of the victims of racial segregation as a criminal defence lawyer and as an activist for the anti-Apartheid movement. Later, Dr Pillay earned a Master's degree at Harvard Law School. She was the first South African to be awarded the degree of Doctor of Juridical Science at Harvard Law School in 1988. In 1995, after the end of Apartheid, she was appointed to the Supreme Court of South Africa as a limited-term judge. In the same year, she was appointed Judge to the International Criminal Tribunal for Rwanda (ICTR), where she served for a total of eight years, including four years as President. She later served at the ICC for five years. Dr Pillay is a co-founder of Equality Now, an international women's rights organisation.

Keynote Addresses

Ambassador Christian Wenaweser

Ambassador, Permanent Mission of the Principality of Liechtenstein to the UN

Ambassador Christian Wenaweser has served as the Permanent Representative of Liechtenstein to the UN in New York since 2002. From 2009 to 2011, he served as President of the ICC ASP to the Rome Statute of the ICC. From 2004 to 2009, he served as Chairman of the Special Working Group on the Crime of Aggression. Other previously held functions include Vice-President of the 61st Session of the UN General Assembly from 2006 to 2007, Vice-Chair of the Open-Ended Working Group on Security Council Reform from 2004 to 2005, Chairman of the Ad Hoc Committee on the Scope of Legal Protection under the 1994 Convention on the Safety of United Nations and Associated Personnel from 2003 to 2005 and Chairman of the UN General Assembly's Third Committee (2002). Previously, Ambassador Wenaweser worked as Counsellor and Deputy Permanent Representative of Liechtenstein to the UN and a diplomatic officer in the Office for Foreign Affairs in Liechtenstein. He studied literature, languages, history and philosophy at the Universität Zürich and diplomacy at the Institut de hautes études internationales et du développement in Geneva.

Luis Moreno-Ocampo

Former Prosecutor, ICC

Luis Moreno-Ocampo was the ICC's first Prosecutor from June 2003 to June 2012. His office examined 17 of the most serious crises of the twenty-first century, including Iraq, Korea, Afghanistan and Palestine. He conducted investigations in seven different countries, presenting charges against Muammar Gaddafi for crimes against humanity committed in Libya, the President of the Sudan Omar Al-Bashir for genocide in Darfur and Joseph Kony. The trial convicting Thomas Lubanga concluded during his tenure. In the coming months, Oxford University Press will publish a book entitled *War and Justice in the 21st Century*, which will describe Ocampo's practice. Previously, Mr Moreno-Ocampo played a crucial role during the transition to democracy in Argentina as the deputy prosecutor in the "Junta trial" in 1985 and the prosecutor in the trial against a military rebellion in 1991. He was a visiting professor at Stanford University and Harvard University.

Dr Fatou Bensouda

High Commissioner to the United Kingdom, The Gambia; former Prosecutor, ICC

Dr Fatou Bensouda served as Prosecutor of the ICC from 2012 to 2021. Between 1987 and 2000, Dr Bensouda was successively State Counsel, Senior State Counsel, Principal State Counsel, Deputy Director of Public Prosecutions, Solicitor General and Legal Secretary of the Republic and Attorney General and Minister of Justice of the Republic of The Gambia. Her international career formally began at the ICTR, where she worked as a Legal Adviser and Trial Attorney then as Senior Legal Adviser and Head of the Legal Advisory Unit from 2002 to 2004, after which she joined the ICC as the Court's first Deputy Prosecutor. Dr Bensouda has served as a delegate of The Gambia to the meetings of the Preparatory Commission for the ICC amongst others. She is the recipient of numerous awards and several honorary doctorates, and has been listed on two occasions by Time magazine as one of the 100 most influential people in the world (2012 and 2017); by the New African magazine as one of the "Most Influential Africans"; by Foreign Policy as one of the "Leading Global Thinkers" (2013), by Jeune Afrique as one of 50 African women who, by their actions and initiatives in their respective roles, advances the African continent (2014 and 2015) and by Forbes magazine as Africa's 50 Most Powerful Women (2020).

Brigid Inder OBE

Former Executive Director, Women's Initiatives for Gender Justice

Brigid Inder, OBE co-founded and was the former Executive Director of the Women's Initiatives for Gender Justice, an international women's human rights organisation that worked on justice and peace-building programmes with communities in armed conflict situations and advocated with the ICC for the investigation and prosecution of sexual and gender-based crimes. She is the recipient of the inaugural Bertha von Suttner Peace Prize and formerly the Special Advisor on Gender to Prosecutor Fatou Bensouda. As an advocate, she has advised governments on gender equality and women's rights issues during several UN global policy negotiations as well as at the UN Earth Summit, Human Rights Council and the Commission on the Status of Women. Ms Inder, OBE continues to be involved in a number of international justice initiatives including the global campaign to recognise ecocide as a new international crime within the ICC's jurisdiction. She is currently working on truth-telling and redress initiatives in relation to historical male sexual and physical abuse and provides training for peace-building networks in conflict and post-conflict countries including Myanmar.

Dr Thomas Dickert

President, Higher Regional Court of Nuremberg

Dr Thomas Dickert is President of the Higher Regional Court of Nuremberg. He represents the Free State of Bavaria in the Foundation Board of the International Nuremberg Principles Academy. From 2011 to April 2018, he was Head of the Department of Budget, Construction, IT, Organisation, Security and Statistics at the Bavarian State Ministry of Justice. Prior to this position, Dr Dickert held several other positions at the Bavarian State Ministry and at different courts in Bavaria, including the Higher Regional Court of Munich and the Regional Court of Ingolstadt. He studied law at the Universität Regensburg and did his legal traineeship in Regensburg.

Judge Piotr Hofmański

Judge and President, ICC

After graduation from Nicolaus Copernicus University in Toruń, Poland, in 1978, Judge Hofmański, started his academic career as an assistant in the Chair of the Criminal Procedure Law at this university. After completing his PhD studies in Toruń (1981), he was offered the position of adjunct to the Chair of Criminal Procedure Law at the University of Silesia in Katowice. He completed his second scientific degree (*habilitation*) in 1989 and was appointed professor at the Chair of Criminal Law of the University of Białystok. Since 2000, he has been professor of Jagiellonian University in Krakow, where he runs the Chair of Criminal Procedure Law. He started his judicial career in 1994 as a judge of the Appellate Court in Białystok and then was appointed Judge of the Criminal Chamber of the Polish Supreme Court in 1996. He was involved in projects carried out by the Council of Europe as a member of its committee of experts, the Reflection Group on Developments in International Co-operation in Criminal Matters, from 2001 to 2002. He was appointed member of the Committee of Experts on Transnational Justice, which was established to continue the work of the Reflection Group and which realised its mandate from 2004 to 2006. He is an author of more than 300 books, commentaries, articles dealing with various aspects of criminal law, criminal procedure, international cooperation in criminal matters and human rights protection.



