



INTERNATIONAL
NUREMBERG
PRINCIPLES
ACADEMY

Conference Report

Nuremberg Forum 2018

“20th Anniversary of the Rome Statute:
Law, Justice and Politics”



2018



Published by:
International Nuremberg Principles Academy
Egidienplatz 23
904030 Nuremberg
Germany
www.nurembergacademy.org

Copyright © 2020 International Nuremberg Principles Academy
ISBN: 978-3-9818913-2-4

This publication is available in open access as a pdf on the International Nuremberg Principles Academy website and is licensed under the Creative Commons Attribution-ShareAlike 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-sa/4.0/>. It can be copied and distributed as long as it is attributed to the International Nuremberg Principles Academy and used for noncommercial educational or public policy purposes. Photographs may not be used separately from the publication.

Cover design and text layout by Martin Küchle Kommunikationsdesign
Printed in Germany by Druckwerk UG

Acknowledgements

The International Nuremberg Principles Academy (Nuremberg Academy) is pleased to present this comprehensive conference report on the Nuremberg Forum 2018, titled “20th Anniversary of the Rome Statute: Law, Justice and Politics”, held in Courtroom 600 at the Nuremberg Palace of Justice, Nuremberg, Germany on 19 and 20 October 2018.

The Nuremberg Academy acknowledges all those who have made the Nuremberg Forum 2018 a success and this publication possible. The conference owes its success to the executive leadership of the Nuremberg Academy, the vision and commitment of Mr. Klaus Rackwitz, Director of the Nuremberg Academy and Dr. Viviane Dittrich, Deputy Director. For the Nuremberg Forum 2018, special thanks go to the last living prosecutor of the Nuremberg Trials, Benjamin “Ben” Ferencz, and to the keynote speakers: the German Federal Minister for Foreign Affairs, Heiko Maas, and the chief prosecutor of the International Criminal Court (ICC or the Court), Fatou Bensouda. The Nuremberg Academy thanks them for supporting its work and shedding light on the importance of this subject.

Sincere appreciation goes to all speakers and chairs at the conference who have taken on the role of addressing the issues through the critical lens of the past, present, and future of the ICC. The conference was convened by the Nuremberg Academy to provide a forum for constructive dialogue. The Nuremberg Forum 2018 proved worthwhile not only because it was one of the major conferences worldwide commemorating the 20th anniversary of the Rome Statute, but also for its advancing of central questions concerning the functioning of the ICC.

Organizing a conference of this magnitude would not have been possible without the Nuremberg Academy’s staff, their dedication, and tireless work in terms of preparation and organization of the Nuremberg Forum 2018. A big thank you to the entire team. Similarly, the continuous support of the Foundation Board and Advisory Council of the Nuremberg Academy (Foundation Board and Advisory Council, respectively) is gratefully acknowledged.

Profound gratitude goes to all participants of the Nuremberg Forum 2018 who demonstrated continuous engagement and shared their expertise and insights in advancing the discussions during the conference. The audience included additional leading practitioners and academics in the field of international criminal and human rights law, which was reflected in their on-point questions and knowledge on the subject.

Finally, sincere thanks to Jolana Makraiová for her initiative in creating this report, and to Dr. Salim Amin and Dr. Viviane Dittrich for their valuable input. Their commitment and professionalism in creating, editing, and finalizing this conference report is greatly appreciated.

Disclaimer

This report is a summary version of the full conference proceedings based on the video recordings available on the YouTube channel of the International Nuremberg Principles Academy. The key recommendations included in this report are not attributable to any individual conference participant nor necessarily reflect the views of the International Nuremberg Principles Academy.



List of Abbreviations

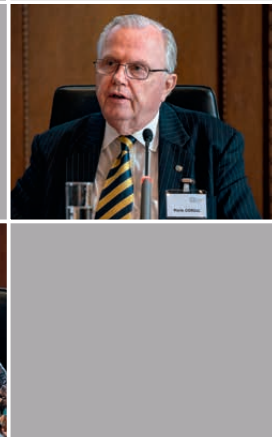
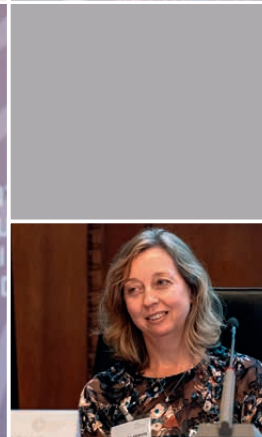
ASP	Assembly of States Parties to the Rome Statute
DRC	Democratic Republic of the Congo
EU	European Union
ICC	International Criminal Court
ICC-OTP	Office of the Prosecutor at the International Criminal Court
ICL	International criminal law
ICTY	The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (referred to in short as International Criminal Tribunal for the former Yugoslavia)
IIIM	International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (referred to in short as International, Impartial and Independent Mechanism on Syria)
KSC	Specialist Chambers within the Kosovo Specialist Chambers & Specialist Prosecutor's Office (referred to in short as Kosovo Specialist Chambers)
NGOs	Non-governmental organizations
Rome conference	United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998
UN Secretariat	Secretariat to the United Nations
UN	United Nations
UNSC	United Nations Security Council
USA	United States of America

Table of Contents

	03	Acknowledgements
	04	List of Abbreviations
	05	Table of Contents
	07	Introduction
	08	Opening Remarks
	09	Message from Benjamin Ferencz
	10	Keynote Addresses
Panel I	16	Making of the Rome Statute
Panel II	20	Case Selection
Panel III	24	Length of Proceedings
Panel IV	28	Victims' Participation and Reparations
Panel V	32	Exercise of Jurisdiction and Complementarity within the Rome Statute
Panel VI	36	State Engagement and Disengagement
Panel VII	40	Quo vadis, ICC? The ICC within the Next 20 Years
	43	Closing Remarks
Annex I	44	Program of the Nuremberg Forum 2018
Annex II	46	Biographies of Contributors
Annex III	58	Declaration on the 20th Anniversary of the Adoption of the ICC-Statute
	58	The International Nuremberg Principles Academy



INTERNATIONAL
NUREMBERG
PRINCIPLES
ACADEMY



Introduction

This conference report is based on the high-level discussions of the Nuremberg Forum 2018 and captures key arguments, central debates, and various perspectives, as well as a number of significant issues for further consideration and debate. The Nuremberg Forum 2018, the fourth annual conference of the Nuremberg Academy, commemorated the 20th anniversary of the Rome Statute. In light of the carefully chosen focus on “Law, Justice, and Politics”, the goal of the conference was to critically underline pertinent issues with regard to the functioning of the first permanent ICC through the lens of the past, present, and future.

The conference that took place in Rome, and resulted in the adoption of the Rome Statute in July 1998, was a groundbreaking moment in the development of international criminal law (ICL). It established the ICC as a permanent criminal court addressing core international crimes. The Rome Statute is the first treaty that binds states to coordinate efforts in enhancing the Nuremberg legacy, as well as the Nuremberg Principles, and moves toward a more combined effort of fighting impunity and deterring the commission of core international crimes.

Throughout the Nuremberg Forum 2018, it has become apparent that the fight against impunity and the vision of sustainable peace through justice is and remains a common ground for many stakeholders. There is a will to tackle the challenges currently being discussed and observed in ICL. Deepening these discussions and moving toward concrete and constructive recommendations is an important step forward.

Paying tribute to the 20th anniversary of the Rome Statute, the Nuremberg Forum 2018 critically evaluated the past 20 years while looking at the next 20 years in terms of practice and the ever-changing landscape. Bearing in mind that the ICC is still maturing, growing, and learning new lessons while operating in a political and institutional landscape that has been constantly changing, the conference focused on addressing carefully selected key issues. This included case selection, length of proceedings, victims’ participation and reparations, exercise of jurisdiction and complementarity as well as state engagement and disengagement. The first panel laid down the foundation for the conference by assessing the achievements, critiques, and important challenges. The last panel, on the other hand, looked at the ICC and its functioning within the next 20 years.

The Nuremberg Academy welcomed more than 35 leading experts as speakers (see Annex I and II), including experts who participated in the Rome conference and led the way toward shaping the current Rome Statute, and thus the setup of the ICC. The keynote addresses were delivered by the German Federal Minister for Foreign Affairs, Heiko Maas and the chief prosecutor of the ICC, Fatou Bensouda. A special message was sent by the last surviving prosecutor of the Nuremberg trials, Benjamin “Ben” Ferencz. He reminded us all of his “law not war” motto, and that in times like today, it is more important to never give up and continue seeking accountability for core international crimes. More than 150 participants attended the conference and advanced the discussions with their own expertise, views, and questions.

By bringing together distinguished academics and practitioners, with a wealth of relevant expertise, the Nuremberg Academy provided a forum for dialogue and critical reflection. It has also provided an invaluable opportunity to look toward the next 20 years and shed light on the current challenges for which the panels were designed to provide possible recommendations. This report highlights these recommendations within each panel. It captures the important discussions in a succinct format and lists three key considerations per panel for further debate and discussion. It is not aiming to be a verbatim report of the conference, but rather a comprehensive, yet concise account of the key points, discussions, and analyses reflecting the nature and scope of the conference. Thus, the report has a two-fold purpose. First, to reflect on the discussions and outcomes of the conference. Second, it aims to capture the developments of the past 20 years and agreeable practical steps that can be taken into consideration for the future. It is hoped that this report can be of interest to a wide range of readers, including experts from various fields, practitioners, and academics. This is consistent with the Nuremberg Academy’s mandate to encourage the promotion of sustainable peace through justice via scholarship, research, and capacity building.

The structure of the report mostly mirrors the chronology of the conference program (see Annex I). The Nuremberg Academy welcomes feedback from the participants, allowing the Academy to advance its focus on providing a forum for dialogue with a practical outlook on the current issues, and thus advancing discussions on ICL and the field itself.



Opening Remarks

Klaus Rackwitz, Director, International Nuremberg Principles Academy

Dr. Ulrich Maly, Lord Mayor, City of Nuremberg

Dr. Navi Pillay, President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, United Nations High Commission for Human Rights; former Judge, International Criminal Tribunal for Rwanda and International Criminal Court

Dr. Thomas Dickert, President, Higher Regional Court of Nuremberg

At the outset, participants of the Nuremberg Forum 2018 were welcomed by the Director of the Nuremberg Academy, the President of the Advisory Council, the Lord Mayor of the City of Nuremberg, and the President of the Higher Regional Court of Nuremberg.

Klaus Rackwitz, Director of the Nuremberg Academy, welcomed the participants to the conference and provided a glimpse of the current situation in the world, and the eminent need for the existence of the ICC as a permanent court that has jurisdiction over core international crimes. He emphasized that the Nuremberg Academy will continue the dialogue with the stakeholders of the ICC; reminding the participants that our common goal is indeed ending impunity for most heinous crimes.

Lord Mayor of the City of Nuremberg, Dr. Ulrich Maly, welcomed the participants by reminding them of the importance of Courtroom 600 and its legacy. He stressed the necessity of the ICC, despite some of the critics that are oftentimes addressed and directed toward this institution. Criticism is, in his view, important for discussions. However, he believed that one should not forget the achievements: the Rome Statute is, as he underlined, the best existing protection of human rights in the world.

Similarly, Dr. Navi Pillay, President of the Advisory Council, reflected on the need for improvement in the next 20 years, as international criminal justice mechanisms, especially the ICC, ensure accountability and individual responsibility for the international crimes codified in the Rome Statute. She explained the deep concerns of the Advisory Council regarding the attacks against the integrity of international criminal justice, and the widespread disregard for the rule of law and human rights. She added that states must bring an end to the current impunity by holding individuals accountable in domestic or international trials. The Advisory Council issued a declaration on the occasion of the 20th anniversary of the Rome Statute and expressed its support for positive developments of ICL (see Annex III).

Dr. Thomas Dickert, President of the Higher Regional Court of Nuremberg, welcomed the participants to the Nuremberg Forum 2018 and evoked the Nuremberg Trial as the very reason for the city of Nuremberg being considered the birthplace of modern ICL. The first principle of the Nuremberg Principles has established individual responsibility and the rule of law for commission of international crimes. This itself has opened new ways of international law based on individual accountability and culpability. Following the atrocities that were committed in the former Yugoslavia between 1989 and 1999, decisive steps were taken to fight impunity and revive the above concepts. The reason for celebration of the 20th anniversary of the Rome Statute is, as Dr. Dickert noted, the achievements of the ICC since 2003. These include, but are not limited to trials of 26 cases, 32 warrants of arrest, and opening of an investigation in the case of Rohingya minorities in Myanmar, which should be seen as important and courageous steps forward in the field of ICL. In spite of this, the ICC faces many challenges. Dr. Dickert pointed out that among the world's major powers, only France and the United Kingdom are members of the Rome Statute, and this lack of wider membership weakens the impact of the ICC. Therefore, it is important that countries like Germany enforce ICL through domestic laws. In particular, he recalled the work of the Office of the Federal Public Prosecutor General of Germany that is responsible for prosecuting international crimes within the framework of the German Code of Crimes against International Law. Dr. Dickert concluded his remarks by praising the Nuremberg Academy for acting as a signpost among actors for the promotion of ICL and for providing a roadmap for practitioners in this field.

Message from Benjamin Ferencz, Last Living Prosecutor of the Nuremberg Trials

Former prosecutor Benjamin Ferencz, the last surviving chief prosecutor of the Nuremberg trials, shared his view on the current situations via a video recording addressing the functions of the ICC and the 20th anniversary of the Rome Statute. He recalled that the message from the post Second World War time has been the hope for a peaceful world governed by law; and emphasized his arguments already made at that time, calling for a more humane and peaceful world, where new values must be found for settling disputes. According to him, the danger in resorting to war is much higher today considering technological abilities and advancements. The current system of international criminal justice should continue, not only due to the danger of nuclear weapons, but also cybercrime. He added that the international community needs to start thinking rationally about the problems worldwide and address them accordingly.

Paying tribute to the 20th anniversary of the Rome Statute, Mr. Ferencz noted that the ICC might have many problems, but the value of its establishment is far-reaching. It is “the prototype” and it will, as it is already, improve with time. He reminded the participants “that one day the ICC will follow the path of the bicycle: they used to say that the bicycle could not fly and now we have thousands of planes in the air”. Mr. Ferencz then recalled the former President of the United States of America (USA), Dwight D. Eisenhower’s saying that the world can no longer turn to war, the rule of law must be drawn upon for the sake of civilization. In conclusion, he recalled his life-long mottos: employ compassion and compromise as tools to reach agreement, “Law not War”, and “Never Give Up”.

Benjamin B. Ferencz

Benjamin B. Ferencz graduated from the Harvard Law School in 1943 and served during the Second World War as a combat soldier and war crimes investigator assigned to General Patton’s Third Army headquarters. In 1947, he served as Chief Prosecutor for the United States in the *Einsatzgruppen* case, where 22 high-ranking German officers were convicted for murdering of over a million innocent men, women, and children simply because they were Jews or others whom the Nazis considered undesirable. Mr. Ferencz’s opening statement was emblematic of his life’s work as an advocate for justice and the international rule of law: “Vengeance is not our goal, nor do we seek merely a just retribution. We ask this Court to affirm by international penal action man’s right to live in peace and dignity regardless of his race or creed. The case we present is a plea of humanity to law.” He has lectured and written extensively on the need for a permanent international criminal court and outlawing the illegal use of force. Currently in his 101st year, he remains active in his pursuit of a more just and humane world under the rule of law.¹

¹ For further information, please see Mr. Ferencz’s website at www.benferencz.org



Keynote Addresses

Heiko Maas, German Federal Minister for Foreign Affairs
Fatou Bensouda, Prosecutor, International Criminal Court

Heiko Maas, German Federal Minister for Foreign Affairs

On my way here today, I had an image in my mind that is probably familiar to almost all of us from our history books – a black-and-white photo from 1946 that shows this room, Courtroom 600 of the Nuremberg Palace of Justice.

Over there, in the dock, sat the leading figures of the Nazi regime, their lawyers in front of them. Opposite them sat the judges and prosecutors of the Allies. The press, spectators and police were also in attendance.

It was almost like a normal criminal trial. And yet the photo of this scene is indelibly etched into our minds. The more I thought about it, the clearer it seemed to me that the remarkable, historic thing about it was precisely this sense of normality.

It was here that men sat in court, men who were responsible for the most heinous crimes in history and had acted against all principles of human civilisation.

And yet their judges were not out to get revenge, but granted the defendants a fair trial, thus confronting them with the very same principles of human civilisation that they had so infamously violated.

This triumph of civilisation over inhumanity is what characterises the Nuremberg Trials to this day and makes this place, Courtroom 600, so significant.

It was here that the foundations were laid not only for the efforts to come to terms with the National Socialist era in Germany. Nuremberg of all places, the city of the National Socialists' party congresses, became the birthplace of a new understanding of law and justice:

No one is above the law – not even the most powerful!

Robert H. Jackson, the US Chief Prosecutor during the Nuremberg Trials, put it thus in his plea: "This trial represents mankind's desperate effort to apply the discipline of the law to statesmen who have used their powers of state to attack the foundations of the world's peace and to commit aggressions against the rights of their neighbours. This trial is part of the great effort to make the peace more secure."²

To put it another way, justice is a vital prerequisite for lasting peace. For me, this realisation contains one of the most important, if not the most important, lesson from the past century.

This lesson finds its expression in the Rome Statute, whose 20th anniversary we are celebrating today. It is embodied by the International Criminal Court, which, more so than almost any other international organisation, stands for the primacy of the rule of law over injustice.

When some people now declare this institution, of all institutions, to be dead in the water, then we must not allow that to go unchallenged. On the contrary, we should take it as an incentive to continue doing all we can to promote acceptance of the International Criminal Court and its jurisprudence around the globe.

Universality remains our goal – in the interests of the victims and with the support of all those who, like us, place their trust in the civilising power of the law.

The zeitgeist of our age appears to militate against this. We are all aware of the difficulties that the Court has to contend with and which you, Ms Bensouda, will doubtless address in a moment. These difficulties are not an isolated problem facing international criminal law or the International Criminal Court, but rather the symptoms of what is in part a conscious renunciation of the rules-based order, of a worldwide crisis of multilateralism.

² Robert H. Jackson, Statement Before the International Military Tribunal, Second Day, Wednesday, 11/21/1945, Part 04", in Trial of the Major War Criminals before the International Military Tribunal. Volume II. Proceedings: 11/14/1945-11/30/1945. Nuremberg: IMT, 1947. pp. 98-102..

It goes without saying that this crisis doesn't stop at the International Criminal Court, which, after all, stands for compliance with the elementary rules of humanity.

