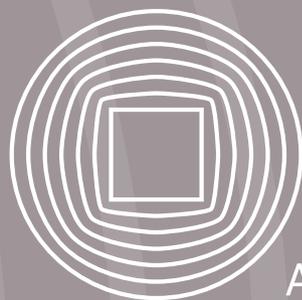


Program

International Nuremberg Principles
Academy Annual Forum 2016

**The Continuing Evolution of the
Nuremberg Principles in Light of
the Contemporary Jurisprudence
of International Criminal Courts**
4–5 November 2016

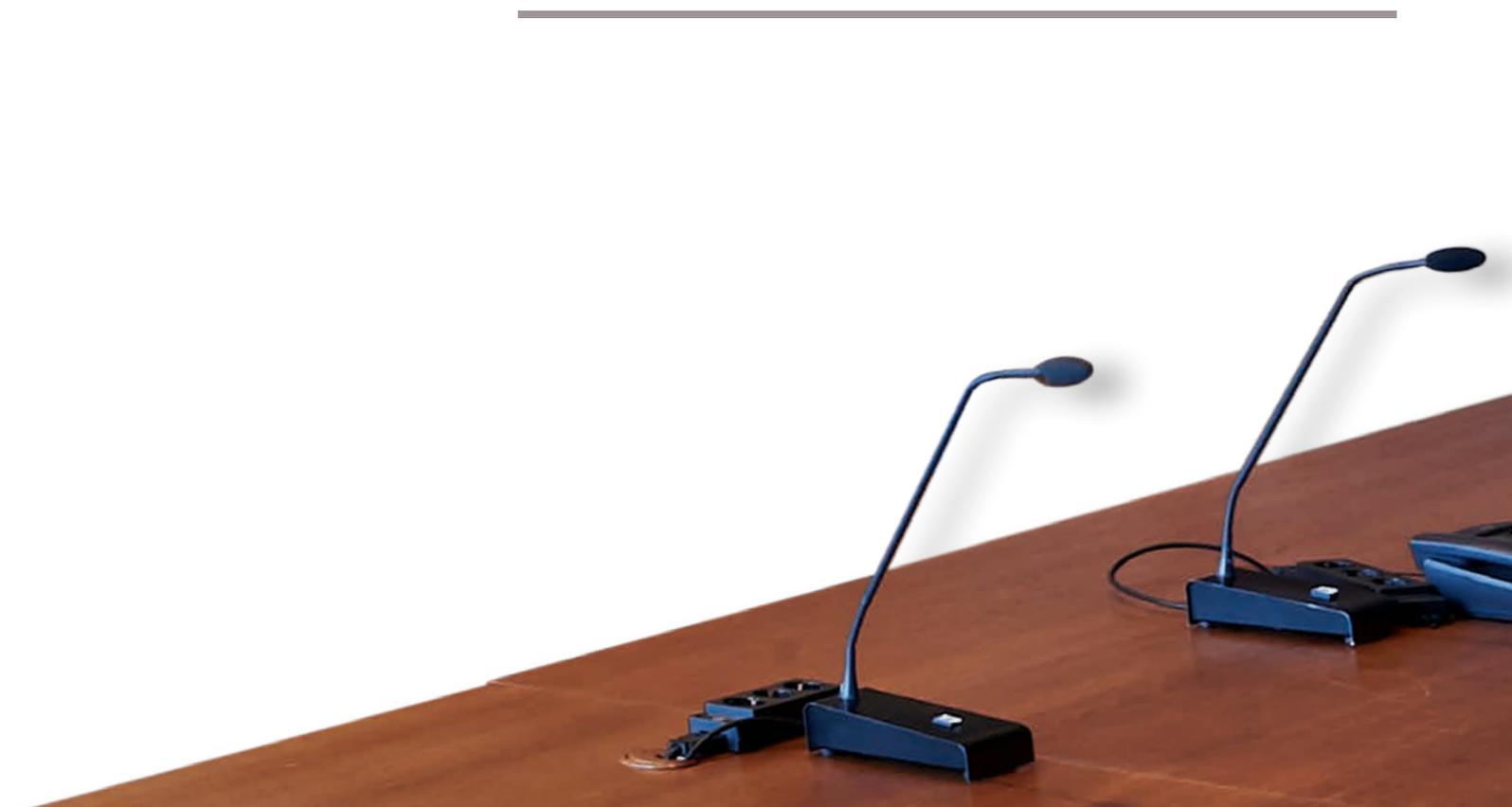


INTERNATIONAL
NUREMBERG
PRINCIPLES
ACADEMY



The Continuing Evolution of the Nuremberg Principles in Light of the Contemporary Jurisprudence of Inter- national Criminal Courts