Panel I: ICC's Major Achievements

Chair:

William R. Pace

Former Director, Coalition for the International Criminal Court

William R. Pace served as the Convenor of the Coalition for the International Criminal Court from its founding in 1995 to 2019. He was also the Executive Director of the World Federalist Movement-Institute for Global Policy (WFM-IGP) and a co-founder and steering committee member of the International Coalition for the Responsibility to Protect. He has been engaged in international justice, rule of law, environmental law and human rights for nearly 40 years. He previously served as Secretary-General of the Hague Appeal for Peace, Director of the Center for the Development of International Law and Director of Section Relations of the Concerts for Human Rights Foundation at Amnesty International, among other positions. He is the President of the Board of the Center for United Nations Reform Education and an advisory board member of the One Earth Foundation, as well as a co-founder of the NGO Steering Committee for the UN Commission on Sustainable Development and the NGO Working Group on the United Nations Security Council. He is the recipient of the William J. Butler Human Rights Medal from the Urban Morgan Institute for Human Rights and has served as an Ashoka Foundation fellow. Mr Pace has authored numerous articles and reports on international justice, international affairs and UN issues, multilateral treaty processes and civil society participation in international decision-making.

Speakers:

Judge Sang-Hyun Song

Former Judge and President, ICC

Judge Sang-Hyun Song was the President of the ICC from March 2009 to March 2015. For more than 30 years, beginning in 1972, Judge Song taught as a professor of law at Seoul National University Law School. He has held visiting professorships at a number of law schools, including Harvard, New York University, Melbourne and Wellington. Judge Song started his legal career as a judge-advocate in the Korean army and later as a foreign attorney in a New York law firm. He has served as a member of the advisory committee to the Korean Supreme Court and the Ministry of Justice. Judge Song has vast experience in relevant areas of international law, principally international humanitarian law and human rights law. He is co-founder of the Legal Aid Centre for Women and of the Childhood Leukemia Foundation in Seoul and the President of UNICEF/KOREA. Judge Song is also the respected author of several publications on relevant legal issues and the recipient of the highest decoration of the Korean Government (MUNGUNGHWA, 2011).

Judge Chile Eboe-Osuji

Distinguished International Jurist, Ryerson University; former Judge and President, ICC

Judge Chile Eboe-Osuji is a Distinguished International Jurist at the Lincoln Alexander School of Law and a Special Advisor to the President's Office at Toronto Metropolitan University. He recently completed his term as President of the ICC. He concurrently served as a senior judge in the Appeals Division of the ICC from 2018 to 2021. Prior to joining the ICC, Dr Eboe-Osuji served as the Legal Advisor to the UN High Commissioner for Human Rights in Geneva. Earlier in his career he worked at the ICTR in various capacities, including prosecution counsel. Before joining international public service, he practiced law as a courtroom advocate in Canada and Nigeria. Dr Eboe-Osuji is a visiting professor at Stanford University Law School. He has also taught as adjunct professor at the Faculty of Law of the University of Ottawa.

Panel II: Complementarity: Universal Aspirations Versus Tangible Results

Chair:

Prof. Diane Orentlicher

Professor of International Law, American University's Washington College of Law

Professor Diane Orentlicher has been described by the Washington Diplomat as "one of the world's leading authorities on human rights law and war crimes tribunals." She has lectured and published widely on issues of transitional justice, international criminal law and other areas of public international law and has testified before the United States Senate and House on a range of issues relating to both domestic human rights laws and US foreign policy. Professor Orentlicher has served in various public positions, including as the Deputy for War Crimes Issues in the US Department of State from 2009 to 2011, UN Independent Expert on Combating Impunity (on appointment by the UN Secretary-General) and Special Advisor to the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (on secondment from the US Department of State). Professor Orentlicher's book *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia* (Oxford University Press, 2018) has been described as "the definitive account" of the ICTY. Her recent scholarship has explored the social and legal impact of other war crimes tribunals, such as the post-war International Military Tribunal for the Far East, the ECCC and the contemporary legacies of historic prosecutions, such as the trial of Adolf Eichmann in Jerusalem more than six decades ago.

Speakers:

Judge Silvia Fernández de Gurmendi

President, ICC ASP, former President, ICC

Judge Silvia Fernández de Gurmendi is the President of the Assembly of States Parties to the Rome Statute of the International Criminal Court, elected in December 2020. She was a Judge of the ICC from 2010 to 2018, serving as President during the last three years of her mandate. She is currently Special Representative of Argentina to the International Holocaust Remembrance Alliance (IHRA), Chair of the Global Action against Mass Atrocity Crimes (GAAMAC), and President of the Latin American Society of International Law. She played a leadership role in the creation and setting up of the ICC as President on the Working Group on Criminal Procedure and Vice-President of the Committee of the Whole at the Rome Conference. She was also instrumental in the negotiations of the complementary instruments of the Rome Statute as chair of the Working Group on Rules of Procedure and Evidence and the Working Group on Aggression. She has taught international law and international criminal law at the Universities of Buenos Aires and Palermo of Argentina. She has published extensively on international humanitarian law and international criminal law issues.

Tamara Taraciuk Broner

Deputy Director for the Americas, Human Rights Watch

Tamara Taraciuk Broner joined Human Rights Watch as a fellow in 2005. She covered Mexico and Venezuela and has worked in several countries in the region as a Senior Researcher, as Acting Director and currently as Deputy Director of Human Rights Watch's Americas Division. She previously was a junior scholar at the Latin American Program of the Woodrow Wilson International Center for Scholars, where she coordinated a project on citizen security in Latin America and worked at the Inter-American Commission on Human Rights of the Organization of American States. Ms Taraciuk was born in Venezuela and grew up in Argentina, where she studied law at Universidad Torcuato Di Tella. She has published articles in leading newspapers globally and holds a post-graduate diploma in human rights and transitional justice from the Universidad de Chile and a master's degree in law from Columbia Law School.

