



INTERNATIONAL  
NUREMBERG  
PRINCIPLES  
ACADEMY

# Conference Report

Nuremberg Forum 2021

“The Fight against Impunity since 1950:  
Living up to the Nuremberg Principles?”



# 2021



## Acknowledgements

The International Nuremberg Principles Academy (Nuremberg Academy) is pleased to present this conference report on the Nuremberg Forum 2021, entitled “The Fight against Impunity since 1950: Living up to the Nuremberg Principles?”, held on 15 and 16 October 2021, and for the first time through an online platform, due to the ongoing pandemic situation worldwide.

The Nuremberg Academy acknowledges all those who have made the Nuremberg Forum 2021 a success and this publication possible. The conference owes its success to the executive leadership of the Nuremberg Academy, the vision and commitment of Klaus Rackwitz, Director of the Nuremberg Academy, and Dr Viviane Dittrich, Deputy Director. For the Nuremberg Forum 2021 special thanks go to Professor Claus Kreß, Chair for German and International Criminal Law, Director of the Institute of International Peace and Security Law, Universität zu Köln, for the very topical introduction to this year’s theme. Moreover, substantial challenges were eloquently presented by our keynote speakers: Professor Patrícia Galvão Teles, Associate Professor of International Law at the Autonomous University of Lisbon and Member of the United Nations International Law Commission; and Judge Navi Pillay, President of the Advisory Council, the International Nuremberg Principles Academy, former High Commissioner, the United Nations High Commission for Human Rights, former Judge, International Criminal Tribunal for Rwanda and International Criminal Court.

Sincere appreciation goes to all speakers and chairs at the conference who have taken on the role of addressing the question of whether the common fight against impunity meets the aspirations of the Nuremberg Principles. A special thank you goes to all chairs this year for managing the objectives of each panel so extraordinarily well and within such a limited time. The conference was convened to provide a forum for dialogue. The Nuremberg Forum 2021 proved worthwhile not only because it was one of the major conferences commemorating the 70<sup>th</sup> anniversary of the formulation of the Nuremberg Principles, but also because it advanced central questions and challenges concerning the fight against impunity for international crimes.

Organising a conference of this magnitude would not have been possible without the Nuremberg Academy’s staff, their dedication and tireless work in terms of preparation and organisation of the Nuremberg Forum 2021. This is especially the case as 2021 took on the challenge of organising and providing a forum for dialogue through an online platform. A big thank you to the entire team. Similarly, the continuous support of the Foundation Board and Advisory Council of the Nuremberg Academy is gratefully acknowledged.

Profound gratitude goes to all participants at the Nuremberg Forum 2021, who have joined us through an online platform and demonstrated continuous engagement and shared their expertise and insights in advancing the discussions during the conference. We received over 450 registrations for the event, and the audience included leading practitioners and academics in the field of international criminal and human rights law posing interesting questions and advancing the objectives of the event.

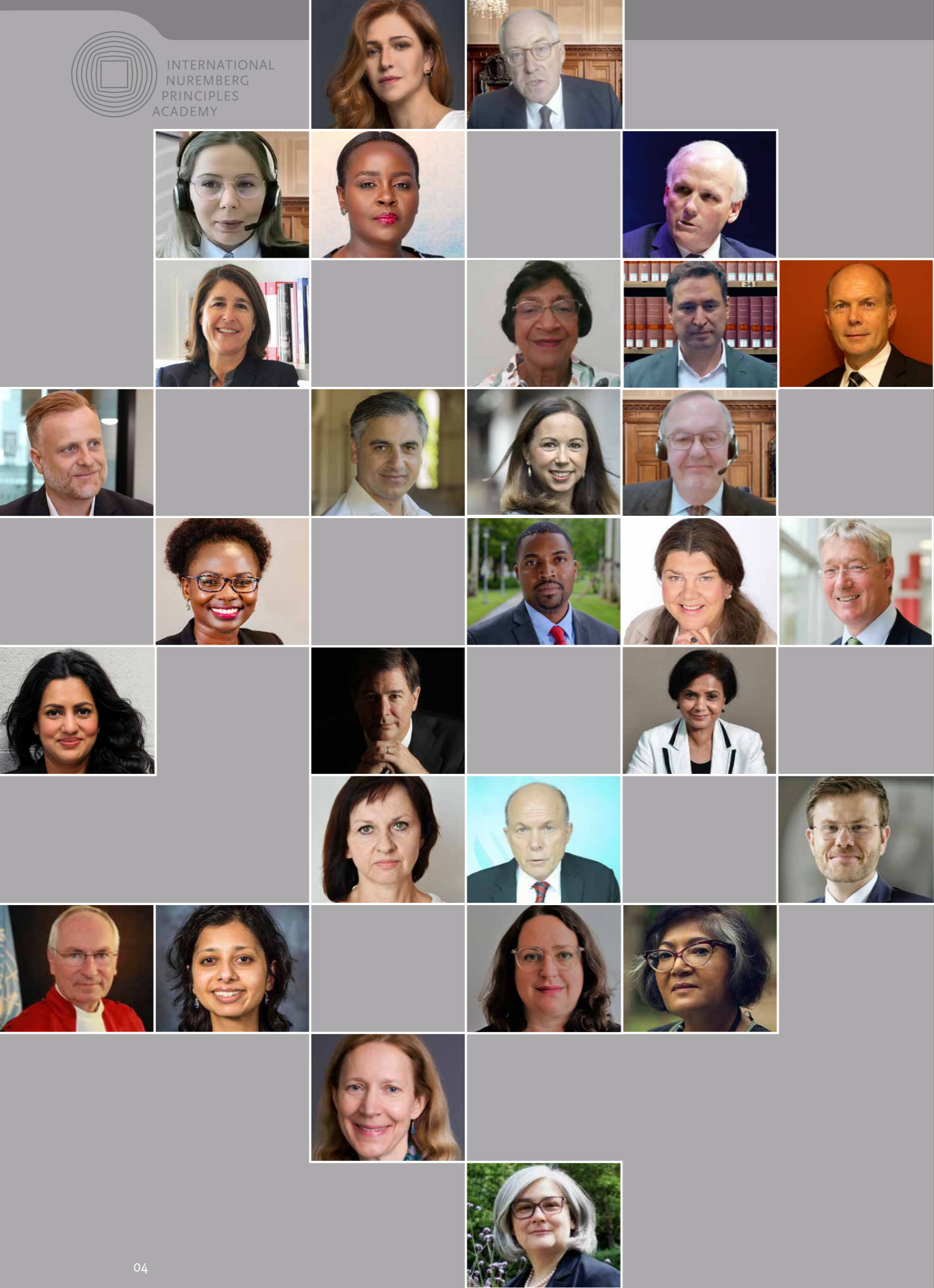
Finally, sincere thanks to Jolana Makraiová for her initiative in creating this report and to Gretel Mejía Bonifazi and Laura de Leeuw for their valuable work in getting the report into its current shape and form. Their commitment and professionalism in creating, editing and finalising this conference report is greatly appreciated.

## List of Abbreviations

AJIL	American Journal of International Law
ASIL	American Society of International Law
ASP	Assembly of States Parties to the Rome Statute
CAH	Crimes against humanity
CAR-SCC	Central African Republic Special Criminal Court
EAC	Extraordinary African Chambers
ESIL	European Society of International Law
EU	European Union
ICC	International Criminal Court
ICC-OTP	Office of the Prosecutor at the International Criminal Court
ICL	International criminal law
ICJ	International Court of Justice
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHRL	International human rights law
IIMM	Independent Investigative Mechanism for Myanmar
IIIM	International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (referred to as the International, Impartial and Independent Mechanism on Syria)
ILC	International Law Commission
IMT	International Military Tribunal at Nuremberg
NGOs	Non-governmental organisations
NATO	North Atlantic Treaty Organisation
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
SJP	Special Jurisdiction for Peace (Colombia)
UJ	Universal jurisdiction
UN	United Nations
UN Secretariat	Secretariat to the United Nations
UNGA	United Nations General Assembly
UN HRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UN SDGs	United Nations Sustainable Development Goals
USA	United States of America

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## Introduction

This conference report is based on the high-level discussions of the Nuremberg Forum 2021 and captures key discussions, arguments, central debates, various perspectives and several significant issues for further consideration and debate. The Nuremberg Forum 2021 – the fifth annual conference of the Nuremberg Academy, and the first one held entirely online due to the worldwide COVID-19 pandemic – commemorated the 70<sup>th</sup> anniversary of the formulation of the Nuremberg Principles. Considering the carefully chosen focus on “The Fight against Impunity since 1950: Living up to the Nuremberg Principles” the goal of the conference was to critically reflect on whether the common fight against impunity meets the Nuremberg Principles’ expectations and their formulation in 1950. The conference discussed the development of the legal framework envisaged in 1950, the Nuremberg legacy or legacies and system or systems put in place to ensure long-lasting peace.

Throughout the Nuremberg Forum 2021, it has become apparent that the fight against impunity and the vision of sustainable peace through justice is and remains a common ground for many stakeholders. There is a will to tackle the challenges in international criminal law (ICL). Deepening these discussions and moving towards concrete and constructive recommendations is an important step forward.

Paying tribute to the 70<sup>th</sup> anniversary of the Nuremberg Principles, the Nuremberg Forum 2021 looked at the framework enforcing the fight against impunity focusing on the goal of ending or fighting impunity for core international crimes, and on the various system(s) enforcing this goal. In addition, the conference addressed the challenges facing the fight against impunity and the best practices that can bolster this fight in line with the Nuremberg Principles. The conference focused on carefully selected key issues:

- reflecting on the post-World War Two set-up and the *status quo* today
- dissecting various objectives and respective changes in practices, identifying which crimes concern the “community as a whole”
- outlining the current system addressing or enforcing the Nuremberg Principles
- reflecting on the United Nations Sustainable Development Goals (UN SDGs) and aspirations of sustainable peace through justice and
- finally, the similarities, differences and the way forward in the fight against impunity.

The Nuremberg Academy welcomed 29 leading experts as speakers (see Annexes I and II). The high-level keynote addresses were delivered by Professor Patrícia Galvão Teles, Associate Professor of International Law at the Autonomous University of Lisbon and Member of the United Nations International Law Commission (ILC) and by Judge Navi Pillay, President of the Advisory Council, the International Nuremberg Principles Academy, former High Commissioner, the United Nations High Commission for Human Rights, former Judge, International Criminal Tribunal for Rwanda, and International Criminal Court. The forum received more than 450 registrations (including the 29 speakers, representing more than 15 countries). Among the participants were leading practitioners, young professionals and academics in the fields of ICL, international human rights and related fields who came together to reflect on the various challenges connected to the fight against impunity and the implementation and application of the Nuremberg Principles. Side events included presentations on the Nuremberg Academy’s current projects and work and a guided tour of the Courtroom 600, co-organised with the Nuremberg Academy’s partner, the Memorium Nuremberg Trials.

By bringing together distinguished academics and practitioners, with a wealth of relevant expertise, the Nuremberg Academy provided a forum for dialogue and critical reflection. It also provided an invaluable opportunity to set-out the current challenges for which the panels were designed as a means of providing possible recommendations and ways of moving forward. This report highlights these suggestions within each panel. It captures the important discussions succinctly and lists three points for further consideration and debate. It is not aiming to be a verbatim report of the conference, but rather a comprehensive yet concise account of the key points, discussions and analyses reflecting the nature and scope of the conference. Thus, the report has a two-fold purpose. First, to reflect on the discussions and outcomes of the conference. Second, it aims to capture the developments of the past 70 years and reflect on practical steps that can be taken into consideration for the future. It is hoped that this report can be of interest to a wide range of readers, including experts from various fields, practitioners and academics. This is consistent with the Nuremberg Academy’s mandate to encourage the promotion of sustainable peace through justice via scholarship, research and capacity building.

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

### Disclaimer

This report is a summary version of the full conference proceedings based on the video recordings of the Nuremberg Forum 2021. The key recommendations included in this report are not attributable to any individual conference participant nor do they necessarily reflect the views of the International Nuremberg Principles Academy.

## Opening Remarks

At the outset, participants at the Nuremberg Forum 2021 were welcomed by the Director of the Nuremberg Academy, the Director General for Legal Affairs of the German Federal Foreign Office, the Bavarian State Minister of Justice and the Lord Mayor of the City of Nuremberg.

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

Klaus Rackwitz welcomed the participants to the conference and urged the audience to reflect on whether the ultimate goal is fighting or ending impunity. He noted that new challenges have emerged, for example terrorism, non-State actors and other phenomena that did not exist when the Nuremberg Principles were formulated by the ILC in 1950. He reminded the audience that the Nuremberg Principles were created as a kind of consensus amongst all States that the grievous crimes committed may not remain unpunished. Therefore, the Nuremberg Principles, in his view, constitute a beacon of hope for ending impunity and providing justice for victims and survivors.

**Dr Christophe Eick**, Legal Adviser and Director General for Legal Affairs of the German Federal Foreign Office

Dr Christophe Eick reminded the audience that the Nuremberg Principles played a key role in the development of modern international criminal courts. He added that for the past seven decades remarkable progress had been made in the field of international criminal responsibility, namely the *ad hoc* tribunals and the creation of the first permanent international court. However, Dr Eick stressed that great challenges remain, such as: impunity for atrocity crimes and the absence of powerful States from the jurisdiction of the International Criminal Court (ICC), the first permanent international criminal tribunal. He emphasised that Germany remains a strong supporter of the ICC and remains committed to improving the court and its mechanisms through an ongoing review and reform process.

**Georg Eisenreich**, State Minister of Justice, Free State of Bavaria

Georg Eisenreich emphasised the importance of the International Military Tribunal (IMT) in Nuremberg, where for the first time in modern history alleged perpetrators were judged for State crimes, in accordance with legal standards and procedures. He highlighted the importance of the Nuremberg Principles and of German laws that make provisions for the punishment of international crimes in fulfilment of international obligations. He stressed that accountability is important and that consistent implementation of the Nuremberg Principles is equally important to contributing to a peaceful world order.

**Marcus König**, Lord Mayor, City of Nuremberg

Marcus König described the history of the City of Nuremberg, including its connection to the darkest moments of German history but also its current efforts to transform the city into a place of openness and of respect for human rights. He highlighted the importance of the work of the Nuremberg Academy, the Memorium Nuremberg Trials, the City of Nuremberg human rights office and the Peace Table celebration in honour of the winners of the Human Rights Awards – all reflecting the current ethos of the city as a place celebrating diversity, peaceful coexistence and a multi-coloured world, tolerance and peace.

## Opening Statement

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

Professor Claus Kreß started his statement by noting that Nuremberg marks an important moment in the crystallisation of a legal concept because the Nuremberg judgment introduced the concept of ICL *strictu sensu*. According to him, this concept implies a *ius puniendi* that transcends the interests of one or more States, thus ultimately being rooted in the international community as a whole. He emphasised that the IMT did not appear out of the blue, but was rather put forward by States after the horrors of the Great War and the Second World War. The intent behind the IMT, according to Chief Prosecutor Robert Jackson, was to set a creative precedent designed for generalisation. Professor Kreß further added that the Nuremberg Principles, formulated by the ILC in 1950, mirror that collective intent behind Nuremberg. The ILC recognised the Nuremberg Principles as principles of international law but nevertheless the principles remained dormant in the following decades. It was only in the 1990s that Nuremberg's potential for generalisation was activated through the establishment of the two *ad hoc* international criminal tribunals and subsequently with the establishment of the ICC. However, he noted, the legacy of Nuremberg was not fully revitalised, because while genocide, crimes against humanity (CAH) and war crimes were included in the Rome Statute, crimes against peace were left out. It was not until 2010 with the Kampala Protocol<sup>1</sup> that an agreement was reached on the definition of the crime of aggression, and then in 2018 with the activation of the ICC jurisdiction over that crime.

Professor Kreß continued his statement by emphasising that the ICC embodies the most advanced stage of centralisation with respect to the enforcement of the international community's *ius puniendi* in the evolution of international criminal justice. However, he also noted that, for a variety of reasons, international criminal proceedings might not present as practicable options. He pinpointed the case of Syria as an example of this situation. Therefore, he reflected that the enforcement of ICL must continue to rely on the national pillar. According to him, for the national pillar to be effective, it must include two principles that differ from the jurisdictional scheme of international legal order. First, the principle of universal jurisdiction (UJ) and second, the inapplicability of functional immunity. He stressed that both principles have come under pressure since the beginning of the century for two reasons. The first reason is the powerful attempts at renationalisation, which view ICL as a central target. The second reason is the concern that the principle of UJ might be politically abused. Professor Kreß considers that the current challenge consists in mobilising resilience against the frontal attack on ICL while duly considering the legitimate concern about political abuse. He suggested that in order to meet this challenge States be called upon to resist attempts to undermine the principles of UJ and to resist the applicability of functional immunity. In addition, he noted that procedural safeguards to prevent political abuse should be developed, such as not trying the accused *in absentia* and prohibiting trying the accused for a second time in another State for the same matter. He went even further and suggested introducing a system of accreditation, in which the power to exercise UJ would be granted only if an independent treaty body confirms that the State concerned is equipped with an independent judiciary both on paper and in practice. He concluded his opening statement by suggesting that the ILC could update the Nuremberg Principles by adding a principle number eight, which could read as follows: "*proceedings for crimes under international law may be conducted internationally and nationally. Principles III to V five apply to all such proceedings. The jurisdiction of an International Criminal Court is governed by its founding legal instruments based on the principle of subsidiarity. States may exercise universal jurisdiction over crimes under international law.*" The proposed Principle VIII, he concluded, would be a convenient medium to confirm the power of (subsidiary) UJ.