No matter how much this development worries us, I'm confident that we will be equal to it. This confidence is based on three things.

- Firstly, despite all opposition, we have succeeded in furthering international criminal law step by step. I admit that it took a long time until the International Criminal Court was granted jurisdiction over the crime of aggression this summer, over 70 years after Nuremberg.

But it was granted this jurisdiction.

The four elements that form the heart of international criminal law have thus been laid down. However, what is more important is that we have come somewhat closer to achieving the dream of men like Jackson – the dream of leaving war as a means of conducting politics behind us, once and for all.

- Secondly, I feel optimistic because I see that determination is growing among those who defend the International Criminal Court against undue criticism and political pressure and stand up against the erosion of its authority.

In recent weeks, I have held talks with many of my counterparts on what we can do to prevent the disintegration of the international order. This gave rise to the idea of an alliance of multilateralists – an alliance of countries that pool their strengths in order to underpin and continue to develop the rules-based order. There is great interest in this idea, particularly as regards international criminal jurisdiction.

Just a few weeks ago, six North and South American countries joined forces and sent a referral regarding the preliminary examination of the situation in Venezuela launched by you, Ms Bensouda.

We expressly welcome this, also because this example shows that people believe in the International Criminal Court, and not only here in Nuremberg, but also in many parts of the world.

- My third and last point concerns the crucial issue of accountability. We also feel pain and rage when the worst war crimes and crimes against humanity go unpunished. I'm thinking of the terrible poison gas attacks in Syria, for example. However, looking beyond this conflict, which receives extensive media coverage, terrible crimes are committed time and again in many other places.

But we're not simply standing by and letting this happen. Along with our partners, we have drawn up new ways to secure evidence. In Syria, for instance, we are ensuring that evidence is not irretrievably lost.

Our message to perpetrators and victims is that justice will prevail.

We will also be guided by this maxim as a non-permanent member of the United Nations Security Council. We want to ensure that perpetrators are consistently held to account.

In view of the fronts in the Security Council, this will be no easy task. However, the fight for justice requires courage and stamina, particularly from Germany, as this fight always means striving for human dignity.

Ladies and Gentlemen,

This battle could not be won without the creativity and courage of civil society, without people who often take great risks in the struggle for human rights, without partners like all of you here in this room. I am very grateful indeed to you for this partnership and for your support and stamina.

In particular, I would like to thank our host, the International Nuremberg Principles Academy, whose goal is expressed in its name – namely to implement the principles that guided Robert H. Jackson and the authors of the Rome Statute in the city where the history of international criminal law began.

Let us continue to further this history together, without ignoring the great challenges that the crisis of multilateralism poses for us, but instead with confidence and faith that the rule of law will ultimately prevail over injustice. That is the legacy of Nuremberg.

Thank you very much.



Fatou Bensouda, Prosecutor of the ICC

I'm delighted and honoured to speak to you on the occasion of the 2018 Nuremberg Forum marking the 20th anniversary of the adoption of the Rome Statute. Allow me at the outset to thank His Excellency, Minister Maas, for his principled remarks in support of the International Criminal Court ("ICC" or the "Court") and international criminal justice, and similarly, our gracious hosts, the International Nuremberg Principles Academy, in particular my friend and former colleague, Mr Klaus Rackwitz, for inviting me to this impressive gathering.

Physics teaches us that the forward thrust of an object and the faster it moves through time and space, the greater the resistance it encounters.

Whereas the adoption of the Rome Statute, with the establishment of the ICC, was in and of itself a new tidal force that changed the status quo of the world for the better, two decades after the Rome Conference, the system of international criminal justice created by the Statute continues to make significant waves towards building a culture of accountability for atrocity crimes.

The Rome Statute has set the course and the ICC is moving ahead, with dedication and determination.

The support and encouragement of its many proponents, and the plight of victims of atrocity crimes, are the driving force, which propel it forward.

Whilst not bereft of challenges, we must acknowledge that its work in practice is increasingly shaping norms, casting a deterrent shadow across the globe.

This Forum offers yet another opportunity to not only pay homage to the Rome Statute but reflect on our responsibilities, methods, and means at our disposal to ensure the enduring value of this important international legal instrument to humanity. I note in this regard, the rich programme and the topics selected for this Forum, from case selection to victims' participation and state engagement, and I very much look forward to benefit from the discussions to follow.

On my part, it is my pleasure to provide through this address a reflection on the ICC's practice since the adoption of the Rome Statute, with an emphasis on the work and strategies of my Office – the Office of the Prosecutor of the International Criminal Court – and while doing so, share with you a number of important challenges we face when conducting our core activities.

I could not think of a more fitting venue for this occasion, so poignantly reminding us why we are here today.

Indeed, reflecting on the events that led to the trials that took place in this very room, some 70 years ago, it was perhaps inevitable that the international criminal justice project, with the ICC as its nucleus, should be a child of war. It was conceived in the wake of centuries of human suffering with lawless violence and impunity wreaking havoc on the lives of countless victims.

As we know, the critical mass pushing the balance towards accountability for atrocity crimes began to gain real momentum after the Second World War, on the heels of the experience of the Military Tribunals of Nuremberg and Tokyo, and the International Nuremberg Principles.

It was thanks to the efforts of countless dedicated individuals, some present here today, from Government, civil society or other proponents of accountability for atrocity crimes, from all continents and different legal systems and cultures, that the ICC was made a reality at the Rome Conference, in 1998.

Since its operational start in 2003, the ICC Office of the Prosecutor has opened investigations in 11 situations, from the Democratic Republic of the Congo in 2004, to Burundi, most recently, in 2017. The

Court's judges are yet to decide on our request to open investigation in Afghanistan, which I submitted last year around this time.

Across our investigations and related prosecution of cases, we have achieved successes but also faced setbacks.

The past 15 years of operations have been informed by a multitude of factors. These have included the establishment of the Office through its prosecutorial strategies and investigative and prosecutorial work, which has been tested and guided by the judges in the courtroom, thus giving concrete shape to the Rome Statute provisions in practice.

Other defining factors have been the largescale criminality followed by mass victimisation, coupled with insecurity on the ground, as well as the changing political climate in situation countries but also in other countries and international or regional bodies supporting the Court.

Our resource capacity has also been far from ideal, and we have seen varying degrees of operational assistance if not flat-out denial of cooperation by some States.

Overall, the demands for the Court's intervention and expectations for what it ought to deliver continue to increase. The latter becomes evident by, merely, looking at the hundreds of communications my Office receives annually under article 15 of the Statute, from States, international organisations, NGOs, or others, bringing alleged criminality to our attention for assessment.

Despite these challenges and realities, in the past 15 years, the Office – as the engine of the Court – has in many ways set the wheels of the Rome Statute, the Court it created, and the international criminal justice system as a whole, in motion.

There are also no signs of slowing down those wheels in the future, as one can appreciate by looking at the Office's ongoing preliminary examinations in situations spread across the world from Nigeria, and Palestine to Ukraine, Iraq, the Philippines, Venezuela and, most recently, concerning the deportation of the Rohingya into Bangladesh.

Unfortunately, there are still too many situations in the world today where grave crimes appear to be committed outside the Court's jurisdictional reach: Yemen, Syria, or South Sudan are just a few examples of conflicts that remind us the importance of accountability for atrocity crimes and universality to ensure that all citizens may benefit from the protection offered by the Rome Statute.

Ladies and Gentlemen,

When I assumed office as Prosecutor in 2012, it was, in my assessment, a critical moment to engage in an honest and open look at the Office's track record, and to draw lessons from the early years of our operations. It is also my firm belief that notwithstanding external challenges, my Office and the ICC, more broadly, bear the first burden to build and strengthen the reputation and credibility of the ICC and the international criminal justice project through performance and the effective exercise of the important mandate we shoulder under the Rome Statute.

That year and those following, we introduced significant changes to our prosecutorial strategy, presented through the first Strategic Plan of my term, with specific investigative and prosecutorial standards and policies as factors deemed critical for increased success. These changes were also designed to respond to the challenges of our operational environment. We also took a number of important concrete steps to ensure the Office abides by the highest standards of professionalism as an investigating and prosecuting office with a critical mandate under the Rome Statute.

As a key shift in focus, we started performing in-depth, open-ended quality investigations while maintaining focus; at the same time working to be as trial-ready as possible from the earliest phases of proceedings, such as when seeking an arrest warrant and no later than the confirmation of charges proceedings.

Also, where appropriate, we started implementing a building-upwards strategy, by first investigating and prosecuting a limited number of mid-level perpetrators in order to ultimately have reasonable prospects of conviction for the most responsible.

Additionally, in our investigations, in order to ensure the adequate gathering of reliable evidence, we have been undertaking efforts to reduce the time gap between events on the ground and the Office's investigations, by creating or strengthening existing partnerships with first responders in order to preserve the 'golden hour' of evidence collection as much as practically possible.

Simultaneously, we have been creating gateways for crime reporting and we have been working with appropriate partners to preserve relevant information on the internet.

In all this, it has been essential to increase our ability to collect different forms of evidence through continuous enhancement of our scientific and technology-related capabilities.

While doing so, we critically look at and continuously review our investigative and prosecutorial standards. Likewise, process improvement projects, performance indicators, lessons learned, and development of new capabilities help to further shape the quality and consistency of the Office's output.



While it is difficult to predict outcomes in the courtroom, we treat each investigation and case with the utmost integrity, meticulousness and dedication they deserve.

It is thanks to some of these strategic approaches, that we are slowly starting to see results in practice. Of course, I hasten to add that we still face significant challenges, even major disappointments at times, but the trend, I am convinced, is a positive one.

We certainly aim to set the bar higher and prepare for any obstacle as we head towards new challenges, with ever intensifying activities, whether in number, complexity or geographical scope.

While noting that in the past years the percentage of charges confirmed and the rate of convictions has already increased, ultimately it is not the quantity but the quality of investigations and prosecutions that we are constantly focusing on.

Ladies and Gentlemen,

I would like to stress here that as my Office undertakes its difficult but necessary work, it must be allowed a safe space to focus on its duties, free from unwarranted resistance and attempts at politicizing its legal work.

Attacks on the Court to undermine its important work or in the service of Machiavellian schemes to shield the culpable, must continue to be met with the determined and unequivocal voices of support from principled States Parties and civil society, who stand by international criminal justice without reserve or distinction.

While the notions and benefits of a multilateral rules-based order are increasingly devalued, we must be vigilant to ensure the achievements and progress of the past are not lost to these concerning trends.

In this regard, I must say I was heartened by the very timely and vocal support from States Parties and the civil society during my most recent mission to the United Nations General Assembly, with positive references to the ICC “as the centrepiece of the international criminal justice system” and a “fundamental part of a rules-based order.”

Some 20 states stood up in partnership with the Court and announced their support for the ICC, during the General Debate, while other declarations were jointly signed by countless other States Parties, including by the host-state of this Forum, Germany, which I salute.

Such vocal support is indeed crucial in times such as these, but equally important is tangible cooperation, especially when faced with pressure from actors who would like to see the Court fail in delivering its critical mandate.

This cooperation is key at the operational level, where my Office will continue its work, undeterred, and in conjunction with the myriad of other actors with whom we interact.

The Office, and the Court by extension, cannot effectively execute our mandate under the Rome Statute alone. Closing the impunity gap can only succeed through a network of partnerships, promoting high quality investigations and prosecutions at both the national and international levels in complementary fashion.

Eventually, the effectiveness of any such efforts will also depend on external factors, including the resources the Court is provided to face increasing demands, and on the level of cooperation it receives for its core activities, in particular regarding the arrest and surrender of suspects.

Investment in accountability for atrocity crimes and its deterrent dividends costs only a fraction of the vast expenditures and economic loss in times of war and conflict.

There is also a great need for proactive efforts to ensure the arrest and surrender of the individuals for whom the ICC Chambers have issued warrants.

The continued presence and influence of the 15 suspects at large in the situations we investigate contributes to protracted tensions and violence.

It is important for States Parties to be more aware of the inefficiency unimplemented arrest warrants present to the whole Rome Statute system, and take remedial responses by devising action, whether in the form of tracking and intelligence gathering, operational assistance, such as the provision of transport for suspects, or providing the diplomatic and political support to effect arrests and surrender.

The Office itself, in collaboration with the Court's Registry where appropriate, has been enhancing its efforts in this regard from tracking to coordination and cooperation to increase prospects for arrests. These efforts must be matched by States Parties. This could include the provision of extra resources for investigative and analytical purposes geared to effecting arrests.

In sum, the fact is that we rely by necessity and by the design of the Rome Statute system on the cooperation and assistance of States in a myriad of areas, from identifying the whereabouts of persons of interest to the protection of victims and witnesses.

Tangible and swift cooperation would allow our investigations and cases to proceed more efficiently. We hope to count on this crucial support, and are committed to continuing to do our part.

Ladies and Gentlemen,

I'll conclude by observing that as we commemorate the 20th anniversary of the Rome Statute in this historically significant courtroom in the life of international criminal justice, lest we forget that the creation of the ICC, and its embodiments of the principle of the rule of law for atrocity crimes, was not merely an accident of history but an absolute necessity, based on the costly human experience of centuries of suffering from unchecked atrocities.

As custodians of the Rome Statute and its values, States Parties must, first and foremost, champion the goals of the Rome Statute, including its implementation in practice.

This is the only way to ensure that the seeds of international criminal justice that were planted in this very courtroom will bear fruit as we work together to advance a more rules-based global order where atrocities as merely politics by other means are no longer tolerated as an accepted norm.

The cause of international criminal justice is an awakening in our collective consciousness and it is a reality; there must be no going back in this forward march of humanity.

I thank you for your attention and wish you fruitful deliberations.

Panel I

Making of the Rome Statute

The first panel was dedicated to the journey leading up to and during the Rome conference, culminating in the adoption of the Rome Statute. The year 1998 was a momentous year for international criminal justice. In Rome, participants at the conference discussed many substantive and procedural issues raised during the preparatory stages, eventually leading up to adjusting the draft and adopting the Rome Statute. Coming from different backgrounds, with diverse interests and expertise, the participants discussed divergent approaches, resolving major legal issues and agreeing on articles that would shape the first permanent international criminal court. In Panel I, prominent participants provided their reflections on the context, goals, and aspirations from 20 years ago, as well as the changes and realizations that have occurred ever since. The path for the creation of the legal framework of the first permanent international criminal court was not an easy undertaking. The negotiations achieved a lot in terms of setting up a structure with universal ambition. However, during the past 20 years, changes in, and different understandings of, the functioning system of ICL have become manifest. Some issues are currently being re-evaluated and appearing to be put back on the negotiation table. One good example is the state obligation or obligations vis-à-vis the immunity for Heads of States (as reflected in Nuremberg Principle III and Article 27 of the Rome Statute) and the impact that these obligations have in real practice of ICL or within the international legal order.

Panel I addressed key changes since 1998 by critically, and in a forward-looking manner, assessing expectations, aspirations, and achievements in the making of the Rome Statute. The panel covered the broader picture of the ICC, as the first permanent court and institution, which aims to achieve justice in order to ensure sustainable peace worldwide and how it may have diverted from the path it was expected to take in 1998. In particular, this panel advanced the discussions on where the ICC is, and should be, heading in order to achieve the aspirations as shared and envisaged at the Rome conference.

Chair:

Professor William A. Schabas, Professor of International Law, Middlesex University London

Speakers:

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

Judge Philippe Kirsch, OC, QC, former Chairman, Committee of the Whole of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court; former Judge and first President, International Criminal Court

William R. Pace, Executive Director, World Federalist Movement – Institute for Global Policy; Convenor, Coalition for the International Criminal Court

The key questions for Panel I included, *inter alia*, the following: What are the important lessons learned from the Rome conference, and what are the defining issues, benefits, and achievements? What elements are missing that could be advanced in light of the goals and ideas that spearheaded the movement toward adopting the Rome Statute?

Discussion

Ambassador Hans Corell, former Under-Secretary-General for Legal Affairs and Legal Counsel at the United Nations (UN), began the discussion by evaluating the contributions that he thought advanced the development of the Rome Statute. As the Representative of the Secretary-General of the UN at the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998 (Rome conference), he was responsible for the Secretariat of the conference together with Mr. Roy S. Lee, who was the Executive Secretary of the conference, and Ms. Mahnoush H. Arsanjani, who was the Secretary of the Committee of the Whole. Ambassador Corell's main concern back then was that the Secretariat itself should not be an element that could cause the Rome conference to fail. He had prepared himself carefully with his team before the conference and he also had an excellent cooperation with Italy, the host country, which was of great assistance to the success of the conference. Furthermore, Ambassador Corell was fully aware of the necessity for an international criminal court. During his ten years on the bench as a judge in his country Sweden, he had been rather skeptical about international criminal courts. But he completely changed his mind when he became a war crimes rapporteur in the former Yugoslavia in 1992–1993, which showed him the necessity to create an independent ICC.

It was therefore necessary to create an independent ICC, a judicial institution as part of a system of international legal order. He is convinced that the world could not be administered without a proper legal system, which is a necessity for a human and peaceful world. In a state under the rule of law, the political organs must also be bound by the law. Ambassador Corell stressed the unique moment and the extraordinary movements that led to the adoption of the Rome Statute; indeed, if failure had been the outcome, it would have taken years to even attempt such or another treaty negotiation. He noted that it was obvious that the stakes were high. Setting up a court that would take on the challenges and set the groundwork for this system was important. Moreover, the independence and exact role that the Prosecutor would play was important and intensely debated during the conference. The role of victims was also an issue of discussion and so was the effectiveness of the court and the complementarity principle. Looking to the future, Ambassador Corell added that he was very critical with respect to list B candidates for judges. In his view only persons with courtroom experience should be elected judges of the ICC. It is also important not to elect judges who will pass 70 years – a usual retirement age at the national level – during their tenure on the ICC. Furthermore, judgements have to be delivered expeditiously. Referring to Article 13(b) in the Rome Statute, he emphasized that the members of the UN Security Council must apply the same standard when they refer situations to the ICC Prosecutor.



However, for Ambassador Corell the effectiveness of the Secretariat of the conference was of utmost importance at the time. He mentioned that he kept Secretary-General Kofi Annan fully informed; his chief was very interested in the conference and occasionally intervened by making high-level contacts in certain capitals. Ambassador Corell also mentioned that during the conference 700 documents had to be translated into the six UN languages. This was done with the assistance from colleagues in Geneva and New York in such a manner that translations of documents submitted in an afternoon could be distributed the delegations the next morning. The important lesson for Ambassador Corell is that a conference of this kind needs an efficient secretariat to succeed.