Prof. Dire Tladi

Professor of International Law, University of Pretoria

Professor Dire Tladi is Professor of International Law and NRF SARChI Chair in International Constitutional Law at the University of Pretoria. He is a member of the UN International Law Commission and its Special Rapporteur on Peremptory Norms (Jus Cogens). He is also a member of the Institut de Droit International. He was formerly a Principal State Law Adviser (International Law) for the South African Department of International Relations and Cooperation as well as the Legal Counsellor of the South African Mission to the UN in New York. Professor Tladi also served as a Special Adviser to the South African Minister. He has served as Counsel before the International Criminal Court.



Panel III: Goal Setting: How Deterrent is the ICC in Reality

Chair:

Judge Richard Goldstone
Former Judge, Constitutional Court of South Africa and former Chief Prosecutor of the ICTY and ICTR

Judge Richard J. Goldstone was a judge in South Africa for 23 years, the last nine as a Justice of the Constitutional Court. Since retiring from the bench, he has taught as a visiting professor in a number of United States and European law schools. He is the Honorary President of the Human Rights Institute of the International Bar Association. He recently chaired the Independent Expert Review Group established in December 2019 by the ICC ASP to review the ICC and the Rome Statute system. From August 1994 to September 1996, he was the Chief Prosecutor of the ICTY and ICTR. From August 1999 to December 2001, he was the chairperson of the International Independent Inquiry on Kosovo. He is the author of *For Humanity: Reflections of a War Crimes Investigator* (Yale University Press, 2001) and the co-author of *International Judicial Institutions: the Architecture of International Justice at Home and Abroad* (Routledge, 2015).

Speakers:

Judge Kuniko Ozaki
S.A. Professor of International Law, Chuo University; former Vice-President and Judge, ICC

Judge Kuniko Ozaki is Professor of International Law at Chuo University, Faculty of Law. She served as an ICC Judge from 2010 to 2019. She was a Second Vice-President between 2015 and 2018. During her tenure, she sat on various cases, including Bemba, Kenyatta (Presiding) and Ntaganda cases. Judge Ozaki graduated from Tokyo University in 1978 and obtained an MPhil in International Relations at Oxford University in 1982. Afterwards, she worked in several positions for the Japanese Foreign Ministry and Justice Ministry. From 2006 to 2009, she worked for the UN Office on Drugs and Crime as Director for Treaty Affairs. She has also worked as Professor of International Law at Tohoku University Graduate School of Law and at other universities. Judge Ozaki has written extensively on international criminal law, refugee law and law of human rights.

Mame Mandiaye Niang
Deputy Prosecutor, ICC

Mame Mandiaye Niang was elected Deputy Prosecutor of the International Criminal Court on 10 December 2021; he was sworn in on 7 March 2022. Mr Niang is a graduate of the École nationale d'Administration et de Magistrature in Dakar, Senegal. He has held senior positions in the Senegalese judicial system. He has been Prosecutor general of the Appeals Court of Saint Louis, in Senegal, Director of Criminal Affairs and Pardons at the Senegalese Ministry of Justice, "Auditeur" at the Senegalese Supreme Court, attached to the Prosecutor General, Trial Attorney at the Regional Tribunal of Dakar and Magistrate at the Regional Tribunal of Dakar. He has extensive international experience within the UN system, having served in various positions at the ICTR, including Legal Officer, Senior Legal Officer and Chief of Staff of the Registrar, Regional Representative of the UN Office on Drugs and Crime (UNODC) in Southern Africa, with jurisdiction over the countries of SADEC, and Judge at the Appeals Chamber of the ICTY and the ICTR. Mr Niang has published dozens of articles in law reviews in French and English and co-authored several books on international humanitarian law and criminal procedure. He was a visiting lecturer in many institutes and academic institutions including the Ecole nationale des Assistants sociaux et Educateurs spécialisés, the Dakar Centre de Formation judiciaire, the University of Rwanda, and the Institute of International Law attached to Makerere University in Uganda. Mr Niang is a member of the Union des Magistrats sénégalais and the Senegalese Section of the International Association of Criminal Law.

Prof. Beth A. Simmons
Andrea Mitchel Penn Integrates Knowledge Professor of Law, Political Science and Business Ethics, University of Pennsylvania in Philadelphia

Professor Beth A. Simmons is best known for her research demonstrating the influence that international law has on human rights outcomes around the world. She has also produced scholarship on how and whether the ICC can deter international crimes. Two of her books, *Who Adjusts? Domestic Sources of Foreign Economic Policy During the Interwar Years* (Cambridge University Press, 1995) and *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009) won the American Political Science Association's Woodrow Wilson Award for the best book published in the US on government, politics or international affairs. The latter was also recognised by the American Society for International Law, the International Social Science Council and the International Studies Association as the best book of the year in 2010. Professor Simmons has spent a year working at the International Monetary Fund, directed the Weatherhead Centre for International Affairs at Harvard, is a past president of the International Studies Association and has been elected to the National Academy of Sciences and the American Academy of Arts and Sciences.

Panel IV: Justice is Interconnected and Does Not End with a Sentencing: Reflecting on the Needs of Victims, Witnesses and the Accused Before the ICC

Chair:

Prof. Betty Kaari Murungi
Professor of Practice, SOAS University of London

Professor Betty Kaari Murungi is a lawyer with nearly 30 years broad experience in the practice of law at the national, regional and international levels as well as ten years experience in the management and governance of non-governmental and non-profit organisations. She was appointed Professor of Practice at SOAS University of London in 2020. Professor Murungi was educated at the University of Nairobi and the Kenya School of Law. In 2005, she spent a year as a visiting fellow at the Harvard Law School's Human Rights Program, researching local transitional justice mechanisms. She has been an integral player in emerging jurisprudence of international criminal law and international humanitarian law as pertains to gender crimes, experience in transitional justice processes, women's human rights, constitutionalism, governance and social justice philanthropy. She is a co-founder of the Urgent Action Fund-Africa. She served as Vice Chairperson and Commissioner to the Kenya Truth Justice and Reconciliation Commission and as the African representative on the Board of Directors of the TFV at the ICC from 2009 to 2013. Among other awards, Professor Murungi was honoured by the President of Kenya with the national award of Moran of the Burning Spear for her distinguished service to the country in the field of human rights. She is also a recipient of the International Peace Advocate Award by Cardozo Law School, New York.