<sup>1</sup> Amendments to the Rome Statute of the International Criminal Court, 11 June 2010, ("Kampala Protocol"), available at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/RC2010/AMENDMENTS/CN.651.2010-ENG-CoA.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/AMENDMENTS/CN.651.2010-ENG-CoA.pdf) (last accessed 6 December 2021).

## Keynote Addresses

**Prof. Patrícia Galvão Teles**, Associate Professor of International Law, the Autonomous University of Lisbon and Member of the United Nations International Law Commission

In her keynote address, Professor Galvão focused on the contribution of the ILC to the development of the Nuremberg Principles and its continuing relevance for the fight against impunity and the consolidation of ICL. She started by noting that in 1947 the United Nations General Assembly (UNGA) tasked the ILC with the formulation of the principles of international law as recognised in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal and also with the preparation of a draft code of offences against peace and the security of mankind. She acknowledged that over its 72 years of existence, ICL and the fight against impunity have been part of the DNA of the ILC, from the development of the Nuremberg Principles to the drafting of a code of crimes and the Statute for a permanent international criminal court and more recently with the draft articles on CAH. Therefore, the objective of the keynote address was to briefly describe this journey in light of the 70 years of the Nuremberg Principles.

According to Professor Galvão, the first step of the journey was the memorandum of the Secretary-General of the UN entitled: *The Charter and the Judgment of the Nuremberg Tribunal: History and Analysis*<sup>2</sup>. This memorandum recognised that the Nuremberg Principles should be made a permanent part of international law. She indicated that from the outset the members of the ILC faced the challenge of ascertaining whether the commission should analyse to what extent the principles contained in the Charter of the Tribunal and Judgment were, or were not, principles of international law. The ILC concluded that it was not its role to evaluate the nature of the principles, but rather to formulate them. As a result, the ILC focused on the substantive articles of the Tribunal's charter, namely Articles 6, 7 and 8 (Part II. Jurisdiction and General Principles). Professor Galvão indicated that when the ILC considered the formulation of the Nuremberg Principles, it considered the question of whether in formulating the principles of international law recognising the Charter and the Judgment of the Tribunal, it should additionally formulate the general principles of international law which underlie the Charter and the Judgment. She described how a member of the ILC, Georges Scelle, advocated the latter and, as a result, some principles ended up in the final draft. Finally, the ILC adopted the formulation of the seven principles, accompanied by explanatory commentaries. In her view, the formulation produced by the Commission remains at the heart of contemporary ICL and the main contribution of the ILC was to establish that the Nuremberg Principles were no longer considered solely in relation to the crimes of the Nazi government, but as universal principles.

Professor Galvão continued delineating the contribution of the ILC to the fight against impunity and ICL. She focused on the draft code of crimes and the question of international criminal jurisdiction and remarked that while the adoption of the Nuremberg Principles was rather swift, the adoption of a draft code of offences or an international judicial organ to try persons for those crimes would take several decades of development. She indicated that in parallel to the development of the Nuremberg Principles, the ILC considered the elaboration of a draft code of offences against the peace and security of mankind. During the preparations of the draft code, the ILC limited the scope of the instruments to offences which contained a political element, and which endanger or disturb the maintenance of international peace and security. In this regard, she noted that the project included crimes similar or equal to the current definitions of acts of aggression, war crimes, CAH and genocide. Nevertheless, she pointed out that the lack of agreement between States in finding a commonly accepted definition of the crime of aggression at the dawn of the Cold War stalled any progress of the project as a whole. Professor Galvão further explained that the draft's scope *ratione materiae* had grown extensively, to the point of no longer maintaining the distinction between crimes against peace, war crimes and CAH. In this regard, she indicated that based on the commentaries and observations of Member States, in 1994 the list of crimes was limited to offences whose characterisation as crimes against peace and the security of mankind was hard to challenge. As a result, only six crimes

remained on the draft code, namely the crime of aggression, genocide, systematic or mass violations of human rights, exceptionally serious war crimes, international terrorism and illicit trafficking of narcotic drugs. She added that in 1996 the ILC adopted the final text of the draft codes, reducing even further the scope of the crimes to reach a consensus, thus returning to the source by including aggression, genocide, CAH, crimes against the United Nations (UN) and associated personnel and war crimes.

Professor Galvão further expounded on how the ILC contributed to the creation of an international criminal court. She pinpointed that from the outset, the discussions involving an international penal code were linked to the question of an international jurisdiction. She described how as a side debate to the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, the UNGA requested the ILC to consider the possibility of establishing a criminal chamber of the International Court of Justice (ICJ). She explained that the ILC addressed and discussed the question of whether it was feasible and desirable to establish an international judicial organ or a criminal chamber of the ICJ. While there were discussions on the possibility that a permanent court would attract the same criticism as the Nuremberg Tribunal with regards to victor's vengeance, there was also agreement on the convenience of amending the statute of the ICJ for the constitution of a criminal chamber that could try individuals. Despite this agreement, she added, several members of the ILC concluded that an international criminal court could be created by means of a convention open to signature by States, members and non-members of the UN without creating it as an organ of the UN. Therefore, the ILC did not endorse the reform of the statute and recommended the creation of a committee composed of representatives of 17 States to prepare a preliminary draft convention for the establishment and the statute of an International Criminal Court. She continued by explaining that while the ILC prepared a first draft, in 1954 the UNGA suspended the discussions until there was a report on the definition of the crime of aggression. It was not until 1981 that the UNGA invited the ILC to resume its work. In this context, she identified several concerns raised by scholars. First, they criticised the role of an international court as superfluous, thus prioritising preventive measures instead. Secondly, it was argued that the international court would contravene the sovereignty of States and the territoriality principle of criminal law. After another suspension of the discussions, she indicated that it was not until the 1990s that the idea of an international Nuremberg would gain momentum. Based on the developments of international law at that time, the ILC considered that the establishment of an international criminal court was more feasible than before. She explained that the ILC assessed different possible models of constitutional and international courts, including the possibility of a court with exclusive jurisdiction, a model of concurrent jurisdiction and a court with review competence only. In 1992, the ILC set up a working group to address the question of international criminal jurisdiction and formulate recommendations. The working group agreed on several propositions. First, that the court should be established by a statute in the form of a treaty agreed by State Parties. Second, that the court would exercise jurisdiction only over private persons. And third, that the court's jurisdiction would be limited to crimes of an international character. At the request of the UNGA, the working group drafted a statute in 1994 for the purpose of a future treaty. The UNGA welcomed the draft for an international criminal court and its commentaries. In her view, through these efforts, the work of the ILC played a fundamental role in the adoption of the Rome Statute in 1998.

Professor Galvão concluded her keynote address by focusing on recent efforts and challenges for the future. In this regard, she highlighted some notable examples. From 2005 to 2015, the ILC discussed the obligation to extradite or prosecute. As a result, the working group produced a report that was intended to clarify the role of States and international cooperation in the fight against impunity. She also noted that the ILC has been working on a set of draft articles on immunity of State officials from foreign criminal jurisdictions which contain the provision on exceptions regarding immunity *ratione materiae* concerning international crimes. And finally, she referred to the recent work of the ILC, namely the drafting of articles on CAH to address the development of a draft convention to enhance the prevention and punishment and to include other issues that were not covered by any existing treaties. She indicated that the ILC adopted the draft articles in 2019 at the second reading and that the topic is under current consideration by the Sixth Committee of the UNGA. Professor Galvão closed her presentation by urging a consensus on the negotiation of an international convention on CAH which would, in her view, consolidate one further important contribution of the ILC to the fight against impunity that had started 70 years ago with the adoption of the Nuremberg Principles.

<sup>2</sup> The Charter and the Judgment of the Nuremberg Tribunal: History and Analysis (Memorandum submitted by the Secretary-General), UN Doc. A/CN.4/5, 1949, available at <https://digitallibrary.un.org/record/160809> (last accessed 6 December 2021).

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

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In her keynote address, Judge Pillay looked at the fight against impunity from her own experience, with a particular focus on her contributions thus far and reflections on the path going forward. She stressed that the timing of this conference is appropriate for reflecting on this topic because work still remains to be done to strengthen accountability for core international crimes and to achieve equality. She referred to her recent CNN Op-Ed<sup>3</sup> in which she urged the international community to demand accountability and continue the push towards ending human rights violations everywhere, because otherwise they are likely to be repeated anywhere. Judge Pillay reflected that the wealth of guidance of the Nuremberg Principles is evident in their impact on the trajectory of ICL over the past seven decades. In this regard, she highlighted the importance of the Nuremberg Academy's resource collection for future generations.<sup>4</sup> According to Judge Pillay, Nuremberg was a milestone in the effort to link the achievement of sustainable peace through justice.

She then addressed the meaning of the words "fight against impunity". The end of the Cold War in the 1990s unleashed an age of accountability and the rise of the anti-impunity discourse. She identified as notable examples the arrest of Slobodan Milošević, the prosecution of Augusto Pinochet and the creation of the *ad hoc* International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). She further noted the codification of international standards and the collective efforts to provide a roadmap to accountability through transitional justice initiatives and the establishment of the ICC. Despite these achievements, she stressed that uncharted areas remain where the aspirations have not impacted the experiences of violence and instability as suffered by traumatised victims and communities, and that one cannot therefore claim that the Nuremberg legacy has been upheld until the Nuremberg Principles are a lived reality for victims.

Considering these reflections, Judge Pillay highlighted four main questions for the Nuremberg Forum's consideration. The first question is whether the accountability framework now in place is a reason for celebration. In this regard, she did see the development of the accountability framework both in terms of substantial and procedural matters of ICL as a reason for celebration. She emphasised the focus on crimes of sexual and gender-based violence amongst other developments. She reminded the audience that she had the privilege of adjudicating the first ground-breaking cases against the interim prime minister Jean Kambanda and other political, military and religious leaders, resulting in the world's first conviction for the crime of genocide. She further noted the importance of the conviction of Jean-Paul Akayesu of the crime of genocide and specifically for rape and sexual violence as crimes of genocide, as well as the convictions of former Liberian President Charles Taylor, former Bosnian Serb leader Radovan Karadžić, Congolese warlord Thomas Lubanga Dyilo and former Chadian President Hissène Habré. In her view, these are significant steps forward in holding high-profile perpetrators of crimes accountable. In the same vein, she celebrated the adoption of various codes and treaties that have shaped the international legal order, including but not limited to: the Convention on the Prevention and Punishment of the Crime of Genocide in 1948; the Universal Declaration of Human Rights of 1948; the Geneva Conventions 1949; the European Convention on the Protection of Human Rights of 1953 and the African Charter on Human and Peoples Rights of 1981. Judge Pillay reminded the audience that these advances were only possible because of the persistence and dedication of lawyers and diplomats, thus showing that these advances in the law are not guaranteed to us, but must be hard-won. These efforts also show that this work is neither finished, nor has it become easier with time and practice. She urged the audience to persist in advancing in the face of the normative and practical challenges we are currently facing, that we must not become discouraged by the inevitable obstacles, but must carry forward the standards set by those who came before us. In this regard, she stressed the importance of standardising knowledge transfer, archiving information and strengthening cooperation between various actors in order to advance the law and genuinely understand what has come before and start building for the future.

<sup>3</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 6 December 2021).

<sup>4</sup> International Nuremberg Principles Academy, Resource Collection on the Nuremberg Principles, 2020, available at <https://www.nurembergacademy.org/resources/resource-collection-on-the-nuremberg-principles/> (last accessed 6 December 2021).

The second question Judge Pillay raised was whether ICL and international justice are the same. In this regard, she urged the audience never to be satisfied with the knowledge of the goals and aspirations of ICL and international justice. In her opinion, the landscape of international law is constantly changing, particularly considering numerous efforts to address growing inequality between people, such as the creation of the UN SDGs and the 2030 UN agenda. She identified the challenge of accepting that these goals and aspirations can conflict with one another and that we must find a collaborative way forward and engage in a dialogue to reconcile them. She concluded by stressing the need to keep reflecting, to build a dialogue and keep realistic expectations, because understanding each other is not just a means to an end, but an end in itself.

Regarding the third question, namely how core international crimes are changing the landscape of ICL, she highlighted the great progress made in formulating and shaping core international crimes and related modes of liabilities. In her view, without this codification, there is no foundation for the elimination of specific criminal activities in order to advance international peace and security. She noted that there are increasing appeals to add certain crimes under the umbrella of core international crimes. These arguments reflect a growing belief that respect for, and protection of, our natural environment is essential to protecting society. On the other hand, she added that there are arguments with respect to preserving the Nuremberg legacy and ranking the crimes addressed at the IMT as the most heinous crimes that impact the community as a whole. In her view, this question is a practical as well as a moral and political one. She recognised the importance of the Nuremberg Forum in looking at these issues and reconciling the contrasting objectives of ICL and international justice, looking at the specific question of core international crimes.

Regarding the fourth and last question, as to whether the fight against impunity has been living up to the Nuremberg Principles, her answer is yes, but she emphasised that the fight is not over. Judge Pillay underlined the great achievements in the common fight against impunity. First, that no-one is above the law and that political power cannot be a safe haven for impunity and the law cannot create a dangerous double standard for accountability. Second, that anyone can be held to account for their actions and, thanks to UJ, this can happen almost anywhere. And third, that we are aiming for a peaceful world order and an international order based on the rule of law. Despite these developments in terms of treaties, rules and international standards, there needs to be more detailed and systematic reflection on the rule-of-law system which enforces the Nuremberg Principles and further assessment of its effectiveness. She further stressed the need to understand why we still have increasing conflicts worldwide, to reach an agreement on the additional set of rules that might be missing from the legal framework and start thinking about how to effectively address the remaining challenges. One way to strengthen the system, according to Judge Pillay, is to gain more political goodwill and effective cooperation.

To conclude, Judge Pillay reiterated the importance of the Nuremberg Forum in fostering dialogue on several issues. First, to what extent the vision and aspirations behind the adoption of the Nuremberg Principles have been fulfilled. Second, to what extent the characteristics and *status quo* of the systems and structures that have been set up fulfil or enforce the Nuremberg legacy, including highlighting the challenges that persist. And thirdly, to look at what else can be done to strengthen the rule of law and to achieve the aspirations of the Nuremberg Principles, namely achieving sustainable peace through justice. She encouraged the participants to join in the discussions and reflect on the key topics and propose recommendations in order to advance the debate. She recognised that the path towards implementing the Nuremberg Principles is a symbol of humanity's aspiration and progress towards justice. It is a moral obligation to continue the collective work by governments, the private sector and civil society towards a more just and peaceful future. To genuinely move away from a culture of impunity for gross human rights violations towards a culture of accountability and responsibility: this is the essence of Nuremberg and the legacy she hopes to leave behind.



# Panel I

## Reflecting on the post-World War Two set-up and the status quo today

The first panel looked back, from a historical perspective, at the post-World War Two accountability efforts and compared these efforts with the situation in Syria (2010–2016). The main question was to reflect on the accountability efforts and then address experts' reflections on the accountability framework and the Nuremberg Principles.

Speakers:

**Prof. Annette Weinke**, Co-Director Jena Center Twentieth Century History, Friedrich-Schiller-Universität Jena

**Dr David W. Lesch**, the Ewing Halsell Distinguished Professor of History, Trinity University, San Antonio, Texas

Facilitator: Nuremberg Academy

Professor Annette Weinke, Co-Director of the Jena Center of Twentieth Century History at Friedrich-Schiller-Universität Jena, shed light on two central historical aspects that often get glossed over in a norm-oriented account of the history of ICL. The first aspect considers the foundation of the IMT and the Nuremberg Principles Declaration as reactions to a fundamental collapse of the international political and legal order as it was created in 1919 in the context of the Paris Peace Treaty and the establishment of the League of Nations. Second, the perceived *ad hoc* nature of the Nuremberg revolution caused the return to a more traditional, State-centred international law after times of crisis and turmoil. Professor Weinke noted that it would be an oversimplification to argue that the Cold War trajectory of the Nuremberg Principles was a mere instrumentalisation for the purposes of political propaganda and historical myth-making. New research shows that the importance of Nuremberg has always transcended the narrower realms of State and interstate institutions. As from the 1960s, some of Nuremberg's core ideas, especially those relating to individual criminal responsibility under international law, criminalisation of atrocity crimes and mass crimes committed against civilian populations and the individual accountability of Heads of State continue to inspire the international struggle for human rights and justice despite the stalemate at the UN. In her view, even though until the 1990s the international community undertook no serious measures to build a more universalised system of ICL, some of Nuremberg's legacies and promises were never completely forgotten. She further emphasised that some historians have made the argument that the rediscovery of Nuremberg's legacy in the 1990s came at the price of prioritising atrocity crimes over crimes of aggression, thereby inverting the original hierarchies of the late 1940s. Further criticisms from postcolonial scholars have remarked that the Rome Statute of the ICC, with its implementation of a dual-standard system that aims at the de-politicisation of extreme violence, reproduces asymmetrical power relations and structural deficits in the international arena. Professor Weinke stated that while these critiques are important, the Nuremberg Principles are not a hegemonic project of neo-liberal and cosmopolitan elites of the West nor was their invocation characterised by sharp dichotomies between aggression and atrocity crimes.