Judge Philippe Kirsch, later the first President of the ICC, noted that possibly not any two participants experienced the Rome conference in the same way due to different institutional perspectives and vantage points. There was the UN Secretariat, as well as various non-governmental organizations (NGOs) next to diplomats from all over the world. The conference itself was enormous and highly decentralized. He was very cognizant of the fact that if the Rome conference did not work, a second session would be a disaster, if it could take place at all. He took away three main issues from the Rome conference, which are related to: jurisdiction, functioning of the Court, and external support.

The most controversial issue at the conference, in his view, was that of jurisdiction. There were three main points of disagreement: the role and independence of the Prosecutor; the role of the United Nations Security Council (UNSC); and the conditions for the exercise of the Court's jurisdiction. There was for example a strong call for universal jurisdiction. It was not taken up because the final package represented an attempt to achieve an acceptable balance among all positions in order to make the court viable, while universal jurisdiction was unacceptable for a number of states. There were still matters of regret. Substantively, one of them was the lack of reference to chemical weapons. The reason was that a prohibition of chemical weapons was unacceptable to a number of states if nuclear weapons were not also prohibited. Those states saw chemical weapons as the "nuclear weapons of the poor". A compromise had to be reached.

The second issue was the functioning of the Court. Judge Kirsch felt the system was unduly complex and lacked flexibility. This was because states had little confidence in the future ICC. It was the first court that had a prospective jurisdiction rather than jurisdiction over past events. This entailed a lack of predictability which states felt they needed to limit. The third issue was that the ICC, as a result of its establishment by treaty, does not have full institutional support by all states such as was the case of international tribunals established by the UN Security Council. This is important to understand, because the treaty is based on cooperation. In practice this cooperation can be very uneven, even if obligatory for state parties in principle, he noted.

Judge Kirsch stated that new elements were introduced in the ICC system compared to other international tribunals, not only victims' participation in proceedings, but also the creation of the Pre-Trial Chamber and its role in selecting situations and cases, which had to be developed. Regarding the crime of aggression, Judge Kirsch pointed out that there was no agreement in Rome on its definition or the conditions for the exercise of the Court's jurisdiction over that crime. The issue therefore had to be postponed and was only resolved at the review conference in Kampala in 2010.

As for the Coalition for the International Criminal Court (CICC), its Executive Director, Mr. William R. Pace stated that despite the fact that the first draft of the Rome Statute was very weak, it set up the framework for discussions. The role of NGOs during the preparation for the Rome conference, as well as during the negotiations, was essential. In the end, at least 60 governments participated in the conference. This was an unprecedented participation and significant to the development of ICL, which is also acknowledged by the UN Secretary General. What is more remarkable is that this cooperation is ongoing even today. The Rome conference and adoption of the Rome Statute was a historic moment and it would not be repeated today. The unique developments from 1989 to 2003 stand for what might be called the golden age of ICL. If Rome were to be repeated today, many discussions would take different directions, and issues such as no death penalty, no immunity, independent prosecutor, victims' rights and reparations would be

assessed very differently. Mr. Pace noted the need to acknowledge that the world is in a time of pushback. His regrets from the Rome conference are the following: some crimes are missing within the jurisdiction of the ICC that could have been inserted in the Rome Statute, including drug trafficking; regional liaison offices should have been established from the beginning; and there is no structural reinforcement for the Assembly of States Parties of the ICC (ASP). He believes that there should not have been any importation of the UN system into the ASP and the Court's structure; the ASP should have had a more robust secretary; and the built-in review process, which is missing within both the ICC and the ASP.

Q&A session

During the question and answer session, Ambassador Christian Wenaweser from the Permanent Mission of Liechtenstein to the UN raised the matter of cooperation, as well as the challenge attached to the amendment procedure of the Rome Statute. He addressed a pertinent issue, namely, that it is unclear what happens, when a state or an individual does not cooperate with the ICC. Similarly, the amendment procedures of the Rome Statute are problematic and avoid genuine changes to the statute. This already led to the view among some states that if the Rome Statute would be amended, it will lead to fragmentation between them. Moreover, Ambassador Wenaweser mentioned that the role of the ASP should be revisited, as the support for the ICC is not as strong as it was anticipated after the Rome conference.

Further comments were raised in relation to the role of the UNSC in supporting the Court, especially with regard to the issue of UNSC referrals, implementation of the Rome Statute in national jurisdiction, and power and competencies of the judges. In reference to the Libya situation, Dr. Fabricio Guariglia from the ICC-OTP noted that there are important lessons learned from this situation and there are verifications put in place to ensure that the legal requirements for complementarity are met.

In conclusion, Professor William A. Schabas summarized the importance and extraordinary undertaking of the Rome conference. He stated that it appears to be an ongoing challenge to know how the Court could be better. The ICC has been improving, the ICC-OTP is a creative organ, preliminary examinations have taken on greater proportions, and the crime of aggression has been activated. This is a lot of work that has gone to the operational functions of the ICC. There is potential and more doors to open; however, it all depends on the political climate, as well as the imagination of the judges. Throughout the discussion, it remained uncontested that there are difficulties connected to the amendment of the Rome Statute.

Three key points for further consideration and debate:

- Scrutinize and re-assess the role, functions, and responsibilities of the ASP;
 - improve and sustain the support for the ICC by states and civil societies, and build more robust institutional support for it; and
 - make the application of the Rome Statute more practical to tackle challenges of international criminal justice.
-



Panel II

Case Selection

Prosecutorial discretion in selection and prioritization of cases for investigation, and prosecution has received much attention with respect to the international and internationalized tribunals. Throughout the years, there has been criticism regarding the selection policy, directing the attention on particular cases while abandoning the focus on others. In 1998, the discussions circled around what powers to give to the ICC-OTP and how to limit its prerogatives of investigation and prosecution. The discussion also concerned the possible discretionary power *vis-à-vis* other venues through which a situation or conflict can be referred to, or potentially self-referred to the ICC. The Rome Statute was the result of a compromise and since its establishment, there have been varying practices as to how cases end up before the ICC. Some of these cases are indeed part of a referred situation where the ICC-OTP's powers differ slightly from the situations that it selects in accordance with its own discretionary power. Moreover, its own selection fell under scrutiny regarding clarity of the criteria that it applies in using its discretion. This critique was partly addressed in 2016, when the ICC-OTP published a policy paper on case selection and prioritization, which laid out the general principles and legal criteria that it applies in assessing each situation and cases within it.

Panel II looked at and analyzed legalistic steps that have been adopted at the ICC and their overall impact on the case selection. The panel begun by highlighting the relevance of domestic prosecution and selection of cases, the practice of other tribunals in the case selection and prioritization, and critically looked at the “interests of justice” notion in light of the current ICC-OTP policy paper.

Chair:

Ambassador Stephen J. Rapp, Distinguished Fellow, Simon-Skjoldt Center for the Prevention of Genocide, US Holocaust Memorial Museum; Chair, Commission for International Justice and Accountability

Speakers:

Dr. Serge Brammertz, Chief Prosecutor, United Nations International Residual Mechanism for Criminal Tribunals

Professor Margaret M. deGuzman, Professor of Law, Temple University

Richard Dicker, Director of International Justice Program, Human Rights Watch

Panel II addressed the following key questions: What are effective strategies for selecting the cases and individuals to prosecute? Are small cases appropriate for the ICC to consider or does it have to go after individuals who bear the greatest responsibility? In terms of the choice of situations, what policies does the ICC implement and how can the legitimacy of the ICC be best promoted? Where is the room for improvement regarding situations and case selection?

Discussion

Panel II started with a reflection on case selection practices at the ICC and the International Criminal Tribunal for the former Yugoslavia (ICTY). Dr. Serge Brammertz, Chief Prosecutor at the United Nations International Residual Mechanism for Criminal Tribunals, stressed that case selection is a key challenge facing all prosecutors. It is even more challenging at the international level, where the massive scale of crimes makes it impossible to investigate every incident or to charge every perpetrator. While the mandate of international prosecutors is to focus on those who bear the greatest responsibility, experience has shown that there are also reasons to include mid-level and notorious perpetrators in a prosecutorial strategy. For example, the investigation and trial of lower-level perpetrators can be used for gathering and testing evidence, which can lay the groundwork for higher-level prosecutions. This strategy was applied in the early days of the ICTY, where the prosecutor conducted a broad investigation and ultimately charged both lower-level perpetrators and higher-level perpetrators, such as Radovan Karadžić. For international prosecutors, it is also critical to select the best charges against a given accused, since it is usually impossible to charge every criminal incident. In the early days of the ICTY, the indictments were very long. Over time, the number of charges was reduced. Narrowing an indictment to the essential and representative charges can be a practical way to ensure efficiency, especially when addressing challenges regarding the health and age of the accused. The bottom line is that the charges must still reflect the nature and gravity of the crimes and the scope of their perpetration.

Another lesson concerns, in his view, timing. While it is always important that justice is delivered as promptly as possible, international prosecutors sometimes need to be patient in order to secure an arrest and a successful prosecution. In addition, the experience of the ICTY confirms that political support is crucial for the successful completion of a prosecutorial mandate. Likewise, the future success of the ICC will depend on the international community's support for its work.

Dr. Brammertz also noted that it is important for the international community to recognize that international criminal trials can never fully respond to complex atrocity crimes. Looking forward, it will be important to focus on integrating the response of national, regional, and international criminal justice mechanisms. Particular attention should be paid to the possibility of third country prosecutions, for example under universal jurisdiction. Regarding transparency, Dr. Brammertz stated that communication plays a much bigger role for prosecutors at the international level than at the national level.



Professor Margaret M. deGuzman, currently teaching law at Temple University, focused on selection of cases and situations at the ICC. Selection of cases, in her opinion, is a matter of identity for the ICC and more discussions about this issue are needed in terms of what are precisely the ICC's goals and purpose. She highlighted some critiques of the ICC policy on case selection. In her view, the ICC-OTP takes a very narrow and legalistic approach to Article 53 of the Rome Statute, including the "interests of justice" provision. She suggested that a better approach would be to develop a clearer understanding of the ICC's identity and goals, and incorporate that understanding into interpretations of the Rome Statute. For instance, the current factor-based approach to the gravity threshold for admissibility in Article 17 can be used to justify almost any result. Instead, she suggested that the gravity threshold should be interpreted in line with the basic goal of preventing crimes, and should therefore exclude very few cases.

Professor deGuzman stated that there are disagreements among critics, both academics and practitioners about whether the ICC should focus on developing global norms or more narrowly on achieving justice for particular victims. She pointed out the existing tensions in the varying views on the issue. Professor deGuzman suggested that the ICC-OTP could interpret the interests of justice provision to allow for greater prosecutorial discretion in situation selection in order to better effectuate the ICC's core purpose.

Regarding the question on how to best promote the legitimacy of the Court, Professor deGuzman noted that politics play a role in the decision making behind the scenes. Embracing this role and potentially engaging in this process fully and transparently is a way forward, in her view. As an example, she noted that if the Prosecutor feels that a UNSC referral is not being backed politically, it is important to be vocal that this is not in the interests of justice.

From the perspective of Human Rights Watch, Mr. Richard Dicker, the Director of its International Justice Program, looked at what could be improved with respect to case and situation selection practice. The ICC is currently functioning under more difficult international conditions than existed in early 1998, and obstacles may come with changes with regard to political aspiration, as well as rule based international order. He noted that the stakes are high, and this is the reason for rethinking the ideas and commitments, and draw on the past lessons learned from the ICC, in particular. The ICC-OTP has a huge burden on its shoulders and case selection is one issue that bears on the reception and legitimacy of the Court. In the past 15 years, Mr. Dicker opines, that there have been many missteps in case selection. The publication of the ICC-OTP policy on case selection in 2016 was an improvement, which indicates that lessons have been learned. The policy paper was a terrific advancement, but it lacked a sense of a more holistic vision as to what it is trying to accomplish. The concerns in that regard that he highlighted are the following: addressing and bringing cases where more than one party is involved or allegedly committed crimes (for example, the Democratic Republic of the Congo (DRC) cases); establishing individual criminal responsibility at a leadership level; and minimizing the timeline of the cases, especially with regard to different parties to the conflict (example of Côte d'Ivoire).

In addition, Mr. Dicker highlighted that the factors of representability of most serious crimes and the available evidence should determine case selection. In that framework, gravity is nonetheless a broad term, an essential element, and one does not need to define or consolidate new norms and criteria for case selection. It is also important to recognize that these are not easy issues that the ICC is supposed to address, especially concerning ongoing conflict situations, and when considering that the evidence as such is evolving. The ICC-OTP has strengthened its investigative techniques over the years. In terms of the future of the ICC, Mr. Dicker pointed out that the ICC-OTP needs to have a proactive vision that it is seeking to achieve in each and every country situation. Such vision should be shared with the public. It is not expected to produce a blueprint, rather be proactive and open in selecting cases.

Q&A session

During the question and answer session, the applicable standards for case and situation selection raised during the Rome conference, as well as those incorporated in the Rome Statute, were discussed. Special attention was given to the type of discretion given to the Prosecutor, and how and where to open an investigation. Dr. Guariglia from the ICC-OTP stated that the vision of the ICC-OTP is underlined within the policy on case selection, and he believes that the broader vision in terms of the interests of justice goes beyond the mandate of the ICC.

Regarding transparency, Dr. Brammertz stated that communication plays a much bigger role for prosecutors at the international level than at the national level, including in terms of prevention of crimes. In terms of combining different solutions, it is important to adopt “a thinking outside the box” approach and more options should be explored including looking for local solutions. Prosecutors should speak about their problems publicly and openly.

In addressing Professor deGuzman’s comment on openness and transparency, when giving consideration to political factors, Mr. Dicker stated that he would advise strongly against acknowledging these factors that go into the prosecution’s consideration and in building up norms. He believes that this would open “Pandora’s box” and there would be more challenges on the horizon.

To sum up the panel on case selection, Ambassador Stephen J. Rapp concluded that the ICC is an important institution to the world and it requires the work toward building the support that it needs to enforce the norms of ICL. It is important to note that for a maximum impact on the fight against impunity, the Court needs support in terms of both diplomatic and political support, as well as financial backing.

Three key points for further consideration and debate:

- Should case selection and prioritization policy of the ICC-OTP consider the inclusion of interests of peace;
 - how could the lessons learned over the past years be incorporated more into the practice; and
 - could there be a more integrated approach adopted in terms of case selection and prioritization considering the wider goals of the prosecutorial and investigation strategy?
-



Panel III

Length of Proceedings

Panel III addressed the length of proceedings at international courts and tribunals, particularly the proceedings at the ICC. Participants analyzed past lessons learned in handling criticisms arising in terms of lengthy proceedings, as well as best practices in this regard. The experience of the Nuremberg and Tokyo trials indicated that proceedings of newly established international courts and tribunals could be possibly lengthier when considering all various elements, especially the translation to the language which the accused understands and follows and impose more budgetary restrictions. It has been however hard to estimate such costs and financial burden at that time, because the trials in Nuremberg and Tokyo were of a very different nature and established under very different and exceptional circumstances. They were also uniquely administered given the mandate, the support and standards set in place for the above tribunals. Complexities behind the international trial process were thus not fully recorded or analyzed. It became apparent during the practices of the international *ad hoc* tribunals, and as an example, that some accused were subject to pre-trial detention for 2–3 years awaiting trial itself. Facing these challenges, the judges started to establish rules of procedures in order to expedite proceedings. In later stages, the completion strategies of the *ad hoc* tribunals were developed that provided some further direction to prosecutors and all other parties involved in the judicial process. These were all tailored to ensure that rules in place are not to the detriment of rights of the accused, and to provide fair opportunity for the prosecutor and the defence to build the case.

Given the overall focus of the topic, the panel looked in detail at the challenges that the ICC has faced and the success it achieved. The panel also critically discussed the practice over the past 20 years, evaluating the critique of excessively lengthy and costly proceedings. It did so by focusing on the work of all organs of the Court, current and past proceedings, and the ambition to speed up proceedings while guaranteeing the principle of fair trial and the rights of the accused. The panel approached this issue by comparing the set-in practices and changes adopted through varied accountability mechanisms.

Chair:

Dr. Vladimir Tochilovsky, former Trial Attorney, International Criminal Tribunal for the former Yugoslavia

Speakers:

Judge Ekaterina Trendafilova, President, Kosovo Specialist Chambers

Dr. Fabricio Guariglia, Director of the Prosecution Division, International Criminal Court

Dr. Michelle Jarvis, Deputy Head, International, Impartial and Independent Mechanism on Syria

Xavier-Jean Keïta, Principal Counsel, Office of the Public Counsel for the Defence, International Criminal Court

Key questions in Panel III included, *inter alia*: How do international judicial mechanisms, e.g. the ICC, the Kosovo Specialist Chambers (KSC), and the International, Impartial and Independent Mechanism on Syria (IIIM), albeit being very different, source from the past lessons with respect to length of proceedings? How to maintain a balance between measures to expedite proceedings and the varying rights and responsibilities? How to ensure that the victim's rights are fully respected? How to ensure that the defence has ample opportunity to fully prepare the case? How to guarantee that the prosecution, on the other hand, has also ample time and resources to investigate and bring the charges and case? What are the main factors that impact the length of proceedings and how to address them?

Discussion

At the outset of Panel III, Judge Ekaterina Trendafilova, President of the KSC, shed light on the topic of length of proceedings, especially with regard to her contribution to the drafting of the rules of procedure for the KSC, as well as her experience from working at the ICC. In her view, expediting judicial proceedings should not compromise the concept of due process and fair trial. As expediting proceedings is the responsibility of judges, they should establish work plans and strict instructive deadlines depending on the circumstances of each case, e.g. six months for pre-trial proceeding and ninety days for the issuance of a trial judgment upon closure of the case. Even during the investigative stages, deadlines are necessary, unless evidence changes, where flexibility would be adopted relying on the wisdom and role of judges. Judge Trendafilova ensured that at the KSC, in case of not adhering to the deadlines, the President could be approached, who would in turn appoint a judge to render a final decision on the issue.