Speakers:

Chief Charles Achaleke Taku
Lead Defence Counsel, ICC

Chief Charles A. Taku is a leading international law expert, counsellor and mentor before international courts, tribunals, international adjudicatory bodies, international organisations and states. From 2017 to 2019, he served as President of the ICC Bar Association. In this capacity, he addressed both the ICC ASP during the 20th anniversary of the Rome Statute in December 2018 and the solemn opening of the ICC on 18 July 2018. Since October 1999, he has been Lead Counsel at the ICTR, the Special Court for Sierra Leone (SCSL) and the ICC in many high-profile cases, including that of Dominic Ongwen, Morris Kallon and Samuel Kargbo. He has also served as counsel at the African Court on Human and Peoples' Rights (Lead Counsel, *Atemnkeng v The African Union*) and at the High Court and Court of Appeal of Paris, France. Chief Taku is a regular contributor to international conferences and has published extensively in the field of international criminal law.

Dr Phuong N. Pham
Assistant Professor, Harvard Humanitarian Initiative

Dr Phuong Pham is an assistant professor at the Harvard Medical School and Harvard T.H. Chan School of Public Health and Director of Education and of Evaluation and Implementation Science at the Harvard Humanitarian Initiative. She has over 20 years of experience in assessing the impact of mass atrocity crimes on the population and how transitional justice mechanisms such as criminal prosecutions impact social reconstruction and peacebuilding. She co-founded Peacebuildingdata.org (a web portal of peacebuilding, human rights and justice indicators), KoboToolbox (a suite of software for digital data collection and visualisation), Kobo, Inc (a non-profit technology organisation) as well as co-directed DataPop (a global coalition on Big Data and development).



Panel V: Whose Outreach and to Whom?

Chair:

Dr Sarah Finnin

International Criminal Lawyer
and Victims' Rights Expert

Dr Sarah Finnin is an Australian lawyer with wide-ranging experience in the criminal law field. She has worked as a domestic prosecutor in Australia and as an international war crimes prosecutor at the ICTY and the ICC. She has also worked for a number of international human rights organisations on issues concerning access to justice, reparations and victims' rights, including in the context of investigations and prosecutions of international crimes by domestic courts. Before entering practice, Dr Finnin completed her PhD in international and comparative international law at the Asia Pacific Centre for Military Law. Dr Finnin currently works as an independent legal consultant.

Speakers:

Sonia Robla

Chief of Public Information
and Outreach Section, ICC

Sonia Robla has served as the Chief of Public Information and Outreach Section of the ICC for nearly 19 years. She has a degree in law with post-graduate qualifications in international relations. Previously she worked as a journalist for leading Spanish media outlets El País, Cadena Ser and the press agency EFE. She also reported on political developments in Central and South America for Radio Netherlands.

Ibrahim Sorie Yillah

Vice Chairman of the Board
of Directors, ICC Trust Fund
for Victims

Ibrahim Sorie Yillah is one of five members of the Board of Directors from Sierra Leone, representing the African States. He has served on the Board since 2021. He is a Barrister and Solicitor of the High Court of Sierra Leone. Mr Yillah has practiced law locally and internationally, being admitted to the Sierra Leone Bar in 1998. As a Barrister in Sierra Leone, he has appeared before all courts of the country, namely the Magistrate's Court, the High Court, the Court of Appeal and the Supreme Court.

Judge Raul Pangalangan

Professor of Law,
University of the Philippines;
former Judge, ICC

Judge Raul Pangalangan was a Judge at the ICC at The Hague until 2021. He is currently Professor of Law at the University of the Philippines, where he was Law Dean from 1999 to 2005 and where he teaches international law and constitutional law. He has lectured at The Hague Academy of International Law, where he had earlier served as Director of Studies. He was an Asian Public Intellectual Fellow of the Nippon Foundation. He most recently served as Senior Fellow at the Kolleg-Forschungsgruppe (The International Rule of Law – Rise or Decline?), jointly organised by the Freie Universität Berlin, Universität Potsdam and Humboldt Universität zu Berlin. He is currently a member of the Permanent Court of Arbitration (The Hague) and a judge of the Asian Development Bank Administrative Tribunal (Manila). He is an associate member of the Institut de Droit International. He received his LLM (1986) and SJD (1990) from Harvard University and his Diploma from The Hague Academy of International Law (1987).

Panel VI: The ICC in the Next Five, Ten and 15 Years

Chair:

Prof. Claus Kreß

Director of the Institute of
International Peace and Security
Law, Universität zu Köln

Professor Claus Kreß is Professor of International Law and Criminal Law. He holds the Chair for German and International Criminal Law and he is the Director of the Institute of International Peace and Security Law at the Universität zu Köln. His prior practice was in the German Federal Ministry of Justice on matters of criminal law and international law. In addition to his scholarly work, comprising more than 200 publications on the law on the use of force, the law of armed conflicts and international criminal law, he has been a member of Germany's delegations in the negotiations regarding the ICC since 1998. In 2019, he was appointed Judge *ad hoc* at the International Court of Justice in the Case of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*). Since 2021, he serves as the Special Adviser to the Prosecutor of the ICC on the Crime of Aggression. He is a Life Member of Clare Hall College at the University of Cambridge, a member of the Academy of Sciences and Arts of Nordrhein-Westphalia and the recipient of the 2014 M.C. Bassiouni Justice Award. He holds honorary doctorates from the State University Tbilisi and the Universidad de Huanuco. In 2018, he was the Francis Lieber Scholar at West Point. He was a guest professor at Columbia Law School, Kyoto University, Melbourne Law School, Université Paris 1 Panthéon-Sorbonne and a Fernand Braudel Senior Fellow at the European University Institute in Fiesole.