She concluded by referring to Thomas Buergenthal's famous keynote speech of 1991, in which he stated that "human rights violations are often either the cause or the effect of the armed conflicts we hear and read about daily." She stressed that in the face of criticism of the Rome Statute as an alleged instrument of neo-liberal power politics and neo-colonialism, it is important to remember Buergenthal's message that doing justice cannot be separated from peacekeeping and political reform.

Regarding the question about the differences and similarities and practical suggestions for addressing these, Professor Weinke stated that we need to broaden our understanding of the Nuremberg history and acknowledge that it has been twisted and complicated since the late 1940s. We need to acknowledge that the 1940s and the 1990s were in a sense exceptional historical times. The 1990s allowed for a coalition beyond the idea of Nuremberg and the Nuremberg Principles. She stressed that there had been opposition right from the beginning and that we must find answers to the legitimacy problems, some of which result from the discussions during the Cold War. While she recognised the broad civil movement in favour of ICL, she noted that the absence of the United States of America is very problematic. According to her, this is one of the biggest problems of the project as a whole. Finally, she concluded the panel by highlighting the need to develop a critical consciousness of the trajectories of ICL since the late 1940s to understand the present problems.

<sup>5</sup> Thomas Buergenthal, "The Human Rights Evolution", in *St. Mary's Law Journal*, 1991, vol. 23, no.1, p. 3.



Dr Lesch, Ewing Halsell Distinguished Professor of History at Trinity University, San Antonio, Texas, focused his presentation on examining what has happened in Syria since the beginning of the Civil War in 2011 and until 2016, marking the establishment of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM). He started his presentation by recalling his various interviews with Bashar al-Assad and other members of the leadership, especially at the beginning of the Civil War, and how they justified the excessive use of force against the protesters, which according to him, showed a reflexive response without the possibility of reconciliation. In addition to this, he stated that there were no institutional mechanisms to deal with this kind of situation, which from an authoritarian perspective was paramount for preventing any perception of weakness.

Dr Lesch noted that to understand the situation in Syria, it is also crucial to understand the perspective of the Assad regime, the historical context overall and various complexities and developments, whether political, economic or geostrategic. Contextual understanding remains imperative for understanding or addressing the fight against impunity. Regarding accountability efforts, Dr Lesch noted that without political will, bringing perpetrators to justice might be difficult. Moreover, Syria is not a signatory to the 1998 Rome Statute, which complicates the matter from the jurisdictional perspective. He concluded by stating that achieving accountability will be a long-term project. Echoing a point made by Professor Weinke in her final remarks when she made reference to a quote stating that justice cannot be separated from political reform or political settlement, Dr Lesch noted that in the case of Syria, in the short term, it may well have to be.

Dr Lesch further stated that, as Director Rackwitz also pointed out earlier, there is a difference between looking back historically and considering something that is on-going, such as the Syrian Civil War. The story of the Syrian Civil War has yet to be finished. President Bashar al-Assad just won another seven years in power and there is no end in sight for his regime. There is a dichotomy between whether or not we should help remove or waive the sanctions on the Syrian Government in order to help the Syrian people, and accept the *fait accompli* that President al-Assad is going to remain in power and has control over most of the country. Dr Lesch observed that he sees the trend of many countries in the Arab world reopening their embassies in Syria and clamouring for Syria to return to the Arab League. In his view, this has been possible due to the central location of Syria in the region. In this context, he raised the question of where to draw the line between keeping up the pressure and bringing political settlement.

Regarding the question posed by Prof Weinke as to whether the current investigations against Syrian perpetrators are helping human rights endeavours and ICL or rather posing risks for the victims, Dr Lesch observed that a collective paradigm has emerged in which collecting and preserving evidence might be useful at some point against the perpetrators. He said that the evidence that has been collected could create a body of data and rulings that might be useful further down the road alongside the other investigations into the Syrian government. Dr Lesch further indicated that just as in any conflict scenario there is in Syria not only a physical reconstruction to be undertaken but also an emotional reconstruction, and that it is sometimes more important to create more long-term sustainability and stability. In this regard, he referred to the dignity panels in South Africa and Northern Ireland that brought opposing groups together to air their grievances. However, he stressed that it is difficult to implement those mechanisms without some sense of injustice from one side or the other. He finished by reflecting that the concept of social injustice is of enormous importance to Syrians and that without that notion, in his view, the country will not be able to recover emotionally, socially or culturally.

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**Three key points for further consideration and debate:**

- It is important to analyse critically the historical trajectories of ICL, to better comprehend the application of the Nuremberg Principles, the current and future challenges and their potential or feasibility.
  - Contextual understanding in cases of unresolved issues or conflicts is imperative, and this is true especially in the context of the fight against impunity. Understanding the proper context eases the addressing of challenges through the lens of inclusiveness, effectiveness and long-term stability.
  - The panel highlighted the importance of dialogue – the importance of inclusive, continued, open and practical, result-oriented dialogue – in addressing the aspirations of the fight against impunity and enhancing understanding of the complexity behind some of the situations worldwide.
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# Panel II

## Harm caused to the “community as a whole” – reflections on the achievements and good practices so far

Panel II identified the strengths and weaknesses of the current fight against impunity while reflecting on the Nuremberg Principles and discussing related challenges. Experts highlighted the good practices and achievements and provided their reflections on the practices that they observed as functioning, and the reasons behind their working or suitability. The panel also aimed to take these good practices a step forward and asked the experts to identify future recommendations – that are to be adopted – from various lessons that they have observed or witnessed during their work in international criminal justice.

The key questions for Panel II included *inter alia* the following: What do you consider the main achievements of ICL, and is ICL meeting its goals? What is the role of the ICC in the fight against impunity, and is it playing the role that it should? What other tools or best practices exist in the fight against impunity, and where should we be investing for the future? And what then are the tools and best practices in which we should continue to invest to best serve victims?

Speakers:

**Judge Silvia Fernández de Gurmendi**, President, Assembly of States Parties to the Rome Statute of the International Criminal Court

**Payam Akhavan**, Senior Fellow, Massey College, Distinguished Visiting Professor, University of Toronto Faculty of Law, Member of the Permanent Court of Arbitration and Special Advisor on Genocide to the Office of the Prosecutor, International Criminal Court

**Judge Joanna Korner**, Judge, International Criminal Court

Moderator:

**Dr Marieke Wierda**, transitional justice expert (personal capacity)

Judge Silvia Fernández de Gurmendi, former Judge and President at the ICC and current President of the Assembly of States Parties to the Rome Statute (ASP) of the ICC, began the discussion by reminding the audience that the ICC builds upon the legacy of the IMT and of its most recent predecessors, namely the ICTY and ICTR. But it went far beyond their *ad hoc* nature, by creating a permanent court with a global aspiration to fight against impunity. She noted that the goal of the ICC is not only to serve as a deterrent, but also as an incentive for States to investigate and prosecute the commission of crimes. It was not created to have the monopoly on the fight against impunity, but rather it was created to complement national judicial systems.

Judge Fernández further stated that in the 20 years of the ICC, great progress has been made, but she acknowledged that there are concerns, both internally and externally, that the ICC is not delivering to the full of its potential. She referred specifically to the letter published by four former presidents of the ASP in which they concluded that the ICC needs fixing with regards to issues of efficiency and effectiveness.<sup>6</sup> Regarding these concerns, Judge Fernández stated that the ICC has made considerable efforts to improve its efficiency and effectiveness by very recently adopting certain measures to expedite proceedings. However, more needs to be done. And in this regard, Judge Fernández, as current President of the ASP, ensured that they are currently dealing with a set of recommendations put forward by a group of independent experts to improve the system. The goal is to go into the soul of the system and see what the State Parties and the Court can do to improve. Judge Fernández stressed that this is an ongoing process and a priority for the ASP. She concluded by stating that the ICC has an important role to play and, although it is not delivering at the full of its potential, it can do so, if there is will to improve the system and enhance its credibility and legitimacy.

Regarding the issue of impact, Judge Fernández highlighted the importance of trials to establish a historical record. Although judges are not historians, they might, in her view, help to establish certain facts objectively. She stated that creating a historical record is particularly important when it comes to countering the denial of genocide and the rehabilitation of the image of convicted war criminals. To maximise the impact, and overcome any possible lack of communication of judicial decisions, Judge Fernández identified the development of didactic approaches to accompany judgments as being crucial.

Furthermore, Judge Fernández stated that the ICC needs to prove that it can deliver efficient and effective justice to be a credible backup system for the global community. She reminded the audience that as a global court, the ICC is only going to focus on the most important cases, taking the view that the remainder of cases will be dealt with by national systems. She further stated that the ICC was the first international court to allow for victim participation in the proceedings, and this is a key matter for the impact of the institution. The reparation programmes put forward by the ICC alongside its outreach programme have been crucial in achieving impact, and she stressed the need to push for high-quality accountability to fight impunity and to communicate the cases so as to allow a central role for the victims in the proceedings.

<sup>6</sup> Prince Zeid Raad Al Hussein, Bruno Stagno Ugarte, Christian Wenaweser and Tiina Intelman, “The International Criminal Court needs fixing”, in Atlantic Council, 24 April 2019, available at <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-international-criminal-court-needs-fixing/> (last accessed 6 December 2021).

Judge Fernández stressed that international criminal justice is a tool in a broader toolkit and that in order to improve the tool, States need to understand that cooperation is vital in terms of financial resources and in the selection and nomination of officials. She concluded her presentation by highlighting two ways forward. First, the importance of reinforcing the trust fund for victims to have meaningful reparations and, second, improving the way the proceedings are being communicated to victims.

Payam Akhavan, Senior Fellow at the University of Toronto, looked at the achievements of ICL and focused on the complex landscape within which the ICC operates. In this regard, he referred to the case of Myanmar, where a myriad of mechanisms have been activated. He noted that the findings of the ICC and ICJ will have significant impact with respect to international criminal justice. Professor Akhavan added that Myanmar is a unique case study, and it remains to be seen how all these different mechanisms will relate to one another. He further reflected on the question of centrality, considering the complementarity principle and pondered whether the ICC is at the centre or the periphery of international criminal justice, especially when the periphery and the centre are constantly changing places rather than being fixed in a particular location.

Regarding the role of judicial capacity building in the contexts of national transitions, Professor Akhavan reminded the audience that it is important to recognise that delivering justice is a messy and complex reality. In this regard, he referred to the role of traditional justice mechanisms or non-orthodox approaches to accountability, as for example, the *gacaca* courts in Rwanda. Concerning these traditional mechanisms, he reflected on whether victims necessarily privilege punitive over restorative justice. This, in his view, brings into play not only questions of material compensation, but also questions about participatory mechanisms, such as truth commissions, which unlike criminal trials, allow a broader victim and perpetrator participation to engage in dialogue with a view to bringing about social and cultural transformation in the aftermath of mass violence. By raising the latter, Professor Akhavan addressed the need to explore varied objectives and show a degree of flexibility when dealing with victims in the realisation that victims of one conflict may not necessarily require the same reparations as victims of another conflict.

Concerning the question of the impact of ICL, Professor Akhavan considers that it needs to be soberer and more realistic because the transformation of global politics is something which will happen across generations. In this regard, he highlighted the expressive function of the law in gradually fostering deterrence and awareness. He recognised that The Hague has become a beacon of hope in the popular understanding, especially when dealing with survivors, who attest the internalisation of the ICC and other ICL institutions. To conclude, he proposed that in order to improve the ICC two measures are needed. First, a focused and realistic budget and, second, an increased focus on prevention mechanisms.

Giving her views as a judge at the ICC, Judge Korner noted that within the ICC there is a real desire to put into practice systems that improve the efficiency of trial proceedings. When looking at the question of the achievements of ICL, she considered the *ad hoc* tribunals as being one of the major achievements because they were the ones to start promulgating ICL, thus starting the development of a coherent body of law. In addition, Judge Korner highlighted as achievements not only the gradual acceptance of UJ, but also the integration of international crimes into the domestic legislation of several countries, especially in holding those most responsible to account. Furthermore, she identified two other achievements: first how ICL has entered public discussion, thus generating more public awareness of accountability needs and, second, how transitional justice and peacebuilding initiatives are gradually integrating criminal accountability into their activities.

On the other hand, Judge Korner noted that one of the drawbacks of international criminal trials is their length, especially considering the goal of creating a historical record of the crimes. She critically reflected that if the goal of ICL is to end impunity for perpetrators and contribute to the prevention of crimes, then it is not meeting those goals because, in her view, these goals are impossible ones. What she has noticed is a failure to prosecute many perpetrators because of the inability to arrest. In this regard, she acknowledged that not only does politics play a prominent role, but also that there are financial constraints on the investigation and prosecution of international crimes.

Regarding the desired impact of ICL, Judge Korner, stated that more can be done in terms of communication. She added that the ICTY failed to reach the people it was meant to, particularly concerning the reasons behind prosecutions and acquittals. She believes that there is an in-built reluctance on the part of prosecutors to explain their decisions both for international and domestic matters, and this in turn constitutes a real drawback to reconciliation between the parties. Judge Korner recognised that the international criminal justice system has a role to play in communicating to the general audience, with a view to achieving reconciliation. To conclude her presentation, Judge Korner stressed that to improve the ICC it is necessary for the Office of the Prosecutor (ICC-OTP) to have the ability to investigate and indict where appropriate.

Dr Marieke Wierda, a transitional justice expert, concluded the panel by stating that on the one hand, the ICL system shows concrete manifestations of success, including the establishment of the tribunals and demonstrating accountability. On the other hand, there is a sense that some goals have been unrealistic or have not been met, which has led to unfulfilled expectations among victim communities. She highlighted that one key issue raised during the discussion concerned the best way to spend resources to address those problems and how to strike a balance with other priorities in post-conflict societies. Dr Wierda concluded that, in her view, the future of ICL lies at the domestic level because we see that new standards are adopted, and trials are taking place at this domestic level, something which shows great promise for meeting the central goal of the system: prevention of the world's worst atrocities.

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#### Three key points for further consideration and debate:

- There are many achievements of ICL – including the establishment of the first permanent criminal court, the ICC, setting out of a normative framework, crystallisation of ICL and enhancement of universal application of the Nuremberg Principles; yet many challenges remain, including improving the effectiveness and efficiency of the ICC and the justice system.
  - Communication is and remains key – clarity in terms of objectives, decisions and strategy taken in various justice-related efforts remains crucial. This enhances the general public's understanding and the overall legitimacy of actions taken with respect to a given goal.
  - More holistic dialogue is needed in respect of addressing the harm caused to the community as a whole, both in terms of objectives (key and wider objectives), goals (key performance indicators included), budget, timeline, and setting out varied communication and priority-setting strategies for achieving these goals.
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# Panel III

## Harm caused to the “community as a whole” – dissecting various objectives and respective changes in practices

Panel III discussed the legal framework envisaged in 1950 and subsequently developed in the common fight against impunity. It further dissected the various objectives of international criminal justice and ICL in order to analyse which ones are contested and which uncontested in the common fight against impunity so as to find a practical recommendation on the way forward.

Panel III addressed the following key questions: Is there an ultimate objective of ICL? What challenges to the setting of objectives are being brought by the wider discussion on international criminal justice? Is there sufficient legal certainty and procedural and legal transparency in these goals and objectives? What are the other or potentially correlated challenges in implementation of the existing legal framework?

Speakers:

**Sarah Kihika Kasande**, Head of Office, Uganda, International Center for Transitional Justice

Speakers:

**Dr Brianne McGonigle Leyh**, Associate Professor, School of Law, Utrecht University

**Karen Mosoti**, Head, Liaison Office of the International Criminal Court to the United Nations, the United Nations

Facilitator: Nuremberg Academy

Regarding the question as to whether there is an ultimate objective of ICL, Dr Brianne McGonigle Leyh, Associate Professor of the School of Law of Utrecht University, stated that there is an ultimate objective of ICL which is to contribute to ending impunity for serious international crimes through the investigation and prosecution of individuals suspected of committing these crimes. However, she stressed that it is not the exclusive objective, as there are several others, such as: the prevention of crime; contributing to a historical record; norm development; promoting the rule of law and fair trial processes; and justice for victims. At the same time, she also wondered if other less visible matters can be considered as key objectives, for example capacity building and restorative justice goals, which are connected to justice for victims. She reflected on the ICTY and how it contributed to the historical record through its archives. Regarding the ICC, she identified justice for victims, but also reflected on how that justice looks for them. She agreed with what Judge Korner said in Panel 2 and noted that ICL as a field has struggled to meet these goals, especially when it comes to certain rights of the accused, justice for victims and communicating limitations to affected communities.

Professor McGonigle Leyh added that there is a tendency to move away from traditional ICL infrastructures to a transnational network approach between the UN, States and civil society actors. In her opinion, these collaborative networks are one of the most dynamic aspects of international criminal justice today. She noted that this paradigm shift that signals a new era in the field could increase prosecutions. However, she also recognised that the complexities, competing interests and overlapping jurisdictions are urgent matters to be addressed. In addition, she reflected on what these developments might mean for the ultimate objective of ICL. Regarding UJ, she raised a concern about the lack of outreach to victim communities and victims’ participation, which could affect the objective of delivering justice for victims. She added that European dominance of UJ is problematic if other States outside of Europe do not prosecute serious international crimes.

