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International Nuremberg Principles Academy

Nuremberg Forum 2018

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

19–20 October 2018

Courtroom 600, Nuremberg Palace of Justice
Baerenschanzstrasse 72, 90429 Nuremberg

INTERNATIONAL NUREMBERG PRINCIPLES ACADEMY

Nuremberg Forum 2018

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

Welcome Address

On behalf of the International Nuremberg Principles Academy, we would like to welcome you personally to the Nuremberg Forum 2018 entitled "20th Anniversary of the Rome Statute: Law, Justice and Politics". The Nuremberg Forum 2018 pays tribute to the 20th anniversary of the Rome Statute and critically evaluates the past 20 years while also looking at the next 20 years in terms of practice and the ever-changing landscape of the International Criminal Court (ICC).

The conference looks at important challenges and critiques that have newly emerged or have remained unresolved in the context of the first permanent court with jurisdiction over international crimes. Since the adoption of the Rome Statute in 1998, and its entry into force in 2002, the Court has grown, matured and shown innovation. The past 20 years have demonstrated repeatedly the complex interplay of law, justice and politics. The ICC is indeed operating in a political and institutional landscape that has changed significantly since 1998 and continues to change. These changes relate to the global geopolitical configuration, proliferation of judicial and quasi-judicial mechanisms and practicalities *vis-à-vis* arising and existing treaty obligations. Equally observable are shifting political priorities, changing nature of states' interests and engagement, expressions of withdrawals of support and vocal contestations of the ICC, multilateralism more broadly and the Nuremberg Principles.

Particularly by analyzing this interplay between law, justice and politics, the Nuremberg Forum 2018 examines key aspects and developments at the ICC. After reflecting on the making of the Rome Statute, the conference focuses on some key areas such as case selection, length of proceedings, victims' participation and reparations, exercise of jurisdiction and complementarity, as well as state engagement and disengagement. The last panel moves towards discussing the next 20 years and addresses the bigger picture as to where the ICC is headed.

By offering a unique forum for critical reflection and discussion, the conference assesses the achievements, limitations, obstacles and lessons learned with an eye towards addressing the next years in terms of deliverables but also goals and future direction of the Court. Such an assessment is essential for advancing the role, work, and functioning of the ICC. The main purpose that lies behind this conference is thus to create a forum for dialogue that further supports and strengthens its work.

The Nuremberg Forum 2018 is very timely. Held in temporal proximity to the 17th session of the Assembly of States Parties, the conference allows the participants to reflect on the core issues in a systematic manner toward the end of the anniversary year and build on the momentum created. Against the backdrop of Courtroom 600, a congenial setting for considering the past, present and future of international criminal law, a more open and forward-looking analysis is possible.

We are pleased to welcome high-level international experts, scholars and practitioners from the field, including judges, prosecutors and decision-makers who have considerable weight in light of the future development and direction of the ICC.

We thank all the participants for their engagement and continuous support of our work in view of our shared goal: fighting impunity and promoting sustainable peace through justice.

Klaus Rackwitz
Director of the International Nuremberg Principles Academy

Dr. Viviane Dittrich
Deputy Director

Day 1: 19 October

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-Skjodt 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

Day 2: 20 October

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, SARChl 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

Opening Remarks

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.

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.

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. 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.

Keynote Addresses

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).

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.

Panel I: Making of the Rome Statute

The year 1998 was a momentous year for international criminal justice. In Rome, active participants in the conference discussed many substantive and procedural issues raised during the preparatory stages leading up to the drafting of the Rome Statute. Coming from different backgrounds, with diverse interests and expertise, the participants were involved in discussing divergent approaches, resolving major legal issues and agreeing on articles that would shape the first permanent international criminal court. In Panel I, with some critical distance, i.e. 20 years on, prominent participants evaluate the journey leading to the Rome Conference and since the adoption of the Statute. In doing so, they will provide a reflection on the context, goals and aspirations 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. Recently and as an example, the issue of the immunities and accountability for Heads of States is put back on the negotiation table questioning one of the principles arising from the Nuremberg legacy. Moreover, and as the geopolitical situation has been changing and the political and institutional landscape continues to change, the ICC is maturing and finding its place as an institution in the midst of power politics, open norm conflicts, or the erosion of norms, and ever-shifting visions of justice and accountability.

Reflecting on the current situation, this panel aims to critically assess the expectations, aspirations and achievements in the making of the Rome Statute. In a forward-looking manner, this panel also looks at the objectives and goals set out during this process of negotiation. The panel covers the broader picture of the ICC, the first permanent court and institution that aims to achieve justice to ensure sustainable peace worldwide, the perceptions on what has diverted from the path that the Court was expected to take in 1998. Through this lens, the panel advances the discussion on where the ICC is and should be headed in order to achieve its aspirations as shared and envisaged back in Rome.