Dr. Guariglia, Director of the Prosecution Division within the ICC-OTP, elaborated on key aspects of length of proceedings. In his view, victims' participation does not contribute to the lengthiness of proceedings. Some trials simply last longer than others. The cooperation in certain areas between the prosecutor and defence has led, and could potentially lead, to proceedings that are more expeditious. That being said, there are a number of structural challenges attached to length of proceedings, e.g. the ICC operates in a different spectrum in comparison to the ICTY that has in fact dealt with a post-war scenario. Indeed, the ICC does not have economies of scale, it is dealing with different situations of conflict and facing new challenges, such as languages that do not even have a written form and the ICC-OTP has to submit written submissions. Every situation is a new learning process, including new languages, security issues, and financial limitations together with the legal constraints before the Court. Victims' protection is another challenge, which did not exist to such a degree at the ICTY. It means that the ICC operates in environments of ongoing armed conflict and investigates accused persons who have a stronghold of support, where victims are located. Some steps have been taken by the ICC to decrease the length of proceedings. Dr. Guariglia recommended that the ICC should proceed based on concentrated trials, where judges opt for a proactive direction. Moreover, the Court should ensure that there is enough time and resources for trial, including parallel trials, to take place.



Dr. Michelle Jarvis, Deputy Head of the IIIM, emphasized that measures to expedite trial proceedings and individual cases may not necessarily expedite the general justice process or transitional justice. It is thus the responsibility of every individual involved in this process to ensure that the trial is effectively moving forward. She highlighted that proving commission of a crime, particularly during an international armed conflict, exhausts numerous evidentiary steps considering the fact that a lot of attention is given to written evidence rather than oral testimonies. Therefore, conscious decisions should be made to timely manage and identify crucial evidence, which will in turn provide judges more time to make fair and proper decisions. At the ICTY, Dr. Jarvis noted that trial judges were told not to adjudicate modes of liability that would at times lead to the reopening of a trial and prolonging the proceedings. There were a number of measures taken by the ICTY that proved to be efficient, e.g. in the *Karadžić* case. Bearing in mind the ICC's evidentiary threshold and the necessity for evidence, the IIIM ensures collecting and preserving evidence to be used by any tribunals in the future through information management and translation systems. This is particularly important, in her view, in cases where contextualizing evidence is time and cost intensive.

Dr. Jarvis identified the following elements as effective in expediting proceedings: availability of stand-by judges who would stand in if a judge could not participate in a trial; concentrated trials; and active pre-trial judges to make sure that the trial is streamlined. In her view, the ICC-OTP should ensure that cases are focused and determine what issues to include in the case file.

From a point of view of the defence, Mr. Xavier-Jean Keïta, Principal Counsel of the Office of the Public Counsel for Defence at the ICC, noted that the Rome Statute was designed as a result of negotiations among different legal traditions. With respect to victims' participation, the civil law legal tradition was considered; however, the procedural aspects were derived from common law that granted the ICC-OTP the power to spontaneously share exculpatory evidence with the defence. This leaves limited time for the defence to prepare its own arguments, which adds to the length of proceedings. In addition, the issue of no timeline for the judges and the lack of security for the defence during the confirmation of charges are the challenges that increase length of the proceedings. Mr. Keïta added that the prosecution and the defence have a number of deadlines. However, there is no time limitation for the judges. In the case of *Lubanga*, for instance, the accused arrived at the ICC in 2004, his trial started in 2009, and judges issued their decision in 2014. Similarly, when charges are confirmed, the ICC-OTP, and even the judges, complement the proceedings with sub-charges that re-characterize the whole case, in his opinion, and the defence needs to adapt to the new circumstances, which is time-consuming.

Mr. Keïta's recommendations for expediting the proceedings include: first, invite the Pre-Trial Chamber to assess the charges; second, consider the 'no case to answer' procedure as it is a way to shorten the proceedings; and third, a systematic approach for the appeal of a decision is needed. Regarding the last point, Mr. Keïta noted that in his view it is not expediting the proceedings, if the same judges are asked to allow appeal of his/her decision. As a final point, he also noted that further financial resources should be available to parties.

Q&A session

During the question and answer session, Dr. Philipp Ambach from the Victims Participation and Reparations Section at the ICC raised the question whether addition of the entire victims' participation docket to the ICC proceedings rendered the proceedings at the ICC slower or faster, considering the entirety of the system of victims' participation. In this regard, Judge Trendafilova responded that in the *Lubanga* case the judges were of the opinion that potential victims of crimes in abstract falling under the jurisdiction of the ICC in a situation or case before the ICC are eligible to be considered. However, Judge Trendafilova also added that victims' participation should be meaningful, specific deadlines need to be set, and the whole proceedings should be streamlined. Dr. Guariglia agreed, mentioning that victims are an integral part of proceedings, and one shall not blame them for prolonging the proceedings, but should focus on proper case management.

In terms of the role and impact of technology on the proceedings, in response to a question raised by Professor Carsten Stahn from Leiden University, Dr. Jarvis acknowledged the importance of technological means during the proceedings. She pointed out that the use of technology is time-consuming and requires specific knowledge, especially with regard to understanding the format and volume of the data, and material acquired through technological means.

Dr. Vladimir Tochilovsky concluded the panel by reiterating that expediting trial proceedings is a difficult task. It requires careful decisions and maintenance of a balance between different factors that contribute to an effective criminal justice system.

Three key points for further consideration and debate:

- It is necessary for judges to play an active role in the judicial proceedings, bearing in mind that they are in charge of adhering to deadlines and managing the cases;
 - all parties and actors, in fact, within the proceeding need to be aware and accept their responsibility for expediting the proceedings; and
 - strategies balancing different factors and ensuring expeditious yet fair proceedings could be put in place before the start of the case, as part of the case management.
-



Panel IV

Victims' Participation and Reparations

Panel IV examined in more detail victims' participation and reparations. Direct inclusion of victims, as parties to the proceedings, and affording victims an active role was widely viewed as an achievement in 1998, offering a distinct and welcomed practice compared to other tribunals. Ever since, the mindset that the need to ensure justice is not only seen to be done, but also delivered to the affected victims, is appreciated. The discussions in 1998 were, however, more focused on the inclusion of victims' participation and the procedures to follow, rather than focusing precisely on what these rules will look like in practice, and how they will be implemented. The developed practices and rules implementing and managing the victims' participation over the years are at the core of the currently debated criticism. It is not per se the victims' participation that is oftentimes contested. In this context, Panel IV looked into the arising challenges and assessed the feasibility of maintaining the ongoing direction toward which victims' rights are being implemented and potentially expanded. The scope of their rights and their participation in the proceedings was discussed, especially in light of the concepts of effectiveness, meaningfulness, and the actual impact on the ground.

Panel IV further focused on the issue of reparations, as the Rome Statute includes provisions in this regard, and the Court has already interpreted these provisions. Reparations have been granted in the form of monumental value, but also monetary and material reparations were offered to victims of core international crimes. The ICC has laid down its standard procedure and guidance with respect to reparations, which in practice has been interpreted or understood to be interpreted differently by different chambers. Moreover, in 2004, the Trust Fund for Victims was created with a two-fold mandate: to implement the Court's orders regarding reparations; and to provide support to the victims and their families. The recent criticism concerns the broad scope of its mandate, and the lack of clarity regarding its role, and responsibilities with respect to reparations.

Chair:

Michaela Lissowsky, Political Scientist, International Criminal Law Research Unit, Friedrich-Alexander-Universität Erlangen-Nürnberg

Speakers:

Dr. Philipp Ambach, Chief of the Victims Participation and Reparations Section, International Criminal Court

Pieter Willem de Baan, Executive Director of the Secretariat of the Trust Fund for Victims, International Criminal Court

Amanda Ghahremani, Legal Director, Canadian Center for International Justice

Fiona McKay, Senior Managing Legal Officer, Open Society Justice Initiative

The key questions addressed in Panel IV included, *inter alia*: What is the current scope of victims' rights within the Rome Statute and how has the case law expanded this scope in practice? What are the major benefits and challenges with respect to victims' representation and reparation? Is the reparation proposal that has come into practice feasible in terms of sustainability, and is the Trust Fund for Victims becoming the funding body of the ICC? What are the experiences on the ground beyond the ICC, in terms of victims' participation, and reparation, and what is the role of civil society?

Discussion

As a starting point of Panel IV, Dr. Ambach, Chief of the Victims Participation and Reparations Section at the ICC, elucidated the rights and limitations of victims' participation and reparations at the ICC. The rights of the victims are well explained in the Rome Statute and there is further guidance in the Rules of Procedure and Evidence and the Regulations of the ICC on victims' participation and reparations. Similarly, through the Court's jurisprudence over the years, a certain procedural framework is also crystallizing regarding victims' procedural rights in court. Victims are represented by a legal counsel in the ICC proceedings, which further contributes to the inclusiveness of victims' participation as these legal professionals know best how to introduce the voices of victims most effectively in the legal confines. Legal representation of victims is usually carried out by common legal representatives of larger victims' groups as far as they pursue common interests. This may lead to one or more common legal representatives per case. In more recent proceedings, there are also between one and two victim groups. Judges at the ICC have considerable discretionary power over the issue of victims' participation, as per Article 68(3) of the Rome Statute. Ideally, in Dr. Ambach's view, this should be addressed in critical analysis of pre-existing jurisprudence and approaches by other Chambers in order to further optimize victims' participation. Dr. Ambach stated that the potential lack of resources is a constant challenge for victims' representation starting from victims' access to the ICC from the field, continued with their representation in court, and ending with reparations in case of a convictions. There is also a number of other, including structural obstacles for victims' participation as well as reparations, both quantitatively and qualitatively that need to be considered. A particular example that he provided was the selectivity of victims to be able to participate in a given case: there may be thousands of victims that relate to a country situation, but only those directly affected by the specific crime(s) charged by the ICC-OTP in a given case may actually partake in proceedings – potentially excluding many other victims in that same general context of victimization. Another prominent challenge that he raised was how to liaise with victims on the ground and communicate the contents of the activities of the ICC to the victims, especially when they do not yet have legal counsel (say during ongoing investigations where no cases have yet crystalized). Here, Dr. Ambach opined that it is key to ensure a constant flow of information and, importantly, to manage victims' expectations as to what the ICC is, what it does, and how its activities may or may not affect victims' lives.



Mr. Pieter Willem de Baan, Executive Director of the Secretariat of the Trust Fund for Victims at the ICC, shed light on the purpose of the ‘Assistance Program’ decided by the Board of Directors at the ICC Trust Fund for Victims in 2010. He asked for consideration of various dimensions of victims’ reparation. Legally speaking, for Mr. de Baan, the issue of reparation encompasses numerous challenges, namely, lack of clarity on the notions of liability and to that effect the questions: What is liability and who is liable? What does a reparative order imply? The moral challenges are linked to the psychological obstacles that need to be tackled in an effective manner. For example, many victims in the Central African Republic (CAR) suffer from diseases, have nutritional problems, or suffer from trauma. In this regard, the Trust Fund for Victims sets priorities for such victims so that they receive a reparative package. Mr. de Baan also added that with respect to reparation for victims, it is necessary that states consider a systematic approach. This would mean that states not only financially assist the Court, but provide political and moral support that would, in turn, lead to a legally sound and operatively viable system of reparation.

In addition to moral support, Ms. Amanda Ghahremani, Legal Director of the Canadian Center for International Justice, noted that victims’ participation is not only about the question of whether victims participate in the proceedings. It is a question of how to engage with victims, mindful of the significant role they play in the justice process, rather than to limit their participation as providers of information, which may further traumatize victims. In her view, the victims are central to the proceedings, especially when the main purpose of trials is to provide them with justice. Therefore, the time that victims’ participation requires should be taken into consideration. Ms. Ghahremani warned against using victims for political purposes and ignoring their needs. She stressed that there is a need for existence of parallel institutions, e.g. truth commissions that look beyond the legal dimension and address broader societal issues.

Ms. Fiona McKay, Senior Managing Legal Officer at the Open Society Justice Initiative, emphasized the important role that judges have in allowing victims to voice their concerns. However, in order for victims’ voices to be heard, added Ms. McKay, civil society plays, and should play, an important role. First, the Court has to rely on the contribution, and by extension trust, of civil society due to its direct engagement on a continuous basis with the local communities. Second, civil society, by such engagements, put its reputation as well as security on the line by reaching out to local societal actors. Third, considering the victims’ expectations *vis-à-vis* the ICC, civil society complements the outreach aspects and interacts with victims also on behalf of the ICC and its proceedings. Ms. McKay pointed that if the ICC engages in every matter of reparation, it may decrease its sustainability in its functions. The question of reparation largely falls within the scope of the Trust Fund for Victims and requires strong support of the Registrar of the ICC.

Q&A session

During the question and answer session, it was emphasized that there is a need for looking beyond simple participation of victims in the proceedings and to consider different societal issues and challenges that the victims face in order to address victims’ claims more fully.

Regarding the ICC, indeed, victims’ participation is directly impacting the legitimacy of the Court. Dr. Ambach noted that the scope of victims’ participation in its practical application is broader than what is legally envisaged in Article 68 of the Rome Statute, which speaks to the discretionary power to the judges in the courtroom; yet, victims’ access to the ICC starts with how it interacts, through its staff, with victims and other actors in the field. Getting it right also on that level is crucial for the Court’s legitimacy amongst the victim communities. This also goes for the early stages of judicial proceedings. It is on the Court to make these processes meaningful to victims. Often, victims have joined forces as collective groups in formulating their views and concerns before the judges, which facilitates the Court’s engagement with them.

With respect to collective and individual reparations, there is no legal definition of collective reparations in the Rome Statute, as Mr. de Baan explained, and one has to consider the established jurisprudence of the Court.

In sum, Ms. Michaela Lissowsky concluded that victims' participation is evolving and needs improvement, noting the success achieved in this context. She added that everyone is responsible for improving the current system of victims' participation and reparations.

Three key points for further consideration and debate:

- There is a need to further solidify the role of victims within the judicial proceedings, in a consistent manner, affording them meaningful participation;
 - clarification on the role, and scope, of the civil society in terms of victims' access to criminal justice should be provided, finding a combined and balanced way forward of working together on the issues of victims' participation (and wider goals of delivering justice); and
 - the reparation stage and pending questions connected with the reparation procedure could be proactively answered in order to streamline proceedings and manage an agreeable and suitable way forward.
-



Panel V

Exercise of Jurisdiction and Complementarity within the Rome Statute

Panel V focused on the issue of the exercise of jurisdiction in terms of complementarity and cooperation. The ICC has been established with the intention to function as a court of last resort. When adopting the Rome Statute in 1998, a majority of states saw Article 17 as a fundamental principle for signing and ratifying the Rome Statute, assuring that state sovereignty remains intact. In this context, discussions during Panel V looked at how the Court is exercising its jurisdiction, bearing in mind Article 17 and the development of the “unwilling and unable” principle. Currently, the ICC has 10 preliminary examinations, 11 situations under investigation, 26 cases, and 15 defendants at large. This amount of cases and situations might not have been predicted two decades ago. This workload has imposed a considerable burden on the Court of more than 800 staff members. In addition to these, many of the cases require substantial cooperation starting with requests for assistance, arresting the accused, or providing documentation and evidence in support of the case. Thus, there is an increased awareness, and critical discussion about the feasibility and effectiveness of the Court, to handle all the situations and cases, and the crucial (and more increasing) role of complementarity. Debates on the length of preliminary examinations, the open-ended nature of these examinations, the lack of clear exit strategies, and the precise role of national jurisdictions, or expected role therein, seem to further the debates on the principle of complementarity.

Panel V thus further zoomed into the issue of how, and to what extent, the Court serves as a means to achieve accountability for core international crimes, and/or universal application of the Rome Statute, especially in relation to the crimes that are being unquestionably accepted as universal. Many states are undertaking domestic prosecutions using different procedural tools, including personal, territorial, and universal jurisdiction, and are pursuing the fight against impunity at the national level.

Chair:

Professor Jens Meierhenrich, Associate Professor of International Relations, London School of Economics and Political Science

Speakers:

Phakiso Mochochoko, Director of the Jurisdiction, Complementarity and Cooperation Division, International Criminal Court

Dr. Brenda J. Hollis, Prosecutor, Residual Special Court for Sierra Leone

Almudena Bernabeu, Director, Guernica 37 International Justice Chambers

Christian Ritscher, Head of the War Crimes Unit, Office of the Federal Public Prosecutor General of Germany

The panel asked, *inter alia*, the following key questions: How has complementarity as reflected in Article 17 of the Rome Statute evolved, and been understood, or used, over the past 20 years? What does the ICC practice mean for states regarding their jurisdictions and more generally regarding their cooperation with the ICC? Is the Court more complementing the prosecution of core international crimes, in terms of capacities and coordination than in terms of actual prosecution, or rather deterring further commission of core international crimes?

Discussion

Mr. Phakiso Mochochoko, Director of the Jurisdiction, Complementarity and Cooperation Division at the ICC, stated that complementarity is clearly incorporated in Article 17 of the Rome Statute within the framework of “unwilling and unable”; however, there is no mention of the exact term “complementarity” in the above provision. The principle of complementarity has evolved in a way, which was not predicted in the Rome conference; and in the *Lubanga* case, for example, complementarity and cooperation had been admittedly recognized as a cornerstone of the ICC. Mr. Mochochoko noted that the main concern regarding cooperation and complementarity in the beginning was the refusal of states to cooperate with the ICC. It became clear that, as pronounced by the Rome Statute, States Parties have to cooperate with the ICC. He believes that it is the different priorities of states, and the fact that states do not properly understand what complementarity means, and how it functions that undermine the work of the ICC in practice. The notion of self-referral or positive complementarity, as some criticize it, is historically secondary to the responsibility of states, and their desire to retain sovereign rights in matters of national criminal jurisdiction. Mr. Mochochoko concluded that the principle of complementarity has a long way to further develop, become concrete, and to reach a mature level. The same applies to the concept of cooperation, e.g. cooperation is a mutual phenomenon and two-way system that is achieved through willingness of both the ICC as well as states; however, the *status quo* is shaped in a direction of chasing states for cooperation. Regarding diplomatic relations among states themselves, especially regarding Article 98 of the Rome Statute, the question was how to find a compromise and work out inter-states relations. During the Rome conference, it was not conceived that states might enter into any agreements among each other and refuse to cooperate with the ICC.

In light of strengthening cooperation with the ICC, Dr. Brenda J. Hollis, Prosecutor at the Residual Special Court for Sierra Leone, revived the discussions on the benefits of the ICC’s regional representation from previous panels by highlighting regional offices and means of concerted outreach efforts. This will, in particular, help states and communities to better understand the Court’s mandate. She recalled the fact that from 1994 to 2001 an effective outreach program did not exist in the framework of the ICTY. This has resulted, in her opinion, in dissatisfaction, as the tribunal could not have an effective dialogue and interact with people in the community on a continuing basis. However, in Sierra Leone, the outreach program of the Special Court for Sierra Leone is widely seen as good practice. Another idea, regarding a question on



local representation within the ICC, is to create a roster of experts from specific regions, especially from situation countries, which will supplement the ICC in its mission via short-term consultancies. Dr. Hollis also expects significant developments concerning complementarity to occur, emphasizing the current inconsistency in the jurisprudence resulting from ICC practice. In other words, the real issue is not legal characterization of the Rome Statute, e.g. Articles 17, 18, and 20(3), but the inconsistent interpretation of the provisions within the Rome Statute in a way that does not reconcile legal ambiguities and undermines the intent of the statute.