She further stated that ICL is just one part of a larger set of issues to be addressed to end impunity and bring justice to victims. She believes that one way to fill the gap is to strengthen the documentation efforts of civil society organisations, particularly with the rise of technological tools to verify and safeguard information. She also encouraged States to move forward with the process of ratifying the draft convention on Crimes Against Humanity and the Draft Treaty on Mutual Legal Assistance.<sup>7</sup> Finally, regarding conflicting goals and recommendations on the way forward, she suggested that if the documentation efforts of civil society are supported and standardised, sequencing of different transitional justice responses might work.

Regarding the ultimate goal of ICL, Sarah Kasande, Head of Office of the International Center for Transitional Justice (ICTJ) in Uganda, noted that following the adoption of the Rome Statute of the ICC, there has been an expansion of the objectives to include restorative aspects, particularly by allowing victims to participate in judicial proceedings and apply for reparations, thus bringing retributive and restorative justice elements closer together. This, in her view, is one of the critical added values of the Rome Statute. She also identified wider objectives, including deterring future crime and promoting lasting peace,

<sup>7</sup> Information about the Mutual Legal Assistance Initiative (MLA Initiative) is available on the webpage of the Ministry of Foreign Affairs of the Netherlands: <https://www.centruminternationaalrecht.nl/mla-initiative> (last accessed 6 December 2021).

delivering justice to victims, strengthening respect for the norms of international law and, in particular, international human rights and humanitarian law and establishing a historical record. She highlighted how the Rome Statute has promoted a culture of accountability by generating a wave of domestication of international crimes in national jurisdictions. She deemed this as a downstream effect through norm setting and norm transfer. She looked in particular at the case of Uganda, which has incorporated aspects of victim participation in criminal proceedings, something alien to common law jurisdictions. She also identified a greater focus on fair trial guarantees and an improvement in the investigation and prosecution of sexual violence. Nevertheless, when it comes to domestication, she noted that it has not translated into effective domestic accountability, due to a lack of political will and to opposition from powerful groups, namely security forces.

Regarding challenges to the objectives of ICL and wider international criminal justice, Ms Kasande stressed that the international criminal justice system takes place in a highly political context, which can either undermine or advance the quest to end impunity. She pointed out that ICL is ill-equipped to conceptualise the structural and systemic nature of atrocities in multiple contexts. She reminded the audience that international crimes stem from a culture of authoritarianism, acute inequality, exclusion and political disenfranchisement. Therefore, to end impunity and prevent future violence, it is important to tackle structural and systemic causes of violence not only through accountability for perpetrators, but also through law reform. In this regard, she stressed the importance of striking a balance between the goals of accountability and what justice actually means for victims. In her opinion, retributive justice alone cannot meet the objective of delivering holistic justice for victims.

With respect to reflections on lessons learnt from different jurisdictions, Ms Kasande identified notable examples, such as regional responses to international crimes that could serve as exemplars for promoting accountability in other contexts. She highlighted the proposed expansion of the African Court on Human and Peoples Rights to grant criminal jurisdiction. She further mentioned the potential of the Extraordinary African Chambers (EAC) to close an impunity gap. Regarding recommendations for the way forward, she stated that policies like the African Union Transitional Justice Policy Framework<sup>8</sup> could contribute to the domestication of international norms, and thus to accountability and the prevention of violence and cycles of conflict. Moreover, she added that the ICC needs to strengthen its fact-finding mission for establishing criminal responsibility in a particular context rather than establishing a historical record, which, in her opinion, should not be a primary objective of the ICC.

Karen Mosoti, Head of the Liaison Office of the ICC to the UN, focused on the challenges that practitioners face when trying to implement the ultimate objective of the international criminal justice regime. She identified three key challenges in ensuring that victims get justice. First, cooperation. She reminded her listeners that the power to enforce lies with the Member States, which makes it difficult for the courts to implement its decisions. The ASP does not have a strong enforcement mechanism, and the Rome Statute does not specify what remedy is available in cases of non-cooperation. This issue then prompts States Parties to ensure that there are consequences for the lack of cooperation. She recognised that civil society has been active in this matter by proposing to the ASP that it adopt a mechanism to deal with non-cooperation. In her view, unless there is an effective mechanism, it is going to be difficult to achieve the objectives of ICL, particularly justice for victims.

The second challenge concerns the implementation of universality and ensuring that there is a broad geographical reach for justice whether the States are parties to the Rome Statute or not. She stated that while the gap might be filled through a referral from the United Nations Security Council (UNSC), there is a current deadlock in this body. She stressed that to cover the area left without international criminal justice, supporters, such as civil society, need to come up with strategies to persuade the States to join the framework.

<sup>8</sup> African Union, Transitional Justice Policy, 12 February 2019, [(AUTJP)], available at [https://au.int/sites/default/files/documents/36541-doc-au\\_tj\\_policy\\_eng\\_web.pdf](https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf) (last accessed 6 December 2021).

Finally, the third challenge concerns complementarity. In this regard, Ms Mosoti stated that this goes back to the ability and willingness test, which deals with issues of capacity and political will respectively. Political will, in her view, is an overarching challenge that depends on the goodwill of individual States to commit to ICL.

Echoing Ms Kasande's views, she further reflected on the role of regional institutions, such as the African Union. She recalled the Malabo Protocol<sup>9</sup> as a positive step even though it was not pushed forward by the States. In her view, these kinds of efforts could be used at the regional level to fill an impunity gap where the ICC is not able to reach. She observed that regional groups can play a part in filling the gap of cooperation and ensuring universality. Regarding the latter, she noted that peer pressure might work in encouraging States of the same region to ratify the Rome Statute. Ms Mosoti concluded by reminding the audience that the European Union (EU) played a key role in putting pressure on States to cooperate with the ICTY, and this might work in other regions as well.

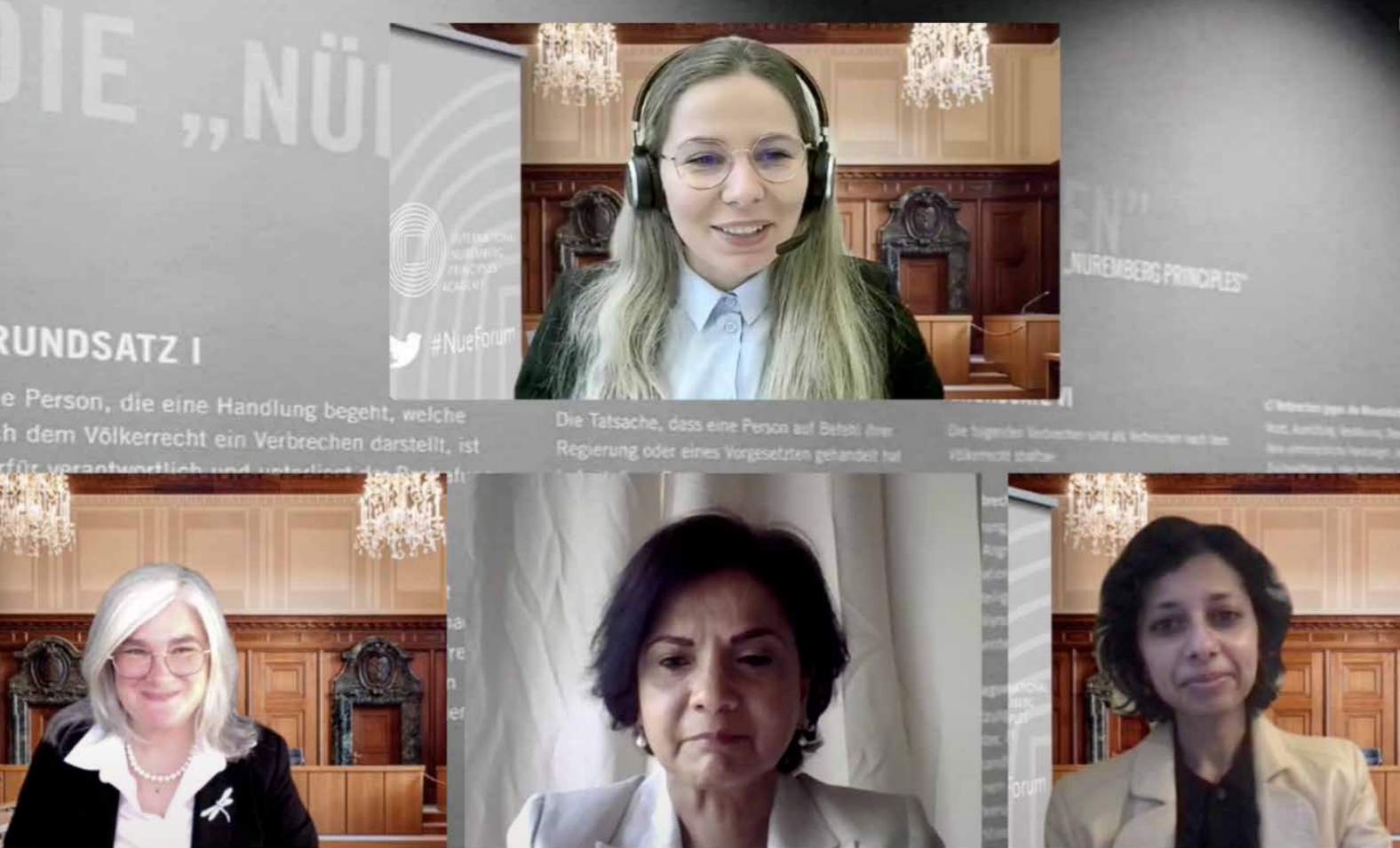
Finally, regarding the conflicting goals and objectives, she noted that there are balancing problems that need to be addressed. She critically reflected on the limited resources of the Rome Statute as well as on the way it is set up – whereby the prosecution only focuses on the most responsible perpetrators, and not on low-level perpetrators – thus working against achieving complete justice for victims. But she recognised that the reparation programmes in place under the Rome Statute are trying to reach out to the affected communities and victims.

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#### Three key points for further consideration and debate:

- International criminal law versus international criminal justice – ICL has been pieced together as a small element in the wider justice toolkit discussion, with the ICC taking on a central role. However, experts also highlighted the importance of other complementary objectives aimed at putting an end to impunity. Reflection on various efforts might be worthwhile, including how to strengthen regional mechanisms and whether this expands the reach of accountability.
  - International criminal justice is a system and as such needs strengthening – the question remains how this should be done, and done in such a way as to have it reflect and encompass various objectives and aspirations.
  - Structural impunity might need to be addressed with further exploration. Experts have identified structural impunity as persisting in some countries and in some case-specific situations. Addressing impunity-related challenges should be part of the dialogue when addressing root causes or seeking accountability.
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<sup>9</sup> African Union, Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 27 June 2014, [(“Malabo Protocol”)], available at [https://au.int/sites/default/files/treaties/36398-treaty-0045\\_-\\_protocol\\_on\\_amendments\\_to\\_the\\_protocol\\_on\\_the\\_statute\\_of\\_the\\_african\\_court\\_of\\_justice\\_and\\_human\\_rights\\_e-compressed.pdf](https://au.int/sites/default/files/treaties/36398-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e-compressed.pdf) (last accessed 6 December 2021).



# Panel IV

## Which crimes concern the “community as a whole” – discussing the reasoning behind this classification and related developments

The fourth panel discussed the scope of the Nuremberg Principles and considered possible and relevant issues stemming from the potential expansion of the list of crimes. The panel started the discussion by looking at the issue of domestic prosecution of core international crimes and complicity. After summarising the various and recent arguments put forward for expanding the list of crimes, the panel was asked to debate whether these discussions concern the efficiency of international criminal justice overall, or whether the core of the debate lies elsewhere, and also to identify related challenges.

Key questions in Panel IV included *inter alia*: In addition to expanding the application of genocide, which other crimes – such as a recent example of the war crime of starvation and CAH – are now being re-discussed or newly considered as being potentially to be included in the group of “core international crimes” and what challenges does this discussion bring? What is the position with theory meeting practice and what additional challenges can be added from the domestic prosecution of core international crimes? Would reinstating complicity (to core international crimes, arguably) as an international crime offer any advancement to the fight against impunity?

Speakers:

**Prof. Olympia Bekou**, Professor of Public International Law, Head of the School of Law, University of Nottingham

Speakers:

**Shamila Batohi**, Advocate, National Director of Public Prosecutions, the National Prosecuting Authority of South Africa

**Neha Jain**, Professor, European University Institute

Facilitator: Nuremberg Academy

Olympia Bekou, Professor of Public International Law and Head of the School of Law of the University of Nottingham, reflected that deciding which crimes we ought to consider as core international crimes sits at the core of the fight against impunity. Genocide, she considers, has remained unchanged since the 1948 definition of the Genocide Convention, despite calls to increase the protected groups or expand the punishable acts envisaged in the crime. In her view, what is particular about genocide is that calling something genocide adds drama and gravity. She noted that over the years there have been calls to include cultural genocide and gendercide, but that these calls have gone unanswered at the international level. However, several States have expanded their domestic definitions of genocide to include social groups. Regarding the challenges of broadening the scope of genocide, Professor Bekou stated that on the one hand it might lead to more charges of genocide being brought by prosecutors, but on the other it might dilute the stigma attached to genocide.

Regarding CAH, she noted that they have been decoupled from the requirement to have been committed in conjunction with an armed conflict. At the same time, there has been an expansion of the punishable acts, with provisions relating to enforced disappearance and sexual violence. With regards to the latter, she stated that it has been developed through the *ad hoc* tribunals according to the very comprehensive set of provisions in the Rome Statute. In her view, the Rome Statute, as a living document, should reflect the reality of the crimes committed on the ground.

With respect to war crimes, Professor Bekou noted that it is the oldest category of core international crimes. Regarding war crimes committed in non-international armed conflicts, there has been an expansion mostly through the creation of new tribunals and through the Rome Statute with an amendment of the Kampala Protocol and through the ASP process in 2019, which criminalised the use of starvation of civilians as a method of warfare. For her, closing the gap between war crimes committed in an international armed conflict and non-international armed conflict is important as it would afford greater protection to the victims. She suggested considering this for future amendments because of the changing nature of conflicts, which increasingly involve non-State actors or are mixed conflicts.

In addition, Professor Bekou referred to the international crimes at the periphery of core international crimes *strictu sensu*. She alluded particularly to the so-called treaty crimes, and she wondered if there is space for these crimes in the modern conception of international crimes. In her view, the crime that comes closest is terrorism. She recalled that in 2010 there was a proposal by the Netherlands to include the crime of terrorism in the Rome Statute, but it did not get very far due to the remaining lack of consensus surrounding the definition of terrorism as a crime. She added that there are new crimes that are of concern to the international community as a whole, namely the destruction of the planet, but she stated that several questions remain with regards to the scope of the definition. According to her, expanding the scope of the provisions would increase the workload, require more resources and, in some instances, dilute the stigma and gravity attached to core crimes. Finally, she concluded by stating that although ICL is not static and needs to adapt to the times, it is important to be cautious and rethink some of the provisions within existing core international crimes and give serious consideration as to whether additional crimes and punishable acts should be elevated to this category.

Advocate Shamila Batohi, National Director of Public Prosecutions at the National Prosecuting Authority of South Africa, addressed the question of the additional challenges facing the domestic prosecution of international crimes. She reflected on her experiences and challenges from a prosecutorial perspective, with a particular focus on South Africa. In this regard, she highlighted the fact that South Africa was the first African State to domesticate the Rome Statute into national legislation through the South African ICC Act, thus making international crimes statutory crimes in South African national law. Despite this progress, she identified the persisting legacy of apartheid as a challenge to accountability and justice for victims. She noted that there is considerable pressure with respect to crimes committed during the apartheid regime because not only are suspects and witnesses dying, but victims are dying too. In addition, the criminal justice system has been weakened due to corruption, exacerbated by the COVID-19 pandemic.

Regarding the fight against impunity, she noted that there have been cases in South Africa that have involved the consideration of the ICC Act in the context of CAH committed in other countries. In addition, there have been some key prosecutions against high-level operatives involved in the apartheid regime. In her view, however, these cases have been challenging because State resources have been used to cover up the tracks of the alleged perpetrators. She added that the National Prosecuting Authority of South Africa is setting up an investigative capability to collaborate and bring these cases to justice. According to her, in order to deal properly with these cases, special capabilities are needed. She indicated that subsequent to the South African Truth and Reconciliation Commission (TRC), cases were not taken to court for various reasons, reasons which included political interference. She said, however, that there are now efforts to ensure that victims and families receive some level of justice. To conclude, Advocate Batohi noted that the legal foundations have been laid in South Africa, but now it is crucial to honour these commitments and not be seen as a safe haven for perpetrators, either of crimes committed beyond the borders, but also most importantly, of crimes committed in South Africa itself. Therefore, this work needs to be done both globally and in Africa in particular.

Regarding the question of reinstating complicity in core international crimes to advance the fight against impunity, Neha Jain, Professor of the European University Institute, focused on the business of mass atrocity. She identified that ICL has an economic blind spot, namely how ICL conceives the relationship between commerce and atrocity. Therefore, she posed the question: Who are the funders of and profiteers from mass atrocities, and what can the Nuremberg Principles tell us about responsibility? Although Nuremberg Principle I states that crimes against international law can be committed only by men and not by abstract entities, Professor Jain wondered whether, if we treat the principles as a living instrument, the responsibility of abstract entities should be excluded or should it address the corporatism, Nazism and militarism that led to the Second World War.