The key questions are, *inter alia*: What has been the original direction and vision for the ICC before the Rome conference, how has it changed during and after the negotiations? Where is the institution headed now in terms of vision and in terms of practice? What is the current biggest challenge ahead for the ICC? Is there a provision that you would push for adopting or leaving out now seeing the experience over the past 20 years? What role is civil society taking compared to the role it has had 20 years ago? Where is the momentum of their active campaigning to support the fight against impunity and where can we expect the focus to be in the next 20 years?

Chair

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.

Speakers

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.

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).

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.

Panel II: Case Selection

Prosecutorial discretion in the 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 policy on selection, directing the attention on particular cases, while abandoning the focus on others. In 1998, the discussion circled around what powers to give to the Office of the Prosecutor and how to limit its prerogatives of investigation and prosecution. The discussion also circled around the possible discretional 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 a result of compromise. Since its establishment, we have witnessed varying practice as to how cases end up before the ICC. Some of these cases are indeed part of a referred situation where the Office of the Prosecutor's powers differ slightly from the situations that it selects in accordance with its own discretionary rule. Moreover, its own selection fell under scrutiny regarding clarity of the criteria that it applies in using its discretion. This critique was addressed partly in 2016, when the Office of the Prosecutor published the "Policy paper on case selection and prioritization", which laid out the general principles legal criteria that it applies in assessing each situation and cases within it.

In addition, the Office of the Prosecutor is undertaking more outreach activities explaining its activities and focus. Panel II dedicates precisely its focus to these issues: case selection, current practice, changes over the past 20 years, criticism received, responses to criticism and practicalities behind the scene, and the work of the Office of the Prosecutor in relation to the legal framework of the Rome Statute. It addresses, *inter alia*, whether the Rome Statute and negotiations in Rome offered guidance on the practice that might have been lost on the way, or any guidance on the further role of the Office of the Prosecutor in terms of case selection. It hopes to gain an understanding whether concrete legalistic steps that seem to be undertaken to address the increasing criticism are advancing the role of this office, which is the driving mechanism of the ICC, or limiting it in the long run, *vis-à-vis* the next 20 years.

The key questions are, *inter alia*: How does a referral or self-referral affect the case selection and prioritization procedure for the Office of the Prosecutor? What have been the biggest lessons learned so far in terms of *proprio motu* investigations and case selection? What do these lessons mean in terms of prioritizing other cases and steps the Prosecution has adopted? What lessons can one take from the *ad hoc* and hybrid tribunals? Finally, bearing in mind the critique of selectivity, what could or should be done in addressing this complex issue?

Chair

Ambassador Stephen J. Rapp
Distinguished Fellow, Simon-Skjodt 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-Skjodt 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.

Speakers

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.

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.

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.

Panel III: Length of Proceedings

Looking back, in 1998, the cost and length of the proceedings of international criminal justice was hard to estimate. The ICTY and ICTR were not yet in full swing in terms of procedures to source from their experience. The expectation of the length of the international trial in more general was potentially predicted to be of that length of Nuremberg or Tokyo. Yet, before the establishment of the ICC, the trials in Nuremberg and Tokyo were of a very different nature and established under very different and exceptional circumstances. Potentially a bit lengthier. However, it is doubtful that in 1998 it was estimated that a trial would on average last ten years. The establishment of the ICC, and international or internationalized tribunals in general, are created under special circumstances. However, and considering the 20 years of practice, some guidance in terms of lengthiness, costs, and evaluation on the effectiveness remains lacking. Panel III dedicates its attention precisely to this point. Given the overall focus of the topics, it delves more in detail on the challenges that have occurred ever since the adoption of the Rome Statute. It critically looks into the practice over the past 20 years and focuses on evaluating the critique of excessively lengthy and costly proceedings. In 2018, the ICC has had six closed cases, two charges not confirmed, one vacated, one withdrawal and two acquittals. Overall estimate spending is so far is over 2 billion euros. Cognizant of the complexity of international cases and requirements to ensure a fair trial, the question on how to strengthen efficiency and effectiveness remains. The panel focuses on the work of all organs of the Court, current and past proceedings and the ambition to speed up proceedings while respecting due process. This panel also looks into lessons learned in handling criticism arising in terms of lengthy proceedings and best practices regarding the way forward.