This year, the Nuremberg Academy's Second Annual Forum commemorates the adoption of the seven Nuremberg Principles by the United Nations General Assembly (UNGA) by Resolution 95 (I) on 11 December 1946 on the initiative of the United States delegation. The seven Principles now form the bedrock of modern international criminal law and justice. In the 70 years since the Nuremberg Principles were affirmed by the UNGA, the legislative, advocacy and adjudicative activity has occurred in multiple sites, in particular around tribunals established to prosecute perpetrators of international crimes. These processes have developed, and enriched the Nuremberg Principles beyond their skeletal formulation in the Charter of the International Military Tribunal at Nuremberg and Tokyo. Indeed, part of the development of the law has been a response to critiques of both tribunals, which for instance, had excluded a focus on sexual crimes. This year's conference will deal with specific aspects in respect of each of the seven Nuremberg Principles. While the contours of some of the Principles can be regarded as 'settled', differing views continue to exist on the interpretation or application of specific aspects of the Principles. The Principle on Immunities is one such Principle. The Forum will offer space for leading academics and practitioners to analyze, debate, critique developments and to chart a trajectory for the future of each of the Principles.



Morning Session

- 9.00–9.10 **Welcoming Remarks**
by **Mr. Klaus Rackwitz** (Director of the Academy)
-
- 9.10–10.40 **Key Note Address**
by **Professor William A. Schabas** (Middlesex University)
-
- 10.40–11.00 **Coffee Break**
-
- 11.00–12.30 **Panel 1:**
Individual Criminal Responsibility: Focus on corporate criminal responsibility as a topic having current relevance for ICL investigations
Main Speaker: **Professor Harmen Van der Wilt** (University of Amsterdam)
Respondent: **Mr. Eduardo B. Toledo** (National University of Cuyo/Paris-Sorbonne University)
Moderator: **Dr. Joanna Kyriakakis** (Monash University)
-
- 12.30–13.15 **Lunch**

Afternoon Session

- 13.15–14.45 **Panel 2:**
International Criminal Law and National Law: Focus on the necessity of criminal accountability for building stable and democratic states: peace through justice
Main Speaker: **Professor Chandra Lekha Sriram** (University of East London)
Respondent: **Judge Raul Cano Pangalangan** (International Criminal Court)
Moderator: **Mr. Paul Seils** (International Center for Transitional Justice)
-
- 14.45–15.00 **Coffee Break**
-
- 15.00–16.30 **Panel 3:**
Immunities: Focus on the immunity of Heads of States and Governments with special emphasis on the interpretation of Articles 27 and 98 of the Rome Statute
Main Speaker: **Professor Sètondji Roland Adjovi** (Arcadia University)
Respondent: **Dr. Ramona Pedretti** (Swiss Federal Supreme Court)
Moderator: **Dr. Athaliah Molokomme** (Attorney General of Botswana)
-
- 16.30–16.45 **Coffee Break**
-
- 16.45–17.30 **Special Event** Book launch ‘Deterrent Effect of the International Criminal Court’
-
- 19.00 **Reception** hosted by the Free State of Bavaria at Nuremberg Castle (Kaiserburg)



Morning Session

9.00–10.30 **Panel 4:**
Superior Order: Focus on Superior Order according to Article 33 of the Rome Statute

Main Speaker: **Professor Charles Garraway** (University of Essex)

Respondent: **Professor Yoram Dinstein** (Tel Aviv University)

Moderator: **Professor Christoph Safferling** (Friedrich-Alexander-Universität)

10.30–10.45 **Coffee Break**

10.45–12.15 **Panel 5:**
Fair Trial: Focus on procedural trial structure and defense rights

Main Speaker: **Mr. Francois Roux** (Special Tribunal for Lebanon)

Respondent: **Mr. Steve Kay QC** (9 Bedford Row Chambers)

Moderator: **Ms. Natalie von Wistinghausen** (Special Tribunal for Lebanon)

12.15–13.00 **Lunch**

Afternoon Session

13.00–14.30 **Panel 6:**
The Crimes: Focus the debate to encompass certain transnational crimes into international criminal law

Main Speaker: **Dr. Olaoluwa Olusanya** (Aberystwyth University)

