



INTERNATIONAL  
NUREMBERG  
PRINCIPLES  
ACADEMY

# Conference Report

Nuremberg Forum 2022

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



Panel II  
Complementarity: Universal Aspirations  
Versus Tangible Results  
Chair: Prof. Stefan IJZENTLICHER  
Moderator: NINA FERNANDEZ DE CUBARRIO  
Panelists: TSIAKIS BRONER, Prof. Uwe GLEIB

2022



## Acknowledgements

The International Nuremberg Principles Academy (Nuremberg Academy) is pleased to present this comprehensive conference report on the Nuremberg Forum 2022, titled “The International Criminal Court 2002–2022: A Court in Practice”, held from 13 to 15 October 2022, including both in-person and online participation to ensure the presence of a fuller and more diverse group of experts. Universal access is crucial for the effective impact of the Nuremberg Academy’s programmes.

The Nuremberg Academy acknowledges all those who made the Nuremberg Forum 2022 a success and this publication possible. The conference owes its success to the executive leadership of the Nuremberg Academy, in particular Mr Klaus Rackwitz, Director of the Nuremberg Academy, in his last Nuremberg Forum prior to retirement, and Dr Viviane Dittrich, Deputy Director of the Nuremberg Academy. For the Nuremberg Forum 2022, special thanks go to Jolana Makraiová for her initiative in largely organising the Nuremberg Forum and to Jennifer Schense for implementing its final stages and orchestrating the event during its three days.

As usual, such a conference would not have been possible without the dedication and tireless work of the Nuremberg Academy’s staff, as well as the continuous support of the Foundation Board and Advisory Council of the Nuremberg Academy (Foundation Board and Advisory Council, respectively).

### The Academy also thanks the keynote speakers of the conference:

- **H. E. Christian Wenaweser**, Ambassador, Permanent Mission of the Principality of Liechtenstein to the UN
- **Luis Moreno-Ocampo**, former Prosecutor, International Criminal Court (ICC)
- **Dr Fatou Bensouda**, High Commissioner to the United Kingdom, The Gambia; former Prosecutor, ICC
- **Brigid Inder OBE**, former Executive Director, Women’s Initiatives for Gender Justice

Sincere appreciation goes to all speakers and chairs at the conference who addressed lessons learned after 20 years of the ICC’s operations. The conference was convened to provide a forum for constructive dialogue about the achievements and setbacks the ICC has experienced. The intention was also to canvas the opinions of the experts and of the audience through online polling while discussing and imagining what directions the ICC might take in the future. The online polling was a new element for the Nuremberg Academy and injected an element of unpredictability and excitement into the discussions. The results of the polls appear later in this report.

### 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.

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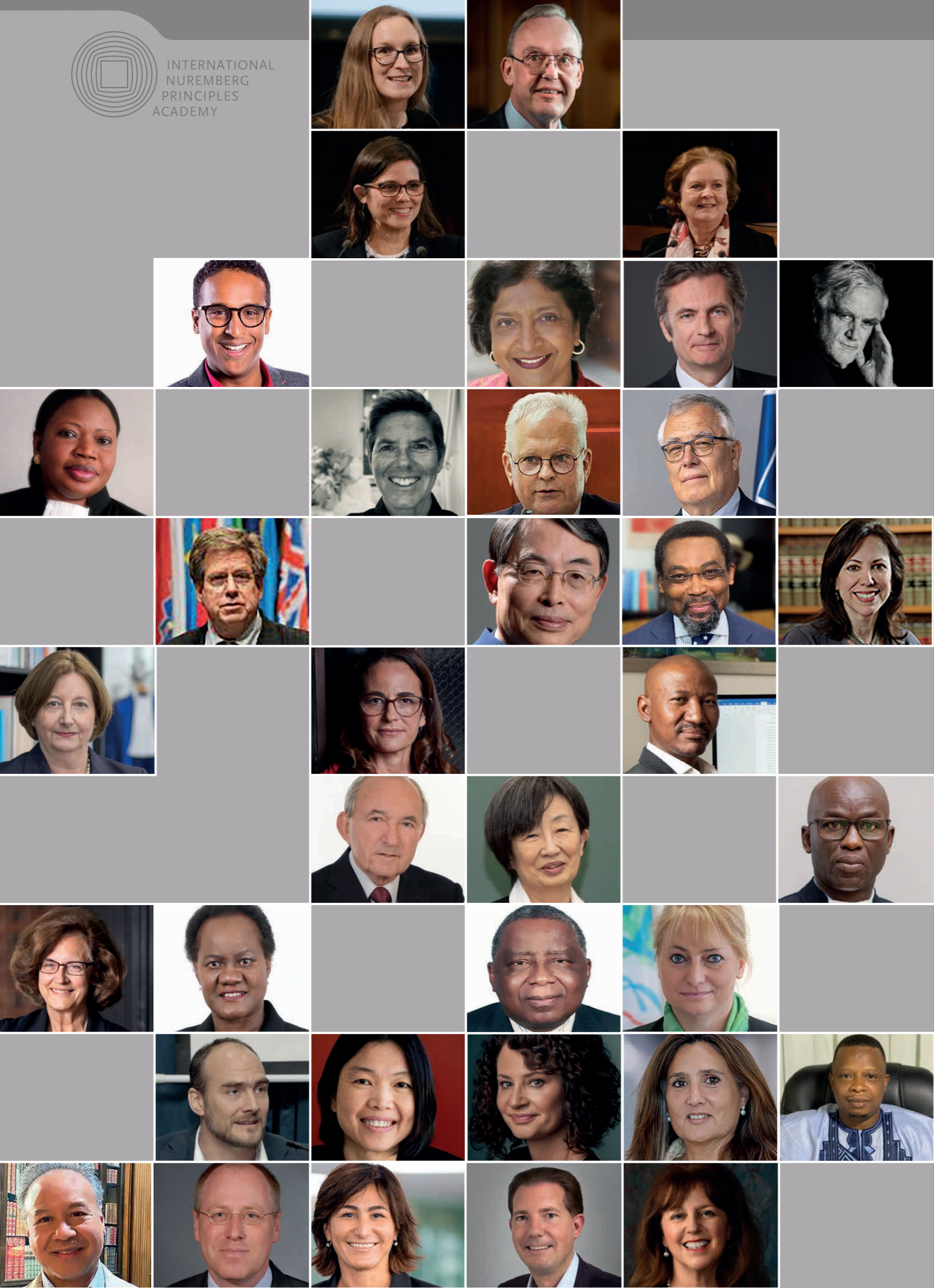
## List of Abbreviations

ASP	Assembly of States Parties to the Rome Statute
CAH	Crimes against humanity
CICC	Coalition for the International Criminal Court
CSOs	Civil society organisations
ICC	International Criminal Court
ICC-OTP	Office of the Prosecutor at the International Criminal Court
ICJ	International Court of Justice
ICL	International criminal law
ICTJ	International Center for Transitional Justice
ICTR	The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (referred to in short as International Criminal Tribunal for Rwanda)
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)
IER	Independent Experts' Report
IHL	International humanitarian law
ILC	International Law Commission
IMT	International Military Tribunal
LMG	Like-Minded Group
NGOs	Non-governmental organisations
Rome Conference	United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998
SCSL	Special Court for Sierra Leone
TFV	International Criminal Court's Trust Fund for Victims
UJ	Universal jurisdiction
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VPRS	Victims Participation and Reparations Section

## Table of Contents

	01	<b>Acknowledgements</b>
	01	<b>Disclaimer</b>
	02	<b>List of Abbreviations</b>
	05	<b>Welcome Address</b>
	06	<b>Opening Remarks</b>
		Klaus Rackwitz
		Christophe Eick
		Georg Eisenreich
		Marcus König
	07	<b>Keynote Addresses</b>
		Christian Wennaweser
		Luis Moreno-Ocampo
		Fatou Bensouda
		Brigid Inder
		Discussion
<b>Panel I</b>	12	<b>ICC's Major Achievements</b>
<b>Panel II</b>	16	<b>Complementarity: Universal Aspirations Versus Tangible Results</b>
<b>Panel III</b>	20	<b>Goal Setting: How Deterrent is the ICC in Reality?</b>
<b>Panel IV</b>	24	<b>Justice is Interconnected and Does Not End with a Sentencing: the Experiences of Victims, Witnesses and Accused Before the ICC</b>
<b>Panel V</b>	28	<b>Whose Outreach and to Whom?</b>
<b>Panel VI</b>	32	<b>The ICC in the Next Five, Ten and 15 Years</b>
	36	<b>Closing Remarks</b>
	37	<b>Overview of Poll Results</b>
<b>Annex I</b>	40	<b>Program of the Nuremberg Forum 2022</b>
<b>Annex II</b>	42	<b>Biographies of Contributors</b>
<b>Annex III</b>	52	<b>The International Nuremberg Principles Academy</b>





## Welcome Address

(as Included in the Conference Brochure)

**Klaus Rackwitz**, Director of the International Nuremberg Principles Academy

**Viviane Dittrich**, Deputy Director of the International Nuremberg Principles Academy

On behalf of the International Nuremberg Principles Academy, we would like to welcome you to the Nuremberg Forum 2022, entitled: "The International Criminal Court 2002-2022: A Court in Practice". This conference pays tribute to the 20th anniversary of the International Criminal Court and reflects on its 20-year practice.

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

In recent years, many advocacy and civil society organizations have called for the ICC to get more involved in crisis situations, such as the crises in Myanmar/Bangladesh and Ukraine, where the ICC may, arguably, not have jurisdiction. In this context, on November 14, 2019, the ICC's Pre-Trial Chamber III gave the Prosecutor permission to begin an investigation into the alleged crimes that fall under its purview in the circumstance in Myanmar/Bangladesh. On 2 March 2022, an investigation of the situation in Ukraine was started as a result of referrals by 43 nations.

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

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



## Opening Remarks

The Nuremberg Forum 2022 opened with welcoming remarks from Dr Viviane Dittrich, Deputy Director of the Nuremberg Academy; Tania von Uslar-Gleichen, Director of International Law of the Legal Department of the German Federal Foreign Office; Dr Nasser Ahmed, City Councillor of the City of Nuremberg; and Dr Navi Pillay, President of the Advisory Council of the Nuremberg Academy, former High Commissioner, United Nations (UN) High Commission for Human Rights, former Judge, International Criminal Tribunal for Rwanda and ICC. On day two, additional opening remarks were offered by Dr Thomas Dickert, President of the Higher Regional Court of Nuremberg, and Judge Piotr Hofmański, President of the ICC.

### Day 1

Dr Viviane Dittrich welcomed the participants and reflected on the ICC's trajectory in its anniversary year and the importance of critically discussing the ICC's development and effectiveness. She underscored the urgency of this discussion in light of the conflict and crimes being committed in Ukraine.

Senior Project Officer Jennifer Schense moderated the discussion from that point, introducing the speakers and summarising key points in the discussion.

Tania von Uslar-Gleichen urged the participants to reflect on the importance of the international criminal law (ICL) architecture and noted that within this architecture the ICC has evolved as a court in practice, as evidenced in its latest investigation in Ukraine. She stressed that in these challenging times, it is crucial to ensure that the Office of the Prosecutor at the ICC (ICC-OTP) can fulfil its mandate. She finished by thanking Klaus Rackwitz, Director of the Nuremberg Academy, for his efforts over the years, which were crucial to forming the new structure of the Nuremberg Academy and making it a visible and influential player.

Dr Nasser Ahmed, representing the Lord Mayor of the City of Nuremberg, welcomed the participants and noted that Nuremberg provides the ideal setting for the Forum, as the city where the Nuremberg Trials took place, but also where the Nuremberg Laws were enacted. He emphasised that the City of Nuremberg is committed to the principles of peace and human rights and has made tremendous efforts to promote human rights through the creation of various municipal institutions, such as the Documentation Center Nazi Party Rally Grounds and the Memorium Nuremberg Trials and by implementing peace-oriented educational work.

Dr Navi Pillay reflected on her professional trajectory and the privilege it entailed, being one of the first eighteen judges to serve at the ICC. She stressed that the Forum is a space to celebrate the ICC's accomplishments, but also to examine the mistakes and shortcomings that prevent it from achieving its potential. In her view, it is important to scrutinise the work of the Court to strengthen its independence and to create an institution that brings lasting peace and justice. She referred to her 2021 CNN Op-Ed<sup>1</sup> in which she urged the international community to demand accountability and to continue pushing towards ending human rights violations everywhere, because otherwise they are likely to be repeated anywhere.