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Professor Gaeta is a leading expert on international criminal law and international criminal courts and tribunals and has published widely on these issues. Her research interests focus on international criminal law, particularly with regard to topics more closely related to general issues of public international law and/or exposed to cross-fertilisation by international human rights law and international humanitarian law. She is currently leading a research project on Lethal Autonomous Weapons and War Crimes: Who is To Bear Criminal Responsibility? Previously, Professor Gaeta was Director of the Geneva Academy from 2007 to 2014, with Professor Andrew Clapham, where she directed the LLM in International Humanitarian Law and Human Rights, Adjunct Professor at the University L. Bocconi (Milan) from 2015 to 2018, Adjunct Professor at the Graduate Institute of International and Development Studies from 2010 to 2015 and Professor of International Criminal Law at the University of Geneva from 2007 to 2015. From 1998 to 2007, she was consecutively Assistant Professor, Associate Professor and Professor of International Law at the University of Florence.

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Closing Remarks

Klaus Rackwitz

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Klaus Rackwitz studied law at the Universität zu Köln and was appointed as a judge in 1990 and has presided over criminal and civil cases at courts of first instance and courts of appeal. He was one of the first judges in Germany to head a task force established to improve the use of computers in the judicial work of judges and prosecutors. Mr Rackwitz's experience in modern technology for courts led to his engagement in the Advance Team of the ICC in 2002. Subsequently, from January 2003 until September 2011, he served as the Senior Administrative Manager of the Office of the Prosecutor of the ICC. From 2011 to September 2016, he served as Administrative Director of Eurojust, the European Union Agency for Criminal Justice Cooperation. From March 2013 to March 2021, he was a member of the Supervisory Board of The Hague Institute for Innovation of Law.

Nuremberg Forum 2022

The International Criminal Court 2002–2022:

A Court in Practice

Background Paper

Introduction

The adoption of the Rome Statute in 1998 and its subsequent entry into force in 2002 were hailed as landmarks in international criminal justice. Twenty years on, the International Criminal Court (ICC or the Court) and the Rome Statute system continue to affect perceptions of and reactions to international crimes. The Court's judicial interventions are considered a potentially crucial element in breaking cycles of violence.¹ The Court's existence has also been characterised by significant challenges in all spheres of its work. The hurdles which plague it relate not just to the lack of State cooperation or the tendency of some actors to politicise its work but to the kind of management challenges many organisations face, in particular in creating productive workplace environments as a minimal baseline of functionality and putting an end to abuses therein and maintaining a complex institution with many moving parts, committing to its positive evolution in the face of what could be perceived as competition from other actors in the international justice ecosystem, but which in fact are complementary to its mandate. What that means in practice is more difficult to define.

On cooperation, the ICC is dependent on States, particularly when it comes to tracking down and apprehending wanted individuals.² Their failure to cooperate can impair the ICC's ability to function and can undermine their own commitment to the rule of law³ as well as the legitimacy of the Court. The effects of selective cooperation, amongst others, include the perception that the ICC is biased in the selection of cases, particularly against African defendants, who may likewise be perceived as less politically risky to target.⁴

Despite the ICC's potential universal reach, it is circumscribed by its "quasi-judicial independence" and the political considerations attendant to the exercise of its jurisdiction.⁵ There has been an inevitable tendency for many actors, including powerful States and permanent members of the Security Council, to view the Court as an instrument for their political purposes and interests and to act towards the Court with those interests foremost in mind.⁶ For example, the non-States Parties Russia and China rejected a UN Security Council resolution draft that would have referred the Syrian situation and some ICC personnel were subject to US sanctions by the Trump Administration in an effort to control the ICC's approach to the Afghanistan situation.⁷ Moreover, the Security Council's failure to follow up its referrals with substantial support has marred both the Council's and the

1 Judge S-H Song, 2nd President of the ICC, 'Past Achievements and Future Challenges of the ICC keynote speech for the 20th Anniversary of the Rome Statute', The Hague, 17 July 2018, 1.
2 Dr H-P Kaul, Second Vice-President of the ICC, 'The International Criminal Court – Current Challenges and Perspectives', Keynote speech, 8 August 2011, Salzburg Law School on International Criminal Law, 8; Courtney Hillebrecht, "Perennial Challenges and New Opportunities for the International Criminal Court."
3 Song, 2.
4 B. Kotecha, 'The International Criminal Court's Selectivity and Procedural Justice', *Journal of International Criminal Justice*, 18/1 (2020), 107–139.
5 F. Cowell, 'Inherent Imperialism: Understanding the Legal Roots of Anti-imperialist Criticism of the International Criminal Court', *Journal of International Criminal Justice*, 15/4 (2017), 667–687.
6 Kaul, 9–10.
7 M. Sterio, 'The International Criminal Court: Current Challenges and Prospect of Future Success', *Case Western Reserve Journal of International Law*, 52/1 (2020), 473–474.



Court's reputations.⁸ The Office of the Prosecutor's (OTP) freedom in decision-making is perceived as limited or influenced by the Security Council's power to trigger the Court's jurisdiction.⁹ Truthfully, almost every State referral to the ICC has been linked publicly to political interests, true or not. The perception of politicisation is difficult to avoid.

Adding to the hurdles are the legal complexities posed by many aspects of the Court's operation as well as the practical challenges it faces in conducting investigations in regions that are far from The Hague, where travel is challenging, the security situation may be unstable and where the Court needs to get up to speed on historical and political environments as quickly as possible.¹⁰ Victim participation brings its own legal and practical challenges.

Civil society groups still strongly advocate for the ICC to become involved in more situations. The ICC Pre-Trial Chamber III, on 14 November 2019, authorised the Prosecutor to launch an investigation into alleged crimes in the situation in Myanmar/Bangladesh. More recently, on 2 March 2022, an investigation into Ukraine was opened on the basis of referrals submitted by 43 States.

The hope for justice from the ICC remains significant in today's world. The International Nuremberg Principles Academy is delighted to organise the Nuremberg Forum 2022 titled: "The International Criminal Court 2002–2022: A Court in Practice". This conference will consider the ICC's achievements in its first two decades. The conference discussions comprising six panels will identify the ICC's strengths and weaknesses in its fight against impunity and will analyse its work, reflecting on its set-up and achievements in light of the Nuremberg Principles and the Nuremberg legacy. This paper provides an overview of central issues that will be discussed and sheds light on some existing research relating to these issues.