Professor Jain further stated that ICL faces normative, conceptual and pragmatic challenges. She identified a tension between the liberal commitment to individual responsibility and romantic notions of collective guilt. Many scholars, in her view, are backsliding towards the collective because core international crimes are crimes of State, which arise out of organisational tendencies and collective choices rather than from individual action. ICL has traditionally balked at the concept of this form of collective criminal liability, but there have been international, regional and national efforts to establish corporate accountability for mass atrocities. She referred to the decision of the Special Tribunal for Lebanon which held that corporate criminal responsibility is on the verge of attaining the status of a general principle of law. In her view, other examples of promising developments are Article 46 of the Malabo Protocol and recent domestic developments that highlight the indirect ways in which corporate entities might be complicit in the commission of international crimes. In addition, Professor Jain stressed that the Nuremberg Principles serve to embrace the idea of criminal law as only one brick in the accountability edifice for the participation of corporate actors in mass atrocities.

During the final discussion, Professor Bekou concluded that the future of international criminal justice is, in her view, domestic. She stated that the fight against impunity is not over, and that tackling national

challenges and focusing on issues such as corporate complicity are important aspects to strengthen the system in the fight against impunity. Advocate Batohi stressed that the solution lies in States taking seriously their primary responsibility to hold people accountable. She added that when it comes to the principles of international law and national interests, it is national interests that will often trump accountability efforts, which leads to a lack of global understanding of these issues. In her view, the answer lies in strengthening the international criminal justice system and working closely together with States. Finally, Professor Jain stated that we are seeing a stress test for ICL whereby stakeholders want to expand the list of crimes and expand the complicity mandate. She noted however that ICL does not have to do everything and, even if the future approach focuses on the domestic, it can also be applied on a broader regional level. She imagined that the future can be a combination of empowering regional institutions and activists to preserve the core of international law without overwhelming the international level.

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**Three key points for further consideration and debate:**

- Core international crimes are being redefined, both in terms of the scope of their applicability and in terms of understanding which ones fall under the umbrella of “shocking the consciousness” of humanity, which presents a challenge to the changing, or ever-changing, nature of international law and ICL.
  - Conflicts themselves are changing. They are becoming more mixed and involve various (and often new) actors. ICL standards and norms should be reflecting these realities and possibly adjusting to them, or clarifying them.
  - Definitions and applications of norms might, in addition, vary in different countries, and there are many complexities behind the implementation of these norms in relation to domestic prosecution and practices.
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**Additional reflections on Day 1:**

- Reaffirmed significance of the Nuremberg Principles – recalling their perseverance throughout the years and continued relevance, while shedding light on the important work of the ILC towards advancing the universal application of these principles and advancing ICL.
- Highlighted the need to enhance further understanding and application of the Nuremberg Principles – experts highlighted the need to continue exploring the understanding, application and scope of the Nuremberg Principles, especially in the developing ICL field and ever-changing landscape of international law. Enhancing critical understanding is especially crucial.
- Justice is needed, but delivering justice is a complex reality – much work remains to be done and the question is how will this work be undertaken as many challenges have been highlighted in the fight against impunity framework. The ICC, as such, cannot achieve justice for everybody acting on its own.

**There are various challenges including:**

- Understanding the (actual) impact of the ICC and other justice-related efforts;
- Situating the ICC in the context of the international legal order;
- Setting out realistic objectives to manage the international community’s expectations, or to achieve a successful completion or impact assessment;
- Including reflecting on the domestic capabilities in a given moment in time; and
- Maintaining the peace versus justice debate and, correlated with that, the setting of various objectives.



# Panel V

## Outlining the current system for addressing or enforcing the Nuremberg Principles

Panel V discussed and dissected the legal framework envisaged in 1950 and subsequently developed in the common fight against impunity. The panel did this from a structural perspective, delving into the interaction and complementary roles and reflecting on their synergies in enforcing the legal framework and describing the nature, method and characteristics of the framework being implemented.

The panel asked, *inter alia*, the following key questions: What has been the most significant and most challenging difference between establishing the *ad hoc* tribunals in the 1990s and the ICC as regards achieving long-lasting peace and thus ending impunity? Why would the convention on CAH address a gap or gaps in the current system, and what advancement would this bring to fighting impunity? Where do you see lacunae and room for improvements, and what would be your suggestions going forward when reflecting on the international legal order based on the rule of law?

Speakers:

**Christoph Flügge**, Former Judge, International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals

**Dr Charles C. Jalloh**, Professor of Law, Florida International University and Member of the United Nations International Law Commission

**Jane E. Stromseth**, Francis Cabell Brown Professor of International Law, Law Center, Georgetown University

Moderator:

**Dr Anna Richterová**, Prosecutor, Prosecutor General's Office of the Czech Republic

Addressing the question of what has been the most significant and challenging difference between establishing the *ad hoc* tribunals and the ICC in achieving peace and ending impunity, Judge Christoph Flügge, formerly of the ICTY and the International Residual Mechanism for Criminal Tribunals, stated that the ICTY completely fulfilled its mandate. It prosecuted 161 persons, thus successfully putting an end to the impunity of those most responsible for war crimes. In his view, this achievement was only possible because of the assistance of international forces such as NATO troops in arresting suspects, as well as the existence of various investigative teams during exhumations and the seizure of documentary evidence and the political pressure exercised by the EU. Mentioning this achievement, Judge Flügge pondered whether the ICC would have been able to achieve this goal. His answer would be no, because the ICC has never had the means to prosecute and try a large number of persons with respect to only one situation. He added that because the ICC must deal with many situations around the world without the support of law enforcement bodies, it can only prosecute one or two suspects.

Despite the challenges, Judge Flügge remarked that ICL is the best tool to deal with the most heinous crimes, and thus urged the ICL community to improve the current system and persuade States to join the Rome Statute. He concluded by stating that although the ICTY was effective, lasting peace is not certain in the former Yugoslavia, and more needs to be done to maintain peace. Judge Flügge said that despite all the challenges the world is facing today, we must never give up, but must continue working on the implementation of the law and on creating a coherent body of law.

Regarding the question of why a convention on CAH would address gaps in the current system and the implications of a convention for the fight against impunity, Charles C. Jalloh, Professor of Law, Florida International University and Member of the UN ILC, proceeded to outline four main reasons why the draft articles could help to fill a gap in the current ICL system. The first reason is that they would fill a gap in the law of international crimes. He noted that at the international level there is not a draft code of international crimes that would be applicable in national legal systems. What exists is an eclectic patchwork of multilateral treaties that reflect the decentralised and *ad hoc* nature of the development of ICL. In his view, there is a pronounced unevenness in the legal framework that needs to be addressed. He raised the matter that even though the Rome Statute has a specific provision for CAH, it does not provide for an express obligation on States to incorporate CAH into national laws. Therefore, the goal of a CAH convention would be to assist States to remedy this gap by bringing these crimes into the national legal order of States that choose to become parties to that convention.

The second and third reasons are that they would provide a basis for addressing gaps in the current law by having a legal framework that is agreed on by States and that is consistent with the definition of the Rome Statute, and which could then help to amplify the national prosecutions of international crimes. According to him, it would give States Parties to the Rome Statute the necessary framework to work more effectively and could even help the countries that already have national criminal laws prohibiting



CAH. Finally, the fourth reason is that they would constitute a consistent and coherent definition dealing with issues related to extradition and mutual legal assistance. Professor Jalloh further noted that the ILC draft articles have three fundamental pillars. The first is the pillar of prevention of CAH, in which the ILC has provided concrete obligations to the States to prevent CAH. The second pillar is the requirement for States to take national action in their own legal systems to ensure the investigation and punishment of CAH, including through criminalisation in the national law. And the third pillar concerns the establishment of mechanisms for interstate cooperation and mutual legal assistance.

Professor Jalloh also identified other important elements of the draft articles, for example underlining the fact that CAH constitute crimes of a *ius cogens* character. Another key provision is the development of a consistent definition in Article 2 to resolve the inconsistencies in other legal instruments.<sup>10</sup> He expanded upon other provisions, such as the ones dealing with prevention and punishment and stating that CAH can be committed in peacetime or wartime without any conflict nexus. In addition, he mentioned other important provisions, such as calling on States to establish national jurisdictions and to ensure that victims and witnesses are given integral reparations, thus reflecting the current sensibility to the rights of victims. Professor Jalloh recognised that there have also been criticisms of the draft articles, particularly regarding immunities. He concluded that it is crucial to continue working on the quest for accountability, for which the Nuremberg Principles can serve as a guide. Secondly, he underlined the need to look for creative solutions, be they hybrid, national or international so as to strengthen positive complementarity, especially considering the limited resources of the ICC.

Regarding the question of potential lacunae and room for improvement in the common fight against impunity, Jane E. Stromseth, Professor of International Law at Georgetown University, put forward the concept of “synergistic catalytic global criminal justice”. This concept entails strengthening constructive synergies between ICL and advancing justice and prevention on the ground at the national level. She stated that incentivising catalytic synergies between international justice and national justice on the ground is going to become increasingly vital to countering impunity for the worst international crimes and strengthening prevention in the future. She recognised the myriad obstacles, yet she believes ICL mechanisms can catalyse and contribute in various ways to creating potential openings and to generating constructive pressure for justice on the ground. In her view, international criminal justice can be a vital catalyst for justice and prevention on the ground through nationally based processes in the directly affected country, through processes that are professional, transparent and consistent with international human rights law (IHRL) standards.

Professor Stromseth identified three main gaps and areas for improvement in the common fight against impunity. First, gaps in accountability, where major perpetrators continue to enjoy impunity, noting the cases of Syria, Myanmar and Afghanistan as examples. Second, complementarity gaps, namely in sustained and meaningful capacity building for justice on the ground. There need to be resources, commitment, time and efforts of multiple actors to meet this goal. Third, there are gaps in education and empowerment. In her opinion, there is not enough being done to address victims’ concerns about justice, to deepen awareness of ICL principles, and to empower affected communities to advocate for their rights.

After outlining the gaps, Professor Stromseth identified solutions and approaches to catalyse effective justice on the ground. First, expanding accountability options and the reach of international legal frameworks into domestic systems, for example, the draft articles on CAH. In addition, encouraging countries to adopt the Rome Statute into domestic law, supporting hybrid and other justice mechanisms more effectively and enlisting regional actors and national civil society in these efforts. Secondly, catalysing complementarity capacity building through progressive and innovative partnerships, which would encourage and assist domestic efforts to prosecute international crimes. She noted the potential for cooperation with, for example, the Central African Republic Special Criminal Court (CAR-SCC).

<sup>10</sup> Draft Articles on Prevention and Punishment of Crimes Against Humanity, UN Doc. A/74/10, 2019, available at [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/7\\_7\\_2019.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf) (last accessed 6 December 2021).

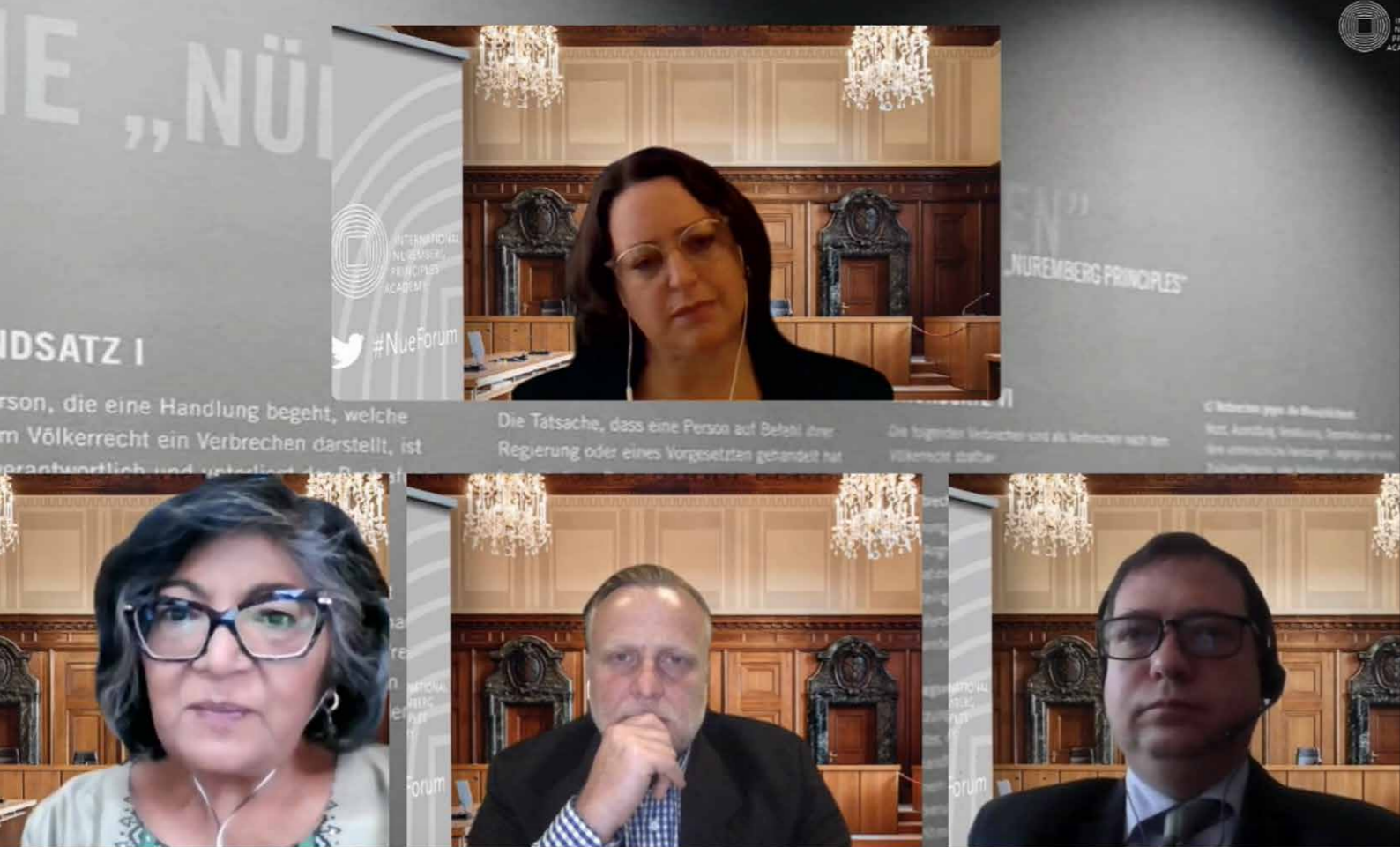
In her view, the Rome Statute has a mobilising impact in galvanising civil society around the world to demand justice from their own institutions. She urged that more attention be paid to the structural factors that contribute to injustice and atrocity and to the question of how to galvanise actors to advance justice and prevention. She stated that there needs to be a greater role played by regional actors and South-South capacity building, because people in the region might understand the challenges more acutely and provide leadership. In sum, she posited that a greater focus is needed on supporting civil society and those who advocate justice and their struggles and efforts in advancing justice and accountability from domestic institutions. The third solution, according to Professor Stromseth, should focus on supporting education and empowerment from the ground up. In this regard, she suggested engaging more meaningfully in outreach with victims and survivors in directly affected communities, without overlooking the divergent views of what justice should look like. She mentioned the case of the Special Court for Sierra Leone (SCSL) as an example, with its innovative approach of going to town hall meetings in the country, listening to the views of the population and engaging with them in order to arrive at a greater understanding of the work of the court. Professor Stromseth stated that survivors need to be acknowledged as agents of change and that support should be provided to domestic efforts to galvanise justice and accountability. She concluded by stressing that the intersections and synergies between ICL and the encouragement of fair, credible domestic justice, accountability and prevention have become more important than ever and that it is important to continue working to catalyse, to exert constructive pressure and to create openings over time for building justice on the ground.

Dr Richerová concluded the panel by stressing that it is crucial that all possibilities be investigated and that all tools be used, whether this be international law, permanent courts, *ad hoc* courts or national mechanisms. Klaus Rackwitz, Director of the Nuremberg Academy, added that there are various angles from which international justice can be pursued, but that it is important to keep them together and not let them diverge from each other. In this regard he acknowledged the pivotal role of the ILC in ensuring that the different mechanisms follow the same principles and standards.

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#### Three key points for further consideration and debate:

- Strengthening synergies in ICL is needed – highlighting the current situation worldwide and ongoing violence, experts re-emphasised the need to strengthen the international criminal justice system, and one way of addressing this challenge could be by strengthening synergies in ICL.
  - Adapting legislation and laws that address lacunae in the legal framework is much needed.
  - Collaborative work between various actors remains important in addressing the objectives of the common fight against impunity – the ICC is the court of last resort, and it operates based on the complementarity principle. Collaboration between various actors in the criminal justice field is essential in order to achieve the complementarity principle.
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# Panel VI

## Reflecting on the United Nations Sustainable Development Goals and wider aspirations of sustainable peace through justice

Panel VI situated the Nuremberg Principles within the framework of the fight against impunity and provided case analysis where applicable. The panel took a holistic look at achieving sustainable peace through justice and broader conflict prevention goals and aspirations. It shifted the framework from ICL and looked at the Nuremberg Principles through the lens of the UN SDGs and the wider 2030 UN agenda, with a particular focus on Sustainable Development Goal 16 (SDG 16): “[P]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

The experts were then asked to share their reflections on how the goals of international criminal justice are being achieved, highlighting the complementary approaches and synergies, and to further discuss the missing aspects within the discussion on accelerating and realising the UN 2030 Agenda for Sustainable Development. The key questions addressed in Panel 6 were, *inter alia*: Where do you situate the Nuremberg Principles in the UN 2030 Agenda for Sustainable Development? What is missing and how and where can the synergies be identified? How can we strengthen the investigation of international crimes and thus achieve prosecution of these crimes?