Ms. Almudena Bernabeu, Director of Guernica 37 International Justice Chambers, likewise pinpointed the lack of jurisprudential clarity and the role of national practitioners in pursuing international criminal justice at an extra-territorial level under the umbrella of the ICC. In Latin America, this has already reached another level. She observed that a trend is emerging toward collective responsibility of international criminal justice, which means local involvement is not only a matter of assisting the ICC, but also building trust between local practice and the ICC. She noted with concern the lack of genuine cooperation by states. For instance, some states in Latin America have added provisions regarding international crimes into their constitutions, but have not taken any actions on the ground; or states establish transitional justice processes for their own objectives in order to gain political support of the international community. Such approaches put aside the interests of victims while expressing any investigative goals through political means. More local representation increases the trust and closes the gap between national practitioners, the ICC and the local population, which will in turn have a larger impact on international criminal justice.

Some countries, like Germany, have already established national mechanisms of dealing with core international crimes and are actively pursuing domestic prosecution for international crimes. Mr. Christian Ritscher, Head of the War Crimes Unit within the Office of the Federal Public Prosecutor General of Germany, provided an account of activities of the German Federal Public Prosecutor's Office. This is the only office in Germany that deals with core international crimes since the adoption of the German Code of Crimes against International Law in 2002. The office dealt with genocide cases from Rwanda and cases in the DRC, especially the case against the leader of the Democratic Forces for the Liberation of Rwanda. The office even conducted interviews with a number of residents in DRC, which required mutual legal assistance with local governments. After the so-called 'Arab Spring' and the war in Iraq and Syria, witnessing the increased arrival of refugees to Germany, the focus shifted and now there are 80 cases under investigation concerning Syria. Mr. Ritscher appreciates the cooperation between his office and the ICC. This cooperation has already resulted in a stable contact between his office and the ICC in terms of exchanging information and following each other's work and providing relevant advice, which leads to more efficiency and accuracy. Another platform to exchange information is Eurojust's Genocide Network Meetings that functions as a hub between European states and eases the communication and flow of information among states.

Q&A session

During the question and answer session, among others, some participants raised the potential role of regional organizations, e.g. the Inter-American Commission on Human Rights, and Inter-American Court of Human Rights, in cooperation with the ICC and fighting impunity. Such mechanisms have close access to, and interactions with states, and therefore, can act as bridges and support accountability at local levels. They are, and should be, part of the system; cooperation with them should be strengthened, especially in light of human rights violations, as highlighted by Judge Cecilia Medina Quiroga, former President of the Inter-American Court of Human Rights. Other actors of this system are states themselves, and civil society actors, all holding duties and responsibilities, which should be upheld, in order for the system to function. They should be complementing each other's work toward sustainable peace through justice.

In order to achieve complementary work, clarity of goals, and understanding of the path toward achieving these goals are important. This is one of the lessons learned from the Greentree project, which aimed to work at the local level and fight against impunity, as highlighted by David Tolbert, former President of the International Center for Transitional Justice. Consideration whether the ASP would be a good venue to start clarifying these goals and start working together in terms of capacity-building, implementation, and efforts toward addressing impunity was discussed.

In conclusion, Professor Jens Meierhenrich summed up the panel by emphasizing two important aspects: first, the collaboration among different actors in the field of international criminal justice vis-à-vis the ICC; and second, the ICC is not the one and only mechanism for implementing international criminal justice; it is rather one of a multitude of international and national mechanisms that are addressing core international crimes.

Three key points for further consideration and debate:

- It is important to stress that the responsibility to prosecute core international crimes lies within the states, which is the core of complementarity;
 - cooperation among various actors in the field can advance the goals of international criminal justice more effectively; and
 - establishing regional offices (or potentially a roster of experts) could be considered as an option with the aim to advance cooperation and collaboration.
-

Panel VI

State Engagement and Disengagement

Chair: Professor Carsten STAHN

19-20 October 2018

Panel VI

State Engagement and Disengagement

Panel VI was dedicated to exploring the role and engagement of the ICC, as a permanent court and a treaty-based international institution, with different actors and *vice versa*. The Court has seen an increased scrutiny of its legitimacy, authority, effectiveness, and politicization, whether real or perceived. Considering the nature of the Rome Statute and establishment of the ICC, the focus of Panel VI was on the role and behavior of states – both States Parties and Non-State Parties – in relation to the ICC. In light of contested multilateralism and legal pluralism, the ICC needs the support of states to ensure the Court's operations, cooperation with actors, enforcement, complementarity, and outreach. Nevertheless, the implementation and ratification of the Rome Statute does not equate to full engagement in itself. States need to be engaged genuinely, especially given their role within the ASP. Moreover, any disengagement from the ICC and withdrawal from the Rome Statute go arguably against the spirit of the Rome Statute, which is seeking universal accountability for the core international crimes. The ASP has a strong role to play as a venue to address some apparently misunderstood, rather than contested, legal issues. In this sense, recent withdrawals from the Rome Statute, and the aspiration of universality, also deserve scrutiny and nuanced analysis.

The current backlash is not unique to the ICC. Various regional and international or internationalized courts have seen some sort of backlash; hence, the ICC is no exception, and by extension, multilateralism is under growing pressure and acutely contested. Treaty exit has become a recent reality. The reasons for withdrawal of ratification, or non-ratification in the first place, are multiple. The panel thus attempted to shed light on the current manifestations of state engagement and disengagement and how best to approach the universal application of the Nuremberg Principles, universal ambition of the Rome Statute, and how to promote and bolster state engagement, in order to effectively ensure the common fight against impunity and sustainable peace through justice.

Acknowledging the complexity of this subject, the panel limited its topic and focused on some of the major powers and highlighted the need for strengthening the state engagement in general. The panel explored why states may be reluctant to sign and ratify the Rome Statute, and how to clarify or advance these issues, which impede a wider application of universal principles and the fight against impunity.

Chair:

Professor Carsten Stahn, Professor of International Criminal Law and Global Justice, Leiden University

Speakers:

Professor Erika de Wet, SARChI Professor of International Constitutional Law, University of Pretoria

Professor David Scheffer, Director, Center for International Human Rights, Northwestern University

Professor Bakhtiyar Tuzmukhamedov, Vice-President, Russian Association of International Law; former Judge, International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda

Professor Dan Zhu, Professor of Law, Fundan University

The following key questions, *inter alia*, were addressed: What explains the variation in state engagement and respectively disengagement, in particular, with regard to the African Union (AU), the USA, Russia, and China? What can be done to advance the signing and ratification of the Rome Statute? Are the obstacles a mere misunderstanding of the provisions, or which constellations of legal and political factors explain disengagement, non-engagement or even opposition that drive the actors out of the system? What is the role of the ASP and states themselves in this regard? What expectations were there for the ASP in 1998 compared to the past 20 years of practice?

Discussion

At the outset of Panel VI, Professor Erika de Wet, currently teaching at the University of Pretoria, reflected on the relationship of the ICC and the African states. Starting with engagement, she noted that Senegal was the first state to ratify the Rome Statute; and Uganda hosted the first review of the Rome Statute. Moreover, the African countries constitute the largest block of members to the Rome Statute – around 33 countries in total. She noted however that the current relationship between the ICC and African countries is defined by a strong tendency toward disengagement and withdrawal from the Rome Statute. For Professor de Wet, various factors contribute to the above situation. First, she noted that over the years a number of incidents and actors have been playing a role in portraying the ICC as biased toward the African continent mindful of the selective approach of the ICC and the UNSC referrals. The highly politicized nature of the ICC's self-referrals and de-referrals also contributed to the disengagement, while oversight and cooperation have been very low in this regard. Moreover, the overwhelming fear, especially among a number of African leaders and heads of states that they will be prosecuted, is another element, and therefore, national sentiments are provoked against the ICC. Finally, communication with the African states is not clear, and there is a distrust between the ICC and some African states. Considering re-building of trust, Professor de Wet suggested the following: the issue of neo-colonization has to be taken into serious consideration, when the ICC is opening investigations, or engaging in a country situation; and there is no need, she mentioned, for self-referrals, when it does not lead to the conduct of international criminal justice.

From an American perspective, Professor David Scheffer, Director of the Centre for International Human Rights at Northwestern University, noted that despite the current *status quo*, many citizens and civil society in the USA strongly support the ICC. In light of non-cooperation of States Parties, as well as Non-State Parties, Professor Scheffer presented his idea of creating a committee that would consist of foreign ministers and non-state actors with 20 members selected periodically for two to three years. This committee would objectively discuss the pivotal issues regarding the ICC that are not discussed; and convey the message to States Parties and Non-State Parties, and *vice versa*, through political and diplomatic dialogue. Further suggestions by Professor Scheffer included the following three points: first, preliminary examinations within the ICC should be avoided, because they are vulnerable to politicization. Second, to avoid politicizing criminal justice in the UNSC, one option is to validate the Nuremberg Principles by the former, and work together with the states on preventative measures through under-



lying policies that do not let atrocities to take place. Third, the ASP should invest in building bridges between States Parties, individuals, and Non-State Parties, because non-state actors play an undeniable role in supporting victims, and such a support should be channeled to the ICC Trust Fund for Victims. Professor Scheffer appreciated the referral with regard to the situation in Venezuela and insisted that there is a need for States Parties referrals. However, such referrals do not occur, because states may not see it in their interests. If States Parties referrals would occur more often, it would allow an efficient prosecution and would avoid the lengthy preliminary investigations.

Russia is another important international actor whose relationship with the ICC deserves attention. That nation's evolution of attitude toward the ICC was the focus of remarks offered by Professor Bakhtiyar Tuzmukhamedov, Vice-President of the Russian Association of International Law. Russia was an active negotiator of the Rome Statute which it signed on 13 September 2000. In 2003, the President of Russia instructed the Ministry of Justice to set up an inter-agency working group to study the possibility of Russia's membership in the Rome Statute. The working group went even further and drafted a law on ratification and amendments to respective legislation. Russia participated in good faith in the Kampala Review Conference in 2010. However, no further steps towards ratification had been taken, while grievances about what was perceived as politicization of the Court had been growing. In November 2016, the President issued an order in pursuance of which the Ministry of Foreign Affairs notified the UN Secretary-General of Russia's intention not to become a party to the Rome Statute. Professor Tuzmukhamedov discussed an issue of whether it was possible to "un-sign" an international treaty, as some states and academics asserted, and argued that international law did not offer such an option. Signature, once affixed to a treaty, belonged to it and, hypothetically, could serve as grounds for renewed participation in that treaty. Despite definitive and seemingly final executive decision of Russia with respect to the Rome Statute, legal community in Russia, both academics and practitioners, are well aware of the Statute and the ICC, and that includes judges at the senior level. That awareness is further fostered by inclusion of ICL, including the ICC jurisprudence, into curricula of most law schools, by active participation of law students in international moot courts, including the Nuremberg Moot Court, by major international conferences held in Russia, which include as speakers current and former judges and officials of the ICC and former UN ad hoc tribunals, as well as internationally reputed academics.

Besides Russia and the USA, China is another major power, which did not sign the Rome Statute. Professor Dan Zhu, teaching law at Fundan University, observed that China is more proactive and objective while having a consistent approach compared to those of the USA and Russia, as she recalled the Kampala review conference and China's observational support. She pointed out China's good faith *vis-à-vis* the ICC, as it did not block referrals of the UNSC through a veto regarding the situations in Darfur and Libya. On the other hand, challenges that China sees with respect to the Rome Statute are of substantive nature, mainly with regard to the crime of aggression and its current definition. That being said, Professor Zhu noted that China does not think that the ICC is the right institution in addressing crimes of aggression at the first place, because such crimes fall within the mandate of the UNSC on restoring international peace and security. China also contests the definitions and scope of war crimes and crimes against humanity, because China has a different understanding of customary international law, as to the occurrence of crimes against humanity during peacetime, and war crimes during non-international conflicts, added Professor Zhu. She noted that an improved relationship for China, especially the prospect of becoming a state party to the Rome Statute, depends on the manner in which the ICC operates. It can be strengthened by providing a comfort zone and respect for state sovereignty, where the gap in substantive understanding of the complementarity regime and crime of aggression could be redefined.

Q&A session

During the question and answer session, Ambassador Corell clarified that Iran, Israel, and the USA signed the treaty on the last day within the given deadline 31 December 2000. However, later the USA wanted to "un-sign" it. The position of the UN Office of Legal Affairs was that there is no such concept as "un-signing" of a treaty as it is a historical momentum, as he recalled. The office however notified the USA that they could send a note verbale to the UN Secretary-General notifying the office of their position of not intending

to ratify the Rome Statute, which was done on 6 May 2002. Similar notifications were received from Israel on 28 August 2002 and the Russian Federation on 30 November 2016. These notifications are all duly registered in the United Nations Treaty Collection.

Professor Kamari Clarke, Professor of Global and International Studies/Law and Legal Studies, Carleton University, differentiated between the expressive and instrumental role of the law, and mentioned that despite the instrumental role of the law during treaty signing, from an expressive point of view, leaving the Rome Statute could also mean exploring other options and alternatives. For instance, in the African context, withdrawal from the Rome Statute has somehow been triggered by the emergence of new jurisprudence of ICL, as well as creation of alternative mechanisms, such as the regional initiatives of criminal justice, namely the Malabo Protocol and the proposed African Court of Justice and Human and Peoples' Rights.

Dr. Pillay raised two important issues reflecting onto the panel discussion: first, with respect to China's fixed policy of non-intervention and arguments based on respecting national sovereignty, she asked whether this argument as such would have impact on the implementation of ICL. Second, multi-state referrals and application of international sanctions against countries like Iran and Zimbabwe by the USA and sanctions against Venezuela, in her view, harm the civilian populations, which in some instances even lead to commission of core international crimes, e.g. crimes against humanity and genocide.

In conclusion, Professor Stahn stated that state engagement and disengagement should be addressed through regional mechanisms, in a flexible manner, as well as perhaps alternative options should be on the table for self-referrals. To guarantee proactive engagement, building bridges between different actors and formal and informal channels of dialogue, would be of significance.

Three key points for further consideration and debate:

- There is a need to increase state engagement to ensure functionality of the ICC;
 - fora for discussing potential ways of engaging states in pursuing the goals of the Rome Statute could be re-established or strengthened; and
 - a wider application and adherence to the Nuremberg Principles is important to pursue.
-



Panel VII

Quo vadis, ICC? The ICC within the Next 20 Years

Panel VII discussed the future of the ICC while sourcing from reflections on the past and the adoption of the Rome Statute in 1998. It mapped out the most pressing issues facing the international community and human rights movements today. Since the adoption of the Rome Statute, the number of ratifications has risen unexpectedly. Nevertheless, its role in deterring conflicts has remained contested. Conflicts around the world are proliferating and the application of the Nuremberg Principles has often been put into question, particularly with differing interests among states. However, the objectives behind these principles – the need for accountability in order to ensure that mass atrocities do not occur – remains a common endeavor, as it is recognized by the Preamble of the Rome Statute. The international community seems to be looking for alternatives in terms of accountability, such as regional mechanisms, especially for situations like Syria, Iraq, or the DRC. In the fight against impunity, regional bodies have played and will play an important role in providing assistance to national jurisdictions in terms of cooperation and political support. The question that remains is where is the international response to mass atrocities headed in light of accountability?

Panel VII also debated the proliferation of offenses by non-state actors and terrorism highlighting the possible need to adjust the legal framework of the ICC, in light of the practice on the ground and the applicable international humanitarian law rules. The jurisdictional limits have become evident and the international community is witnessing more and more discussions regarding emerging crimes, such as corporate crimes, environmental crimes, and cybercrimes. Against the backdrop of the changing landscape and the interplay of law and politics, the panel looked into some of the future challenges related to the Rome Statute and the ICC, and prospects for possible amendments, legislative developments, and future practice.

Chair:

David Tolbert, Visiting Scholar, Duke University

Speakers:

Professor Kamari Clarke, Professor of Global and International Studies/Law and Legal Studies, Carleton University

Barbara Lochbihler, Member, European Parliament

Judge Sang-Hyun Song, former President, International Criminal Court

Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein, Mission of Liechtenstein to the United Nations

The key questions addressed in Panel VII were, *inter alia*: What may the future trajectory of the ICC look like, mainly regarding its response to the challenges it faces, in the short, medium, and long run? What role has the European Union (EU) played and will continue to play in connection to supporting the ICC? How can the reach of the ICC, and goals enshrined in the Rome Statute, be enhanced, particularly with respect to the crime of aggression? Are cooperation agreements on the rise instead of ratifications of the treaty? Is the Rome Statute sufficiently covering the potential advancements of ICL by, for example, allowing for amendments to the rules that would reflect the discussion on emerging crimes?

Discussion

In the beginning of Panel VII, Professor Clarke, teaching at Carleton University, set the scene by highlighting the importance of considering the context and pointing out that the key future challenges, which affect the functioning of the ICC on the African continent, include electoral violence, financial crises, radicalization, and security. Political factors have often been the root causes of such challenges, said Professor Clarke, and therefore, rational political strategies are necessary for the ICC to adopt to be able to deal with the challenges and obstacles. Neo-colonialism, selectivity, withdrawal as well as the issue of non-cooperation are of political nature, and thus require tailored strategies and approaches. Moreover, economic inequalities and crimes that emerge in Africa are of great concern, and indeed, human rights movements have fallen short in targeting these issues. Regional mechanisms, such as courts and tribunals, are a possibility to address them. Professor Clarke added that local and sub-regional endeavors should be strengthened to provide more support for the ratification of the Rome Statute. For example, she mentioned the Malabo Protocol deserves attention, although it may be seen as a counterpoint to the ICC while including provisions on immunity of head of state. Nevertheless, it is also an opportunity to address core international crimes (in addition to corporate criminal responsibility and economic crimes) and some core issues of international criminal justice in Africa. Currently, it has 14 signatories with no ratification.