### Day 2

In brief additional opening remarks on the second day, Dr Thomas Dickert, President of the Higher Regional Court of Nuremberg, welcomed the participants again to the Nuremberg Forum and noted he was delivering his opening remarks on the second day because the previous day he had been commemorating the 150<sup>th</sup> anniversary of higher court jurisdiction in Nuremberg. He remarked on that lengthy history, reflecting on the misuse of these facilities by the Nazis, who created unjust and brutal special courts, and how the historic post-war Judges' trial put them on trial in the same place they handed down their unjust verdicts and underscored why true justice should always be done in these buildings. Given the purpose of the Nuremberg Forum, Dr Dickert reflected on the role of Nuremberg as the birthplace of international criminal law and the cradle of the ICC. Given its importance, he said Germany had proposed Courtroom 600 to be added to the list of UNESCO World Heritage Sites.

Judge Piotr Hofmański, President of the ICC, addressed the 20<sup>th</sup> anniversary of the ICC and the need for space for expert discussions rather than celebratory statements. He suggested the ICC's own 20<sup>th</sup> anniversary conference was similarly contemplative, and that the results would be published soon through Leiden University. He expressed appreciation for the input of academic experts and cooperation from diplomats and States. He said their scrutiny and overview were necessary to a free and democratic society, to the functioning of even an independent institution like the ICC, to raise awareness, and to attract new generations of lawyers to work with the ICC. He said that 2022 is not the end of the road; to further enhance the fight against impunity, we must engage in an honest exchange of views and experiences. Even the Rome Statute is not set in stone; it can and has already been amended.

<sup>1</sup> Navi Pillay, "I've spent my life fighting for human rights – and the job is not done", in *CNN*, 8 October 2021, available at <<https://edition.cnn.com/2021/10/08/opinions/nuremberg-anniversary-lessons-fighting-human-rights-pillay/index.html>> (last accessed 15 November 2022).

## Keynote Addresses

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

H. E. Christian Wenaweser focused on the topic of independence. He reminded the audience that independence was a key achievement at the Rome Conference, but it was a hard-fought success. He noted that respect for the independence of the Court implies respecting its judicial decisions, but it does not mean that we should refrain from voicing opinions. It is crucial to be critical of the system and engage with overarching questions that arise. In his view, the second aspect in the discussion about independence is the collective response when independence is threatened by States that have not joined the Rome Statute. He highlighted the sanctioning of senior officials such as former Prosecutor Fatou Bensouda by the former United States of America administration, which was, in his view, an example of abuse of power. He believes that the States Parties have failed to stand up for the Court's independence in the manner that is necessary and there is a lack of a robust mechanism to support the Court in these circumstances. Regarding complementarity, he noted that the Rome Statute has defined unwillingness and inability as part of the complementarity test, but some States now want to reinterpret this standard and to limit it to the aspect of inability only. He stressed that this would result in the irreversible perception that the Court only prosecutes crimes committed in States that have capacity challenges or are failed States. He urged participants to stand up for complementarity as it is written in the Rome Statute.

He further reflected on the strength of the Rome Statute and the timing of its creation, wondering if it would even be possible to start negotiations and reach a similar outcome today. There was a sense of historical opportunity at the Rome Conference, which led to one of the highlights of treaty-making in the last decades. Despite this achievement, the question arose whether the Rome Statute should be a living instrument that reflects the progressive development of international law or be static and reflect the state of international law at the end of the nineties. The expectations of the public vis-à-vis the ICC are high, and it is the job of States Parties and civil society to manage these expectations and explain the basics of the Rome Statute to the wider public. In his view, it is a collective obligation not only to defend the integrity of the Rome Statute, but also to be open to suggestions for change. One challenge of the treaty today is its limited jurisdictional reach on the crime of aggression. There was a persuasive argument in Kampala that aggression was a thing of the past and that the Court did not need jurisdiction. However, the world is a different place today, and the term 'aggression' is constant in the diplomatic vernacular, even reaching UN resolutions. In the current global context, it is important to bring the Court's jurisdiction over aggression in line with that of the other crimes. The illegal use of force is the most fundamental attack on the international order and a source of other crimes under the Court's jurisdiction. The crime of aggression guarantees that the political and military leaders who bear the brunt of the responsibility are brought to justice.

Ambassador Wenaweser finished by reminding the audience of the Preamble of the Rome Statute: "All States shall refrain from the threat of use of force against the territorial integrity or political independence of any State" but explained, however, why the ICC as the most relevant international judicial body cannot prosecute the aggression against Ukraine. It is crucial to create an alternative avenue to ensure that the crime of aggression against Ukraine is prosecuted, as this will enhance the relevance of the ICC and of its future work. If aggression goes unpunished, the message for the future will be devastatingly clear: there is no accountability for this crime, not before the ICC or anywhere. He urged the audience to prevent this from happening as it is our duty to do so if we are genuinely committed to international criminal justice.

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**Luis Moreno-Ocampo**, former Prosecutor, ICC

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Luis Moreno-Ocampo reflected on the birth of international criminal justice with the adoption of the Nuremberg Charter. The Nuremberg Trials represented the practical effort to utilise international law to meet the greatest menace of our time: aggressive war. The judges at Nuremberg ruled that aggression is the supreme international crime containing within itself the accumulated evil of the whole. In July 2002, the Rome Statute transformed the Nuremberg legacy into a permanent system to deal with international crimes. However, a war started in Iraq soon after. As the first appointed Prosecutor in 2003, he reflected on his work within this context. At the beginning, there were serious doubts about the viability of the institution. However, the Iraq military intervention galvanised States Parties into cohesive diplomatic support for the Rome Statute. This was reflected in the consensus to refer the situations of Darfur and Libya to the ICC. However, the Syrian conflict divided the international community in 2012. This created a conflict between war, diplomacy, and international justice. Ten years later, the Rome Statute is once again operating in the middle of a new aggressive war. The Ukrainian conflict triggered political support not only for the ICC, as represented by the referral of the Ukrainian situation by 43 States Parties and Prosecutor Karim Khan's active work in leading justice efforts, but also for the war. However, there is a failure by design because the Prosecutor cannot investigate an aggressor who is not from a State Party. Against this backdrop, the rules must be changed to ensure a global legal order. Therefore, 2022 is the perfect time to study and assess the unprecedented legal architecture of the ICC.

He argued that the Rome Statute created more than a Court. It produced a confederation of nations committed to ending impunity for the most serious crimes, and thus, contributing to their prevention. It created a system in which alone amongst independent and non-state actors, the ICC-OTP could trigger ICC intervention if States failed to act. During his tenure as the first Prosecutor, many developments took place, among them: the evolution of the concept of positive complementarity; the selection of the gravest situations; the policy to focus on those most responsible; the invitation to States to refer situations before using *motu proprio* power; the differentiation between interests of peace and interests of justice and the opening of 17 situations around the world. The ICC's operations created new challenges and opportunities to mitigate ongoing conflict and security concerns. It is crucial to end war as an accepted mechanism to solve conflicts. Experts are needed to propose new mechanisms to manage conflict, but also political leaders to support the peace objectives. And finally, it is crucial to get the people's support for justice and peace. But people do not read judicial decisions, therefore he stressed the need for art, movies, poems, books. The movie "Argentina 1985" is an example of a film that has sparked a social discussion on what happened 40 years ago. The battle for justice is endless, but war should not be.

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

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Dr Bensouda focused on her work as the second ICC Prosecutor, highlighting the achievements and challenges during her nine-year term and acknowledging the solidarity and support given by her colleagues and the supporters of the Rome Statute under what she argued were personal threats and serious attempts at political interference in the Court's judicial work. Despite the challenges, the ICC and the system are stronger and more relevant than they were a decade ago. She highlighted the importance of listening to the millions of victims who look to the Court as the last bastion of justice. Therefore, it is crucial to work together to deliver the promise of justice through effective collaboration and cooperation. During her term, she argued that major changes were undertaken: first, the adoption of a new prosecutorial strategy in how cases are investigated and built, second, the enhancement of quality control mechanisms to streamline processes, ensure transparency and to build a positive work culture, and third, the implementation of gender awareness training. The goal was to strive for an accountable ICC-OTP in terms of performance and professional conduct.

The issuance of policy papers, such as on sexual and gender-based crimes and the protection of cultural heritage, and follow-up on the policies targeting gender crimes and crimes against children were set as strategic goals. In her view, this was a defining feature of her tenure. This approach led to the rulings on the Myanmar-Bangladesh situation confirming the Court's jurisdiction over the alleged deportation of the Rohingya. Another notable example is the appellate ruling on head of state immunity in the *Al-Bashir* case in the Situation in Darfur, Sudan. The ICC-OTP also contributed to emerging jurisprudence on the crimes of sexual slavery and rape against women and men, as well as extending the protection under international humanitarian law (IHL) to cover crimes committed by an armed group against members of their own group, and finally on the protection of cultural heritage as the basic fabric of civilisation.

With regards to preliminary examinations, the ICC-OTP increased transparency of its work by engaging with all stakeholders openly and by issuing an annual report to provide up-to-date information on the status of different situations. The conclusions of the preliminary examinations with respect to the UK-Iraq, Palestine, Nigeria, and Ukraine were highlighted. At the same time, the operational challenges brought on by the COVID-19 pandemic and the mismatch between the resources afforded to the ICC-OTP and the ever-growing demands placed upon it played a key role. In sum, preliminary examinations became more integrated into the lifeblood of the ICC-OTP and have become more effective in ensuring the integrity of possible future investigations. She concluded by asserting that the ICC is here to stay and deserves strong commitment and efforts and promised to continue advocating for and defending the Court's mandate.

**Brigid Inder**, Former Executive Director, Women's Initiatives for Gender Justice

Ms Inder stated that the anniversary is an opportune moment to reflect not only on the work of the Court, but to consider its meaning and purpose for humanity in light of Nuremberg's role as the moment where reckoning with some of the horrors of humanity began, as through the courageous witness testimonies of four women in the December 1946 Doctor's Trial who were victims of medical experiments in a concentration camp. The ICC is an important bridge, helping us move away from a collective consciousness of conflict, a war consciousness, and the addiction to domination using violence. The normative role of the ICC in delegitimising the use of armed violence through universal deterrence, however, remains unfulfilled. The ICC is emblematic of both the best and worst of humankind.

At the start, there was no roadmap for non-governmental organisations (NGOs) to follow. However, over the years, civil society has proven to be an enduring partner on this journey. As one of the co-founders of the Women's Initiative for Gender Justice, she was aware that it would be difficult to prosecute sexual and gender-based crimes because that would require a change in priorities, practice, and approach, as well as a transformation of legal norms and gender perceptions. However, more has been achieved in this part of the ICC's mandate than in any other category of crime. Examples include the ICC-OTP policy on gender-based crimes, as well as the judgment and 2017 Appeal Chamber decision in the *Ntaganda* case on rape and sexual slavery committed against children within his own militia group and under his command. These decisions extended the legal protection for children within militia groups.

As for the ICC's future, the challenges cannot be solved by international or individual States with short-term thinking. This is also true for problems like climate change, economic injustice, civil unrest, and armed conflicts around the world. These challenges require a global citizenry that expects more inclusive and effective forms of collective decision-making. It also requires a "cathedral thinking" approach in which the Assembly of States Parties (ASP) becomes firmly oriented to long-term thinking and engages in serious planning for the ICC's long-term future, considering its priorities and how it will be equipped to respond to new crises and potential threats to the peace and security of humanity, such as ecocide. She concluded with two recommendations: first, that all States Parties consider how they can genuinely shape and select agendas, decide on priorities, and mutually influence outcomes, and second, how States Parties can employ effective governance to ensure fulfilment of the ICC's purpose. A new era of collective decision-making and leadership is needed, and the ASP could be the body to lead the process and set an example of multilateralism with the support of the ICC and civil society.

## Discussion

The discussion focused on several topics: first, on how to coordinate among different actors and initiatives that have emerged in recent years, for example, between multiple national prosecution services and the ICC-OTP. The keynote speakers reflected that the goal is to combat impunity, and in that regard, it is crucial to look for ways in which international crimes can be addressed by one institution or another. It is important to address the challenges that come from having different initiatives in a given situation. In the case of Ukraine, there is the risk of witness fatigue on the one hand, and the potential of double standards with respect to other situation countries on the other. A different subject that came to light concerned budgets, particularly the importance of allocating the necessary resources for the ICC to do its work in all cases and all contexts with thoroughness and independence.