<sup>11</sup> Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, 21 October 2015, available at <https://undocs.org/A/RES/70/1> (last accessed 6 December 2021), p. 14.

Speakers:

**Yasmin Sooka**, Commissioner and Chair of the Commission on Human Rights for South Sudan, human rights lawyer, Honorary Fellow at the University of Cape Town South Africa

**Kingsley Abbott**, Director, Global Accountability and International Justice, International Commission of Jurists

**Dr Juan Botero**, Associate Professor, Pontificia Universidad Javeriana Law School

Moderator:

**Kate Orlovsky**, Director, the Hague Office, International Bar Association

Regarding the question of where to situate the Nuremberg Principles within the 2030 Agenda for Sustainable Development, Yasmin Sooka, Commissioner and Chair of the Commission on Human Rights for South Sudan, stressed that providing access to justice for all requires building effective, accountable and inclusive institutions – but above all, it requires ensuring justice for victims, restoring their dignity and the right to a speedy trial and strengthening the rule of law. She acknowledged that there are gaps, and she reminded the audience that the Nuremberg Principles are a product of their time. She critically discussed how the quest for accountability focused primarily on civil and political rights violations but how it ignored the question of the structural root causes of violent conflict. In this regard, she recognised the increasing socio-economic violations, including economic crimes and corruption as central causes of conflict. While the UN SDGs emphasise the importance of economic, social, cultural and environmental rights, they do not deal with the main pillars of transitional justice. In addition, she noted that Nuremberg is silent on the matter of gender crimes, and that despite documentation of sexual crimes, they were excluded from the Principles.

Reflecting on the international level in terms of cultural and regional complexities, she concluded by mentioning the increasing polarisation that exists at the international level and how this leads to new and innovative mechanisms. In her view, these developments pose a series of questions regarding how to operate without a court and political support, as well as how to deal with the resources. These are gaps that need to be addressed urgently.

With respect to the sequencing of transitional justice measures and the role of political actors and States, Commissioner Sooka, reflected on the case of South Sudan. She stated that there was a certain amount of deference paid to allowing regional structures to take responsibility for criminal accountability in the region. Therefore, the idea of the creation of a commission to collect and preserve evidence to support the work of a future prosecutor came out of the notion of building complementarity between the international system and regional mechanisms. She noted that what we see in South Sudan is an increasing tendency to dilute the notion of criminal accountability and to focus instead on the question of a truth commission. This is seen as a way, in her view, of lessening the opposition towards criminal accountability and at the same time of dealing with victim aspirations. However, from her experiences with victims, victims seek criminal accountability. In effect, this approach then contrasts with the tendency to prioritise softer options, such as setting up a truth commission as almost a substitute for justice. In her opinion, the notion of sequencing plays out to avoid criminal accountability. At the international level, she noted the polarisation of States arising out of the debates surrounding the ICC, as well as before the UN Human Rights Council (UN HRC). States are responding to political interests instead of to the needs of victims and their expectations of justice. In this regard, she pointed to the recent resolution on Yemen. Commissioner Sooka concluded that the centralisation of the voices of victims is rapidly disappearing. This shift poses a great challenge to the framework of justice, accountability and peace. Peace cannot occur without accountability.

Reflecting on recommendations on how to effectively rebuild trust in the international criminal justice regime, Commissioner Sooka noted that investigative mechanisms dedicated to collecting and preserving evidence are powerful tools to boost the confidence of ordinary citizens and to counter power imbalances when reaching out for support. Furthermore, she insisted on the importance of fighting structural impunity, and the potential of development aid being made conditional upon addressing impunity so as to see changes in the long run.

Addressing the question of whether there is a gap between ICL and development, Kingsley Abbott, Director of Global Accountability and International Justice at the International Commission of Jurists, recalled that development is not the end goal in itself, but it should be pursued because it leads to the realisation of the full spectrum of civil, political, economic and cultural rights. He stated that the target of UN SDG 16 is promoting the rule of law and ensuring access to justice. In his view, this is where we can situate the Nuremberg Principles. In terms of challenges, he identified the widening cracks in the commitment of States and powerful actors to the rule of law and human rights. He raised the concern that certain States have weaponised the law to violate human rights while at the same time misusing the concept of the rule of law as a shield against scrutiny.

With regards to accountability for serious human rights violations, he noted that challenges remain. Human rights violations are committed with impunity and States are unwilling or unable to investigate and prosecute. In addition, many States have not accepted the jurisdiction of the ICC, and the UNSC has failed to refer situations to the ICC. To fill these gaps, he highlighted the emergence of a new generation of UN accountability mechanisms, such as the IIM for Syria and the Independent Investigative Mechanism for Myanmar (IIMM), to collect and preserve evidence for future trials. He said that these institutions are fragile and face great challenges and threats from hostile actors. He recalled the recent resolution from the UN HRC voting against the renewal of the mandate of the group of eminent experts on Yemen. Therefore, he posited that political protection of these mechanisms is needed to meet the expectations of States, donors and victims. However, sufficient time, resources and staffing to fulfil their mandates are required from the outset. In parallel, he suggested identifying and supporting opportunities for prosecution at the ICC, in national jurisdictions or through UJ. Finally, he stressed that the ICC and other accountability mechanisms remain too remote from victims. In this regard, he recalled the case of the Rohingya where he noticed insufficient understanding of these mechanisms and how they serve the interests of the victims. Therefore, he reiterated the need to allocate sufficient resources to bring the work of the ICC and other mechanisms closer to the ground. In his conclusion, he reflected that international criminal justice is not static, and despite the ideals and hope, it is not a *fait accompli*. Thus constant vigilance is required to allow victims to access justice.

To achieve accountability, Mr Abbott argued that what is required is to hold the line against attacks on human rights and the rule of law worldwide. In his view, this requires a refresher course on IHRL and ICL standards for diplomats and State representatives. He stressed that the rule of law is a dynamic concept that should be employed to safeguard human rights. Second, he reflected on the need to acknowledge that there is no peace without justice and, particularly, that any kind of economic and development initiatives will fail if there is rampant impunity. He underscored the case of Myanmar, where despite great investment on the part of the International Commission of Jurists and local actors to strengthen the rule of law, the army is back in charge with people committing CAH and genocide in the country. He echoed Commissioner Sooka's remarks about sequencing, by stating that justice and accountability should run in parallel with other transitional justice measures.

Regarding what is needed to realise UN SDG 16 and how ICL can contribute, Mr Abbott stressed the need to take stock of the available tools. He stated that gaps remain, but they can be filled through creative solutions. He highlighted the case of Myanmar, where in a short amount of time four different mechanisms were activated at various levels thanks to the creativity of victims, civil society and States. He concluded that while challenges remain, there is a need to hold the line on fundamental principles and look for creative solutions.

In addressing the potential synergies between the Nuremberg Principles and the 2030 UN Agenda, Dr Juan Botero, Associate Professor at the Pontificia Universidad Javeriana Law School, outlined three aspects. First, there are gaps in the meaning and scope of the fight against impunity as set out in the Nuremberg Principles and the framework of the development agenda, in particular the tension between restorative justice and accountability. Second, there is a need to advance the rule of law at both the national and international levels because there are accountability gaps, especially the absence of prominent States being made subject to ICC jurisdiction. Third, he noted how the principle of complementarity plays out in a case like Colombia, where there is a sophisticated framework, known as the Special Jurisdiction for Peace (SJP), which has the goal of achieving the minimum necessary justice to achieve the maximum possible peace. He recalled that when meeting victims of the Colombian armed conflict, their restorative justice framework of truth and reconciliation appears in line with their traditions, but at the same time, urgent needs of reparation and compensation also emerge. In his view, these notions of accountability reaffirm that the core of the Nuremberg Principles remain as valid as ever. He stated that the Nuremberg Principles are a living document but that at the time when they were adopted there was not a robust framework of transitional and restorative justice foregrounding the participation of victims. Nevertheless, the core fight against impunity remains lively.

Regarding the question of sequencing and supporting victims' plight in their search for formal justice, Dr Botero noted that in the case of Colombia, the role of ICL and the Nuremberg Principles takes on a new light in which without the expressed threat of ICC intervention through an open investigation, it would have been difficult to achieve some degree of accountability under the SJP. For him, the threat of retributive justice pure and simple remains a powerful deterrent for pervasive violations in the Colombian case.

Finally, concerning how to address the tension between formal criminal accountability and other mechanisms, Dr Botero highlighted the Colombian case, because it is illustrative of bringing together and creating a balance between systems of restorative justice based on principles of truth-telling and reconciliation on the one hand, and adversarial and traditional accountability procedures before the SJP on the other. He then raised the question as to whether the system is working or not. In his view, it is working because indictments have started to come in, and victims are organising to present cases. He stressed that the Colombian example is one that shows the success of the ICC and ICL. Dr Botero concluded with the reflection that the core elements of accountability and retributive justice cannot be set aside when trying to achieve peace.

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#### Three key points for further consideration and debate:

- The ICC's deterrent effect and accountability mechanisms were discussed – experts debated the actual deterrent effect of the criminal accountability mechanisms and their realistic or measurable impact. From the Colombian case example, however, it was highlighted that without the express possibility of ICC intervention, accountability efforts might not have moved in the directions they have and, moreover, it is likely that this deterrent effect also impacts, to some extent, the current conflict situation (and prevention of further violence).
  - The core of the Nuremberg Principles – accountability for the commission of core international crimes – remains as valid as ever in complementing the various efforts towards achieving sustainable peace.
  - Experts highlighted that to achieve justice the root causes of conflict need to be addressed. These are complex matters, as it was reaffirmed, but it has been emphasised and believed that without addressing these root causes of conflict, a recurrence of the conflict or violations is very likely. Moreover, the question remains open as to whether addressing root causes could be done effectively without considering criminal responsibility.
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# Panel VII

## Similarities, differences and the way forward – the fight against impunity and accountability

The last panel reflected on the Nuremberg Forum discussions so far, on its objectives, and attempted to situate the Nuremberg Principles within the framework and system(s) seeking accountability and to dissect various challenges highlighted throughout the past two days. This panel listed the related challenges and opened the floor for a discussion of some of them.

Panel VII addressed the following key questions: Is there a switch from the peace through justice principle towards peace through human rights? Are these two propositions in synergy? What are the observed limitations of State responsibility (in the fight against impunity) and towards strengthening the protection of humanity? What is missing from the legal regime discussed so far reflecting the current fight against impunity and how can one strengthen accountability for core international crimes?

Speakers:

**Dr Mark Ellis**, Executive Director, International Bar Association (and chair of the panel)

**Akila Radhakrishnan**, President, Global Justice Centre

**Dr Anya Neistat**, Legal Director, The Docket, Clooney Foundation for Justice

Facilitator: Nuremberg Academy

Dr Mark Ellis, Executive Director of the International Bar Association and chair of the panel, opened the discussion by highlighting that it was Nuremberg that set in motion the great era of accountability, and that after the Cold War a Golden Age of international justice emerged with new forms of collaboration and a proliferation of accountability mechanisms. He wondered whether in the face of the many challenges facing ICL and international justice today the Golden Age is perhaps waning. On the basis of this thought, Akila Radhakrishnan, President of the Global Justice Centre, reflected on whether there is a switch from the peace through justice principle towards a peace through human rights principle. Ms Radhakrishnan said that the notion of justice is quite broad and has evolved significantly since the adoption of the Nuremberg Principles. She identified a duality that has emerged since the post-World War Two period. First, the concept of mass atrocity for international crimes and, second, the development of the human rights law framework, rooted in the concepts of justice and equity. This duality, she stated, is evidenced in the UN Charter and in the UN SDGs, particularly UN SDG 16 as discussed in Panel 6. In her view, the concepts of justice and human rights run in parallel with each other and, more importantly, they are intertwined and mutually reinforcing. She addressed this idea in two ways. First, she looked at the connection between human rights and situations of mass atrocities. And second, what each of the two brings to the table. She reminded her listeners that most mass atrocity situations are preceded by systematic human rights violations. In this regard, she brought up the case of Myanmar, where the Rohingya genocide was preceded by decades of discrimination and human rights violations. Based on her experience in this case, she noted that justice alone cannot bring peace to the Rohingya, because peace for them is contingent on the restoration of their human rights and the dismantling of the system of discrimination against them to break the state of vulnerability, marginalisation and the risk of atrocities.

Furthermore, she proposed to analyse this issue from a thematic perspective, rather than from a particular situation, for example from the perspective of gender equality, which is a concept firmly rooted in human rights and which is strongly linked to achieving sustainable peace and stability. Second, she highlighted that the pursuit of human rights and justice often targets different actors and addresses different parts of the problem; while ICL focuses on holding individuals to account for their actions, IHRL focuses on holding States and systems to account that enable atrocities to occur, which now includes corporate actors and multilateral institutions. Ms Radhakrishnan remarked that to achieve sustainable peace we need both justice and human rights paradigms, because they are interconnected and mutually reinforcing.

Ms Radhakrishnan noted the robustness of both regional and international human rights systems. These mechanisms can be used in the early stages of human rights violations that could lead to mass atrocities. On the one hand there are treaty monitoring bodies, the UN HRC monitoring and accountability functions, and on the other there is civil society, which is deeply engaged in providing information on the human rights situation in the country, as well as domestic human rights litigation. She critically noted that the international community often marginalises these processes and does not treat them with the seriousness they deserve. She suggested that there are different places to start engaging in these early stages with the goal of prevention. Ms Radhakrishnan insisted on the importance of addressing the systems that allow atrocities to happen rather than having to deal with what justice should look like in the aftermath of mass atrocities.

With regards to the question of the role of civil society, Ms Radhakrishnan emphasised that civil society knows the needs and threats of the community, and they are usually the first to confirm that human rights violations are occurring and denounce them before any State actor. She criticised the lack of attention given to listening to and validating these voices at the highest levels. She recalled the case of Myanmar,

where civil society partners warned that the country was in a vulnerable place and likely to fall back in to military rule, something which then ended up happening. Therefore, in her view, it is important to heed the voices of the ones who know what is going on in their communities. In order to ensure that the international community listens to these voices, there needs to be a more meaningful commitment beyond merely including them in the ongoing conversations at the highest levels. Civil society should be brought to the table in order to set the agenda. Ms Radhakrishnan insisted on making decisions based on what civil society and actors on the ground are calling for.

Next, Dr Anya Neistat, Legal Director of The Docket, Clooney Foundation for Justice, addressed the limitations of State responsibility in the fight against impunity and the question as to how these limitations can be addressed. Dr Neistat reflected on the current developments, especially how mass atrocities are known in real time. This situation, in her view, increases State responsibility because the notion of not knowing no longer applies. At the early stages, States should demonstrate a very strong idea of accountability, as this could make a big difference and is not something that should be done three years down the line. According to her, a major aspect of the State's responsibility to investigate and prosecute lies in the idea that States have a moral responsibility to say that they will act in the face of mass atrocities. Often this does not happen, and civil society can do no more in the advocacy space here. Regarding the challenges, she emphasised the practical ones and highlighted the fact that States face difficulties when trying to apply UJ principles in their national prosecutions. Despite this, she noted that civil society is supporting States in fulfilling this responsibility. In addition, she noted promising opportunities in national prosecutions in the States where atrocities were committed, or where enablers of international crimes are based. While these cases come with challenges, they also provide possibilities for prosecution. In this context, she highlighted the need for supporting investigations with information and resources. From her experience in civil society, she considers that the real challenge lies in how to combine advocacy with practical support for States. Dr Neistat called for an increase in the agency and voices of the survivors, because so many cases are being driven by non-State actors or State law enforcement agencies. Therefore, in order fully to live up to the Nuremberg Principles, she insisted that survivors must be meaningfully included in the proceedings.

In addressing the question of how to define victim and survivor participation in the proceedings, Dr Neistat identified several ways in which we can include victims and survivors. One example would be civil party participation in criminal processes. However, this is not easy. Domestic prosecutors have been reluctant in this regard as this could complicate cases. Furthermore, numerous logistical challenges arise, such as bringing survivors and witnesses, who often live in remote locations, to prosecutorial bodies and courts. She also pondered whether civil society and prosecutorial bodies do in fact fully represent the interests and needs of victims, and what was to be done if they don't. This situation requires a dialogue and, in her view, creates another set of challenges that can be addressed by bringing in survivor communities at the early stages of these cases. Based on her experience, victims' understandings of justice deserve greater consideration not only from civil society, but also from judiciaries and prosecutorial bodies.

Dr Neistat agreed with Dr Ellis's reflection that technological advancements are the driving force behind the awareness that mass atrocities are happening. She further noted that technology has changed the landscape, but it has also created new challenges in terms of verification efforts. She appreciated that this new landscape has made the notion of justice and accountability more universal and accepted in communities. Technology has developed the belief that recording human rights violations might lead to action, something that was not considered before.