At the EU level, institutional actors play a crucial role in support of the ICC. Ms. Barbara Lochbihler, Member of the European Parliament, mentioned that the EU triangle of Parliament, Commission, and Council is steadily cooperating with the ICC. Political dialogue is ongoing in this regard, especially with states the EU has intensive external relations with, to encourage them to ratify the Rome Statute. The policies of the EU Commission are not changing, although the recent elections exposed tendencies toward far-right politics and populism. As a member of the international network Parliamentarians for Global Action, Ms. Lochbihler stated that this network plays a crucial role in parliamentarians translating to the people what the ICC is and monitoring member states governments' actions with regard to the ICC. For instance, following discussions with the government of Malaysia,³ the latter decided to ratify the Rome Statute. The EU played a crucial role in preventing the announced mass withdrawal of African states from the Rome Statute. In addition, the ICC has a responsibility to work with different countries in Africa. She opined that the ICC should take into account concerns and criticism received, including potential impartiality, and act upon improving the situations, be specific in its approaches, and protect the interests of victims.

Judge Sang-Hyun Song, former President of the ICC, started his presentation by noting that to rely on the Nuremberg Principles is another way of moving ahead in enhancing cooperation and universal acceptance of ICL.

³ Note for the reader: the Government of Malaysia decided to withdraw its instrument of accession to the Rome Statute of the International Criminal Court on 5 April 2019. See e.g. United Nations, Reference: C.N.185.2019.TREATIES-XVIII.10 (Depositary Notification, 15 May 2019).



During the panel discussion, he pointed out two significant elements important for the future of the ICC: first, how well the Court will operate as a judicial institution; and second, how much support it will receive from States Parties. It is pivotal to select well-qualified professionals who are equipped with the knowledge of ICL procedures. Judge Song proposed the establishment of an advisory body that can filter and select candidates effectively. The same strategy should apply to the ICC-OTP. Additionally, Judge Song warned against a collapse of the post-war order as a golden era of ICL, given the rise of populism and the current volatile political climate. He called upon State Parties to streamline their relationship with the Court. Judge Song emphasized the necessary efforts to preserve neutrality of the ICC. Indeed, the ICC is a judicial body, but operates in a political environment; therefore, the Court should be vigilant and keep away from politics. Political issues should be dealt with by the states themselves.

Ambassador Wenaweser, Permanent Representative of Liechtenstein within the Mission of Liechtenstein to the UN, recalled the important development of the activation of the Court's jurisdiction on the crime of aggression in December 2017. However, and while expressing his disagreement on the manner in which the jurisdiction was activated, he insisted that it is important to look at the broad picture and advancement of ICL (including the definition of the crime and individual criminal responsibility for violation of the use of force). He stressed that there is a need for more informed discussion on the new challenges arising in connection with the activation of this crime, such as cyberattacks. In the presence of challenges to the universal acceptance of the ICC and failure of referrals, Ambassador Wenaweser reiterated his position on the importance of other mechanisms such as the IIIM and their *de facto* role in prosecution of crimes, which by no means overshadow the jurisdiction of the ICC. In Ambassador Wenaweser's view, the international criminal justice community should be more open for creative solutions to the problems. Regarding the future, the ICC has a difficult job to do: to prosecute the most powerful perpetrators. In order to do so, the Court needs to be defended and strengthened, and people need to understand that it is the role of all states. The conversation needs to start among officials across all organs of the Court and the States Parties.

Q&A session

During the question and answer session, further emphasis and actions toward strengthening international justice needs were discussed. Many issues were raised as inter-connected with the system of international criminal justice, including strengthening the cooperation among different actors on various levels toward improving responses to international justice needs. Regarding the EU, Ms. Lochbihler noted a demand, together with the Coalition for the International Criminal Court, which was made to appoint a special representative – an expert in international humanitarian law and international justice – to strengthen the understanding and response to international justice needs within the EU. This however has not been accomplished.

Regarding the election of judges and their expertise, the question about the qualification of judges arose, especially in light of the activation of the crime of aggression. Judge Song stated that it is important that criminal trial experience is part of the judges' experience, as the ICC is a criminal tribunal, in the end. Ambassador Wenaweser added that it is important to have open discussions about missing elements. To have public international law expertise within the chamber, not just criminal law but general international law knowledge as well, is one good example, in his view.

Mr. David Tolbert summed up Panel VII concluding that it is the responsibility of states and of everyone to support the ICC, and to cooperate with its organs in implementing the Rome Statute to fight impunity.

Three key points for further consideration and debate:

- There is a need to think about the international criminal justice system more holistically, understand the various branches that correlate and connect the field, and establish the respective roles toward advancing and sustaining peace through justice;
 - once the system is clarified, it is necessary to start thinking creatively about the options available through the system to enhance the effectiveness; and
 - the challenges surrounding the fight against impunity should be addressed in a way that avoids any negative consequences thereof.
-

Closing Remarks

Judge Bertram Schmitt, Judge, International Criminal Court

Dr. Viviane Dittrich, Deputy Director, International Nuremberg Principles Academy

At the end of the Nuremberg Forum 2018 titled “20th Anniversary of the Rome Statute: Law, Justice and Politics”, Judge Bertram Schmitt, a judge at the ICC, delivered a speech pointing out key achievements and challenges of the ICC, as well as future opportunities.⁴ He noted that the ICC has come a long way since the adoption of the Rome Statute carrying with it an ambitious mandate. In 2002, the Court started its functions with an advanced team of five staff members while today it has 1063 employees, which demonstrates institutional growth. The functioning of the ICC and its existence is a fundamental development in support of the rule of law and international affairs, reflecting the universal ambition of human rights and international humanitarian law. For Judge Schmitt, victims’ participation has been and is an essential step and a unique feature of the Court, which differentiates it from the former tribunals. Victims should not be seen as annoying parties, and therefore, judges have considerable discretion to ensure procedural and substantive rights of the victims, as well as the responsibility to check correctness of the proceedings. Therefore, in the proceedings, authenticity of documents is well checked by the judges, and evidence and testimonies are assessed holistically. The details of the hearings are kept on record to ensure the immediate and comprehensive accessibility of the objective content of evidence. Regarding truth telling, there are accurate accounts of facts established, including circumstances of a situation, which oftentimes are more far-reaching than the facts related to individual criminal responsibility. Despite all these achievements, Judge Schmitt acknowledged that the ICC has been facing enormous challenges, such as withdrawals from the Rome Statute, lengthy proceedings, selectivity of situations and cases, and lack of cooperation.

Withdrawals, as Judge Schmitt expanded upon, have a strong effect on the functioning of the ICC, e.g. fewer States Parties means less universality and determination to fight impunity; however, withdrawals are not a sign of crisis. They are rights of each state, arising from the treaty itself. Exercising this right is more telling about the States Parties than the Court itself, and does not influence the judicial work per se. The ICC is not there to accommodate the States Parties’ interests, it is not meant to be a comfort zone.

Selectivity should not be seen as a negative dynamic, but as a sign of autonomy of the ICC-OTP. Judge Schmitt further explained that taken into account the hardship and resistance that the ICC faces in its functioning, it is in favor of justice that the Court follows the strategy of “catch as catch can”; e.g. the ICC will bring perpetrators of core international crimes to justice to the extent possible. Nevertheless, latest developments indicate that the ICC is engaging in other regions too, e.g. the case of the Rohingya in Myanmar is a prominent example. Overall, the ICC cannot function well without the cooperation of states and the support of individuals. Fifteen arrest warrants are outstanding and the ICC depends on cooperation of states to arrest the accused perpetrators, mentioned Judge Schmitt. In other words, if states do not cooperate, it is very difficult for the ICC to prosecute the perpetrators on its own.

Regarding the length of proceedings, Judge Schmitt explained that it is in the nature of crimes under the jurisdiction of the ICC to exhaust long and resource-intensive proceedings. As an example, added Judge Schmitt, proving that a crime is widespread and systematic as noted in Article 7 of the Rome Statute, requires thorough investigations by the ICC-OTP and clearance in the courtroom, which goes beyond the individual criminal acts, and deals with complex social and political factors. Indeed, to concretely check proceedings and establish a truth affects the speed and cost of proceedings, which are not decisive factors in comparison to the quality of proceedings to which judges at the ICC are committed. Judge Schmitt also reminded the audience that although we have come a long way, we need to think of our future and remember that the fight for justice was never a linear progress. There are enormous challenges ahead, but it is important to remember that we need the ICC.

Following Judge Schmitt’s remarks, Dr. Dittrich, Deputy Director of the Nuremberg Academy, officially closed the conference by acknowledging the wealth of knowledge and expertise shared throughout the discussions, analyses, and recommendations generated by all seven panels. She highlighted that the conference shed light on the complex interplay of law, justice, and politics, the balance between idealism and pragmatism, and the past, present, and future of international criminal justice. The ICC and the Nuremberg Principles continue to be vital cornerstones in this regard. Finally, on behalf of the Nuremberg Academy, she expressed gratitude to all speakers and contributors and acknowledged the immense efforts and hard work of various individuals involved in convening the conference. To commemorate the momentum of the 20th anniversary of the Rome Statute, the Nuremberg Academy, the number 4, has also worked on an edited volume, forthcoming in the *Nuremberg Academy Series*,⁵ in 2020 that will include valuable contributions by experts and scholars addressing core themes of this conference.

4 See also Bertram Schmitt, “ICC Judge Schmitt Counsels Resilience to Preserve International Justice”, Just Security, 13 February 2019, available at www.justsecurity.org/62577/icc-judge-schmitt-counsels-resilience-preserve-international-justice/, last accessed 9 April 2020.

5 The Nuremberg Academy Series is an open-access book series of the Nuremberg Academy published by TOAEP.



Annex I

Program of the Nuremberg Forum 2018

Morning Session

9.30–9.50 **Opening Remarks**

Klaus Rackwitz, Director, International Nuremberg Principles Academy

Dr. Navi Pillay, President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, United Nations High Commission for Human Rights; former Judge, International Criminal Tribunal for Rwanda and International Criminal Court

Dr. Thomas Dickert, President, Higher Regional Court of Nuremberg

Dr. Ulrich Maly, Lord Mayor, City of Nuremberg

9.50–10.40 **Keynote Addresses**

Heiko Maas, Federal Minister for Foreign Affairs of Germany

Fatou Bensouda, Prosecutor, International Criminal Court

10.40–11.00 **Coffee Break**

11.00–12.30 **Panel I: Making of the Rome Statute**

Chair:

Prof. William A. Schabas, Professor of International Law, Middlesex University London

Speakers:

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

Philippe Kirsch, OC, QC, former Chairman, Committee of the Whole of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court; former Judge and first President, International Criminal Court

William R. Pace, Executive Director, World Federalist Movement-Institute for Global Policy; Convenor, Coalition for the International Criminal Court

12.30–13.30 **Lunch**

Afternoon Session

13.30–15.00 **Panel II: Case Selection**

Chair:

Ambassador Stephen J. Rapp, Distinguished Fellow, Simon-Skjoldt Center for the Prevention of Genocide, US Holocaust Memorial Museum; Chair, Commission for International Justice and Accountability

Speakers:

Dr. Serge Brammertz, Chief Prosecutor, Mechanism for International Criminal Tribunals

Prof. Margaret M. deGuzman, Professor of Law, Temple University

Richard Dicker, Director of International Justice Program, Human Rights Watch

15.00–15.15 **Short Break**

15.15–16.45 **Panel III: Length of Proceedings**

Chair:

Dr. Vladimir Tochilovsky, former Trial Attorney, International Criminal Tribunal for the former Yugoslavia

Speakers:

Dr. Fabricio Guariglia, Director of the Prosecution Division, International Criminal Court

Dr. Michelle Jarvis, Deputy Head, International, Impartial and Independent Mechanism on Syria

Maître Xavier-Jean Keïta, Principal Counsel, Office of the Public Counsel for the Defence, International Criminal Court

Judge Ekaterina Trendafilova, President, Kosovo Specialist Chambers

	Morning Session
9.30–11.00	Panel IV: Victims’ Participation and Reparations Chair: Michaela Lissowsky , Political Scientist, International Criminal Law Research Unit, Friedrich-Alexander-Universität Erlangen-Nürnberg Speakers: Dr. Philipp Ambach , Chief of the Victims Participation and Reparations Section, International Criminal Court Pieter Willem de Baan , Executive Director of the Secretariat of the Trust Fund for Victims, International Criminal Court Amanda Ghahremani , Legal Director, Canadian Center for International Justice Fiona McKay , Senior Managing Legal Officer, Open Society Justice Initiative
11.00–11.30	Coffee Break
11.30–13.00	Panel V: Exercise of Jurisdiction and Complementarity within the Rome Statute Chair: Prof. Jens Meierhenrich , Associate Professor of International Relations, London School of Economics and Political Science Speakers: Almudena Bernabeu , Director, Guernica 37 International Justice Chambers Dr. Brenda J. Hollis , Prosecutor, Residual Special Court for Sierra Leone Phakiso Mochochoko , Director of the Jurisdiction, Complementarity and Cooperation Division, International Criminal Court Christian Ritscher , Head of the War Crimes Unit, Office of the Federal Public Prosecutor General of Germany
13.00–14.00	Lunch
	Afternoon Session
14.00–15.30	Panel VI: State Engagement and Disengagement Chair: Prof. Carsten Stahn , Professor of International Criminal Law and Global Justice, Leiden University Speakers: Prof. Erika de Wet , SARChI Professor of International Constitutional Law, University of Pretoria Prof. David Scheffer , Director, Center for International Human Rights, Northwestern University Prof. Bakhtiyar Tuzmukhamedov , Vice-President, Russian Association of International Law; former Judge, International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda Prof. Dan Zhu , Professor of Law, Fundan University
15.30–15.45	Short Break
15.45–17.15	Panel VII: Quo vadis, ICC? The ICC within the Next 20 Years Chair: David Tolbert , Visiting Scholar, Duke University Speakers: Prof. Kamari Clarke , Professor of Global and International Studies/Law and Legal Studies, Carleton University Barbara Lochbihler , Member, European Parliament Judge Sang-Hyun Song , former President, International Criminal Court Ambassador Christian Wenaweser , Permanent Representative of Liechtenstein, Mission of Liechtenstein to the United Nations
17.15–17.45	Closing Remarks Judge Bertram Schmitt , Judge, International Criminal Court Dr. Viviane Dittrich , Deputy Director, International Nuremberg Principles Academy



Annex II

Biographies of Contributors

Dr. Philipp Ambach

Chief of Victims Participation and Reparations Section, International Criminal Court

Dr. Philipp Ambach is Chief of the Victims Participation and Reparations Section in the Registry of the International Criminal Court. Prior to that, he worked for more than six years in the Presidency of the ICC as the President's Special Assistant, and as Legal Officer/team leader on a Registry reorganization project (2015). Before that, Dr. Ambach worked as Associate Legal Officer in the Appeals Chamber of the ICTY, ICTR, and Registry of the ICTY. After finishing his Master's degree in law at the Humboldt-University of Berlin and subsequent employment at the Regional Court of Düsseldorf, he was accepted at the Cologne Public Prosecutor's Office as Prosecutor. He holds a Ph.D. in international criminal law from the Free University of Berlin. Dr. Ambach has published a number of contributions on various topics in the area of international criminal law as well as humanitarian law, victims' participation and managerial practice at the ICC. He regularly lectures on international criminal law and humanitarian law topics at various research/academic institutions.

Pieter Willem de Baan

Executive Director of the Secretariat of the Trust Fund for Victims, International Criminal Court

Pieter Willem de Baan joined the Trust Fund for Victims at the International Criminal Court in 2010 as Executive Director. He is responsible for the development and implementation of the Fund's reparative mandates – judicial reparations and assistance to victims – for the benefit of victim survivors suffering harm from crimes under the jurisdiction of the ICC, as well as for the Fund's institutional development under the framework of the Rome Statute. Mr. de Baan also worked in international management, research and consulting positions with long-term postings in the Western Balkans, Central Africa, Vietnam, Egypt and Indonesia. Mr. de Baan has carried out legal and historical research, as well as victim impact interviews regarding experiences of civilian victims of war and conflict (Europe, Southeast Asia during the Second World War) and of refugees and asylum seekers (Europe following the Yugoslavia break-up). For Amnesty International, he has established a trial observation routine regarding the International Criminal Tribunal for the former Yugoslavia. Mr. de Baan holds an M.A. in History (Modern Imperialism) from Leiden University where he also obtained postgraduate education in international law.

Fatou Bensouda

Prosecutor, International Criminal Court

Fatou Bensouda is the Chief Prosecutor of the International Criminal Court, having been elected in 2011 by consensus by the Assembly of States Parties. Prior to this, Mrs. Bensouda served as the Court's first Deputy Prosecutor from 2004 to May 2012. Previously, she worked as Legal Adviser and Trial Attorney and later on as Senior Legal Advisor and Head of The Legal Advisory Unit of the International Criminal Tribunal for Rwanda. Between 1987 and 2000, she served as Senior State Counsel, Principal State Counsel, Deputy Director of Public Prosecutions, Solicitor General, Legal Secretary, Attorney General and Minister of Justice of the Republic of The Gambia, inter alia. Mrs. Bensouda also took part in negotiations on the treaty of the Economic Community of West African States (ECOWAS), the West African Parliament and the ECOWAS Tribunal. She has served as a delegate to the United Nations, the Organization of African Unity's Ministerial Meetings on Human Rights, and to the meetings of the Preparatory Commission for the ICC. Mrs. Bensouda holds a Master's degree in International Maritime Law and Law of the Sea.

Almudena Bernabeu

Director, Guernica 37 International Justice Chambers

Almudena Bernabeu is a renowned international lawyer with a long career in the fields of transitional justice, and international criminal and human rights law, who successfully litigated civil cases in the United States, brought under the Alien Tort Statute, and criminal cases in Europe, under the principle of universal jurisdiction, to assist victims to achieve truth and accountability for international crimes. Ms. Bernabeu has been rewarded

internationally for her contribution to justice and accountability mechanisms around the world, in particular, for bringing landmark cases in Guatemala, El Salvador, Peru, Chile, Argentina, and Ecuador and many other countries. She led the investigation and prosecution of the massacre of six Jesuit priests, their housekeeper, and her daughter, by members of the Salvadoran Military High Command, the investigation and prosecution of the genocide committed against the Mayan people in Guatemala, ensured the extradition of two military officials involved in the Accomarca massacre, an essential case for the Peruvian Truth Commission, and investigated and provided essential evidence to secure a civil judgment against Pedro Barrientos Nuñez, a former lieutenant in the Chilean Military responsible for the torture and murder of the popular singer Víctor Jara.