Another topic that emerged focused on the need for long-term thinking to engage with other stakeholders and to envision the ICC in the coming decades. It is necessary that the international justice community engages more closely with other communities and in other debates. This led to a discussion on how to bring the ICC closer to the artistic community to draw attention to its work and to support peace and justice. It is also important to engage with the public, particularly considering misinformation campaigns

from ICC detractors. One example is the narrative targeting the ICC as a Western institution to try African leaders. The influence of these narratives needs to be tackled by engaging with a wider audience, particularly the grassroots and ordinary citizens. The challenge is to explain the complexities of the international criminal justice system and to gain the support of the public.

In a series of **six panels**, the experts sought to answer the following proposition: what does the future hold for the permanent ICC? And how can its founders help ensure a successful future for the institution they brought into being 20 years ago?

Participants grappled in particular with the original proposition that the greatest achievement of the ICC was its mere existence and considered what more should be expected of the institution and what shape it might take in the future. Amongst many lines of inquiry, the following were examined:

- What are the achievements in the ICC set-up and have they helped it function effectively in practice? What are the most pressing changes needed based on the Independent Expert Review (IER) recommendations and how have those been carried out thus far?
- Has the ICC's objective to prosecute those most responsible for the most serious crimes been met with success?
- What steps has the ICC taken to advance its role with regard to complementarity and what obstacles have been encountered and solutions explored?
- Where can increased coordination improve complementarity in practice and help narrow the impunity gap?
- Is deterrence or prevention the ultimate goal? What has helped to advance the goal of deterrence over the past 20 years and what practices are worth exploring further?
- What goals are central now, particularly to protect the rights of witnesses and victims? How are these balanced against the rights of the defence? What do acquittals mean for the fairness of the original trials and how can these be improved?
- To what end goal should outreach be tied: accountability, the needs of communities and victims, seeking arrests of suspects and other forms of cooperation, capacity building in terms of understanding the ICC and international criminal law or possibly a broader focus including deterrence or prevention? How can more targeted outreach be taken?
- What is the vision of the Court for 2042?

In answering a set of related questions for each panel, the experts reflected on the achievements of the ICC but also its failings, including looking at the 2020 findings of the IER.





# Panel I

## ICC's Major Achievements

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

Participants considered what had been achieved since the Court's historic creation in 2002. After 20 years, the ICC and the larger Rome Statute system are seen as an essential part of ending cycles of violence. Significant obstacles, however, have plagued it in different spheres of its work. Despite the ICC's potential for global influence, the basic political concerns ingrained in the exercise of its authority frequently confine it. It has become increasingly obvious that the ICC is dependent on State cooperation, particularly when it comes to locating and apprehending suspects.

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

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

Regarding the procedural law, each of the ICC's trigger mechanisms have been used. Concerning the substantive law, the Court has decided cases that have broken new ground on many important issues such as the use of child soldiers, destruction of cultural heritage, sexual abuse and attacks on innocent civilians.<sup>2</sup> The ICC has developed innovative ways to address the needs of different categories of victims, such as the OTP's approach to victims' participation, to sexual and gender-based violence, to the human factor in environmental crimes and to matters related to children, as demonstrated in its policy papers.<sup>3</sup>

Similarly, the ICC community more broadly has faced a turning point in their operations and have found their own assumptions challenged: how best can community members support one another? What can be reasonably expected of the ICC and Rome Statute States Parties? How can we all do better in meeting the needs of victims and in protecting the rights of the defence?

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

<sup>2</sup> UN News, 'ICC at 20: Five things you should know about the International Criminal Court', 27 June 2022; Song, 1.

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



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Chair:

**William Pace**, former Convenor, Coalition for the International Criminal Court

Speakers:

**Judge Sang-Hyun Song**, former President, ICC

**Judge Piotr Hofmański**, President, ICC

**Judge Chile Eboe-Osuji**, former President, ICC

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To begin, **William Pace** addressed his role as the original Convenor of the Coalition for the International Criminal Court (CICC), and how it had grown from its origins until today. It was a challenge for the CICC to go from creating a court to monitoring it. Officials at the early tribunals did not understand the importance of consulting with civil society and had to be convinced. Similarly, keeping civil society organisations (CSOs) invested in what happened at the ICC and the ASP was a challenge when it often was not their primary mandate. The ICC would not exist without the participation of CSOs in the negotiations, and he warned against the closing of space to civil society in international organisations and treaty bodies. He appealed to the ASP President and the ICC community to restore the previous consultative arrangements to their proper level as quickly as possible, as well as to restore funding. He also called for the restoration of a governmental Like-Minded Group (LMG) to support the ICC. It is essential that the well-formulated recommendations of the IER be seriously considered and implemented.

**Judge Sang-Hyun Song**, former ICC President, said that one of the most important trends was the idea of “no sustainable peace without international criminal justice”. He described the ICC’s establishment as a historic achievement, based in part on Trinidad and Tobago President Robinson’s 1989 initiative to revive discussions on the establishment of an international criminal court. It has also been a historic achievement to change the way the world has come to think of and respond to grave international crimes by helping to entrench strong legal and societal norms that prohibit core crimes and human rights abuses. The Rome Statute system can help us move towards a safer world. Democracy, development and the rule of law must simultaneously be strengthened. This is not a cause for the justice sector alone. He called on States and the UN Security Council (UNSC) in particular to assist the ICC and argued that the lack of cooperation can seriously diminish the ICC’s ability to deliver justice.

**Judge Piotr Hofmański**, current ICC President, started by saying that nothing is perfect and there is always space for improvement. He chose not to focus on where the ICC failed but rather on its achievements. It found its own place in the international law landscape, made its own jurisprudence, rendered the principle of complementarity a work in practice, attracted greater membership and survived challenges and attacks. Most importantly, it put victims at the centre of international criminal justice, including participation and reparations, an achievement not only on paper but on the ground. More than 21,000 victims have formally participated so far. Close to 3,000 individual victims have received court-ordered reparations. Nearly 100,000 victims and their family members have benefited from Trust Fund for Victims (TFV) funding. On the IER process, he said there were bright and dark sides, and the ICC should try to use it to improve the ICC and its operations, but it was not a bible for the ICC, and it created a lot of extra work when the ICC was busier than ever. He highlighted that the ICC is handling 17 situations and there are five cases in trial, all three courtrooms are full of activity, and that is a new situation for the Court. Therefore, there is huge pressure on budget allocation that needs to be resolved. He concluded that it is important to expedite the pre-trial process, and that there needs to be agreement on timelines on key decisions and decision structures. He also agreed that the working culture needs to change significantly although he argued that important policies had been adopted that should hopefully provide remedies.

**Judge Chile Eboe-Osuji**, former ICC President, also looked at the contributions of the ICC to international justice against the backdrop of Russia’s invasion of Ukraine. He focused his presentation on the issue of Head of State immunity. The Appeals Chamber addressed this question in the *Omar Al-Bashir* case. There are debates between one group that argues that there is no immunity for international crimes and another that argues the opposite. Within the former, many insist that neither State practice nor *opinio juris* supports immunity under customary international law. In this regard, Judge Eboe-Osuji referred to international instruments and jurisprudence that do not recognise the immunity of Heads of State. He highlighted provisions in the 1996 International Law Commission (ILC) commentary on the draft code of crimes against peace and in the First Geneva Convention. He further mentioned key decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the cases of *Tadić* and *Blaškić*, as well as the 2004 Special Court for Sierra Leone (SCSL) decision in the *Taylor* case. He concluded that these examples constitute customary international law and there is no controversy about this proposition, other than from groups that want to create confusion.

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#### Q&A

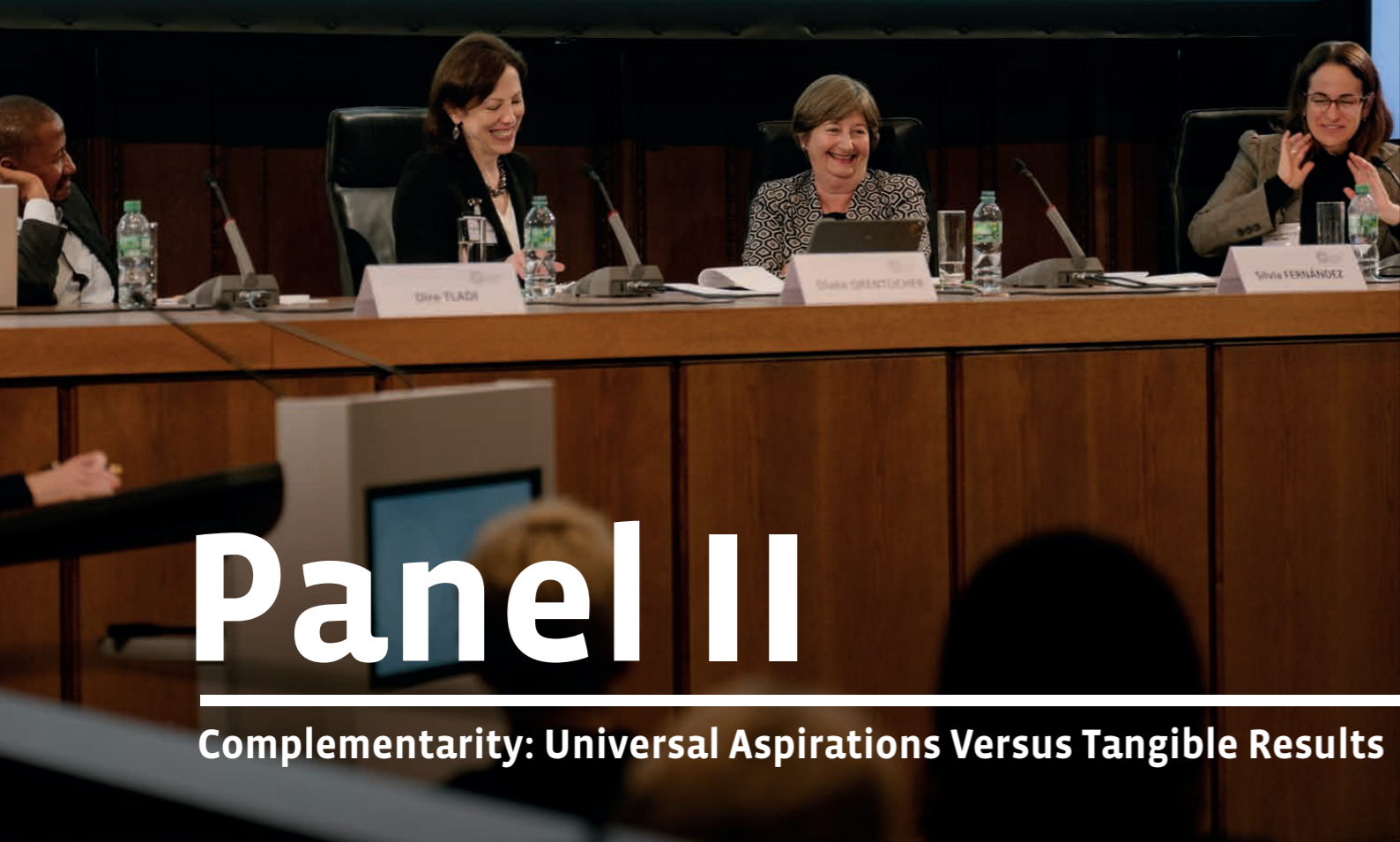
The discussion centred on the ICC’s achievements and failures. While the panellists argued that the mere existence of the ICC is a huge breakthrough in human history and demonstrates the capacity for joint work between States Parties, civil society and judges, they agreed there are several significant shortcomings. First is the fact that powerful States are not willing to join the ICC and that there is a lack of governmental investment in prevention mechanisms. Regarding the universality debate, participants wondered if the UN General Assembly (UNGA) could submit a situation to the ICC. States would have to amend Article 15 of the Rome Statute to allow the UNGA to act if the UNSC does not.

Another topic that emerged was that States Parties do not hold themselves to scrutiny regarding their own efforts and some participants considered the potential for creating an independent expert report focusing on such efforts. To ensure the success of the ICC, all the pillars that support it need to be looked at. It was added that while in the 2020 IER there are recommendations for States Parties, and there is a mandate from the ASP, this should not preclude additional suggestions.

Finally, it is important not to separate the Court from its creators. The ICC relies on States Parties to support it and enforce its judgments. The reality is that small countries have carried the burden of supporting this institution. The ICC needs everybody’s support.