The key questions are, *inter alia*: What are the key factors determining the length of proceedings? Are the proceedings excessively lengthy and if yes, what does this lengthiness derive from – is the problem "self-made", meaning is it the unreasonable workload, inefficient working environment or is the problem lying with the fact that ensuring fair procedure is actually always lengthy? How can one make this process more effective? What role does the Defence play in ensuring that the trials are indeed effective and speedy? Are the Kosovo Specialist Chambers or the International, Impartial and Independent Mechanism on Syria (IIIM) – although being very different – sourcing from past lessons learned?

Chair

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.

Speakers

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.

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).

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).

Panel IV: Victims' Participation and Reparations

Panel IV turns to the issue of victims' participation and reparations. Inclusion of victims into the proceedings and affording them an active role was widely viewed as an achievement in 1998, offering a distinct and welcomed practice compared to the other tribunals. Ever since, it has been circled with the appreciation addressing the need to ensure that the justice is not only seen but being actually delivered to the affected victims. The discussions in 1998 were, however, more focused on the scope of victims' participation and the procedures to follow rather than focusing on precisely what these rules will look like in real practice and how they will be implemented. These practices are precisely the issues that are being contested in recent years, rather than the concept of the victims' participation. As a result, this panel looks into the arising challenges and critically assesses the feasibility of maintaining the direction towards which victims' rights are being implemented and potentially expanding. The scope of their rights and their participation in the proceedings will be discussed in light of current criticism, especially concerning effectiveness and meaningfulness as well as the actual impact on the ground.

The Rome Statute also included provisions on reparations and the Court has already interpreted these provisions. We have seen granting of reparations in form of monumental value, whereas we have also seen that monetary and material reparations were offered to victims of international crimes. The Court has laid down its standard procedure and guidance regarding reparations, which in practice has been interpreted differently by different chambers. Moreover, in 2004, the Trust Fund for Victims was created with a two-fold mandate: to implement Court's orders regarding reparation; and to provide support to the victims and their families. The recent criticism concerns the broad scope of its mandate, as well as lack of clarity regarding its role and responsibilities with respect to the reparations.

The key questions are, *inter alia*: What is the current scope of victims' rights within the Rome Statute and where has the case law expanded their rights *vis-à-vis* the Rome Statute? How are victims actually participating in the different instances of the proceedings before the ICC? With expanding on their rights, is over-inclusiveness of victims detrimental to the overall fairness of the proceedings? Is the reparation proposal that has come into practice feasible in terms of sustainability? Is the Trust Fund for Victims becoming the funding body of the ICC in respect of the reparations?

Chair

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".

Speakers

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 World War II) 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.

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.

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.

Panel V: Exercise of Jurisdiction and Complementarity within the Rome Statute

Panel V moves towards addressing the issue of exercise of jurisdiction in terms of complementarity. The Court has been established and is intended to function as a court of last resort. To this particular end, the complementarity principle was adopted which was appreciated by many states. In 1998, the majority of states saw this as a fundamental provision for signing and ratifying the treaty, assuring that state sovereignty remains intact. The Court was set out to exercise jurisdiction when a state is unwilling or unable to prosecute international crimes. However, in practice, there are more situations under preliminary investigations than was potentially predicted two decades ago. Currently, the ICC has 10 preliminary examinations, 11 situations under investigation, 26 cases and 15 defendants at large. This is a considerable workload for a court of approximately 800 staff members. 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 role of complementarity. The length of preliminary examinations, the open-ended nature of these examinations and the lack of clear exit strategies has come into sharper relief. Moreover, the discussion on the precise role of complementing the national jurisdiction rather than undertaking lengthy and difficult prosecutions in terms of reach and outcome seem to be ongoing. The question that arises in this regard is whether this role is being limited to capacity building and outreach as the focus or whether there is more behind the scenes.

The discussion then centers on how and to what extent the Court serves as a means to achieve accountability for international crimes, and/or universal application of the Rome Statute, and especially with relation to the crimes being accepted universally as international crimes. Moreover, this role is particularly interesting *vis-à-vis* the situation that occurred in Syria, where the Court has currently no jurisdiction because of the political deadlock in the United Nations Security Council. To that end, 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.

The key questions are, *inter alia*: How has complementarity as understood and drafted in Article 17 evolved over the past 20 years? Has the ICC, and in particular the Office of the Prosecutor, allowed space for the development of the complementarity principle? What does the Court's practice in reality mean for states and jurisdictions and more generally what does this imply for the fight against impunity? Was the intention to impose the material burden arising from this principle on states? Is the Court more complementing in terms of capacities and coordination than in terms of actual prosecution deterring further commission of crimes?

Chair

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.

Speakers

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. 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.

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.

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.