Dr. Serge Brammertz

Chief Prosecutor, Mechanism for International Criminal Tribunals

Dr. Serge Brammertz has served for more than a decade in senior positions charged with investigating and prosecuting grave international crimes. On 28 November 2007, Dr. Brammertz was appointed by the United Nations Security Council (UNSC) to serve as Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY). In 2016, he was subsequently appointed by the UNSC to serve concurrently as Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals. From January 2006 to December 2007, he was Commissioner of the United Nations International Independent Investigation Commission into the assassination of former Lebanese Prime Minister Rafik Hariri. Previously, he was the first Deputy Prosecutor of the ICC. Prior to his international appointments, Dr. Brammertz was first a national magistrate and then Head of the Federal Prosecution of the Kingdom of Belgium. He is currently a member of the Executive Committee of the International Association of Prosecutors, and previously served as Chairman of the European Judicial Network. He has published and lectured widely.

Professor Kamari Clarke

Professor of Global and International Studies/Law and Legal Studies, Carleton University

Kamari Maxine Clarke is Professor at Carleton University in Global and International Studies and Law and Legal Studies. Trained in Canada and the United States, and formerly a professor at Yale University and the University of Pennsylvania, Professor Clarke has taught multiple generations of students in legal anthropology, law, politics, the humanities, and social sciences. She has conducted field studies in Nigeria, Kenya, Uganda, the US-South and has worked on institutional studies of the International Criminal Court and the African Union (AU). Professor Clarke has also served as an expert advisor to the AU. Through research funding with the Open Society Initiative, and collaborators with the Pan African Lawyer's Union (PALU) and the West Africa Civil Society Institute (WACSI), she is currently collaborating with Charles Jalloh on a research project and publication concerning the AU's expansion of the criminal jurisdiction of the African Court of Justice and Human Rights. Professor Clarke has just completed a book on the ICC-rule of law and social movement campaigns and their affective resonances and limits. She is the author of over fifty books and articles and has held numerous prestigious fellowships, grants and awards.

Ambassador Hans Corell

former Under-Secretary-General for Legal Affairs and Legal Counsel, United Nations

Ambassador Hans Corell was Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations from March 1994 to March 2004. From 1962 to 1972, he served in the Swedish judiciary, and in 1972, he joined the Ministry of Justice where he became Director of the Division for Administrative and Constitutional Law in 1979. In 1981, he was appointed as Chief Legal Officer of the above-mentioned Ministry. He was Ambassador and Under-Secretary for Legal and Consular Affairs in the Ministry for Foreign Affairs from 1984 to 1994. Since his retirement from public service in 2004, Ambassador Corell is engaged in many different activities in the legal field as, inter alia, legal adviser, lecturer and member of different boards. Among other, he is involved in the work of the International Bar Association, the Stockholm Center for International Law and Justice and The Hague Institute for Innovation of Law. He was Chairman of the Board of Trustees of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, from 2006–2012.



Richard Dicker

Director of International Justice Program, Human Rights Watch

Richard Dicker is Director of Human Rights Watch's international justice program since it was founded in 2001, and he has worked at Human Rights Watch since 1990. Mr. Dicker began working on international justice issues in 1994 when Human Rights Watch attempted to interest states in bringing a case before the International Court of Justice alleging the government of Iraq violated its obligations under the Convention to Prevent and Punish Genocide for gassing the Kurdish population in 1988. Starting in 1995, Mr. Dicker led the Human Rights Watch multi-year campaign to establish the International Criminal Court and was deeply involved in all of the ICC Preparatory Committee sessions as well as the Rome Diplomatic Conference. Starting in 2002, he monitored the Slobodan Milošević trial at the International Criminal Tribunal for the former Yugoslavia and observed Saddam Hussein's trial at the Iraqi High Tribunal. Mr. Dicker is a frequent author of articles that have appeared in *Foreign Policy*, *The Guardian*, *The Economist*, *The International Herald Tribune*, and *the Jurist*. He also teaches on international criminal tribunals and courts at UCLA and Columbia law schools. A former civil rights attorney in New York, Mr. Dicker graduated from New York University Law School and received his LL.M. from Columbia University.

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, Organization, 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 University of Regensburg and did his legal traineeship in Regensburg.

Dr. Viviane Dittrich

Deputy Director, International Nuremberg Principles Academy

Dr. Viviane Dittrich is Deputy Director of the International Nuremberg Principles Academy. She is also Visiting Fellow at the Centre for International Studies at the London School of Economics and Political Science (LSE), and Honorary Research Associate at Royal Holloway, University of London. Previously, she has been Visiting Researcher at iCourts (Centre of Excellence for International Courts), University of Copenhagen. Dr. Dittrich has broad teaching and research experience and has published on the notion of legacy and legacy building at the international criminal tribunals. Drawing on extensive field research, her work comparatively investigates the ICTY, ICTR, SCSL, ECCC, ICC and IMT (Nuremberg). Her research interests lie at the intersections of politics and international law, focusing on international organizations, international criminal law and the politics of memory. After studies in France, England and the United States (Wellesley College) she received an M.Sc. in International Relations from the LSE and a Master's degree from Sciences Po Paris. She holds a Ph.D. from the LSE.

Amanda Ghahremani

Legal Director, Canadian Centre for International Justice

Amanda Ghahremani is Legal Director of the Canadian Centre for International Justice, where she supports survivors of torture and other atrocities to seek legal redress and end impunity for gross human rights violations. She is also a co-researcher on the Social Sciences and Humanities Research Council of Canada Partnership Grant titled "Strengthening Justice for International Crimes – A Canadian Partnership", where she is involved in strengthening the collaboration between civil society organizations, academics, and national prosecuting authorities on international justice and accountability initiatives. Ms. Ghahremani was nominated in 2017 and 2018 as Canadian Lawyer Magazine's Top 25 Most Influential Lawyers for her human rights work, particularly her successful legal and diplomatic advocacy work on the case of Professor Homa Hoodfar, a Canadian-Iranian political prisoner formerly imprisoned in Iran. Ms. Ghahremani remains a strategy consultant on a pro bono basis for families whose loved ones are political prisoners or otherwise wrongfully detained in Iran.

Dr. Fabricio Guariglia

Director of the Prosecution Division, International Criminal Court

Dr. Fabricio Guariglia was appointed as Director of the Prosecution Division of the International Criminal Court in October 2014, where he previously held senior positions within the same division, including Senior Appeals Counsel, Head of the Appeals Section, and Prosecutions Coordinator. Prior to joining the ICC, Dr. Guariglia was a member of the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia beginning in 1998, first as Legal Officer in the Legal Advisory Section and subsequently as Appeals Counsel in the then shared ICTY/ICTR Appeals Section. Between 2003 and early 2004, Dr. Guariglia was a visiting fellow in London School of Economics. From 1995 to 1998, as Legal Advisor to the Ministry of Justice of Argentina he was closely involved in the process of negotiation of the Rome Statute. Dr. Guariglia practiced law in Buenos Aires from 1989 to 1995, and served in various human rights and rule of law projects in post-civil war in El Salvador during 1992 and 1993. Dr. Guariglia has a law degree from the University of Buenos Aires and a Ph.D. (Summa cum laude) in criminal law from the University of Münster.

Prof. Margaret M. deGuzman

Professor of Law, Temple University

Professor Margaret M. deGuzman teaches Criminal Law, International Criminal Law, Transitional Justice, and Mindful Lawyering at the Temple University. Her scholarship focuses on the role of international criminal law in the global legal order, with a particular emphasis on the work of the International Criminal Court. She is currently participating in international expert groups studying the proposed addition of criminal jurisdiction to the mandate of the African Court on Human and Peoples' Rights, and in a project studying the impact of the Extraordinary African Chambers in the Court of Senegal on national, regional, and global justice norms. Before joining the Temple Law Faculty, Professor deGuzman clerked on the Ninth Circuit Court of Appeals and practiced law in San Francisco for six years, especially in criminal defense. She also served as Legal Advisor to the Senegal delegation at the Rome Conference where the ICC was created and as a law clerk in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia and was Fulbright Scholar in Darou N'diar, Senegal.

Dr. Brenda J. Hollis

Prosecutor, Residual Special Court for Sierra Leone

Dr. Brenda J. Hollis was appointed Prosecutor of the Residual Special Court for Sierra Leone in February 2014 by the Secretary-General of the United Nations, having served as Prosecutor of the Special Court for Sierra Leone from February 2010 until its closure in December 2013, also by appointment of the Secretary-General of the United Nations. She also led the prosecution against former Liberian President Charles Taylor, culminating in September 2013 in appellate confirmation of guilt on all charges and a sentence of imprisonment for 50 years. Dr. Hollis is currently Reserve International Co-Prosecutor, Extraordinary Chambers in the Courts of Cambodia, appointed by Royal Decree. She also served as a member of the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia from 1994 to 2001, where she served as Co-Counsel and Lead Counsel in a number of historic prosecutions, including the case against former Serbian President Slobodan Milošević until her departure from the ICTY in 2001. As an international expert, Dr. Hollis has trained judges, prosecutors and investigators at courts and international tribunals in Indonesia, Iraq and Cambodia, national prosecutors and investigators in Rwanda, and human rights monitors in Turkey, Jordan, Lebanon and Syria, and members of an Afghan NGO.

Dr. Michelle Jarvis

Deputy Head, International, Impartial and Independent Mechanism on Syria

Dr. Michelle Jarvis has worked in the international criminal justice field for over 18 years and is presently Deputy Head of the International, Impartial and Independent Mechanism on Syria, having taken up the post in December 2017. Prior to that she was Deputy to the Prosecutor at the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals. Prior to her work in international criminal law, Dr. Jarvis was a litigator in Australia, where her roles included improving women's access to



justice. Dr. Jarvis has lectured and trained widely on issues concerning international criminal law, including for Justice Rapid Response, the International Nuremberg Principles Academy, the Salzburg Summer School and the Strathmore Institute for Advanced Studies in International Criminal Justice. She brings extensive expertise on issues concerning gender and armed conflict, having co-authored two books and numerous articles on the subject. Dr. Jarvis holds a Master's degree in law from the University of Toronto as well as degrees in law and economics from the University of Adelaide.

Maître Xavier-Jean Keïta

Principal Counsel, Office of the Public Counsel for the Defence, the International Criminal Court

Maître Xavier-Jean Keïta joined the International Criminal Court in 2007 as Principal Counsel for the Defence Office. He has practiced law for more than 34 years (Senegal Bar and Paris Bar). Maître Keïta was a founding member of the International Criminal Bar Association and the CIFAf (Africa). He has chaired the first lawyers' union of France, the Commission Admission of the French Bar National Council, and the International Human Rights Commission. He is also an active member of the International Conference of French-speaking Bar Associations. He is an international law expert (member of the French Institute of International Law Experts) and a qualified Mediator who was a first-instance Judge at the International Organization of La Francophonie of the OIF Complaints Board. He is Counsel for Germain Katanga and Narcisse Arido, he assisted in the first appearances for Jean-Pierre Bemba, Laurent Gbagbo, and Aimé Kilolo, and was appointed as Counsel for Saif Gaddafi for 18 months. Maître Keïta has lectured and presented around the world, published broadly, and commented on Article 67 Rome Statute in *Commentaire du Statut de Rome* (July 2012) and Article 55 RS in *Comentários ao Estatuto de Roma* (October 2014).

Philippe Kirsch

OC, QC, former Chairman, Committee of the Whole of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court; former Judge and first President, International Criminal Court

Philippe Kirsch OC, QC served as a judge of the International Criminal Court, as well as the Court's first President from 2003 to 2009. In 1998, then Legal Adviser to the Canadian Department of Foreign Affairs and International Trade (DFAIT), he was Chair of the Committee of the Whole of the Rome Conference which created the ICC, and from 1999 to 2002 Chair of the Preparatory Commission for the ICC. Mr. Kirsch is currently Chair of the Assembly of States Parties to the Rome Statutes' Advisory Committee on Nominations of the ICC judges. Between 1972 and 2003, Mr. Kirsch occupied a number of other positions within the Canadian Department of Foreign Affairs and International Trade, such as Agent of Canada in cases before the International Court of Justice, and Ambassador and Deputy Permanent Representative to the United Nations and Ambassador to Sweden. From 2009 to 2012, he was judge ad hoc at the International Court of Justice in a case concerning criminal proceedings against Hissène Habré, former dictator in Chad. He chaired the UN Human Rights Council's Commission of Inquiry for Libya (2011–2012) and was a member of a commission of inquiry in Bahrain (2011) and of an International Bar Association fact-finding mission in Myanmar (2012–2013).

Michaela Lissowsky

Political Scientist, International Criminal Law Research Unit, Friedrich-Alexander-Universität Erlangen-Nürnberg

Michaela Lissowsky is Political Scientist at the International Criminal Law Research Unit of Friedrich-Alexander-Universität Erlangen-Nürnberg; responsible for the DFG research project on victims participation and recognition at the International Criminal Court. In 2017, she was Visiting Professional at the Trust Fund for Victims at the ICC. From 2014 to 2016, she held the position of Deputy Director at the International Nuremberg Principles Academy, and from 2010 to 2014, she was Director of the Founding Office International Nuremberg Principles Academy. Prior, Ms. Lissowsky was Editor in Chief for an online portal of the German Federal Ministry of Labor and Social Affairs, a trained Online Editor and Researcher at the German Federal Agency of Migration and Refugees. She is a member of the committee of the German Human Rights Film Award; Executive member of the Nuremberg Human Rights Centre and Editor of the online exhibit "From Nuremberg to The Hague".

Barbara Lochbihler

Member, European Parliament

Barbara Lochbihler is Member of the European Parliament (EP) from Germany since 2009 and Foreign Affairs and Human Rights Spokeswoman for the Greens/EFA group in the EP. She is Member of the Foreign Affairs Committee and Vice-President of the Subcommittee on Human Rights. Since 2014, she is Board Member of the Parliamentarians for Global Action and Co-Convenor of its International Law and Human Rights Programme. Mrs. Lochbihler is Head of the European Parliament's working group on UN-EU relations and Member of the ASEAN delegation of the European Parliament. Before her political mandate, she was Secretary General of Amnesty International Germany from 1999 to 2009. From 1992 to 1999, Mrs. Lochbihler was Secretary General of the Women's International League for Peace and Freedom in Geneva and New York.

Heiko Maas

Federal Minister for Foreign Affairs of Germany

Heiko Maas is Federal Minister for Foreign Affairs of Germany, he was appointed on 14 March 2018. He studied law at the Universität des Saarlandes, completing the first state examination in 1993 and the second state examination in 1996. He was elected twice as member of the Saarland Landtag (1994–1996 and 1999–2013). Mr. Maas held different positions in Saarland: State Secretary at the Ministry of Environment, Energy and Transport (1996–1998); Minister of Environment, Energy and Transport (1998–1999); Minister of Economy, Labor, Energy and Transport and Deputy Minister-President (2012–2013). Prior to his current function, he served as Federal Minister of Justice and Consumer Protection (2013–2018).

Dr. Ulrich Maly

Lord Mayor, City of Nuremberg

Dr. Ulrich Maly is the Social Democratic Mayor of Nuremberg. Dr. Maly attended the Friedrich-Alexander-Universität Erlangen-Nürnberg, where he graduated with a doctorate in political science in 1990. The same year, he became Secretary of the SDP-party group in the Nuremberg City Council, and became City Treasurer in 1996. He was elected Mayor of Nuremberg in 2002 and has been reelected twice (2008 and 2014). Dr. Maly's term of office has been guided by what he refers to as the solidarity-based politics of "Municipal Politics in Dialogue". He is also a member of the board of the N-ERGIE (energy supply company) and the Airport of Nuremberg.

Fiona McKay

Senior Managing Legal Officer, Open Society Justice Initiative

Fiona McKay is a British lawyer specializing in international criminal law with a particular focus on victims' participation and reparations. She is currently with the Open Society Justice Initiative heading the International Justice Team, and prior to that was Chief of the Registry Victims Participation and Reparations Section at the International Criminal Court. Before joining the ICC, she qualified as a solicitor in the United Kingdom and worked for several human rights NGOs, with a focus on projects to provide legal services to victims seeking legal remedies for human rights violations in domestic, regional, and international fora. These included a Palestinian legal aid center in East Jerusalem, the international human rights organization Redress, the Kurdish Human Rights Project in London, and Human Rights First in New York.

Prof. Jens Meierhenrich

Associate Professor of International Relations, London School of Economics and Political Science

Jens Meierhenrich is Director of the Centre for International Studies and Associate Professor of International Relations at the London School of Economics and Political Science. He previously taught for a decade at Harvard University. He is the author of *The Legacies of Law* (Cambridge University Press, 2008), which won the American Political Science Association's 2009 Woodrow Wilson Foundation Award for the best book



published in the United States during the previous year in politics, government, or international affairs. His other books include *Lawfare: A Genealogy* (Cambridge University Press, 2019), *The Remnants of the Rechtsstaat* (Oxford University Press, 2018), and, as editor or co-editor, *Political Trials in Theory and History* (Cambridge University Press, 2016), *The Oxford Handbook of Transitional Justice* (Oxford University Press, 2019), and *The Law and Practice of International Commissions of Inquiry* (Oxford University Press, 2019). Professor Meierhenrich has conducted archival, ethnographic, or other in-depth field research in Argentina, Cambodia, Germany, Iraq, Japan, Rwanda, South Africa, and also in several international organizations. He served as a Visiting Professional in Trial Chamber II at the International Criminal Tribunal for the former Yugoslavia and in the Office of the Prosecutor at the International Criminal Court, where he worked with Luis Moreno Ocampo, its first Prosecutor, and is also the editor of a special issue of *Law & Contemporary Problems* on “The Practices of the International Criminal Court.” He is presently at work on an ethnography of the International Criminal Court.

Phakiso Mochochoko

Director of the Jurisdiction, Complementarity and Cooperation Division, International Criminal Court

Phakiso Mochochoko joined the International Criminal Court as part of the ICC Advance Team created to set up the Court in The Hague in 2002. From 2004 to 2011, he was Senior Legal Advisor at the Registry of the ICC. Since February 2011, he is Director of the Jurisdiction, Complementarity and Cooperation Division at the Office of the Prosecutor. Previously, he practiced law as an attorney in Lesotho from 1984 to 1992. He later worked as a trainer and coordinator for human rights NGOs in South Africa from 1992 to 1994. As Legal Counselor for the Permanent Mission of Lesotho to the UN, Mr. Mochochoko was also part of the Management Team that oversaw the establishment of the Sierra Leone Special Court and he participated in the UN Planning Mission that made practical arrangements for the start-up operations of that court. He is a contributor to the two books edited by Professor Roy Lee: *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiations, Results* (1999) and *The International Criminal Court: Elements of Crimes and Rules of Procedures and Evidence* (2001). He holds a B.A. in Law and LL.B. Degrees from the National University of Lesotho; M.A. in International Relations and a Post Graduate Diploma in International Law and Diplomacy from St. John's University, New York.