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ge Silvia FERNÁNDEZ DE GURMENDI,  
ara TARACIUUK BRONER, Prof. Dire TLADI



# Panel II

## Complementarity: Universal Aspirations Versus Tangible Results

Panel II examined the options for balancing the scale of the ICC's complementarity regime. By enacting the Rome Statute, States did not merely create a Court, but also laid the groundwork for a broader network of international criminal justice practitioners, with duties divided up amongst States, international organisations and civil society bodies. The ICC is poised to serve as a convenor of different justice stakeholders in conjunction with the ASP.<sup>4</sup> The Court's practice thus far has unearthed capabilities and limitations tied to different stakeholders' varied and sometimes conflicting interests. The ICC is also poised to serve as a convenor of different justice stakeholders in conjunction with the ASP. The ICC has contributed to NGOs' efforts to empower communities in their quest for accountability and to gain a stake in the system and has contributed to the increased functioning of domestic criminal justice systems. There are still gaps in the ICC's architecture that prevent it from effectively coordinating with others as well as questions about how far that coordination can realistically extend. The perceived selectivity of the ICC's jurisdiction, including but not limited to perceptions of bias on the part of the UNSC referral mechanism, may have further undermined the ICC's legitimacy. So far, referrals have only been possible where no permanent UNSC member has a vital interest in the situation being referred.

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

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

<sup>4</sup> Stromseth, 4.

Chair:

**Professor Diane Orentlicher**, Professor of International Law, Washington College of Law, American University

Speakers:

**Silvia Fernández de Gurmendi**, President, ICC Assembly of States Parties (ASP), former President, ICC

**Tamara Taraciuk Broner**, Deputy Director for the Americas, Human Rights Watch

**Professor Dire Tladi**, Professor of International Law, University of Pretoria

**Professor Diane Orentlicher**, Professor of International Law at the Washington College of Law of the American University, opened the panel by declaring it an opportune time to assess the ICC's record with the goal of applying lessons learned, going forward. The Rome Statute not only created a permanent ICC, it also sought to foster a new global system of accountability in which States played the primary role. To this end, the concept of complementarity, the cornerstone of the Rome Statute, plays a crucial role. The ICC is a dynamic vehicle for catalysing domestic efforts to tackle impunity. The catalytic role can be viewed as negative, like a Damocles sword, or as positive and dynamic, as a vehicle for productive cooperation in which national and international actors constructively support each other. Key actors in implementing complementarity very much include domestic and international NGOs. It is a concept that has spurred these actors to act effectively in demanding accountability from domestic judges and prosecutors, even when the ICC has been relatively remote. From the viewpoint of the ICC, the two perspectives of complementarity do not always sit easily with each other, and a number of daunting questions have arisen, such as whether the jurisprudence under Article 17 of the Rome Statute might inadvertently undermine the necessarily painstaking and time-consuming efforts of local actors to press for prosecutions, and whether the ICC's case law on complementarity has constrained more expansive conceptions of complementarity.

**Judge Silvia Fernández de Gurmendi**, former ICC Judge and current ASP President, continued the discussion by recognising praise for what is happening at the domestic level: prosecutions in Europe, Argentina, and elsewhere, spurred by CSO efforts to collect and preserve evidence for national prosecutions. She found the change of approach and mindset impressive, from praising internationalism to a new focus on national and domestic justice. However, she wondered how it took place and what challenges it implicates. In the 1990s, the focus was on international justice, but the approach changed when the Rome Statute entered into force. There was an idea of division of labour, as international justice would deal with those who bear the greatest responsibility, with the rest being handled by national systems. The ICC's engagement pushed the evolution of new strategies, such as investigations based on self-referrals. Nevertheless, there was disillusionment over the impossibility of matching the ICC's capacity to the global aspirations for its work. In her view, a combination of international and domestic efforts is necessary and the only way to have accountability.

She highlighted several challenges, the first being the division of labour. There is a patronising view that assigns greater importance to international efforts, with domestic efforts being seen as less serious. It is important to redress this view, which is now shifting. Second, on cooperation, issues of languages, protection of witnesses and enhancing interstate cooperation are only a few hurdles facing international prosecutions in any venue. Third, on coordination, many situations remain unaddressed. Therefore, it is important to coordinate on a case-by-case basis. Lastly, on harmonisation, there must be common standards. As such, States Parties that accept the ICC's jurisdiction must enact domestic implementation protocols.

**Tamara Taraciuk Broner**, Deputy Director for the Americas at Human Rights Watch, focused her presentation on the role of Latin America as a crucial actor in implementing the Rome Statute. She referred to preliminary investigations in Colombia and Venezuela, as well as the cases of Bolivia, Chile, and Honduras. With regard to Colombia and Venezuela, she argued that the ICC can catalyse national justice efforts because it applies a unique pressure. In her view, the ICC must strike a delicate balance, providing space for national authorities to do their work while continuing its investigations. Along the way, there could be risks if delays on the part of the ICC-OTP are seen as legitimatising impunity.

There are difficulties to reach success at the national level for Latin America, such as the lack of judicial independence. The ICC-OTP needs to be strategic and avoid premature assessments that could be seen as manipulating complementarity. Cooperation is key, particularly regarding access to case information and working with national authorities that may not want to advance justice efforts. Lack of information could raise concerns for local actors, victims, and rights holders about transparency. In her view, a key recommendation is to enhance public communication between the ICC-OTP and civil society to address these concerns. She warned that the risk of politicisation is evident in these interactions. There is a constant need for vigilance to protect justice and prevent the ICC from becoming a political tool.

**Dr Dire Tladi**, Professor of International Law at the University of Pretoria, stressed that universality is not an objective, but a means to an end, the objective which is a world without atrocities and impunity. In his view, the most obvious pathways are: to promote the ICC and enhance ratification, an approach with many benefits and few costs; to extend the reach of the ICC system beyond States Parties, for example, through article 12(3) declarations; to promote positive complementarity, including the exercise of jurisdiction and the referral of situations and cases from Rome Statute non-States Parties. It promotes the most important principle of the system and ensures that justice happens close to the victims. At the same time, it could increase ratification. He emphasised that certain conditions must be met, such as ensuring a degree of consistency in national standards; and finally, another pathway would be to promote UNSC referrals, which come with risks of politicisation and are guided by interests beyond justice. The content of the resolutions may also undermine the legitimacy of the ICC and its objectives.

He concluded by asserting that the ILC has engaged in promoting complementarity and standardisation of rules. He highlighted the draft articles on crimes against humanity as crucial to answering complementarity issues because they promote investigations, prosecutions, and the interstate cooperation they require. He acknowledged that there are substantive limitations. For example, the text should have a broader scope, including the crime of aggression, and that it does not address immunity for the purposes of standardisation. It is important that States address setbacks in the document.

#### Q&A

The discussion looked at standardisation between national and international initiatives to attain consistency while keeping some margin of appreciation. In addition, there was a discussion on the role of the ASP in expanding universality, as the ASP is a decentralised body with representatives of 123 States Parties that could pressure others to join and thereby increase the ICC's value added to the justice system.

One question posed online dealt with the ICC's future, asking whether the Court would continue to exist in the absence of any cases. The panellists agreed that the ICC will continue to exist even if there are no cases, since it will be needed if a situation erupts. There will always be a need for a Court like the ICC as a backup system to catalyse national systems and promote standards.

Finally, the discussion focused on the topic of positive complementarity and the role of the ICC in enhancing domestic prosecutions. Capacity building is important, and the ICC could serve as a forum for actors to meet and engage. Another crucial topic was communicating the division of labour in a particular situation to the broader public. The panellists reflected that it should take place when cases are brought before judges and arrest warrants are issued. Finally, the issue of witness fatigue when there are multiple initiatives was brought up. In this regard, the ICC-OTP has guidelines that could be useful to reduce harm and avoid traumatising.





# Panel III

Goal Setting: How Deterrent is the ICC in Reality?

Panel III addressed the deterrent function of the ICC and its main challenges, analysing the ICC's agenda in assessing whether deterrence is the ultimate goal. There is no consensus on whether it has a deterrent effect. Experts believe that impunity for the gravest crimes cannot be alleviated without convictions. Hence, when there is little likelihood of prosecution, it can undermine any deterrent effect. Regardless, some scholars argue that the ICC has arguably contributed to deterring and preventing crimes. They cited social deterrence as another form of impact through the shaping of social expectations. Other scholars support the social deterrence argument. Some experts believe that preliminary examinations can exert considerable pressure on States to carry out genuine national proceedings and others have asserted that the ICC Prosecutor's strategic public statements can be deterrent. In the Nuremberg Academy's volume on the subject *One Step Forward, Two Steps Back: the Deterrent Effect of International Criminal Tribunals* (TOAEP, 2017), the scholars involved found across ten country situations that there was a measurable deterrent impact but that it was elastic and could be reversed through counter-pressures which would need to be addressed over a longer period of time.

A study on the effect of the ICC's involvement in Libya on civilian deaths indicated that while the Court's involvement did not stop violence against civilians, it did correlate with a statistically significant reduction in that violence. Evidence suggests that the possibility of being indicted by the ICC played a significant role in preventing widespread violence in the run-up to elections in some African countries. In Sudan, the threat of ICC action might have encouraged some politicians to distance themselves from the indicted individuals. In Côte d'Ivoire, the ICC's investigations are believed to have paved the way for greater political balance in the country. In Kenya, preliminary investigations appear to have notably impacted domestic politics and international mediation efforts. Moreover, ICC prosecutions arising from the 2007 to 2008 post-election violence in Kenya reduced the incidence of violence in elections there. Some experts have cited similar deterrent effects in Sri Lanka, Colombia, Uganda and Georgia.

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

Chair:

**Judge Richard Goldstone**, former Judge, Constitutional Court of South Africa; former Prosecutor, International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) (remote participation)

Speakers:

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

**Mame Mandiaye Niang**, Deputy Prosecutor, ICC

**Professor Beth A. Simmons**, Professor of Law, Political Science and Business Ethics, University of Pennsylvania in Philadelphia

**Judge Richard Goldstone**, former Judge of the Constitutional Court of South Africa and former Prosecutor of the ICTY and ICTR, said goals such as deterrence may not be fully attainable, but even partial success is worth striving for, and worth the cost. The goals of justice are complex and have been debated for centuries. He cited the Nuremberg Academy volume, *One Step Forward, Two Steps Back: the Deterrent Effect of International Criminal Tribunals* (TOAEP, 2017) and the work of its editors, Jennifer Schense and Linda Carter, in listing the various goals supporters intend for the ICC to achieve, an impressive but daunting collection. Deterrence and prevention may be the ultimate goals of the Court, but they are two among many. Compared to the famous Hitler quote about whether anyone remembers the annihilation of the Armenians, there is greater awareness today of genocides and other crimes being perpetrated. But this does not always translate into action. He recalled his frustration when Radovan Karadžić and Ratko Mladić were indicted, only to commit the genocide in Srebrenica a few weeks later. They moved with impunity through UN roadblocks. Regardless of UN and NATO refusal to conduct arrests, he cited examples where Croatian authorities took steps to at least reduce the commission of war crimes in its operations. He addressed ongoing Russian attacks on Ukraine and cited the ongoing ICC investigation, arguing it might have some deterrent effect and that Russian cover-up of crimes pointed in that direction, and called for the establishment of a special court to investigate and prosecute crimes of aggression since 2014.

**Judge Kuniko Ozaki**, former ICC Judge, ICC Vice-President and S.A. Professor of International Law at Chuo University, addressed the main question of whether deterrence is the ultimate goal, arguing that it was. She discussed the relationship between deterrence and prevention and referenced the purposes of domestic criminal law, which are multifold, including prevention. The ICC should aim for all these effects as well. But the spirit of the Rome Statute is to alleviate human suffering to contribute to peace, security and wellbeing. Therefore, prevention should be the priority. Criminologists often distinguish prevention from deterrence, arguing that prevention may come through trust in law and a law-abiding spirit amongst the population. Prevention through deterrence means to deter potential criminals from committing crimes, using the threat of punishment. In the case of core crimes, she argued that many potential perpetrators feel confident that they are free to do anything, immune from any accusation. That confidence comes from strong military and political power, support from the majority of the population, or backing from other countries. The ICC can only affect such a balance through a high probability of apprehension and punishment. Prevention through developing trust in law is more subtle and time-consuming, but more fundamental and effective in the long-run. People in extreme situations become desperate and cynical in the face of core crimes and may lose sense of their norms, to live together with their neighbours in a community, as well as their sense of law and justice. They may also rely on inhumane measures if they feel they are necessary to survive. The ICC can help people to recover their trust in law, nourish and permit the law-abiding spirit. This will strengthen communities against the temptation of resorting to core crimes or supporting leaders who commit them. The ICC cannot achieve its goals alone. Outreach is also a key factor. But she also argued against expanding the ICC's mandate so as not to lose the international community's confidence.