Panel VI: State Engagement and Disengagement

Panel VI dedicates its attention to exploring the role of the ICC as a permanent organization, a treaty-based body and international institution. The Court has seen increased scrutiny by states 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 here is on the roles of states – both States Parties and non-States Parties – and state behavior. Over the 20 years, it has become evident that in order to function the ICC needs the support of states. This is clear regarding the Court's operations, cooperation, enforcement as well as complementarity and outreach. This is further evident in applying the universal principles and the caveats set out in the Nuremberg Principles. Yet, the implementation and ratification of the Rome Statute does not equate to full engagement with and unwavering support of the Court. State engagement and genuine support, as reflected in 1998, is required today more than ever and a call for re-engagement is set forward.

This panel addresses some of the contested issues and focuses on certain major powers that have shown variable support for international criminal justice and continue to do so in many respects. However, due to the interplay of law and politics, their ratification of the Rome Statute has not yet taken place. This panel explores why states are reluctant to sign and ratify the Statute and what can be done to clarify these issues, which estop a wider application of universal principles, and the fight against impunity. It also turns to the role of the Assembly of State Parties in this regard and avenues to address some apparently misunderstood rather than contested legal issues. In this sense, recent withdrawals of support and withdrawal from the Rome Statute and the aspiration of universality also deserve scrutiny and nuanced analysis.

Various international courts have seen political backlash; hence, the ICC is no exception. Multilateralism is under growing pressure and acutely contested, and treaty exit has become a recent reality. The reasons for withdrawal of ratification, or non-ratification in the first place, are multiple and the challenges are reflected in opposition to procedural, substantive, and administrative rules. Given its universal aspiration and the ambition of achieving accountability, it seems paramount to find ways to engage constructively and urge cooperation. This panel discusses current manifestations of state disengagement and how best to approach the universal application of the Nuremberg Principles and universal ambition of the Rome Statute, and to promote and bolster state engagement.

The key questions are, *inter alia*: What explains the variation in state engagement and respectively disengagement? 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? What is the role of the Assembly of State Parties and states themselves, in this regard? What expectations were there for this organ in 1998 compared to the past 20 years of practice?

Chair

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*.

Speakers

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. 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).

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.

Prof. Dan Zhu
Professor of Law, Fundan 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.

Panel VII: *Quo vadis*, ICC? The ICC within the Next 20 Years

Panel VII turns to the future while sourcing from the reflections on before, during and after the adoption of the Rome Statute in 1998. It aims to map out the most pressing issues that are ahead for the international community and the field of international criminal justice. Since the adoption of the Rome Statute, the number of ratifications have mounted unexpectedly. Against the majority of the commentators, the ICC was activated in 2002 and its work has become more and more prominent. Nevertheless, its role in the deterrence of conflicts has been contested many times. Conflicts around the world are proliferating. The application of the Nuremberg Principles is called oftentimes into question particularly with differing stakeholders' interests. This is the case despite the fact that the objectives behind these principles – the need for accountability in order to ensure that mass atrocities occur – remains a common endeavor. This is also the main purpose of international criminal law, and as it is recognized by the Preamble of the Rome Statute, the Court has itself been looking into how to address the arising challenges and move forward. We have seen discussions intensify related to the objective of the Rome Statute. The international community seems to be looking for alternatives in terms of accountability, especially in cases like Syria, Iraq or the Democratic Republic of Congo. In this fight against impunity, regional bodies have played and will play an important role to provide assistance to national jurisdictions in terms of cooperation and political support.

Moreover, the jurisdictional limits have become evident. We have witnessed that the Office of the Prosecutor is also looking for alternative ways to advance ahead of the challenges. For example, it reached out to the Pre-Trial Chamber for guidance on the issues concerning the application of Article 12 ensuring that accountability could be achieved where possible. Non-state actors and terrorism-related offenses have proliferated which highlighted the need to adjust the legal framework in light of the practice on the ground and the rules of international humanitarian law applicable. Finally, yet importantly, we are witnessing emerging crimes, such as corporate crimes, and environmental crimes. Against the backdrop of the changing landscape and interplay of law and politics, the panel looks into some of the future challenges related to the Rome Statute and the ICC and prospect for possible amendments, legislative developments and future practice.

The key questions are, *inter alia*: Have the objectives and goals of the ICC as set out in the Rome Statute changed over the past 20 years? Should these be revisited and if so, to what end-goal? How can the reach of the ICC and goals enshrined in the Rome Statute be enhanced? Are cooperation agreements on the rise instead of ratifications of the treaty? Is the Rome Statute sufficiently covering the potential advancements of international criminal law by, for example, allowing for amendments of the crimes?

Chair

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.

Speakers

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.

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.

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 (MUNGUNGHWA, 2011).

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.

Closing Remarks

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.

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.


Panel VI
Political Impediments to
the Fight Against Impunity

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