Dr Ellis reflected on how to strengthen accountability for core international crimes and, on the basis of the discussions, he put forward a four-pronged approach to answer this question. First, international and domestic war crimes courts as two sides of the same coin. Second, UJ. Third, the responsibility to protect and increasing awareness of State responsibility. And fourth, echoing Ms Radhakrishnan's remarks, civil society. Regarding the first point he raised the following questions to both panellists: Is the ICC truly an international court?; What is the role of the UNSC in relation to international justice and the ICC?; Is the ICC an effective way to secure accountability?; and how should we respond to power imbalances between States that escape accountability and the ones that cannot? Ms Radhakrishnan critically reflected on whether these systems

are colonial frameworks and how to decolonialise international law, justice and human rights. In this regard, she noted the importance of calling out powerful States that have refused to be subjected to the same frameworks they call for in other States. She also addressed the underwhelming role of the UNSC and how States with veto power can block referrals to the ICC. Ms Radhakrishnan referred to various initiatives dealing with veto restraint, with a particular focus on developing legal arguments supporting limitations on the use of a veto, especially relating to mass atrocities. She highlighted the work of Professor Jennifer Tran in this regard and other initiatives focusing on the potential scope of veto rights and what situations can fall under veto restraint. Concerning the power imbalances among States, Dr Neistat said that despite the ICC not being a truly equitable and effective international court, it is still needed as a symbol. She emphasised that voices on the ground have said to her that the Court does form a deterrent. But in her view, it is important to find alternatives, including hybrid courts, UJ and different initiatives before the UNGA.

Dr Ellis acknowledged that while he remains a strong supporter of the ICC, it is important to reflect on these issues. In his view, the ICC is at a crossroads with a new prosecutor and a new strategic plan. Therefore, the coming years will be critical to assess whether the ICC is meeting its aspirations. He added that UJ is a complementary mechanism to the ICC and to the international justice paradigm in general. What we see is that UJ is often tied to conditions. On the basis of this idea of a nexus, he asked the panellists whether there is a real increase in the use of UJ or whether there is an increase in name only. Dr Neistat asserted that there is a promising increase that needs to be supported. However, in certain countries there are new limitations to this principle that prevent it from being fully applied. She stated that UJ can become the first line of prevention by fostering the notion that no-one is above the law when committing mass atrocity crimes. She suggested that to strengthen UJ, constant and clear public communication is needed about its meaning, especially to the survivors and to the perpetrators. In addition, to make UJ functional, resources and capacity building are crucial to build conceptual understanding, especially with prosecutors. Ms Radhakrishnan reflected on the potential of UJ to shift the paradigm of who can be held accountable. Dr Neistat agreed and recognised that UJ can enable States that have not been active participants in the international justice system to be included. Dr Ellis concluded that a more aggressive form of UJ is required, one that ensures the prosecution of atrocity crimes regardless of where they are committed or the need of conditionality.

Continuing on the issue of conditionality, Dr Ellis addressed a question coming from the audience, namely whether there is a role for the ILC in clarifying the vague and problematic legal aspects of universal criminal jurisdiction, as proposed in its 2018 report to the UNGA. Dr Neistat stated that the issue of conditionality can be addressed at the ILC to ensure that the same principles of UJ are applied equally in different jurisdictions. In addition, she insisted on finding an effective way to communicate and explain to the public in simple terms what the concept of UJ entails.

Regarding the responsibility to protect, Dr Ellis raised the question of how important the responsibility to protect principle is when it comes to strengthening the idea of international justice. Dr Neistat critically reflected on the fact that the responsibility to protect relies on the idea that this responsibility lies with the States that have the moral foundation to uphold it and, in her view, with the current situation, it is very difficult to find a State that meets that requirement. Instead, she suggested a coalition of like-minded States that have the moral compass to further this principle, alongside sufficient support and trust from the international community to apply it. She also asserted that the effort should come from the UNGA and not from the permanent members of the UNSC. Ms Radhakrishnan said that the responsibility to protect is not only a moral responsibility but is grounded in legal obligations. There is a need to recast this principle to encompass a much broader range of actions than humanitarian intervention. She reflected on how The Gambia deciding to file a case against Myanmar at the ICJ showed an act rooted in justice and in compliance with this principle. To conclude, she stressed the importance of thinking about justice as an explicit measure of prevention, and also of thinking more expansively on the potential of who needs to be held accountable and for what, with a view to making the multilateral system more relevant again.

Regarding the question from the audience as to how to establish swifter justice, and whether that should be an issue or a priority, Dr Neistat stated that swifter does not necessarily mean fairer and equal. She recognised that there is a movement for allowing the justice system to be more inclusive in terms of evidentiary

standards and in terms of the participants, which has the potential of delivering swifter justice.

Ms Radhakrishnan stated that it depends on how one defines justice, as there can be different levels of justice and thus of duration depending on the mechanism. She stressed the need to involve survivors in the design of justice and to explore with them what kind of elements – be they reparations, truth-telling or guarantees of non-repetition – can be accelerated. She concluded that allowing those affected to inform us on what justice looks like for them is key to ensuring swifter justice.

Dr Ellis closed the panel by acknowledging that a remarkable shift in international law has occurred and the real challenge for the international community is to continue to strengthen it, maintain it and give it momentum.

#### Three key points for further consideration and debate:

- The moral and legal obligation to fight impunity was re-emphasised – in terms of moral obligation, the Nuremberg legacy, the Nuremberg trials and the Nuremberg Principles have been recalled, including the words of the last of the original Nuremberg Prosecutors still alive today, Ben Ferencz, whose motto was: “Law. Not War.” In the light of the continuing culture of impunity, experts also highlighted legal obligations, including the duty to prevent atrocities and to prosecute or punish, and raised the relevance of the responsibility to protect principle. Both the justice and human rights paradigm are needed for the fight against impunity.
- In order to achieve effective collaboration, to achieve the objectives of the common fight against impunity, collaboration efforts should be inclusive. Transparency in terms of objectives and goals is of importance here. Experts also highlighted that a forthright dialogue with the affected communities might be needed, especially in wider transitional justice efforts.
- Actors in criminal justice might need to look for creative and problem-solving solutions – experts stressed that more creative partnerships might be required, both on the supply side and on the capacity-building side. Experts stressed the increasing role of regional actors in addressing the justice-related challenges. Experts noted that thinking outside the box has helped, to the extent currently possible, in situations such as Myanmar and Syria.

#### Additional reflections on Day 2:

- Early warning signs could be considered when discussing the preventative function of international criminal justice – experts highlighted that considering early warning signs might help to advance the prevention of the commission of core international crimes, and these signs might be easier to address in practical, meaningful terms.
- Strengthening synergies in ICL between the national and international levels is equally important – it was stated and reaffirmed that domestic prosecution of breaches of international law and human rights violations is not only important but is indeed embodied in States’ own responsibility towards their citizens. Finding effective ways to undertake these prosecutions is important, in order to strengthen synergies between the domestic and international levels.

#### Some of the ways forward and suggestions included:

- Strengthening domestic prosecution through capacity building;
- Supporting more meaningful outreach in a given area and in a language the general public can understand;
- Enlisting more regional actors and expanding on the accountability options;
- Engaging in more dialogue and creative solutions;
- Considering various accountability models to enhance rebuilding trust in ICL or wider international criminal justice; and
- Ensuring power balance among various actors, also focusing on victims and including them in conversations.

## Closing Remarks

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

**Jolana Makraiová**, Senior Officer for Interdisciplinary Research, International Nuremberg Principles Academy

At the end of the Nuremberg Forum 2021 entitled: “The fight against impunity since 1950: Living up to the Nuremberg Principles?”, Klaus Rackwitz, Director of the International Nuremberg Principles Academy, thanked all the panellists and the audience for the rich discussions over the two days of the forum.

He noted that while this conference was planned for 2020, coinciding with the actual 70th anniversary of the Nuremberg Principles, the postponement only attested to the importance of the discussions on this topic. When thinking about the key question of the forum, namely: are we living up to the Nuremberg Principles?, he reflected that the advantages of a set of principles lie in its role as guidelines and, as a result, they leave ample scope for implementation. In this regard, he identified various mechanisms to implement the Nuremberg Principles starting with the establishment of the ICC, which is the only permanent court where the Nuremberg Principles are codified. He further stated that there is still much to be done to fight impunity for the most heinous crimes. In his view, the discussions have cast both light and shadows, particularly in relation to the veto powers of the UNSC as an obstacle to accountability. In this regard, he highlighted the existence of numerous initiatives to counter this obstacle, which are parts of the problem of how to avoid impunity. For example, investigative mechanisms help collect and preserve evidence that could be used to prosecute and adjudicate international crimes in the future. He further recognised the importance of advanced technology to realise this endeavour.

While there are numerous gaps in the fight against impunity, Mr Rackwitz noted that there has been significant progress in the 70 years since the adoption of the Nuremberg Principles, namely the establishment of customary international law. For him, this kind of progress in a relatively short amount of time should give motivation to continue the work. He reminded the audience that when the Nuremberg Principles were established, the world was a different place. Now there are new environmental and socio-economic challenges arising, but he asserted that we have a robust framework in place to bring perpetrators of international crimes to justice, and to provide dignity and recognition to the victims.

Finally, he stated that the Nuremberg Academy will continue to support States and organisations in their work to implement the Nuremberg Principles through capacity building, research and through conferences such as the Nuremberg Forum. While there was hesitancy to hold the Nuremberg Forum 2021 in an online platform, this format showed that there are also advantages, because never in the history of the Academy have so many people watched the discussions. He concluded by extending an invitation to participate next year in the Nuremberg Forum 2022, which will take place on the 14 and 15 October on the topic of: 20 years of ICC between 2002 and 2022.

Following Mr Rackwitz’s remarks, Jolana Makraiová, Senior Officer for Interdisciplinary Research of the Nuremberg Academy, closed the conference by reflecting on the objectives of the Nuremberg Forum 2021: to discuss and dissect the legal framework envisaged in 1950 and the subsequent development of the common fight against impunity. Throughout the conference, the issue was addressed from substantive, structural and doctrinal perspectives while at the same time shedding light on the present challenges. The Nuremberg Principles featured in all the discussions, with reflections on their establishment, their continued relevance and their analysis and application through varied case and example studies. She also highlighted that during the discussions, strengths and weaknesses of the current fight against impunity system were identified while also reflecting whether the Nuremberg Principles are respected 70 years after their formulation. She concluded with the key takeaways for further reflection, namely, the importance of the Nuremberg Principles, the need to continue the ongoing dialogue on the fight against impunity and to advance wider accountability efforts. Finally, on behalf of the Nuremberg Academy, she expressed gratitude to all panellists, the team and the technicians for making this event possible.

## Annex I

### Programme of the Nuremberg Forum 2021

Day 1 ,15 October 2021

#### What is the framework enforcing the “fight against impunity”?

##### Morning Session

10.00–12.00

##### Welcoming Remarks

**Dr Christophe Eick**, Legal Adviser, Director-General for Legal Affairs, German Federal Foreign Office

**Georg Eisenreich**, Bavarian State Minister of Justice

**Marcus König**, Lord Mayor of the City of Nuremberg

##### Opening Statement

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

##### Keynote Addresses

**Patrícia Galvão Teles**, Associate Professor of International Law, the Autonomous University of Lisbon, and Member of the United Nations International Law Commission

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

12.00–13.00

##### Break and brief networking session

##### Afternoon Session

12.00–13.00

##### Panel I: Reflecting on the post-World War Two set-up and the status quo today

Speakers:

**Prof. Annette Weinke**, Co-Director Jena Center for Twentieth Century History, Friedrich-Schiller-Universität Jena

**Dr David W. Lesch**, the Ewing Halsell Distinguished Professor of History, Trinity University, San Antonio, Texas

Facilitator: Nuremberg Academy

##### Afternoon Session

13.45–15.00

##### Panel II: Harm caused to the community as a whole – reflections on the achievements and good practices so far

Speakers:

**Silvia Fernández de Gurmendi**, President, Assembly of States Parties to the Rome Statute of the International Criminal Court

**Payam Akhavan**, Senior Fellow, Massey College, Distinguished Visiting Professor, University of Toronto Faculty of Law; Member of the Permanent Court of Arbitration, and Special Advisor on Genocide to the Office of the Prosecutor, International Criminal Court

**Joanna Korner**, Judge, International Criminal Court

Moderator:

**Marieke Wierda**, transitional justice expert (personal capacity)

15.00–15.30

##### Coffee break

15.30–16.15

##### Panel III: Harm caused to the community as a whole – dissecting various objectives and respective changes in practices

Speakers:

**Sarah Kihika Kasande**, Head of Office, Uganda, International Center for Transitional Justice

**Dr Brianne McGonigle Leyh**, Associate Professor, School of Law, Utrecht University

**Karen Mosoti, Head**, Liaison Office of the International Criminal Court to the United Nations, the United Nations

Facilitator: Nuremberg Academy

16.15–17.00

##### Panel IV: Which crimes concern the “community as a whole” – discussing the reasoning behind this classification and related developments

Speakers:

**Prof. Olympia Bekou**, Professor of Public International Law, Head of the School of Law, University of Nottingham

**Shamila Batohi**, Advocate, National Director of Public Prosecutions, the National Prosecuting Authority of South Africa

**Neha Jain**, Professor, European University Institute

Facilitator: Nuremberg Academy

17.00–17.30

##### Reflections on Day 1

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

**Jolana Makraiová**, Senior Officer for Interdisciplinary Research, International Nuremberg Principles Academy

## Day 2, 16 October 2021

### Has the fight against impunity been living up to the Nuremberg Principles?

10.00–11.30 **Side event: Memorium Nuremberg Trials and Courtroom 600**

12.30–13.00 **Introduction to the session**

#### Brief Reflections on Day 1 and Key Questions for Day 2

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

**Jolana Makraiová**, Senior Officer for Interdisciplinary Research, International Nuremberg Principles Academy

13.00–14.15 **Panel V: Outlining the current system for addressing or enforcing the Nuremberg Principles**

Speakers:

**Christoph Flügge**, Former Judge, International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals

**Dr Charles C. Jalloh**, Professor of Law, Florida International University and Member of the United Nations International Law Commission

**Jane E. Stromseth**, Francis Cabell Brown Professor of International Law, Law Center, Georgetown University

Moderator:

**Dr Anna Richterová**, Prosecutor, Prosecutor General's Office of the Czech Republic

14.15–14.30 **Coffee break**

14.30–15.30 **Panel VI: Reflecting on the United Nations Sustainable Development Goals and wider aspirations of sustainable peace through justice**

Speakers:

**Yasmin Sooka**, Commissioner and Chair of the Commission on Human Rights for South Sudan, human rights lawyer, Honorary Fellow at the University of Cape Town, South Africa

**Kingsley Abbott**, Director, Global Accountability and International Justice, International Commission of Jurists

**Dr Juan Botero**, Associate Professor, Pontificia Universidad Javeriana Law School

Moderator:

**Kate Orlovsky**, Director, the Hague Office, International Bar Association

15.30–15.45 **Coffee Break**

15.45–17.15 **Panel VII: Similarities, differences and the way forward: the fight against impunity and accountability**

Speakers:

**Akila Radhakrishnan**, President, Global Justice Centre

**Dr Mark Ellis**, Executive Director, International Bar Association (and chair of the panel)

**Dr Anya Neistat**, Legal Director, The Docket, Clooney Foundation for Justice

Facilitator: Nuremberg Academy

17.00–17.30 **Official closing of the Nuremberg Forum 2021**

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

**Jolana Makraiová**, Senior Officer for Interdisciplinary Research, International Nuremberg Principles Academy

## Annex II

### Biographies of Contributors (in Alphabetical Order) as of October 2021

#### Kingsley Abbott

Director, Global Accountability and International Justice, International Commission of Jurists

Kingsley Abbott is Director of Global Accountability and International Justice at the International Commission of Jurists where he leads its global programme combatting impunity for serious human rights violations. Before joining the Commission, he worked for the United Nations as Senior Legal Officer at the Extraordinary Chambers in the Courts of Cambodia and as Trial Counsel in the Office of the Prosecutor at the Special Tribunal for Lebanon in The Hague. He also practised as a criminal barrister in New Zealand, appearing in the District Court, High Court and Court of Appeal on numerous matters for both the defence and prosecution.

#### Prof. Payam Akhavan

Senior Fellow, Massey College, Distinguished Visiting Professor, University of Toronto Faculty of Law; Member of the Permanent Court of Arbitration, and Special Advisor on Genocide to the Office of the Prosecutor, International Criminal Court

Professor Payam Akhavan is Senior Fellow of Massey College and Distinguished Visiting Professor at the University of Toronto Faculty of Law, with prior appointments at the Universities of McGill, Yale, Oxford and Paris Nanterre. He is a member of the Permanent Court of Arbitration, Senior Advisor to Canada's Ministry of Global Affairs, and was the first Legal Advisor to the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (1994–2000). Professor Akhavan has also been a counsel and advocate before the International Court of Justice, the International Criminal Court, the European Court of Human Rights and the Supreme Courts of Canada and the United States. He currently serves as Special Advisor on Genocide to the Office of the Prosecutor at the International Criminal Court (2021).