**Mame Mandiaye Niang**, Deputy Prosecutor of the ICC, reflected that deterrence and prevention were considered since the drafting of the Rome Statute. In his view, deterrence can neither be ruled out nor overrated. Crimes occur with a certain regularity. Short of being able to prevent them, we should always endeavour to punish them. This is the basic function of criminal law. Deterrence is not the primary purpose, but it is only aimed at through the retributive function. Applying the law in a practical, effective and consistent way will allow it to serve as an anchor for stability and security, which is much needed in current times. Since the ICC's advent, the conversation has dramatically changed. Everyone knows it exists and can call to book any leader who misuses his powers to indulge in mass atrocities. As an African, as a former *ad hoc* tribunal judge, and as a domestic prosecutor, having travelled a lot throughout Africa, he witnessed almost daily this shift in the mindset or mindfulness of the existence of the ICC as a body that keeps people in check. The limitations of the ICC's jurisdiction even are ignored, wilfully or not. Opposition leaders, human rights activists, NGOs, militants and others call on the ICC for an intervention, whether it has jurisdiction or not, no matter the scale or gravity of the situation, and this does have an impact. Many African leaders are very watchful of the ICC. He cited the example of Blaise Campaoré of Burkina Faso, who in 2014 chose to quietly flee the country when challenged over his decision to stay in power, even though he enjoyed a great deal of support from the army. In his view, if Campaoré made that choice, it was from fear of the ICC and what happened to his neighbour, Laurent Gbagbo of Côte d'Ivoire.

**Professor Beth A. Simmons**, Professor of Law, Political Science and Business Ethics at the University of Pennsylvania, stated that deterrence can shape perceptions of potential perpetrators about the potential consequences if they commit crimes, such as apprehension, travel restrictions, interacting with legal institutions and punishment. She also highlighted the concept of social deterrence, the understanding that a crime will not be tolerated. It is important to nurture a sense of solidarity. She stressed that the ICC has the role of being the expressive conscience of the international community, but wondered "what does the community value?"

She also differentiated between deterrence and prevention. To deter concerns stopping someone specific who wants to commit a crime from acting. In contrast, prevention restricts the social space within which crimes are committed, to the point of avoiding crime more generally. She acknowledged that there are broader structural issues that need to be addressed when talking about deterrence, but what can ICL do? Can it deter crimes? In her view, deterrence is a process over time that begins with clarity about the potential consequences of committing crimes. In this regard, the ICC has a crucial role to educate. On the other hand, complementarity has helped to increase the risk of prosecution and make accountability more credible on the ground. She highlighted several studies that provide evidence that countries that experience conflicts are more likely to prosecute officials if they have ratified the Rome Statute. In addition, preliminary examinations are important. Qualitative evidence in Colombia and Uganda shows that armed actors considered the risks of prosecutions after the preliminary examination opened.

#### Q&A

The discussion focused on the ICC's communicative role to inform about the process and consequences of investigations, and thus to promote deterrence. It is important to customise outreach strategies and determine who should be the target. But communication must be implemented early on, to clarify the law and make audiences understand that there are legitimate proceedings taking place in each situation. The panellists highlighted that horizontal complementarity is needed to support outreach and communication, as well as the allocation of sufficient resources to the ICC to engage in outreach. It was also stressed that not all groups are deterrable, but some are, and the Court should nurture that.

Complementarity was also part of the discussion, in the sense of coordinating joint work to enhance predictability. In an ideal justice system, there should be predictability and certainty about the prosecutorial proceedings. Complementarity can expand the chances of prosecutions, and hence, deter.

Finally, the topic of victim participation emerged. Amongst the questions addressed, some asked about victims that could commit crimes in the future. It is important to address these individuals and involve them in the process to find a sense of reparation and justice. Participants mentioned that ICC cases have been used to talk to militias and demobilise child soldiers in different countries. It is crucial to count on the support of civil society, human rights, and women's organisations to meet this endeavour.





# Panel IV

**Justice is Interconnected and Does Not End with a Sentencing:  
the Experiences of Victims, Witnesses and Accused Before the ICC**

Panel IV addressed the different facets of justice for victims, witnesses and the accused and how they could be balanced. In addition, it explored the key goals of protecting the rights of witnesses and victims and the impact of reparations on victims and their communities. The ICC pursues accountability for international crimes, comprising retributive and restorative justice. Victims-related goals include protection, provisions for participation in ICC proceedings and reparations. Accused-related goals are bound up in the obligations to ensure due process and to respect the principle of innocent until proven guilty. None of the goals are fully enunciated, and there is much room for clarity. For example, in the Court's practice, the lack of explicit instructions in article 75 poses challenges to the enforcement of victims' rights.

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

Upon analysis of cases at the reparations phase, some experts have observed that after sentencing, it is difficult for the Court to balance the needs of victims with other goals; frequently, victims' rights are compromised. Moreover, each of the Chambers have differing opinions on what reparations should include and how they should be carried out. The TFV definition and application of restitution are again different. This disagreement can be clearly seen in the ICC judges' and the TFV's inability to agree on a reparations program, which resulted in tensions and delays in implementation in the Lubanga case, as well as between the parties in the Katanga and Al Mahdi cases.

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

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



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Chair:

**Dr Athaliah Molokomme**, former Attorney-General, Botswana; Permanent Representative of Botswana to the UN in Geneva; and Ambassador to Switzerland (in place of **Professor Betty Kaari Murungi**, Professor of Practice, SOAS University of London, absent due to sudden illness)

Speakers:

**Chief Charles Achaleke Taku**, Lead Defence Counsel, ICC

**Dr Philipp Ambach**, Chief of the Victims Participation and Reparations Section (VPRS) in the ICC Registry (in place of **Judge Ivana Hrdličková**, President of the Special Tribunal for Lebanon)

**Dr Phuong N. Pham**, Assistant Professor, Harvard Humanitarian Initiative

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**Dr Athaliah Molokomme**, former Attorney-General of Botswana, Permanent Representative of Botswana to the UN in Geneva and Ambassador to Switzerland, opened the discussion by overviewing the questions put to the panel before handing over to the speakers.

**Dr Phuong N. Pham**, Assistant Professor at the Harvard Humanitarian Initiative, focused her presentation on the impact of reparations on victims and communities. According to survey data with survivors and affected communities, their desires are not inconsistent with the ICC's goals. Their needs involve peace and security, access to basic services, recognition of their harm and suffering, and knowing the truth about what happened, who was responsible and what could have been done to prevent it. However, there is confusion and lack of clarity in terms of what victims can expect from reparations. The closer victims are to proceedings, the less positive they are because the proceedings are not able to meet their expectations. Impact data is needed regarding the ICC's Trust Fund for Victims.

The process of delivery and perceptions of reparations are crucial to assess their impact. Justice not only must be done, but also be seen to be done. The perception of reparations as effective is just as important as the actual reparations. Therefore, outreach plays an important role. Reparations without engagement are less likely to achieve system-level impact. According to the studies she has conducted, there is evidence that reparations enhance a vertical relationship, not a horizontal one. It improves relationships between citizens and the State, for example, but not within the community. She concluded by urging more resources to conduct rigorous research, to have access to backed data of best practices and to allow science to guide design and implementation. In the same vein, a common framework to assess the impact of the ICC is needed. Therefore, it is important to coordinate with external experts and improve the evidence base of reparations.

**Chief Charles Achaleke Taku**, Lead Defence Counsel of the ICC, referred to the Rome Statute Preamble on ensuring effective prosecutions to prevent atrocity crimes. In his view, without the protection of witnesses and victims, there will not be cooperation from them or from the States. In many cases, witnesses, victims and the accused come from the same community and share common cultural values. When victims come before the Court, it is because they are protected and when they return to their communities, they expect protection measures to continue. Cultural sensitivity is necessary to avoid re-traumatisation. It is important to pay attention to their traditional ways of dressing and consider the weather conditions in The Hague as well. This will instil the proceedings with humanity and dignity. Another key issue is the notion of the victim-perpetrator. Some people will have dual status, and it is important to take into consideration the interrelation between individuals that participate in the proceedings. Finally, it is important to enhance victim participation and balance the rights of the accused. Participation should be an effective principle and process, in which representatives and counsels can also take part to expedite the process.

**Dr Philipp Ambach**, Chief of the VPRS in the ICC Registry, focused his presentation on how the victim participation and reparations framework has developed so far. The ICC has had a pioneering role, and some of its features have been taken over by other institutions. Legal provisions about victim participation were a novelty, and there was a lack of clarity on how it would work in practice. There was a two-sided approach, first that victim participation should not slow down the process, and second, to avoid any participation that is merely symbolic.

One of the key concerns was the amount of information needed from victims to meet the procedural standards and enable them to participate in the proceedings. There are also problems related to the lack of personal documents to accredit the identity of the victim in the proceedings, especially when talking about hundreds or thousands of victims. The challenge was how to maximise victim participation without it becoming a mere numerical exercise. In this regard, victim legal representation is important to make the system work. Resources are needed for the system to work properly, for example, to use technology to void security problems given the confidential nature of the information collected. Another issue is protection and clearly explaining to victims under which conditions they can expect it. Expectation management is important, and careful consideration in what is being communicated to the victims must be considered. He concluded by stating that the system works, and victim participation does not slow down proceedings. There is room for improvement, but not in terms of efficacy and efficiency.

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#### Q&A

The discussion addressed several questions regarding reparations. First, how to expedite reparation processes so that victims do not wait too long. One avenue that could speed up the proceedings is to address reparations during the trial proceedings, thus allowing decisions on reparations to come out more quickly after the judgment. Secondly, a question was posed on how to separate reparations from the outcomes of the case. It is crucial to rethink the TFV and State responsibility in terms of complementarity. The States Parties should be responsible for starting a reparations programme regardless of an acquittal or a conviction. The participants stressed that victims cannot be burdened with the outcome of the process beyond a reasonable doubt. This debate is linked with the question of through whom victims feel repaired. If the State is unable to provide reparations, the international community could step in, as well as non-State actors.

The purpose of reparations was also discussed, especially when looking at cultural differences. For some victims, justice is to have a historical record of the stories. In this regard, it is crucial to consider victim perceptions and different forms of reparations. Another priority for victims is the opportunity to be acknowledged and for people to understand what happened to them and to affected communities. The panellists noted the potential of restorative assistance, and how the ICC could partner with development actors and humanitarian institutions and engage with rehabilitation processes. In this regard, a multidisciplinary approach is crucial to integrate different methodologies and design, implement and evaluate the resulting processes. The discussion finished with the reflection that the ICC is in a deconstruction process, and the role of the victims is central. It is important to look beyond the mechanisms to support victims and promote the constructive intervention of the international community.

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# Panel V

## Whose Outreach and to Whom?

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

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

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

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

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Chair:

**Dr Sarah Finnin**, International Criminal Lawyer and Victims' Rights Expert

Speakers:

**Sonia Robla**, Chief of Public Information and Outreach Section, ICC

**Ibrahim Sorie Yillah**, Vice Chairman of the Board of Directors, TFV (remote participation)

**Judge Raul Pangalangan**, former Judge, ICC

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**Dr Sarah Finnin**, International Criminal Lawyer and Victims' Rights Expert, stated that outreach was an integral part of the ICC's operations and a vital tool to achieve its goals, an interface between the ICC and affected communities, and a path towards making the ICC's judicial proceedings more accessible and inclusive. Implementing effective outreach and being heard by the audiences the ICC needs to reach is incredibly challenging. A few key issues revolve around the question posed here: who's outreach and to whom? There must be a clear understanding of the goals of outreach for it to be successful. One is to ensure victims and affected communities are put in a position to engage effectively with the ICC throughout all phases of its activities. To do this, victims and affected communities need accurate, comprehensive, consistent and timely information about the ICC's mandate and their opportunities to participate. The TFV has more scope for these consultations than the Registry, but true dialogue on both parts will include a range of other actors, including victims' representatives, the VPRS and civil society. Outreach is also important for achieving greater understanding amongst the supporters of defendants as well as amongst victims. Dr Finnin cited examples from the *Ongwen* case to support this point.