Respondent: **Professor Ademola Abass** (Institute for Security Studies)

Moderator: **Professor Alexander Zahar** (Wuhan University)

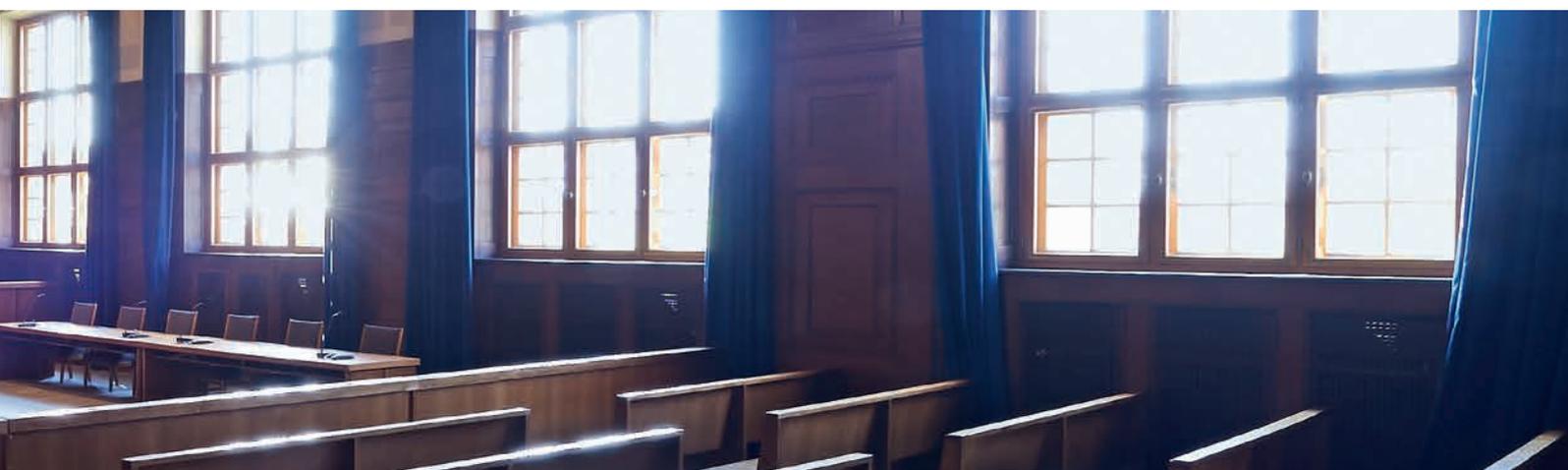
14.30–14.45 **Coffee Break**

14.45–16.15 **Panel 7:**
Modes of Liability: Focus on chain of command responsibility and sexual violence crimes

Main Speaker: **Professor Olympia Bekou** (University of Nottingham)

Respondent: **Ms. I. Maxine Marcus** (Prosecution Expert to National Jurisdictions on Cases Involving International Crimes)

Moderator: **Ms. Brenda J. Hollis** (Residual Special Court for Sierra Leone)



Key Note Address

by Professor William A. Schabas
(Middlesex University)

Abstract

The first session of the General Assembly of the United Nations affirmed the principles of international law recognized by the Charter of the International Military Tribunal and the judgment of the Tribunal. This seminal law-making event is to international criminal law what the Universal Declaration of Human Rights is to human rights law. Yet the legacy of Nuremberg has its detractors who, with the catchphrase 'victors' justice', focus their attention on alleged double standards of the Tribunal, notably as regards naval warfare and the treatment of the Katyn massacre. The validity of the critiques will be examined. The Charter, the judgment, and the codification of the Principles adopted by the International Law Commission in 1950 confirmed a definition of crimes against humanity that was limited to atrocities associated with the war, a condition that is no longer part of international law. This issue, and the so-called 'leadership restriction' with respect to crimes against peace and the crime of aggression, will be examined. Finally, recent suggestions from the Grand Chamber of the European Court of Human Rights that our approach to historical atrocities is vulnerable to a 'time factor', a kind of statutory limitation on the 'right to truth', will be discussed.