#### Shamila Batohi

Advocate, National Director of Public Prosecutions, the National Prosecuting Authority of South Africa

Shamila Batohi, Advocate, started her career as a prosecutor in Chatsworth Magistrates' Court, Durban, after completing her studies at the University of KwaZulu-Natal (KZN). In 1995, she was seconded to the Investigation Task Unit established by the President of South Africa, Nelson Mandela, to investigate atrocities committed in KZN by the apartheid government, including so-called "hit-squads" in the old Kwa Zulu Police. In 2000, she was appointed Regional Head of the Scorpions in KwaZulu-Natal and led evidence at the King Commission of Enquiry into Cricket Match Fixing. In 2002, she was appointed the first woman Provincial Director of Public Prosecutions in South Africa. She has served as Senior Legal Advisor to the Prosecutor of the International Criminal Court. In 2018, she was appointed National Director of Public Prosecutions in South Africa.

#### Prof. Olympia Bekou

Professor of Public International Law, Head of the School of Law, University of Nottingham

Professor Olympia Bekou is Professor of Public International Law and Head of the School of Law at the University of Nottingham, where she specialises in international criminal law. She is Deputy Director of the Case Matrix Network, a member of the Advisory Board of the Centre for International Law Research and Policy (CILRAP), and Editor of the Torkel Opsahl Academic EPublisher (TOAEP). She is also a member of the Executive Board of Civitas Maxima. Professor Bekou has undertaken numerous capacity-building missions, including in post-conflict situations (such as Colombia, the Democratic Republic of the Congo, Liberia, Sierra Leone and Uganda), has provided legislation drafting assistance to Samoa and Jamaica and has been involved in training the Thai judiciary.



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**Dr Juan Botero**

Associate Professor, Pontificia Universidad Javeriana Law School

Dr Juan Botero is Associate Professor at Pontificia Universidad Javeriana Law School in Bogota, Colombia. He holds a Doctorate in Juridical Sciences from Georgetown University, a Master of Laws from Harvard Law School and a law degree from Universidad de Los Andes (Colombia). Prior experience includes service as the World Justice Project's Executive Director and Rule of Law Index Director; Chief International Legal Counsel at the Colombian Ministry of Commerce; and researcher at Yale University and the World Bank. His academic publications focus on the rule of law, access to justice and social policy.

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**Dr Christophe Eick**

Legal Adviser, Director-General for Legal Affairs, German Federal Foreign Office

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

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**Georg Eisenreich**

Bavarian State Minister of Justice

Georg Eisenreich studied law at Ludwig-Maximilians-Universität München and has been an attorney-at-law in Munich since 2001 (currently not exercised due to a public function). Minister Eisenreich has been a Member of the Bavarian Landtag (State Parliament) since 2003. From 2013 to 2018, he was Bavarian State Secretary for Education and Religious Affairs, Science and the Arts, and from March to November 2018, Bavarian State Minister for the Digital Agenda, Media and Europe. He was appointed Minister of Justice on 12 November 2018.

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**Dr Mark Ellis**

Executive Director, International Bar Association

As Director of the International Bar Association, Dr Mark Ellis leads the world's foremost organisation of lawyers. Dr Ellis served as Legal Advisor to the Independent International Commission on Kosovo and was appointed by the Organisation for Security and Co-operation in Europe (OSCE) to advise on the creation of Serbia's War Crimes Tribunal. He was actively involved with the Iraqi High Tribunal. He was appointed Chair of the UN-created Advisory Panel on Matters Relating to Defence Counsel of the Mechanism for International Criminal Tribunals. Twice a Fulbright Scholar to Croatia, he earned his JD and BS degrees from Florida State University and his PhD from King's College, London.

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**Silvia Fernández de Gurmendi**

President, Assembly of States Parties to the Rome Statute of the International Criminal Court, former Judge, International Criminal Court

Judge Silvia Fernández de Gurmendi is President of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC). She is a former judge and president of the ICC. 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 and published extensively on international humanitarian law and international criminal law issues.

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**Christoph Flügge**

Former Judge, International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals

Judge Christoph Flügge studied law in Berlin and Bonn, Germany. He started his career as a public prosecutor in Berlin, worked in prison administration and as a criminal judge in Berlin. From 2001 until 2007, he was Secretary of State in the Department of Justice in the State of Berlin. From 2008 until 2017, he was Permanent Judge of the International Criminal Tribunal for the Former Yugoslavia in The Hague, and from 2012 until 2019, he further served as Judge of the International Residual Mechanism for Criminal Tribunals.

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**Prof. Patrícia Galvão Teles**

Associate Professor of International Law, Autonomous University of Lisbon, and Member of the United Nations International Law Commission

Professor Patrícia Galvão Teles is a member of the United Nations International Law Commission (ILC) and Associate Professor of International Law at the Autonomous University of Lisbon. She is a member of the Permanent Court of Arbitration and is currently Vice-President of the Portuguese Society for International Law. She is also Adjunct Senior Researcher at the Centre for International Law (CIL) of the National University of Singapore and Co-Director of the CIL eAcademy – Singapore Academy of International Law. At the ILC, she was General Rapporteur at the 70<sup>th</sup> Session in 2018 and Chair of the Drafting Committee at the 72<sup>nd</sup> Session in 2021. Since 2019, she has been Co-chair of the Study Group on the topic “Sea level rise in relation to International Law”.

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**Prof. Neha Jain**

Professor, European University Institute

Professor Neha Jain is Professor of Public International Law at the European University Institute and Associate Professor at the University of Minnesota Law School. She has worked at the Max Planck Institute for Foreign and International Criminal Law, served as a visiting professional at the International Criminal Court and held fellowships at the Stellenbosch Institute of Advanced Study, Lauterpacht Centre for International Law and iCourts. Professor Jain is a Board member of the European Society of International Law, a member of the American Journal of International Law (AJIL) Executive Council and serves on the editorial boards of AJIL Unbound and the European Journal of International Law.

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**Prof. Charles C. Jalloh**

Professor of Law, Florida International University and Member of the United Nations International Law Commission

Dr Charles C. Jalloh is Professor of Law at Florida International University (FIU) in Miami and a member of the United Nations International Law Commission, where he was elected as Chairperson of the Drafting Committee for the 70<sup>th</sup> (2018) Session and as Rapporteur for the 71<sup>st</sup> (2019) Session. He is Founding Editor of the African Journal of Legal Studies and the African Journal of International Criminal Justice and Founder of the Centre for International Law and Policy in Africa. He is recipient of the FIU Top Scholar Award (2015), the FIU Senate Faculty Award for Excellence in Research (2018) and the Fulbright Lund University Distinguished Chair in Public International Law (2018–2019).

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**Sarah Kihika Kasande**

Head of Office, Uganda, International Center for Transitional Justice

Sarah Kihika Kasande is Head of Office of the International Center for Transitional Justice (ICTJ) in Uganda. She is Advocate of the Courts of Judicature of Uganda and a transitional justice specialist, with over 12 years of experience, having provided technical expertise in diverse African contexts, including in Uganda, South Sudan, The Gambia, Tunisia and Kenya. Before joining the ICTJ, Ms Kasande was Senior Programme Officer with the Uganda Association of Women Lawyers. She is a co-founder and board member of Chapter Four, a human rights organisation dedicated to protecting civil liberties and promoting human rights for all in Uganda.

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**Marcus König**

Lord Mayor of the City of Nuremberg

Marcus König is Mayor of the City of Nuremberg. He graduated from the commercial college and worked in the banking industry as a financial advisor, before taking on the work as head of the department at Commerzbank. Mr König has been a member of the city council of Nuremberg since May 2008 and has been working in an honorary capacity in the citizens' group St. Jobst/Erlenstegen, at the Altstadtfreunde, in the Franconian-Montenegrin Society and the Society for Christian-Jewish Cooperation. He is a senator of the Bretonia 11er Rat 1981 e.V. Nuremberg, honorary member of the Never Walk Alone Nuremberg e.V. and a member of the Landsmannschaft Banater Schwaben.

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**Joanna Korner**

Judge, International Criminal Court

Judge Joanna Korner CMG QC has practised criminal law for more than 45 years as a judge and barrister. Prior to joining the International Criminal Court, she served as a judge of the Crown Court of England and Wales (since 2012). She has also been a Queen's Counsel (since 1993). Her experience includes a total of eight years (1999–2004 and 2009–2012) as a senior prosecutor at the International Criminal Tribunal for the former Yugoslavia. Between 2004 and 2005, she was Senior Legal Advisor to the Chief Prosecutor of Bosnia and Herzegovina. Judge Korner studied law at the Inns of Court School of Law. In 2004, she was Appointed Companion of the Order of St. Michael and St. George for services to international law.

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**Prof. Claus Kreß**

Chair for German and International Criminal Law, Director of the Institute of International Peace and Security Law, Universität zu Köln

Professor Claus Kreß is Professor of Criminal Law and Public International Law and Director of the Institute of International Peace and Security Law at the Universität zu Köln. Professor Kreß has served in the German Federal Ministry of Justice, was a member of Germany's delegation in the negotiations of the Rome Statute establishing the International Criminal Court (1998). He has written extensively on the use of force, the law of armed conflicts and international criminal law. He is Life Member of Clare Hall College at the University of Cambridge, Member of the Academy of Sciences and Arts of North Rhine-Westfalia and the recipient of the 2014 M.C. Bassiouni Justice Award.

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**Dr David W. Lesch**

Ewing Halsell Distinguished Professor of History, Trinity University, San Antonio, Texas

Dr David W. Lesch is the Ewing Halsell Distinguished Professor of History at Trinity University in San Antonio, Texas (United States). He received his M.A. and PhD from Harvard University. He is the author or editor of 16 books, some of the most recent include: *Syria: A Modern History* (Polity Books, 2019); *The Arab-Israeli Conflict: A History* (Oxford University Press, 2009, 2019); and *Syria: The Fall of the House of Assad* (Yale University Press, 2012, 2013). Dr Lesch has consistently advised high-level officials in the USA, Europe, the Middle East and the United Nations. He has led several high-profile NGO initiatives working on conflict resolution in the Syrian civil war. He is on the board of the Syrian Studies Centre (St. Andrews University), the Damascus Foundation, Cure Violence (Washington, D.C.) and the Abraham Path Initiative.

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**Dr Brianne McGonigle Leyh**

Associate Professor, School of Law, Utrecht University

Dr Brianne McGonigle Leyh is Associate Professor with the Netherlands Institute of Human Rights (SIM) and Montaigne Centre on Rule of Law at Utrecht University's School of Law. She is also Senior Legal Advisor with the Public International Law & Policy Group. Her specialisations include human rights law, transitional justice, victims' rights and documentation and accountability for serious human rights violations.

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**Karen Mosoti**

Head of the Liaison Office of the International Criminal Court to the United Nations, the United Nations

Karen Mosoti is Head of the Liaison Office of the International Criminal Court to the United Nations, New York. Prior to this, she was a career diplomat, serving her country Kenya in various capacities, including as Senior State Counsel and Legal Advisor to the Permanent Mission of Kenya to the United Nations and advisor on human rights, international humanitarian law and international criminal justice. Ms Mosoti holds a Masters in Public Administration from Harvard University, a Master of Laws in Human Rights Law from the University of Nottingham and a Bachelor of Laws from the University of Nairobi.

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**Dr Anya Neistat**

Legal Director, The Docket, Clooney Foundation for Justice

Dr Anya Neistat is Legal Director of The Docket initiative at the Clooney Foundation for Justice (CFJ), leading the Foundation's work on pursuing accountability for perpetrators and enablers of international crimes and supporting survivors in their pursuit of justice. Dr Neistat has been involved in international human rights work for more than two decades and has conducted over 60 investigations in conflict areas around the world. Before joining CFJ, she was Amnesty International's Senior Director for Research and Associate Director for Programme and Emergencies at Human Rights Watch. She is Chair of the Board at Crisis Action and an Honorary Professor at La Universidad Autónoma del Estado de Hidalgo.

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**Kate Orlovsky**

Director, the Hague Office, International Bar Association

Kate Orlovsky is Director of the Hague Office of the International Bar Association (IBA) and of the IBA's International Criminal Court and International Criminal Law Programme. Ms Orlovsky is an American lawyer with over 15 years of experience working in civil society organisations on international justice, where her work has focused on fair trials, gender justice and international criminal law. Prior to joining the IBA, Ms Orlovsky served as Legal Officer with the Women's Initiatives for Gender Justice. Ms Orlovsky has an LLM from the School of Oriental and African Studies, University of London, a JD from the University of California Hastings College of the Law and a BA from Columbia University.

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**Navi Pillay**

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

Dr Navi Pillay is President of the Advisory Council of the International Nuremberg Principles Academy. She served as High Commissioner for Human Rights at the United Nations from 2008 to 2014. She was the first South African to be awarded the degree of Doctor of Juridical Science from Harvard Law School. In 1995, after the end of apartheid, Dr Pillay was appointed to the Supreme Court of South Africa. In the same year, she was appointed as Judge to the International Criminal Tribunal for Rwanda, where she also served for four years as President. Later she served as Judge of the International Criminal Court. She is also co-founder of "Equality Now", an international women's rights organisation.

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**Akila Radhakrishnan**

President, Global Justice Centre

Akila Radhakrishnan is the President of the Global Justice Centre (GJC). She directs GJC's strategies and efforts to establish legal precedents protecting human rights and ensuring gender equality. Ms Radhakrishnan has authored numerous shadow reports, legal briefs and advocacy documents and provided legal expertise to domestic and international stakeholders and policymakers, including the International Criminal Court, the United Nations, the European Union and State governments. Prior to the GJC, she has worked at the International Criminal Tribunal for the Former Yugoslavia, DPK Consulting and Drinker, Biddle & Reath LLP. Ms Radhakrishnan received her JD with a main focus on international law from the University of California, Hastings and holds a BA in Political Science and Art History from the University of California, Davis.

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**Dr Anna Richterová**

Prosecutor, Prosecutor General's Office of the Czech Republic

Dr Anna Richterová has over 30 years' experience as a prosecutor. In the years 1999–2008, she worked as Trial Attorney and later as Senior Trial Attorney in the Office of the Prosecutor of the International Tribunal for the former Yugoslavia. In October 2008, she took up the position of Deputy National Member for the Czech Republic at Eurojust, dealing with international legal cooperation with respect to a vast majority of cross-border and organised crime cases. Since February 2016, she has served as a prosecutor at the International Department of the Prosecutor General's Office of the Czech Republic.

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**Yasmin Sooka**

Commissioner and Chair of the Commission on Human Rights for South Sudan, human rights lawyer, Honorary Fellow at the University of Cape Town, South Africa

Yasmin Sooka is a South African human rights lawyer and served as a Commissioner on the South African Truth and Reconciliation Commission and also as one of three international Commissioners on the Truth and Reconciliation Commission of Sierra Leone. She currently chairs the Commission on Human Rights in South Sudan, established by the Human Rights Council in Geneva to investigate serious crimes in South Sudan and collect and preserve evidence for future accountability efforts. Ms Sooka also served on the Secretary-General's Panel of Experts, advising him on Accountability for War Crimes in Sri Lanka and served as the former Executive Director of the Foundation for Human Rights in South Africa.

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**Prof. Jane E. Stromseth**

Francis Cabell Brown Professor of International Law, Law Center, Georgetown University

Professor Jane Stromseth is the Francis Cabell Brown Professor of International Law at Georgetown University specialising in post-conflict justice and accountability and international human rights. Professor Stromseth served in government as Deputy to the Ambassador-at-Large for Global Criminal Justice at the United States Department of State from 2013 to 2015. She also served as Senior Advisor on Rule of Law and International Humanitarian Policy at the USA Department of Defense and at the National Security Council as Director for Multilateral Affairs. She received her doctorate in international relations from Oxford University, where she was a Rhodes Scholar, and her law degree from Yale.

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**Prof. Annette Weinke**

Co-Director Jena Center Twentieth Century History, Friedrich-Schiller-Universität Jena

Professor Annette Weinke is Professor at the History Department of Friedrich-Schiller-Universität Jena, Germany and Co-Director of the Jena Center of Twentieth Century History. She has written extensively on themes such as the history of war crimes tribunals, human rights and international criminal law. Among her publications are *Die Nürnberger Prozesse* (Munich 2019, 3<sup>rd</sup> edition with translations into Japanese and Turkish), and *Law, History and Justice: Debating German State Crimes in the Long Twentieth Century* (Oxford, New York 2018). Her current project is a collective biography of emigrated human rights lawyers and activists in the twentieth century.

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**Dr Marieke Wierda**

Deputy Ambassador of The Netherlands to Yemen (as of August 2021)

Dr Marieke Wierda is a Dutch lawyer, born and raised in Yemen and educated in the UK and the US and specialising in the rule of law, international criminal law and transitional justice. Dr Wierda has 20 years of experience in transitional justice, starting with the International Criminal Tribunal for the former Yugoslavia (1997–2000), and then joining the International Center for Transitional Justice, where she worked for a decade (2001–2011). From 2011 to 2015 she worked with the United Nations Support Mission in Libya (UNSMIL). Most recently, she was Rule of Law Advisor for the Dutch Ministry of Foreign Affairs (2015–2021). She is the author of many publications, including a PhD on the Impact of the International Criminal Court (2019).

## 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. Its main fields of activity include providing a forum for dialogue by convening international conferences and expert meetings, conducting interdisciplinary and applied research, and engaging in specialised capacity building for practitioners and human rights education.

The Nuremberg Academy is located in Nuremberg, the birthplace of modern international criminal law, where the Nuremberg trials of the major war criminals were held by the IMT from 1945 to 1949. 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, principles of international law recognised in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal and formulated by the International Law Commission of the United Nations General Assembly in 1950.

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

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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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