**Sonia Robla**, Chief of the ICC's Public Information and Outreach Section, focused her presentation on the evolution of the ICC's outreach system. While outreach was not mentioned in the drafting of the Rome Statute, it was inspired by the experiences of the *ad hoc* tribunals. Outreach at the ICC means making the judicial proceedings accessible to the communities affected by the situations. The outreach work is different from that of the *ad hoc* tribunals. The ICC often works in ongoing conflicts, simultaneously in many countries, in many languages and in a context of resistance against its work. Outreach involves two-way communication, and it is important to listen to communities, not only to victims but also to reach out to legal communities, local NGOs, academia, the media, members of armed forces and supporters of the accused. Each situation is unique and requires a tailored approach according to cultural sensitivities and considering traditional means of communication and local languages.

The most relevant challenges are the lack of cooperation in countries where the ICC is not welcome and cannot create a country office, which limits access to affected communities; dissemination of fake news against the ICC and personal attacks against elected officials; confidentiality of proceedings limiting the dissemination of information and the subsequent disappointment of affected communities; and the lack of sufficient resources to implement outreach in situation countries. Staff with cultural expertise and language skills are needed to build trust with communities. Despite the challenges, the ICC has implemented innovative approaches to reach out to victims and affected communities by working with civil society and other partners.

**Ibrahim Sorie Yillah**, Vice Chairman of the Board of Directors of the TFV, provided his insights into the TFV's outreach strategy and its impact on victims and affected communities in situation countries. The TFV works with the Court's Public Information Unit with two objectives: first, to reach out to victims and affected communities; and second, to provide visibility to the TFV's work. There is a continuous engagement with civil society groups to reach victims and inform them about the legal process, reparations and assistance.

He added that the TFV has put in place a victim-centred participative approach in the design and implementation of outreach and reparations. The goal is to listen to victims' expectations and to reach out in terms of how to design and implement reparations. In turn, the communities can take ownership of the process and give it legitimacy because they collaborate in the design of the reparation projects. Another objective of outreach is to fundraise on behalf of victims. For this objective, the TFV works with embassies, donors and undertakes projects with international missions.

He concluded that the purpose and objective of the ICC should not only be accountability and complementarity, but also communication and outreach. According to Mr Yillah, outreach should also be measured by its complementarity, how domestic actors domesticate and build out their own legal systems. Finally, outreach should not only focus on victims and affected communities but should be part of a continuous engagement to educate the public and States Parties.

**Judge Raul Pangalangan**, former ICC Judge, reflected on the historical evolution of judicial outreach. In the past, a judgment usually spoke for itself, but today it is unthinkable to have an ICC without outreach. Outreach is necessary to give legitimacy to the Court, promote State cooperation, find witnesses, and inspire their confidence. In his view, there has been an epistemological shift, and a pedagogical approach is needed to make the public understand about convictions and acquittals. The goal should be to bridge the gap between judicial-legal jargon and human beings expecting concrete results, including financial reparations.

Outreach is about audiences. The type of communication must be tailored to the medium and context in which the ICC is operating. Outreach to the legal community is different from that to victims. Regarding victims, outreach should be linked to the definition of justice itself. In many cases, the right name of the crime is part of the justice victims seek. There needs to be a sense of ownership of the justice victims are being given. Thus, victim participation and reparations are the real test of the system. He concluded by urging that we listen to the victims and bring them closer to a system that is often too distant and indifferent to them.

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#### Q&A

The discussion dealt with the purposes of outreach, whether deterrence or strengthening the rule of law should be goals. The panellists stated that any exercise to explain the workings of the Court could have a deterrent effect. But the larger goal is to remind communities that there is an ICC as a last resort. In addition, the terminology is critical to reaching out to affected communities, considering specific circumstances and languages. The concept of outreach puts victims and affected communities at the centre of communication.

Another discussion point centred on the timing of outreach. Should it start from the preliminary examinations or only during judicial proceedings and the judgment? The vital issue to consider is the limited resources to expand to preliminary investigations. A comprehensive strategy that takes into consideration ways of communication and specific circumstances of the context and the nature of the target group is needed.

Finally, the discussion dealt with the message that the Court also communicates with its silence. It is a crucial issue because, in many cases, silence speaks louder than words. When the ICC is too slow to take the floor, other actors can take it. There is the risk of leaving a vacuum where silence can be filled with misinformation.

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# Panel VI

The ICC in the Next Five, Ten and 15 Years

The last panel reflected on the most recent criticisms, workable solutions, and the need for the ICC today. The ICC is still defining its place in the international community, as well as the expectations it holds for itself and which others hold for it. The ICC was never intended to be a *panacea*, but what is it?

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

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

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

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

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

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Chair:

**Professor Claus Kreß**, Director of the Institute of International Peace and Security Law, Universität zu Köln

Speakers:

**Professor Paola Gaeta**, Professor of International Law, Graduate Institute of International and Development Studies (remote participation)

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

**Professor Leila Nadya Sadat**, James Carr Professor of International Criminal Law, Washington University School of Law

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**Professor Claus Kreß**, Director of the Institute of International Peace and Security Law at the Universität zu Köln, began by immediately introducing the speakers, indicating his intention to add a few substantive remarks prior to opening the floor up to broader discussion.

**Professor Leila Nadya Sadat**, James Carr Professor of International Criminal Law at the Washington University School of Law, began by reflecting on the developments at the ICC, with the first decade being characterised by self-referrals, which made access to evidence easier. Part of the success was the workload, as State funding demanded action. Referrals from other States also took place, for example, in the case of Venezuela and Ukraine. However, *proprio motu* power and UNSC referrals have challenges. Lack of State cooperation delayed many cases, as did States using their veto in the face of atrocity crimes. These delays affected perceptions of the ICC. In addition, there were attacks and sanctions against officials of the Court by States, which set a dangerous precedent.

Despite the challenges, Professor Sadat noted the continued evolution of ICL jurisprudence. There are key judgments on rape, sexual slavery, the definition of armed conflict, attacks on cultural property and child soldiers. Therefore, future ICC Judges' task is to advance ICL and overcome limitations. In her view, the main limitations are the reticence to include ecocide as a treaty crime. Ukraine and the inability to exercise jurisdiction on aggression also shows the ICC's limits. In addition, universal ratification remains a goal and is paramount to increasing the number of States Parties. She concluded by reminding the audience that the ICC never targets the States. It prosecutes individuals. Therefore it is important to overcome that improperly framed narrative.

**Professor Carsten Stahn**, Professor of International Criminal Law and Global Justice at Leiden University, focused his presentation on reimagining the ICC in a multipolar world. The ICC is operating in a context where there are fewer liberal democracies, and autocratic regimes are on the rise. Therefore, he urged more imagination in getting the ICC ready for the next decade. Professor Stahn identified several challenges. First, we must rethink the idea of complementarity and how it should function in a polycentric environment. There should be coordinating mechanisms on evidence, especially when universal jurisdiction (UJ) cases are increasing and crimes are more visible. Second, it is crucial to confront the causes of criminality rather than the symptoms. Reflection is needed about which cases the ICC should prosecute, not only spectacular crimes but also slower, neglected types of structural violence or non-human harm. Third, accountability should extend to non-State armed groups and businesses. With regard to reparations, there is a new tendency of non-State actors to provide reparations. The ICC should reflect on how to encompass complex structures. Lastly, Professor Stahn stressed the need to rethink universality beyond the UNSC. What is the role of the UNGA in the future, considering the Uniting for Peace example as supporting powers for referral? For this to materialise, an amendment of the Rome Statute is required.

There is a need to develop a resilient Court to confront these challenges. He envisioned specific task forces to navigate relationships with non-States Parties in which the ASP could be a broker. He further added that a task force is needed to confront misinformation and disinformation through engagement with media from the Global South.

**Professor Paola Gaeta**, Professor of International Law at the Graduate Institute of International and Development Studies, critically analysed the relationship between the UNSC and the ICC. She questioned whether nationals serving as officials of non-States Parties of the ICC are subject to its jurisdiction. In her view, the UNSC uses the Court in a discretionary manner. She proposed a separation between the UNSC and the ICC in terms of triggering the Court's jurisdiction. A divorce could be positive for the legitimacy and the perception of the ICC's independence. She stressed the importance of strengthening the Rome Statute vis-à-vis States Parties, particularly for State officials in power. In that way, the message will be stronger to reinforce the original goal to combat impunity.

**Professor Claus Kreß** retook the floor to delve into the history of the International Military Tribunal in Nuremberg (IMT) to urge the audience to consider the importance of the crime of aggression and its application in today's world, considering the Russian aggression against Ukraine. It is not sufficient to prosecute aggression by analogy as another crime. It must, instead, be addressed by its proper name. It could have been left out of the Rome Statute, but it was not, and it is essential for the full functioning of the ICC that it is fully included and exercised. He expressed that there was a risk of establishing a negative legal precedent, and that the challenge to international law is more serious at this historic moment in time than since the UN's establishment. Claus Kreß concluded by saying something must be done now. A special tribunal for aggression would not damage the ICC as a complementary structure. The ultimate solution for this glaring challenge should be to amend the ICC Statute itself. He also seconded the idea of giving referral power to the UNGA. He expressed hope that the Nuremberg Academy could play a constructive role in promoting justice for aggression.

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#### Q&A

The discussion centred on jurisdiction over the crime of aggression. The instruments of international criminal justice should be used to meet the challenges of avoiding periodic wars. It can serve that purpose if it is universalised to apply to all aggressors. The prohibition of the use of force is a cornerstone of both the Charter of the International Court of Justice (ICJ) and the Preamble of the Rome Statute. The reasons for the failure of the prohibition are twofold. First, power politics by Western States prevents the use of international criminal justice to prohibit the use of force. Second, by differentiating between atrocity crimes and the idea that aggression is different and has nothing to do with human rights, the ICC's impact is limited.

The participants pointed to different approaches on how to deal with this challenge. A UNGA power of referral of situations through an amendment of the Rome Statute was one option considered. Creativity is important to think about aggression, for example, to use the crime of persecution linked with another crime under the Court's jurisdiction. A forward-looking approach could be to create a court on aggression, as there is space for another entity to deal with this crime.

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## Closing Remarks

**Klaus Rackwitz**, Director, International Nuremberg Principles Academy (remote participation)

At the end of the Nuremberg Forum 2022, titled: “The International Criminal Court 2002–2022: A Court in Practice”, Klaus Rackwitz, Director of the Nuremberg Academy, thanked all the panellists and the audience for the rich and stimulating discussions over the three days of the Forum.

He noted that Nuremberg was the starting point of the international criminal justice system. However, in the current context, accountability is the exception and impunity is the norm. There are challenges in terms of cooperation, evidence collection, protection of witnesses and the veto powers of the UNSC. However, the ICC’s mere existence has changed the behaviours of key actors. While a tendency for universal jurisdiction is evident, the judicial reaction to the situation in Ukraine was unprecedented and a game changer, as investigations in ongoing conflicts give hope to victims and affected communities. The joint work of domestic and international institutions should be a motivator to continue the efforts in the fight against impunity. Mr Rackwitz concluded by reminding the audience that if we had given up 25 years ago, we would not be where we are today. But the work must continue to overcome setbacks and challenges. Finally, on behalf of the Nuremberg Academy, he expressed gratitude to all panellists, the team, and the audience for making this event possible.

## Overview of Poll Results

The Nuremberg Forum employed an online tool (Slido) to poll the audience present and online on key questions relating to the ICC’s performance and perceptions thereof after 20 years. The poll allowed participants to consider how the ICC’s impact is viewed and led to discussions about how to frame these questions and think about the answers.

Seven questions were posed, one before and after each panel, and one at the end of the conference. Before each panel, a question was presented on the conference room screens and online, and participants were given time to enter their responses via the app. After the panel, the question was reintroduced, and the polling results were provided. The polls represented a concrete attempt to measure the impact of the ICC after 20 years of operation.