William R. Pace

Executive Director, World Federalist Movement-Institute for Global Policy; Convenor, Coalition for the International Criminal Court

William R. Pace is Executive Director of the World Federalist Movement-Institute for Global Policy. He has served as Convener of the Coalition for an International Criminal Court since its founding in 1995 and is 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 the past 30 years. Mr. Pace previously served as Secretary-General of The Hague Appeal for Peace; Director of the Center for the Development of International Law. Mr. Pace is also President of the Board of the Center for United Nations Reform Education. He is the recipient of the William J. Butler Human Rights Medal from the Urban Morgan Institute for Human Rights, and 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.

Dr. Navi Pillay

President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, United Nations 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 United Nations from 2008 to 2014. Aside from that, she has championed many human rights issues with which she herself 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 defense lawyer and as an activist for the anti-Apartheid movement. Later, Dr. Pillay earned a Master's degree under a graduate program at Harvard Law School. In 1988, she became the first South African to be awarded the degree

of Doctor of Juridical Science at Harvard Law School. 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 as Judge to the International Criminal Tribunal for Rwanda (ICTR), where she served for a total of eight years, including four years as President. Later she served at the International Criminal Court in The Hague for five years. Dr. Pillay is the co-founder of “Equality Now”, an international women’s rights organization.

Klaus Rackwitz

Director, International Nuremberg Principles Academy

Klaus Rackwitz studied law at the University of Cologne and was appointed as a judge in 1990, where he presided over criminal and civil cases at courts of first instance and at courts of appeal. He was one of the first judges in Germany heading a task force, which was established to improve the use of computers in 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 International Criminal Court in The Hague 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, responsible for all administrative and support matters. From 2011 to September 2016, he served as Administrative Director of Eurojust, the European Union’s Judicial Cooperation Unit. He has previously worked in the field of IT law and has lectured for several years on civil law, commercial law and IT law at the Universities of Cologne and Düsseldorf and the Technical Academy of Wuppertal. Since March 2013, he is a member of the Supervisory Board of The Hague Institute for Innovation of Law, an advisory and research institute for the justice sector.

Ambassador Stephen J. Rapp

Distinguished Fellow, Simon-Skjoldt Center for the Prevention of Genocide, US Holocaust Memorial Museum; Chair, Commission for International Justice and Accountability

Ambassador Stephen J. Rapp is Distinguished Fellow at the Simon-Skjoldt Center for the Prevention of Genocide of the US Holocaust Memorial Museum. He also serves as Chair of the Commission for International Justice and Accountability (CIJA). From 2009 to 2015, he was Ambassador-at-Large heading the Office of Global Criminal Justice in the U.S. State Department. In that position he coordinated US Government support to international criminal tribunals, including the International Criminal Court, as well as to hybrid and national courts responsible for prosecuting persons charged with genocide, war crimes, and crimes against humanity. Ambassador Rapp was Prosecutor of the Special Court for Sierra Leone from 2007 to 2009, where he led the prosecution of former Liberian President Charles Taylor. From 2001 to 2007, he served as Senior Trial Attorney and Chief of Prosecutions at the International Criminal Tribunal for Rwanda, where he headed the trial team that achieved the first convictions in history of leaders of the mass media for the crime of direct and public incitement to commit genocide. Before becoming an international prosecutor, he was the United States Attorney for the Northern District of Iowa from 1993 to 2001.

Christian Ritscher

Head of the War Crimes Unit, Office of the Federal Public Prosecutor General of Germany

Christian Ritscher has been serving as Head of the War Crimes Unit S4 at the Office of the Federal Public Prosecutor General of Germany since 2014. The unit is currently consisting of seven prosecutors. In this function, Mr. Ritscher was team leader of the prosecution in the war crimes trial at the Regional High Court of Stuttgart against Ignace M. and Straton M., leaders of the Rwandan-Congolese militia Forces Démocratiques de Libération du Rwanda, which started in 2011 and ended in 2015. Since 2009, he has been member of the War Crimes Unit at the Office of the Federal Public Prosecutor General. Prior to this, Mr. Ritscher has been working at the office of the Federal Public Prosecutor General in different functions in the division of prosecution of espionage and international crimes since 2002. He has been working in the judicial branch since 1992 and served as Judge and Prosecutor in different positions at the District Courts of Aschaffenburg/Bavaria and of Munich and in the appeals division of the Office of the Federal Public Prosecutor General. Mr. Ritscher is fluent in German and English and holds a law degree from the University of Passau.



Prof. William A. Schabas

Professor of International Law, Middlesex University London

William A. Schabas is Professor of International Law at Middlesex University in London. He is also Professor of International Human Law and Human Rights at Leiden University, Distinguished Visiting Faculty at Sciences Po in Paris and Honorary Chairman of the Irish Centre for Human Rights. Professor Schabas holds B.A. and M.A. degrees in History from the University of Toronto and LL.B., LL.M. and LL.D. degrees from the University of Montreal, as well as several honorary doctorates. He is the author of more than twenty books in the fields of human rights and international criminal law. Professor Schabas drafted the 2010 and 2015 United Nations quinquennial reports on the death penalty. He was a member of the Sierra Leone Truth and Reconciliation Commission. Professor Schabas was Officer of the Order of Canada and a member of the Royal Irish Academy in 2007.

Prof. David Scheffer

Director, Center for International Human Rights, Northwestern University

Professor David Scheffer is Mayer Brown/Robert A. Helman Professor of Law and Director of the Center for International Human Rights at Northwestern University Pritzker School of Law. He was the first U.S. Ambassador at Large for War Crimes Issues (1997–2001) and led the United States delegation in United Nations talks on the Rome Statute of the International Criminal Court. He has been the UN Secretary-General's Special Expert on UN Assistance to the Khmer Rouge Trials since 2012. Professor Scheffer received the Berlin Prize in 2013 and the Champion of Justice Award from the Center for Justice and Accountability in 2018. He authored the award-winning book, *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, 2012). His latest book, available in Europe in December 2018, is *The Sit Room: In the Theater of War and Peace* (Oxford, 2019).

Judge Bertram Schmitt

Judge, International Criminal Court

Judge Bertram Schmitt was elected by the Assembly of States Parties to the International Criminal Court on 10 December 2014 from among the candidates with proven expertise in the field of criminal law. After earning a law degree and a Ph.D. in 1985, Judge Schmitt began as a research associate at the University of Frankfurt/Main, and then entered the Higher Judicial Service of the German State of Hesse in 1991. He was appointed Presiding Judge of the Darmstadt Regional Court (Landgericht) in 1999. In April 2000, the Bavarian State Minister for Science, Research and Art appointed him to the post of Honorary Professor at the University of Würzburg, where he teaches criminal law, criminal law procedure, and criminology. Judge Schmitt was appointed Judge of the German Federal Supreme Court on 8 May 2005, and has served as an ad hoc judge with the European Court of Human Rights.

Judge Sang-Hyun Song

former President, International Criminal Court

Judge Sang-Hyun Song was President of the International Criminal Court from 2009 to 2015. Judge Song taught as Professor of Law at Seoul National University Law School, beginning in 1972; he has also 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, particularly in 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 President of Unicef/Korea. Judge Song is a respected author of several publications on relevant legal issues, and the recipient of the highest decoration of the Korean Government (MUNGUNHWA, 2011).

Prof. Carsten Stahn

Professor of International Criminal Law and Global Justice, Leiden University

Carsten Stahn is Professor of International Criminal Law and Global Justice at Leiden University and Programme Director of the Grotius Centre for International Legal Studies (The Hague). He has previously worked as Legal Officer in Chambers of the International Criminal Court (2003–2007) and as Research Fellow at the Max Planck Institute for Comparative Public Law and International Law (2000–2003). He obtained his Ph.D. degree (Summa cum laude) from Humboldt University Berlin after completing his First and Second State Exam in Law in Germany. He holds LL.M. degrees from New York University and Cologne/Paris I (Panthéon-Sorbonne). He has published 12 books and over 70 articles/essays in different fields of international law and international justice. His most recent works in international criminal justice include *The Law and Practice of the International Criminal Court* (Oxford University Press, 2015), *Contested Justice* (Cambridge University Press, 2015) and a *Critical Introduction to International Criminal Law* (Cambridge University Press, 2018). He is Editor of the *Leiden Journal of International Law* and Correspondent of the *Netherlands International Law Review*.

Dr. Vladimir Tochilovsky

former Trial Attorney, International Criminal Tribunal for the former Yugoslavia

Dr. Vladimir Tochilovsky was Investigation Team Leader and Trial Attorney in the International Criminal Tribunal for the former Yugoslavia Office of the Prosecutor from 1994 to 2010. He served as a member of the UN Working Group on Arbitrary Detention from 2010 to 2016. Since 2009, he is Senior Adviser to the Case Matrix Network, independent international non-governmental organization for assisting national investigation of serious violations of the international humanitarian law, and since 2008, he is expert of the International Expert Framework for the Codification of International Criminal Procedure. He was official representative of the ICTY to the UN negotiations for the establishment of the ICC from 1997 to 2001. He served as a member of two expert groups that prepared recommendations for the ICC Office of the Prosecutor in 2002–2003. Dr. Tochilovsky served as Deputy Regional Attorney for judicial matters and as District Attorney in the Ukraine from 1976 to 1994. He holds a Ph.D. and worked as a Professor at Mechnikov National University, Ukraine, from 1991 to 1994.

David Tolbert

Visiting Scholar, Duke University

David Tolbert is Visiting Scholar at Duke University. Mr. Tolbert was President of the International Center for Transitional Justice from 2010 to 2018. Previously, he served as Registrar (Assistant Secretary-General) at the Special Tribunal for Lebanon and before that as Assistant Secretary-General and Special Expert on United Nations Assistance to the Khmer Rouge Trials. From 2004 to 2008, Mr. Tolbert served as Deputy Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia. He had previously been Deputy Registrar of the ICTY and at an earlier time served at the ICTY as Chef de Cabinet to President Gabrielle Kirk McDonald and Senior Legal Advisor Registry, serving a total of nine years at the ICTY. From 2000 to 2003, Mr. Tolbert held the position of Executive Director of the American Bar Association's Central European and Eurasian Law Initiative and Chief of the General Legal Division of the United Nations Relief Works Agency in Vienna, and Gaza. Mr. Tolbert frequently lectures and makes public appearances on international justice issues. He also represented the ICTY in the discussion leading up to the creation of the International Criminal Court and served as an expert to the ICC Preparatory Committee inter-sessional meetings.

Judge Ekaterina Trendafilova

President, Kosovo Specialist Chambers

Judge Ekaterina Trendafilova is President of the Kosovo Specialist Chambers (KSC) as of December 2016. She has extensive academic and practical experience in criminal law and procedure, international criminal justice, humanitarian law and human rights. She was Judge of the International Criminal Court from 2006 to 2015, where she served as Judge in the Pre-Trial Division. She was also member of the Appeals Chamber in



the first two final appeals in the cases of the Prosecutor v. Thomas Lubanga Dyilo and the Prosecutor v. Mathieu Ngudjolo Chui. Judge Trendafilova advised the Ministry of Justice of Bulgaria on the establishment of the ICC and served as an expert to the Ministry of Justice and the Parliament of Bulgaria. She was the head of the working group on the reform of the Bulgarian Criminal Procedure Code for efficient administration of justice and protection of human rights (1998–1999). Judge Trendafilova represented Bulgaria at the UN Commission for Crime Prevention and Criminal Justice (1992–1994). She was a deputy district attorney at the Sofia District Court (1985–1989) as well as a barrister with the Sofia Bar (1995–2006).

Prof. Bakhtiyar Tuzmukhamedov

Vice-President of the Russian Association of International Law; former Judge, International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda

Professor Bakhtiyar Tuzmukhamedov is Vice-President of the Russian Association of International Law and member of the UN Committee against Torture. In 2009, he was sworn to office as a Judge of the International Criminal Tribunal for Rwanda and, prior to that, he was Counsellor of the Court at the Constitutional Court of the Russian Federation. He was Professor of International Law at the Diplomatic Academy of the Russian Foreign Ministry in Moscow since 1984. From 1977 to 1984, Professor Tuzmukhamedov was Research Fellow at the Law of Sea Division, Institute of Merchant Marine. He has extensive experience with international organizations including being adviser of his country's delegations to the UN Special Committee on the Indian Ocean, as well as Civil Affairs Officer with the UN Peace Forces in the former Yugoslavia. He is a graduate of Moscow State Institute of International Relations where he received basic legal education and in 1983 was conferred a degree of the Candidate of Juridical Science (S.J.D. - equated). In 1994, he received an LL.M. degree from the Harvard Law School.

Ambassador Christian Wenaweser

Permanent Representative of Liechtenstein, Mission of Liechtenstein to the United Nations

Ambassador Christian Wenaweser has served as Permanent Representative of Liechtenstein to the United Nations in New York since 2002. He was also President of the Assembly of States Parties to the Rome Statute of the International Criminal Court. From 2004 to 2009, Ambassador Wenaweser served as Chairman of the Special Working Group on the Crime of Aggression. Previously, he held functions including: Vice-President of the 61st session of the UN General Assembly (2006–2007); Vice-Chair of the Open-Ended Working Group on Security Council Reform (2004–2005); 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 (2003–2005); and Chairman of the UN General Assembly's Third Committee (2002). He worked as diplomatic officer in the Office for Foreign Affairs in Liechtenstein. Ambassador Wenaweser studied literature, languages, history and philosophy at Zurich University and diplomacy at the Institut Universitaire de Hautes Etudes Internationales in Geneva.

Prof. Erika de Wet

SARChI Professor of International Constitutional Law, University of Pretoria

Professor Erika de Wet is SARChI Professor of International Constitutional Law in the Faculty of Law, University of Pretoria. Between 2011 and 2015, she was Founding Co-Director of the Institute for International and Comparative Law in Africa at the same institution. Since July 2015, she is Honorary Professor in the Faculty of Law, University of Bonn, Germany. Between 2004 and 2010, she was tenured Professor of International Constitutional Law at the Amsterdam Center for International Law, University of Amsterdam. During the early years of her career, she held positions at the International Labor Organization (Geneva), the Swiss Institute of Comparative Law (Lausanne) and Leiden University (Leiden). Professor de Wet completed her B.Iur. and LL.B. as well as her LL.D. at the University of the Free State. She holds an LL.M from Harvard University and completed her Habilitationsschrift at the University of Zurich. Her work has been widely cited by different courts, including by the International Court of Justice, the International Criminal Court, the European Court of Human Rights, the South African Supreme Court of Appeal and the United Kingdom Supreme Court.

Prof. Dan Zhu

Professor of Law, Fudan University

Professor Dan Zhu is Lecturer in Public International Law at Fudan University, Law School, and member of the Chinese Bar. She holds a Ph.D. from the University of Edinburgh, an LL.M. from Xiamen University and an LL.B. from Jilin University. Before joining Fudan, she worked at the Registry, Legal Advisory Service Section, and the Appeals Chamber of the International Criminal Court. Her academic interests include public international law, international criminal law, human rights law and Chinese criminal law. Professor Zhu has published broadly in her principal areas of research and her work has appeared in multiple edited collections and in peer-reviewed legal journals. She is currently a member of the International Law Association Study Groups on Individual Responsibility in International Law and UN Sanctions and International Law. She is also an active member of a number of Chinese academic committees and professional communities.



Annex III

Declaration on the 20th Anniversary of the Adoption of the ICC-Statute

We, the Advisory Council of the International Nuremberg Principles Academy, which was established to promote sustainable peace through justice and the rule of law:

ARE FIRMLY CONVINCED that international criminal law upholds respect for human rights, helps to prevent conflicts, and facilitates reconciliation after the fighting ends. To achieve these aims and following the Nuremberg precedent, the international community has developed human rights norms, as set forth in the Universal Declaration of Human Rights and the International Covenants, and has created mechanisms to end impunity for the most serious crimes known to humankind. These mechanisms, including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and on July 17, 1998 the creation of the first permanent international criminal court (the International Criminal Court), ensure accountability for the most serious violations of fundamental human rights, support global enforcement of international criminal law, and build national capacity to investigate and prosecute these violations.

ARE DEEPLY CONCERNED by the growing disrespect for international criminal law and international human rights law across the globe, and the unwillingness to fight impunity and uphold international human rights norms.

ARE DEEPLY CONCERNED by vitriolic attacks against the integrity of international criminal justice and its institutions and the widespread disregard for the rule of law and basic respect for human rights.

RECOGNIZE the promise made by the international community at Nuremberg in 1945/46 and call upon all states to end impunity for international crimes by supporting the prosecution of these crimes both through international and domestic courts.

The International Nuremberg Principles Academy

The International Nuremberg Principles Academy (Nuremberg Academy) is a non-profit foundation dedicated to the advancement of international criminal law and human rights. It was established by the Federal Republic of Germany, the Free State of Bavaria and the City of Nuremberg in 2014. Its main fields of activity include providing a forum for dialogue by convening international conferences and expert meetings, conducting interdisciplinary and applied research, and engaging in specialized capacity building for practitioners and human rights education.

The Nuremberg Academy is located in Nuremberg, the birthplace of modern international criminal law, where the Nuremberg trials against the major war criminals were held by the International Military Tribunal (IMT) from 1945 to 1949. For the first time in history, an international tribunal was authorized to hold leading representatives of a state personally accountable for crimes under international law.

The foundation carries forward the legacy of the Nuremberg trials and the “Nuremberg Principles”, principles of international law recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal and formulated by the International Law Commission of the United Nations General Assembly in 1950.

Conscious of this historic heritage, the Nuremberg Academy supports the fight against impunity for universally recognized international core crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. Dedicated to supporting the worldwide enforcement of international criminal law, the Nuremberg Academy promotes the Nuremberg Principles and the rule of law with a vision of sustainable peace through justice, furthering knowledge, and building capacities of those involved in the judicial process in relation to these crimes.



International Nuremberg Principles Academy
Egidienplatz 23
90403 Nuremberg, Germany
Tel +49 (0)911 231-10379
Fax +49 (0)911 231-14020
info@nurembergacademy.org
www.nurembergacademy.org

The International Nuremberg Principles Academy (Nuremberg Academy) is a non-profit foundation dedicated to the advancement of international criminal law and human rights. It was established by the Federal Republic of Germany, the Free State of Bavaria, and the City of Nuremberg in 2014. The activities and projects of the Academy are supported through contributions from the three founding entities and financially supported by the Federal Foreign Office of Germany.

ISBN: 978-3-9818913-2-4