Professor William A. Schabas
Middlesex University

William A. Schabas is Professor of international law at Middlesex University in London. He also has appointments at Leiden University, where he is Professor of international criminal law and human rights, and at the National University of Ireland Galway, where he is Emeritus Professor of human rights law and honorary chairman of the Irish Centre for Human Rights. Professor Schabas is a 'door tenant' at the chambers of 9 Bedford Row, in London. He is the author of important monographs in international criminal law, including 'Unimaginable Atrocities' (Oxford, 2012), 'A Commentary on the Rome Statute' (Oxford, 2010) and 'Genocide in International Law' (Cambridge 2009). Professor Schabas is chairman of the International Institute for Criminal Investigation. From 2002 to 2004 he served as one of three international members of the Sierra Leone Truth and Reconciliation Commission. Professor Schabas has worked as a consultant on capital punishment for the United Nations Office of Drugs and Crime, and drafted the 2010 and 2015 reports of the Secretary-General on the status of the death penalty.

**Panel 1:
Individual Criminal
Responsibility:
Focus on corporate
criminal responsibility
as a topic having
current relevance for
ICL investigations**

Abstract

A significant debate in contemporary international criminal law discourse is the desirability and practicalities of corporate criminal responsibility for international crimes, either before international criminal courts or through the domestic enforcement of international criminal law. In the context of that debate, the purported legacy of Nuremberg has been considerable given the attention given by the Allies to the contribution of industrialists to Nazi crimes and the application of the notion of criminal organizations within the Nuremberg and subsequent trials. Taking this seminal history as a starting point, panel one explores issues, both normative and practical, surrounding the proposition towards corporate criminal responsibility for international crimes.

Panelists

Professor Harmen van der Wilt
University of Amsterdam

Harmen van der Wilt is a Professor of international criminal law at the Amsterdam School of Law, University of Amsterdam. His research interests lie in the concepts of criminal responsibility in international criminal law; domestic prosecutions of international crimes, the legal reaction to terrorism, international criminal law and legal philosophy, history in the courtroom, European Arrest warrant and transnational crimes. Professor van der Wilt has been involved in professional training programs for judiciary and public prosecutors in Addis Ababa and training programs for young staff members of Lobatchevski University of Nizni Novgorod, Russia. He is a member of the editorial board of the Journal of International Criminal Justice, the Netherlands Yearbook of International Law and the major Dutch journal on criminal law, *Delikt en Delinkwent*. He has been a member of the Research Council of the EU (F7)-project on the European Arrest Warrant and member of the Steering Committee of DOMAC (Impact of International Courts on Domestic Procedures in Mass Atrocity cases). Van der Wilt has been an ad litem Judge in the Criminal Court of Roermond and is currently an ad litem judge in the Extradition Chamber of the District Court in Amsterdam. He has presented his research all over the world at countless occasions and he is the acting President of the Nino Cassese Foundation.

Mr. Eduardo B. Toledo
Paris-Sorbonne University

Eduardo Bernabé Toledo is a legal adviser specializing in international and European criminal law. He worked for the UDAPT (Unión de Afectados por las operaciones de Texaco – Ecuador), collaborates with the NGO Xumek (Argentina) and is a reporter for the Oxford University Press about the jurisprudence of the International Criminal Court. He is writing his PhD dissertation (Université de Paris 1 Panthéon – Sorbonne) on ‘The attribution of criminal responsibility to a group in the system of the International Criminal Court’. On October 24, 2014, he presented a Communication before the ICC to denounce the operations of the Texaco Oil Company (today Chevron Corp) and the actions its CEO takes to avoid due remediation for ground and river pollution of the Oriente Region in Ecuadorian Amazonia. This document was the first that has been filed to the Tribunal that describes the acts of contamination as a crime within the jurisdiction of the International Criminal Court.

Dr. Joanna Kyriakakis
Monash University

Joanna Kyriakakis is a senior lecturer at the Monash University Faculty of Law and a Deputy Director of the Castan Centre for Human Rights Law. She practised law with the South Australian Crown Solicitor’s Office, and in private and community legal settings. Joanna Kyriakakis has researched and published extensively on the application of international criminal law to corporations, including analyzing issues of complementarity, modes of liability, comparative criminal law regimes, and the normative and practical implications of individualism and its alternatives in criminal law.