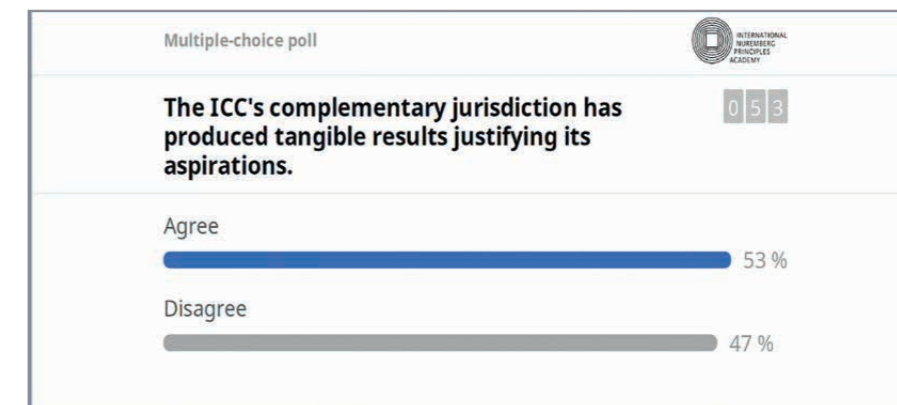
**Poll 1:** The ICC is a success (agree or disagree)

The first poll was conducted before and after the first panel and its result is as follows. 59 people participated in the poll:



**Poll 2:** The ICC’s complementary jurisdiction has produced tangible results justifying its aspirations (agree or disagree)

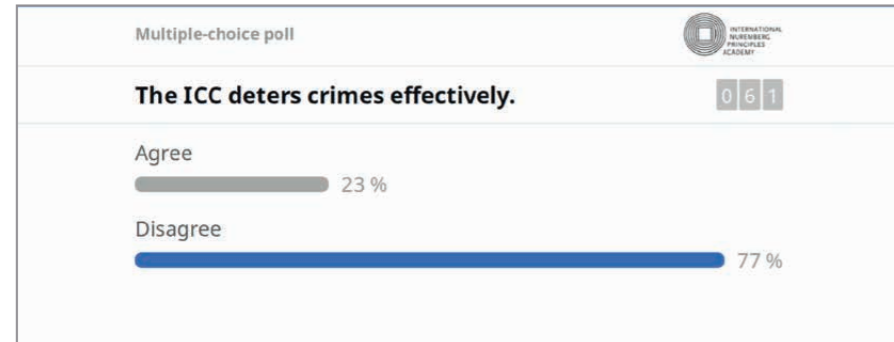
The second poll was conducted before and after the second panel and its result is as follows. 53 people participated in the poll:



**Poll 3:** The ICC deters crimes effectively (agree or disagree)

The third poll was conducted before and after the third panel and its result is as follows.

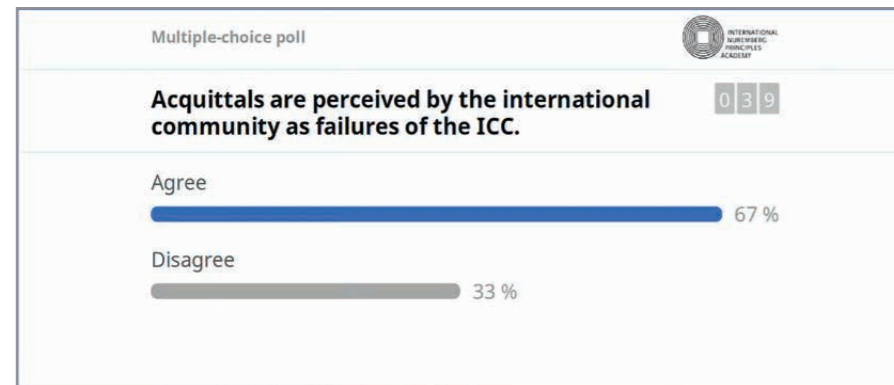
61 people participated in the poll:



**Poll 4:** Acquittals are perceived by the international community as failures of the ICC (agree or disagree)

The fourth poll was conducted before and after the fourth panel and its result is as follows.

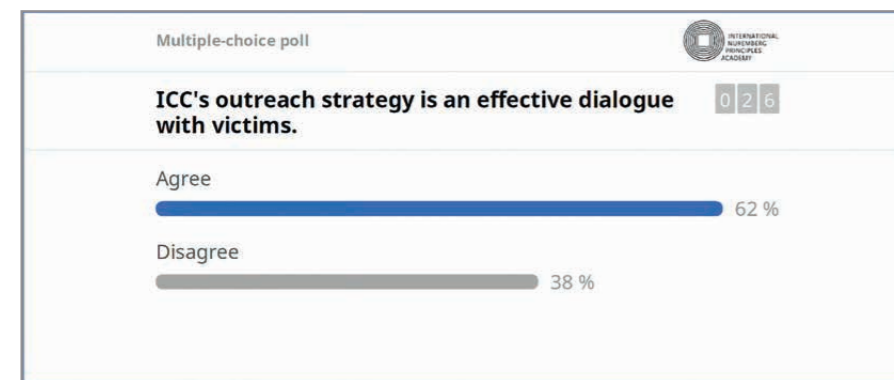
39 people participated in the poll:



**Poll 5:** ICC's outreach strategy is an effective dialogue with victims (agree or disagree)

The fifth poll was conducted before and after the fifth panel and its result is as follows.

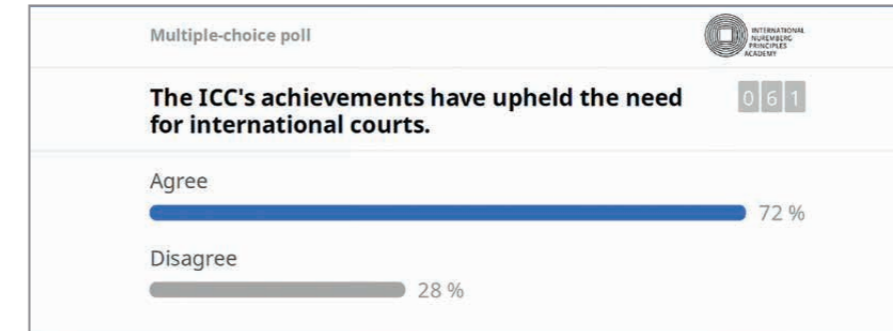
26 people participated in the poll:



**Poll 6:** The ICC's achievements have upheld the need for international courts (agree or disagree)

The sixth poll was conducted before and after the sixth panel and its result is as follows.

61 people participated in the poll:



**Poll 7:** The ICC is on the right track to reach its full potential (agree or disagree)

The seventh and last poll was conducted before and at the end of the conference and its result is as follows.

35 people participated in the poll:





## Annex I

### Programme of the Nuremberg Forum 2022

#### Day 1, 13 October 2022

3 pm–3.30 pm

#### Welcoming Remarks

**Tania von Uslar-Gleichen**, Director International Law, Legal Department, Federal Foreign Office of Germany

**Dr Nasser Ahmed**, City Councillor, City of Nuremberg, representing the Lord Mayor of the City of Nuremberg

**Dr Navi Pillay**, President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, United Nations (UN) High Commission for Human Rights; former Judge, International Criminal Tribunal for Rwanda (ICTR) and ICC

3.30 pm–5.30 pm

#### Keynote Addresses

**H. E. Christian Wenaweser**, Ambassador, Permanent Mission of the Principality of Liechtenstein to the UN

**Luis Moreno-Ocampo**, former Prosecutor, ICC

**Dr Fatou Bensouda**, High Commissioner to the United Kingdom, The Gambia; former Prosecutor, ICC

**Brigid Inder OBE**, Former Executive Director, Women's Initiatives for Gender Justice

7.30 pm

#### Welcome Dinner

#### Day 2, 14 October 2022

#### Morning Session

10 pm–10.20 am

#### Opening Remarks

**Dr Thomas Dickert**, President of the Higher Regional Court of Nuremberg

**Judge Piotr Hofmański**, President, ICC

10.20 am–12.15 pm

#### Panel I: ICC's Major Achievements

Chair:

**William Pace**, Former Director, Coalition for the International Criminal Court

Speakers:

**Judge Sang-Hyun Song**, former President, ICC

**Judge Piotr Hofmański**, President, ICC

**Dr Chile Eboe-Osuji**, Distinguished International Jurist, Ryerson

12.15 pm–1.15 pm

#### Lunch

#### Afternoon Session

1.15 pm–3 pm

#### Panel II: Universal Aspirations Versus Tangible Results

Chair:

**Prof. Diane Orentlicher**, Professor of International Law, American University's Washington College of Law

Speakers:

**Silvia Fernández de Gurmendi**, President, ICC Assembly of States Parties (ASP); former President, ICC

**Tamara Taraciuk Broner**, Deputy Director for the Americas, Human Rights Watch

**Dr Dire Tladi**, Professor of International Law, University of Pretoria

3 pm–3.30 pm

#### Coffee Break

3.30 pm–5.15 pm

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

Chair:

**Judge Richard Goldstone**, former Judge, Constitutional Court of South Africa; former Prosecutor, International Criminal Tribunal for the Former Yugoslavia (ICTY) and ICTR (remote participation)

Speakers:

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

**Mame Mandiaye Niang**, Deputy Prosecutor, ICC

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

7.30 pm

#### Dinner

#### Day 3, 15 October 2022

#### Morning Session

10 am–12 pm

#### Panel IV: Justice is Interconnected and Does Not End with a Sentencing: The Experiences of Victims, Witnesses and the Accused Before the ICC

Chair:

**Dr Athaliah Molokomme**, former Attorney-General, Botswana; Permanent Representative of Botswana to the UN in Geneva; and Ambassador to Switzerland (in place of **Professor Betty Kaari Murungi**)

Speakers:

**Chief Charles Achaleke Taku**, Lead Defence Counsel, ICC

**Dr Philipp Ambach**, Chief of the Victims Participation and Reparations Section (VPRS) in the ICC Registry (partly in place of **Judge Ivana Hrdličková**, President of the Special Tribunal for Lebanon)

**Dr Phuong N. Pham**, Assistant Professor, Harvard Humanitarian Initiative

12 pm–1 pm

#### Lunch

1 pm–3 pm

#### Afternoon Session

#### Panel V: Whose Outreach and to Whom?

Chair:

**Dr Sarah Finnin**, International Criminal Lawyer and Victims' Rights Expert

Speakers:

**Sonia Robla**, Chief of Public Information and Outreach Section, ICC

**Ibrahim Sorie Yillah**, Vice Chairman of the Board of Directors, ICC Trust Fund for Victims (TFV)

**Judge Raul Pangalangan**, former Judge, ICC

3 pm–3.30 pm

#### Coffee Break

3.30 pm–5.30 pm

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

Chair:

**Prof. Claus Kreß**, Director of the Institute of International Peace and Security Law, Universität zu Köln

Speakers:

**Prof. Paola Gaeta**, Professor of International Law, Graduate Institute of International and Development Studies (remote participation)

**Prof. Carsten Stahn**, Professor, Leiden University

**Prof. Leila Nadya Sadat**, James Carr Professor of International Criminal Law, Washington University School of Law

5.30 pm–6 pm

#### Closing Remarks

**Klaus Rackwitz**, Director, International Nuremberg Principles Academy (remote participation)

## Annex II

### Biographies of Contributors as of October 2022

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**Dr Nasser Ahmed**

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

Dr Nasser Ahmed was, prior to running for the City Council in 2014, Chairman of the Jusos in Nuremberg – the Social Democratic Party’s (SPD) Youth Division. Since 2015, he has been Vice-Chairman of the local SPD. In the City Council of Nuremberg, he acts as a specialist for public transportation issues and is Senior Advisor to his faction on sports policy. Dr Ahmed holds a Master’s degree in Political Science. Since late 2015, he has been doing a PhD at Friedrich-Alexander-Universität Erlangen-Nürnberg, Germany. His dissertation examines the construction of the political perspectives in the work of Michel Foucault and Ernst Jünger.

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**Dr Philipp Ambach**

Chief of the Victims Participation and Reparations Section (VPRS) in the ICC Registry

Dr Philipp Ambach is Chief of the Victims Participation and Reparations Section in the Registry of the ICC. Previously, he worked in the Presidency of the ICC as the President’s Special Assistant for more than five years until November 2016. From February to September 2015, Dr Ambach temporarily worked as a team leader and legal officer in the Registry of the ICC. Before that, Dr Ambach held for more than three years the position of legal officer in the Appeals Chamber of the ICTY, ICTR, as well as in the Registry of the ICTY. Nationally, Dr Ambach had been accepted at the Cologne Public Prosecutor’s Office prior to his employment with the ICTY. Dr Ambach holds a PhD in international criminal law of Free University of Berlin; his thesis develops a proposed framework convention for the establishment of international(ised) hybrid tribunals. He has authored a number of publications on various topics in the area of international criminal law as well as humanitarian law and regularly gives guest lectures on ICL/IHL topics at various universities, academic institutions and summer schools.