Panel I The ICC's Major Achievements

Panel I of the conference will reflect on the ICC's key challenges and major achievements as the first permanent criminal judicial body, its mandate to prosecute those most responsible for the commission of the core international crimes (war crimes, genocide, crimes against humanity and aggression) and its complementary nature.

As of July 2022, the ICC has 31 ongoing, completed and passive cases, involving 50 defendants from nine situation States, with ten convictions and four acquittals. The Court also has 17 ongoing investigations relating to some of the world's most violent conflicts, such as the Democratic Republic of the Congo, the Central African Republic, Georgia and Ukraine. The OTP has conducted preliminary examinations in ten situations, three of which are ongoing in Nigeria, Guinea and Venezuela.

In terms of its jurisdiction, the crime of aggression was successfully included in the Rome Statute, following the unanimous adoption of Resolution RC/Res. 6 in 2010 by States Parties during the Kampala Conference Review in 2010. Subsequently, the jurisdiction of the Court was extended to the crime of aggression in at least some situations in 2017.

Regarding the procedural law, each of the ICC's trigger mechanisms have been used. Concerning the substantive law, the Court has decided cases that have broken new ground on many important issues such as the use of child soldiers, destruction of

⁸ I. Macleod and S. Charania, 'Three challenges for the International Criminal Court', 16 November 2015.

⁹ Kotecha, 107–139.

¹⁰ Kaul, 9.

cultural heritage, sexual abuse and attacks on innocent civilians.¹¹ The ICC has developed innovative ways to address the needs of different categories of victims, such as the OTP's approach to victims' participation, to sexual and gender-based violence, to the human factor in environmental crimes and to matters related to children, as demonstrated in its policy papers.¹²

The main questions for Panel I include: What are the achievements in the ICC set-up and have they helped it to function effectively in practice? What are the most pressing changes needed based on the Independent Expert Review (IER) recommendations and how have these been carried out thus far? Has the ICC's objective to prosecute those responsible for the most serious crimes been met with success? Which crimes have been prosecuted and which haven't? Regarding complementarity, what steps has the Court taken to advance its role, what obstacles have been encountered and what solutions explored? Where can increased coordination improve complementarity in practice and help narrow the impunity gap?

Panel II Complementarity: Universal Aspirations Versus Tangible Results

Panel II focuses on the ICC's contribution to sustainable peace and justice through the lens of complementarity. By enacting the Rome Statute, States did not merely create a Court, but also laid the groundwork for a broader network of international criminal justice practitioners, with duties divided up amongst States, international organisations and civil society bodies. The Court's practice thus far has unearthed capabilities and limitations tied to the varied and sometimes conflicting interests of different stakeholders.

The ICC is also poised to serve as a convenor of different justice stakeholders in conjunction with the ICC ASP.¹³ The ICC has contributed to NGO efforts to empower communities in their quest for accountability and to gain a stake in the system and has contributed to increased functioning of domestic criminal justice systems.¹⁴

There are still gaps in the ICC's architecture that prevent it from effectively coordinating with others as well as questions about how far that coordination can realistically extend. The perceived selectivity of the ICC's jurisdiction, including but not limited to perceptions of bias on the part of the UN Security Council referral mechanism, may have further undermined the ICC's legitimacy. So far, referrals have only been possible where no permanent UN Security Council member has a vital interest in the situation being referred.

The practice of complementarity is fraught with paradoxes, which limit effective prosecutions. Although complementarity "stresses the responsibility or even obligation of States to investigate and prosecute," not all States take that responsibility fully on board and some may even prefer to offload it on the ICC or disregard it altogether.¹⁵ For complementarity to function, the ICC should serve as a catalyst but cannot act alone.¹⁶

¹¹ UN News, 'ICC at 20: Five things you should know about the International Criminal Court', 27 June 2022; Song, 1.

¹² A. Coco and M.E. Cross, 'Epilogue — The ICC on the Yellow Brick Road', *Journal of International Criminal Justice*, 15/3 (2017), 593–596.

¹³ Stromseth, 4.

¹⁴ C. B. Christine and J. Goebertus, 'Complementarity in Action: The Role of Civil Society and the ICC in Rule of Law Strengthening in Kenya', *Yale Human Rights and Development Law Journal*, 14/1 (2011), 212 and 228.

¹⁵ S. M. H. Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge University Press, 2013), 13.

¹⁶ Le Fraper du Hellen, 512–514.



The key questions for Panel II are how to coordinate amongst the stakeholders in the work of the Court and in the practice of complementarity, what role the ICC can and does play and what is missing from current practice. More specifically, the panel questions are: What are the identified good practices from the ICC or from other institutions, including the ICTY, ICTR and the International Residual Mechanism for Criminal Tribunals (MICT)? What practices are lacking? How do civil society actors help? Is there a need to set out more tangible goals? What does the ideal balance look like?

**Panel III:
Goal Setting:
How Deterrent is
the ICC in Reality?**

Panel III will analyse the ICC's agenda in assessing whether deterrence is the ultimate goal. There is no consensus on whether it has a deterrent effect. Experts believe that impunity for the gravest crimes cannot be alleviated without convictions.¹⁷ Hence, when there is little likelihood of prosecution, it can undermine any deterrent effect.¹⁸

The ICC has arguably contributed to deterring and preventing crimes, as holding perpetrators accountable can affect the behaviour of political leaders and diminish future violations.¹⁹ Former ICC President Chile Oboe-Osuji has cited research supporting a discernible impact on State behaviour independent of the State's underlying commitment to the rule of law.²⁰ In Jo and Simmons' study, they found that the ICC's interventions mobilised domestic actors, sparked minor but noticeable reforms in Uganda, Kenya and Côte d'Ivoire, and reduced the rate of government-sponsored killings generally. They cited social deterrence as another form of impact through the shaping of social expectations.²¹ Other scholars support the social deterrence argument.²² Some experts believe that preliminary examinations can exert considerable pressure on States to carry out genuine national proceedings and others have asserted that the ICC Prosecutor's strategic public statements can be deterrent. In the Nuremberg Academy's volume on the subject, the scholars found across ten country situations that there was a measurable deterrent impact but that it was elastic and could be reversed through counter-pressures which would need to be addressed over a longer period of time.²⁴

A study on the effect of the ICC's involvement in Libya on civilian deaths indicated that while the Court's involvement did not stop violence against civilians, it did correlate with a statistically significant reduction in that violence. Evidence suggests that the possibility of being indicted by the ICC played a significant role in preventing widespread violence in the run-up to elections in some African countries.²⁵ In Sudan, the threat of ICC action might have encouraged some politicians to distance themselves from the indicted

17 D. Guilfoyle, 'Lacking Conviction: Is the International Criminal Court Broken? An Organisational Failure Analysis', *Melbourne Journal of International Law*, 20/2 (2019), 409.
18 N. Hodgson, 'Exploring the International Criminal Court's Deterrent Potential: A Case Study of Australian Politics', *Journal of International Criminal Justice*, 19/4, 2020, 7–12.
19 J. Stromseth, 'Is the ICC Making a Difference?', *Just Security*, (2017), 3–5.
20 C. Eboe-Osuji, 'The Cause of All Humanity: Why the United States Should Support the International Criminal Court', *Journal of International Criminal Justice*, 19/3 (2021), 474–476.
21 H. Jo and B. A. Simmons, 'Can the International Criminal Court Deter Atrocity?', *International Organization*, 70/3 (2016), 37.
22 T. L. Chapman and S. Chaudoin, 'Public Reactions to International Legal Institutions: The International Criminal Court in a Developing Democracy', *The Journal of Politics*, 82/4 (2020), 7.
23 Hodgson, 23–25.
24 International Nuremberg Principles Academy, *Two Steps Forward, One Step Back: The Deterrent Effect of International Criminal Tribunals*, eds. J. Schense and L. Carter (Brussels, Torkel Opsahl Academic EPublisher, 2017), 427–458.
25 Song, 1.

individuals.²⁶ In Côte d'Ivoire, the ICC's investigations are believed to have paved the way for greater political balance in the country.²⁷ In Kenya, preliminary investigations appear to have notably impacted domestic politics and international mediation efforts.²⁸ Moreover, ICC prosecutions arising from the 2007 to 2008 post-election violence in Kenya reduced the incidence of violence in elections there. Some experts have cited similar deterrent effects in Sri Lanka, Colombia, Uganda and Georgia.²⁹

Against this backdrop, the main questions for Panel III are: Is either deterrence or prevention the ultimate goal? If so, where does deterrence via criminal accountability rank against broader prevention via criminal law and other social, legal, political or cultural means? What has helped to advance the goal of deterrence over the past 20 years and what practices are worth exploring further? If it is not the ultimate goal, what is? Have the ICC's goals evolved? How is deterrence advancing international criminal law or vice versa? The main questions for the panel include: What are the established goals of the ICC and is either deterrence or prevention the ultimate goal? What is meant by deterrence or prevention? Which fosters peace more effectively and why? Do preliminary analyses deter or prevent crimes? What relevant data is available or missing?

**Panel IV:
Justice is Interconnected
and Does Not End with
a Sentencing: Reflecting
on the Needs of Victims,
Witnesses and the Accused
Before the ICC**

Panel IV will discuss current goals and advancement towards them, in particular as they relate to victims, witnesses and the accused. The ICC pursues accountability for international crimes, comprising retributive and restorative justice.³⁰ Victims-related goals include protection, provisions for participation in ICC proceedings and reparations.³¹ Accused-related goals are bound up in the obligations to ensure due process and to respect the principle of innocent until proven guilty. None of the goals are fully enunciated; there is much room for clarity. For example, in the Court's practice, the lack of explicit instructions in article 75 poses challenges to the enforcement of victims' rights.

Perception of these goals is another matter. In Uganda, Acholi civil society's objection to the ICC's intervention reflected the challenge the OTP faced in communicating with local stakeholders. The ICC conducted extensive outreach, including radio and television shows, but these efforts were hampered by high rates of illiteracy and the lack of adequate infrastructure in Uganda.³²

Upon analysis of cases at the reparations phase, some experts have observed that after sentencing, it is difficult for the Court to balance the needs of victims with other goals; frequently, victims' rights are compromised. Moreover, each of the Chambers have differing opinions on what reparations should include and how they should be carried out. The TFV definition and application of restitution are again different. This disagreement

26 C. Gegout, 'The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace', *Third World Quarterly*, 34/5 (2013), 809–810.
27 A. Coco and M. E. Cross, 'Epilogue — the ICC on the Yellow Brick Road', *Journal of International Criminal Justice*, 15/3 (2017), 1–4.
28 D. Bosco, 'The International Criminal Court and Crime Prevention: Byproduct or Conscious Goal?', *Michigan Journal of International Law*, 19/2 (2011), 178.
29 Bosco, 176.
30 K. A. Rodman, 'The 'Peace versus Justice' Debate at the International Criminal Court', *Leiden Journal of International Law*, 13/3 (2000), 4.
31 Rome Statute of the International Criminal Court, Articles 68 and 75.
32 C. Bernadoux, 'The ICC & the Tension between Peace and Justice', *International Affairs Forum*, 4.



can be clearly seen in the ICC judges' and the TFV's inability to agree on a reparations program, which resulted in tensions and delays in implementation in the *Lubanga* case, as well as between the parties in the *Katanga* and *Al Mahdi* cases.³³

Witnesses' rights are intertwined with those of victims, including their protection. And as far as due process is concerned, the raft of high-profile acquittals in the last ten years raises the question of whether the interests of the accused are fully taken into account in the drive to secure convictions at any cost.

Reflecting on these difficulties, Panel IV will discuss the following questions: When looking at the Rome Statute's Preamble, what goals are central now, particularly to protect the rights of witnesses and victims? How are these balanced against the rights of the defence? And how are these goals measured against the overarching goals of securing cooperation, ensuring effective prosecutions and contributing to prevention? The panel will be asked the following questions: Have the challenges to witnesses' and victims' protection and participation been addressed and what persists? Concerning reparation, what has been the impact on victims and their communities? What have been the challenges connected with convicted persons in the post-sentencing period and how have these challenges been addressed? What do acquittals mean for the fairness of the original trials and how can these be improved?

Panel V: Whose Outreach and to Whom?

Panel V will dissect the criticisms arising from the ICC's outreach strategy and whether the Court should invest more time and resources in it. The panel will discuss the goals to which the ICC's outreach programmes should be tied.