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**Dr Fatou Bensouda**

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

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

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**Tamara Taraciuk Broner**

Deputy Director for the Americas, Human Rights Watch

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

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

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**Dr Viviane Dittrich**

Deputy Director, International Nuremberg Principles Academy

Dr Viviane Dittrich is the Deputy Director of the International Nuremberg Principles Academy. Previously, she taught for several years at the London School of Economics and Political Science (LSE), at Royal Holloway, University of London, and at Sciences Po Paris. Also, she has been Visiting Fellow at the LSE Centre for International Studies, Honorary Research Associate at Royal Holloway and Visiting Researcher at iCourts, Centre of Excellence for International Courts at the University of Copenhagen, and at Friedrich-Alexander Universität Erlangen-Nürnberg. Her research has appeared in journals and edited volumes (e.g. Cambridge and Oxford University Press). Dr Dittrich recently co-edited three volumes: *The Past, Present and Future of the International Criminal Court* (2021), *Integrity in International Justice* (2020) and *The Tokyo Tribunal: Perspectives on Law, History and Memory* (2020). Her new book is an edited collection on *The Nuremberg Principles at 70* (forthcoming). After studies in France, England and the United States (Wellesley College), she received an MSc in International Relations from the LSE and a Master’s degree from Sciences Po Paris. She holds a PhD from the LSE.

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**Dr Chile Eboe-Osuji**

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

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

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**Dr Sarah Finin**

International Criminal Lawyer and Victims’ Rights Expert

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



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**Prof. Paola Gaeta**

Professor of International Law, Graduate Institute of International and Development Studies

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Professor Paola Gaeta is Professor of International Law at the Graduate Institute of International and Development Studies. She is also a member of the Editorial Board of the Journal of International Criminal Justice and of the International Spectator (formerly The Italian Journal of International Affairs).

Professor Gaeta is a leading expert on international criminal law and international criminal courts and tribunals and has published widely on these issues. Her research interests focus on international criminal law, particularly with regard to topics more closely related to general issues of public international law and/or exposed to cross-fertilisation by international human rights law and international humanitarian law. She is currently leading a research project on Lethal Autonomous Weapons and War Crimes: Who is To Bear Criminal Responsibility?

Previously, Professor Gaeta was Director of the Geneva Academy from 2007 to 2014, with Professor Andrew Clapham, where she directed the LLM in International Humanitarian Law and Human Rights, Adjunct Professor at the University L. Bocconi (Milan) from 2015 to 2018, Adjunct Professor at the Graduate Institute of International and Development Studies from 2010 to 2015 and Professor of International Criminal Law at the University of Geneva from 2007 to 2015. From 1998 to 2007, she was consecutively Assistant Professor, Associate Professor and Professor of International Law at the University of Florence.

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**Judge Richard Goldstone**

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

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

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**Silvia Fernández de Gurmendi**

President, ICC Assembly of States Parties (ASP); former President, ICC

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

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**Judge Piotr Hofmański**

Judge and President, ICC

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After graduation from Nicolaus Copernicus University in Toruń, Poland, in 1978, Judge Hofmański started his academic career as an assistant to the Chair of the Criminal Procedure Law at this university. After completing his PhD studies in Toruń (1981), he was offered the position of adjunct to the Chair of Criminal Procedure Law at the University of Silesia in Katowice. He completed his second scientific degree (*habilitation*) in 1989 and was appointed professor at the Chair of Criminal Law of the University of Białystok. Since 2000, he has been a professor at the Jagiellonian University in Krakow, where he runs the Chair of Criminal Procedure Law. He started his judicial career in 1994 as a judge of the Appellate Court in Białystok and then was appointed Judge of the Criminal Chamber of the Polish Supreme Court in 1996.

He was involved in projects carried out by the Council of Europe as a member of its committee of experts, the Reflection Group on Developments in International Co-operation in Criminal Matters, from 2001 to 2002. He was appointed member of the Committee of Experts on Transnational Justice, which was established to continue the work of the Reflection Group and which realised its mandate from 2004 to 2006. He is an author of more than 300 books, commentaries, articles dealing with various aspects of criminal law, criminal procedure, international cooperation in criminal matters and human rights protection.

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**Judge Ivana Hrdličková**

President, Special Tribunal for Lebanon

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Judge Ivana Hrdličková is the President of the Special Tribunal for Lebanon, elected in 2015 and re-elected in 2018. She previously worked as a Judge of the Tribunal's Appeals Chamber. She also has extensive previous professional experience as a judge in the judiciary of Czechia, having presided over both civil and criminal cases. Judge Hrdličková's expertise spans international criminal law, international humanitarian law, and the intersection of Islamic law and international law. She has been a speaker and expert for numerous global institutions. She has also contributed to advancing international legal practices by integrating artificial intelligence to enhance decision-making and operational efficiency. Judge Hrdličková holds a J.D. in Law and a Ph.D. in International Law from Charles University in Prague. She has published extensively on judicial independence, international criminal law, and the intersection of Islamic finance and international law. She remains deeply committed to fostering accountability, addressing human rights violations, and strengthening judicial systems.

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**Brigid Inder OBE**

Former Executive Director, Women's Initiatives for Gender Justice

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

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**Prof. Claus Kreß**

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

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

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**H. E. Athalia Molokomme**

Ambassador Extraordinary and Plenipotentiary Permanent Representative of Botswana to the United Nations in Geneva

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Ambassador Athalia Molokomme obtained her Bachelor of Laws degree from the University of Botswana and Swaziland in 1981, and a Masters in Law from Yale Law School, USA in 1983. She obtained a PhD in Law at Leiden University, the Netherlands, in 1991. She has taught law at the University of Botswana for more than 15 years, and researched and published extensively in the fields of family law, women and law, customary law and employment law. Ambassador Molokomme has served on several boards, commissions and professional organizations at national, regional and international levels, and is a founding member of several human rights organizations. From July 1998, she was founding head of the Gender Unit at the Secretariat of the Southern African Development Community (SADC), until May 2003 when she was appointed judge of the High Court of Botswana. In October 2005, she was appointed to the position of Attorney General of the Republic of Botswana, whose main constitutional task is Principal Legal Advisor to the Government of Botswana.

In this role, she also represented the Government in various national, regional and international bodies. Ambassador Molokomme qualified as an international arbitrator in 2016, and is now a Fellow of the Chartered Institute of Arbitrators in London.

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**Luis Moreno-Ocampo**

Former Prosecutor, ICC

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

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**Mame Mandiaye Niang**

Deputy Prosecutor, ICC

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Mame Mandiaye Niang was elected Deputy Prosecutor of the International Criminal Court on 10 December 2021; he was sworn in on 7 March 2022. Mr Niang is a graduate of the École nationale d'Administration et de Magistrature in Dakar, Senegal. He has held senior positions in the Senegalese judicial system. He has been Prosecutor general of the Appeals Court of Saint Louis, in Senegal, Director of Criminal Affairs and Pardons at the Senegalese Ministry of Justice, "Auditeur" at the Senegalese Supreme Court, attached to the Prosecutor General, Trial Attorney at the Regional Tribunal of Dakar and Magistrate at the Regional Tribunal of Dakar.

He has extensive international experience within the UN system, having served in various positions at the ICTR, including Legal Officer, Senior Legal Officer and Chief of Staff of the Registrar, Regional Representative of the UN Office on Drugs and Crime (UNODC) in Southern Africa, with jurisdiction over the countries of SADEC, and Judge at the Appeals Chamber of the ICTY and the ICTR. Mr Niang has published dozens of articles in law reviews in French and English and co-authored several books on international humanitarian law and criminal procedure. He was a visiting lecturer in many institutes and academic institutions, including the Ecole Nationale des Travailleurs Sociaux Spécialisés, the Dakar Centre de Formation Judiciaire, the University of Rwanda, and the Institute of International Law attached to the Makerere University in Uganda. Mr Niang is a member of the Union des Magistrats Sénégalais and the Senegalese Section of the International Association of Criminal Law.

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**Prof. Diane Orentlicher**

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

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

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**Judge Kuniko Ozaki**

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

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

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**William Pace**

Former Director, Coalition for the International Criminal Court

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

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**Judge Raul Pangalangan**

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

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

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**Dr Phuong N. Pham**

Assistant Professor, Harvard Humanitarian Initiative

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

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**Dr Navi Pillay**

President, Advisory Council of the International Nuremberg Principles Academy; former High Commissioner, UN High Commission for Human Rights; former Judge, ICTR and ICC

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

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**Klaus Rackwitz**

Director, International Nuremberg Principles Academy

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

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**Sonia Robla**

Chief of Public Information and Outreach Section, ICC

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

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**Prof. Leila Nadya Sadat**

James Carr Professor of International Criminal Law, Washington University School of Law

Professor Leila Nadya Sadat is the James Carr Professor of International Criminal Law and long-time Director of the Whitney R. Harris World Law Institute at Washington University School of Law, Professor Sadat has served as the Special Adviser on Crimes Against Humanity to the ICC Prosecutor since 2012 and was a member of the US Commission on International Religious Freedom from 2001 to 2003. In fall 2021, she was a Senior Research Scholar at Yale Law School. Professor Sadat is an authority in the fields of public international law, international criminal law, human rights and foreign affairs and has published more than 160 books and articles in leading journals, academic presses and media outlets throughout the world, including casebooks on international criminal law and public international law and a monograph, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (Transnational Publishers, Inc., 2002). She was the first woman to receive the Alexis de Tocqueville Distinguished Fulbright Chair in Paris, France, in 2011, and received an Honorary Doctorate from Northwestern University as well as the Arthur Holly Compton Faculty Achievement Award from Washington University in 2017. Professor Sadat directs the Crimes Against Humanity Initiative, a ground-breaking project launched in 2008 that wrote the world's first global treaty on crimes against humanity and, closer to home, has been working on a project on gun violence and human rights. She is the President of the International Law Association (American Branch), Chair of the American Association of Law Schools Section on International Law and a member of the American Law Institute and the US Council on Foreign Relations. Professor Sadat holds law degrees from Columbia Law School, Tulane Law School and the Université Paris 1 Panthéon-Sorbonne.

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**Prof. Beth A. Simmons**

Andrea Mitchel Penn Integrates Knowledge Professor of Law, Political Science and Business Ethics, University of Pennsylvania in Philadelphia

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

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**Judge Sang-Hyun Song**

Former Judge and President, ICC

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

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**Prof. Carsten Stahn**

Professor of International Criminal Law and Global Justice, Leiden Law School

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Professor Carsten Stahn is Professor of International Criminal Law and Global Justice at the Leiden Law School and Queen's University Belfast, former Legal Officer at the ICC and author/editor of 17 books and over 80 articles in international law and international justice. He holds a PhD and Habilitation from Humboldt University Berlin. He has received the Ciardi Prize of the International Society for Military Law and the Law of War and multi-year research grants from the Dutch Science Foundation (NWO) on Post-Conflict Justice and Law after Conflict (*jus post bellum*). His most recent monographs in the field of international criminal justice include *Justice as Message* (OUP, 2020) and *A Critical Introduction to International Criminal Law* (CUP, 2018). He edited the *Law and Practice of the ICC* (OUP, 2015).

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**Chief Charles Achaleke Taku**

Lead Defence Counsel, ICC

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

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**Dire Tladi**

Professor of International Law, University of Pretoria

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

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**Tania von Uslar-Gleichen**

Legal Adviser, Head of Legal Department, Federal Foreign Office of Germany

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Tania von Uslar-Gleichen is the Head of the Legal Department of the Federal Foreign Office of Germany. Prior to this position, she was Vice President of the Federal Intelligence Services between 2019 and 2022. Ms von Uslar-Gleichen has decades of experience in diplomacy. In 1993, after finishing her law degree and state exams, she began her career in the German Federal Foreign Office and worked at the Office of the Minister of State for European Affairs. In 2004, she became the Deputy Head of the Crisis Prevention Unit of the Federal Foreign Office's United Nations Department and in 2006, the Chief of Staff to the Director of the Policy Unit of the General Council Secretariat of the European Union. She has also served as Head of the European Policy Relations Unit at the German Chancellery.

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**H. E. Christian Wenaweser**

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

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

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**Ibrahim Sorie Yillah**

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

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

## Annex III

### The International Nuremberg Principles Academy

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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 Nuremberg Academy is located in Nuremberg, the place of the first international trial before the International Military Tribunal. For the first time in history, an international tribunal was authorised 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”, which comprise of the principles of international law recognised in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal. They were 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 recognised international core crimes: genocide, crimes against humanity, war crimes and the crime of aggression. Its main fields of activity include providing a forum for dialogue by convening international conferences and expert meetings, conducting interdisciplinary and applied research, engaging in specialised capacity strengthening for practitioners of international criminal law and human rights education. Dedicated to supporting the worldwide enforcement of international criminal law, the Nuremberg Academy upholds 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.



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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.

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