The importance of outreach cannot be overstated. Studies suggest that through extensive in-person outreach, the ICC could improve local perceptions of its legitimacy. Outreach could increase public understanding and develop a greater sense of community.³⁴ Outreach is considered a pillar of effective international prosecutions and may contribute to greater judicial accountability, reduce judicial arbitrariness through greater understanding of local context, educate on the rule of law, enable deterrence and promote peace and reconciliation. It is intended to ensure that accountability mechanisms better reflect the population's needs and expectations and foster their effective participation and ownership of the process.³⁵

In States with ongoing investigations, the ICC's outreach actively reaches out to the local population to educate them about victims' rights and the ICC's mandate and procedures. The Rome Statute specifically mentions the connection between the ICC and the TFV in the case of court-ordered reparations following guilty verdicts. The TFV's duty involves assisting victims outside of court procedures and it has already assisted tens of thousands of individual victims and the communities of which they are a part.³⁶

Although the ICC has a Public Information and Outreach Section, which operates in field offices in or close to the States where it investigates, the ICC has mainly relied on mass media communications instead of in-person outreach because of the cost and complexity

33 A. Balta, Manon Bax, 'Trial and Rianne Letschert, Trial and (Potential) Error: Conflicting Visions on Reparations Within the ICC System', *International Criminal Justice Review* 2019, 29/3 (222), 232.

34 Y. M. Dutton, 'Bridging the Legitimacy Divide: The International Criminal Court's Domestic Perception Challenge', *Columbia Journal of Transnational Law*, 12/2 (2017), 90.

35 P. Vinck and P. N. Pham, 'Outreach Evaluation: The International Criminal Court in the Central African Republic', *International Journal of Transitional Justice*, 4/3 (2010), 2.

36 Song, 1–2.

of the latter. A 2009 study on ICC outreach in the Central African Republic has shown that based on this strategy, "members of an urban, male, educated and rich elite who frequently access the media and are the focus of informational gatherings" have, on average, more knowledge and awareness of the Court. Groups with inadequate information access, who mostly rely on informal communication and have limited or no access to the media, have a lower likelihood of knowing about the ICC.³⁷ The ICC can increase its legitimacy among the general public only by locating itself in or close to the States where the crimes were committed and by engaging in more nuanced, proactive and two-way communications with the affected communities.³⁸

Examining the inherent difficulties in outreach, Panel V will answer the following questions: To what end goal shall the outreach be tied: accountability, the needs of communities and victims, seeking arrests of suspects and other forms of cooperation, capacity building in terms of understanding the ICC and international criminal law or possibly a wider focus including deterrence or prevention? What have been the ICC's improvements in its outreach strategy? What aspects of outreach is the Court currently focusing on and how does it address the challenges it faces? How can the ICC assist local communities? How can more targeted outreach be undertaken?

Panel VI: The ICC in the Next 5, 10 and 15 Years

Panel VI will reflect on current critiques and discuss practical solutions as well as reflect on the larger questions of the necessity of the ICC and its place in the international community. The ICC is still defining its place in the community as well as the expectations it holds for itself and which others hold for it. The ICC was never intended to be a panacea, but what is it?

The relationship between the Court and States could be governed through traditional carrots and sticks, although the sticks tend to be emphasised more heavily in the form of sanctions for States which do not follow through with their obligations under the Rome Statute, such as loss of voting rights, suspension or expulsion from the ICC ASP and UN Security Council sanctions.³⁹ How can the carrots or the advantages of the ICC be better promoted? Public and diplomatic support could be improved by mainstreaming within national administrations and international organisations but the more concrete the gains are perceived to be, the greater the likelihood of effective cooperation.⁴⁰

Regarding the ICC judiciary, it would be beneficial if the judges could demonstrate greater collegiality with each other and the institution. Could ICC judges work on forging consensus regarding substantive law, entailing better communication and coordination, increased sharing of expertise and ideas and awareness from all the judges about the importance of delivering consistent and uniform decisions?⁴¹ Should the ICC ASP take further steps to ensure selection of judges based on their criminal law expertise and practical or academic experience in public international law? Would renewable judges' terms reduce loss of institutional memory or create more stagnation?⁴²

37 Vinck and Pham, 'Outreach Evaluation: The International Criminal Court in the Central African Republic', *International Journal of Transitional Justice*, 4/3 (2010), 19–20.

38 Dutton, *Columbia Journal of Transnational Law*, 88.

39 G. Barnes, 'The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar al Bashir', *Fordham International Law Journal*, 34/6 (2011), 1616–1618.

40 Le Fraper du Hellen, 512–514.

41 M. Sterio, 'The International Criminal Court: Current Challenges and Prospect of Future Success', 52 *Case W. Res.*, *Case Western Reserve Journal of International Law*, 52/1 (2020), 475–478.

42 Guilfoyle, 'Lacking Conviction: Is the International Criminal Court Broken? An Organizational Failure Analysis', *Melbourne Journal of International Law*, 20/2 (2019), 439–440 and 449–451.

Should OTP case selection change? Should the OTP consider the prospects of a successful conviction, the possibility that the chosen case and prosecution will lead toward more prosecutions of higher-level defendants, geographic diversity to ensure that defendants from all parts of the world are investigated and prosecuted, as well as any political concerns related to the opening of a new case? How can case selection increase the perception of certainty of punishment which is essential for deterrence? How can case selection increase confidence in the ICC?

The ICC and the OTP in particular have undergone substantial structural changes since 2021. Will this increase confidence in the ICC? Should such changes be undertaken in the Chambers, such as re-examination of the role of the Pre-Trial Chambers, as many of the Pre-Trial Chamber functions could be conducted by a Trial Chamber? Are there changes that would require amendment of the Rome Statute? Vital changes may run into resistance; how can changes inspire honest dialogue about the obstacles standing in the way of improved performance? How can the ICC become an institution that is truly transparent and respectful of human rights, especially in light of the IER finding that there is a culture of fear at the Court?

Against the array of recommendations that cut across the different panel discussions, the questions for the Panel VI include: Where do you see the most significant obstacles to the Court achieving its primary goal: to prosecute the most responsible for the commission of core international crimes? Where should the Court focus its priorities, especially considering the Independent Expert Review's recommendations? Where is the Court exceeding its obligations? What practice would you highlight as most constructive in advancing the ICC's objectives? What is your vision for the ICC for 2042?

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