**Panel 2:
International Criminal
Law and National Law:
Focus on the necessity of
criminal accountability
for building stable and
democratic states: peace
through justice**

Abstract

In a world with staggering numbers of human rights abuses and widespread violations of international humanitarian law, the question of how to build stable and democratic states in post-conflict environments is a pressing one. In the settlements of these conflicts and in places where abusive regimes have been turned out of office (e.g., Tunisia) there is an increasing demand for accountability for serious crimes and abuses. With the adoption of the Rome Statute, the question of amnesty for serious crimes appears, at least on the normative level, to be off the table. Nonetheless, there remain a number of questions as to the role of criminal justice in post-conflict and post-authoritarian contexts. Other transitional justice measures, e.g., truth commissions, reforms, reparations, often accompany criminal justice processes. Criminal justice will play an important role but in some cases alternative criminal penalties may be imposed. Thus, while progress has been made in the application of Principle 2 in terms of prosecutions on the international and national levels, there is a continuing lively debate on the role of criminal justice in building peaceful societies and democratic states. There are also questions of how these processes work or could work better. This panel will examine and discuss the role of criminal justice processes in building states in post-conflict and transitional states. How do criminal justice processes and other accountability mechanisms contribute to building stable states that respect human rights? What is the role of criminal justice in peace processes? How can these processes be strengthened? What challenges do criminal justice processes face? How can these be overcome?

Panelists

Professor Chandra Lekha Sriram
University of East London

Chandra Lekha Sriram joined the School of Law at the University of East London in 2005 as its inaugural Professor of Human Rights, when she also founded and directed the Centre on Human Rights in Conflict. From 2010–2013, she was Professor of Law at the University of London, School of Oriental and African Studies. Professor Sriram has authored three books, edited or co-edited 11 books or special journal issues, and published over 100 articles and essays in the field of post-atrocity justice, conflict resolution and peace building.

Judge Raul Cano Pangalangan
International Criminal Court

Raul Cano Pangalangan is a Philippine lawyer and currently a Judge of the International Criminal Court. He was elected as a judge of the ICC in 2015 and will serve until 2021. Judge Pangalangan is a graduate of Political Science and Law from the University of the Philippines, where he subsequently became Professor of Law (from 1984) and Dean (1999–2005). Judge Pangalangan received his Law Master's degree (1986) and Doctorate (1990) from Harvard Law School. He also holds the Diploma of The Hague Academy of International Law (1987).

Mr. Paul Seils
International Center
for Transitional Justice

Paul Seils began his professional career as a criminal defense lawyer in Scotland in 1991. From 1997 he spent nearly five years in Guatemala as legal director of one of the country's main NGOs, designing and directing investigations on behalf of victims into massacres committed by the military during the civil war. He has held senior positions in the Office of the Prosecutor of the ICC, in the Rule of Law section of the Office of the High Commissioner for Human Rights, and at the International Commission against Impunity in Guatemala (CICIG). He has written widely on theory and practice in transitional justice, particularly on the importance of national prosecutions and complementarity, challenges in investigating mass crimes in transitional contexts, and on mapping and selection issues. He returned to ICTJ in October 2010, having been one of its original senior associates when the organization began in 2001.

Panel 3: Immunities: Focus on the immunity of Heads of States and Governments with special emphasis on the interpretation of Articles 27 and 98 of the Rome Statute

Abstract

This panel focuses on the first Nuremberg Principle, which establishes the basic rule that anyone ‘who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.’ The third principle takes this further by providing that being a ‘head of state or responsible government official does not relieve a person from responsibility under international law.’ The latter principle is also reflected in Article 27 of the Rome Statute of the ICC, which states that official capacity is irrelevant to criminal responsibility. On the other hand, Article 98 of the Rome Statute requires the Court to first obtain the consent of a third state for the waiver of the immunity where cooperation would require that State to act inconsistently with its obligations under international law or under international agreements. Some commentators have taken the position that the above Articles contradict each other, or are inconsistent, and therefore need interpretation to reconcile them.

Panelists

Professor Sètonджи Roland Adjovi
Arcadia University

Roland Adjovi joined Arcadia University in September 2009 as the Resident Director for the Center in Arusha, United Republic of Tanzania (East Africa). He earned his *Maîtrise* in Public Law from the University of Villetaneuse, his *Maîtrise* in Political Science from the University of Nanterre, his *Diplôme d’Etudes Approfondies* in African Studies from the University of Paris-Sorbonne and his *Diplôme de Troisième Cycle* in human rights from the University of Nantes, all in France. Africa is the focus of Adjovi’s research, with an international law and conflict resolution perspective that combines his knowledge in political science and legal studies. Before joining Arcadia University Professor Adjovi taught in Côte d’Ivoire and France mainly and lectured in other countries as well. He also worked as a jurist, assisting the judges in their mandate at the United Nations International Criminal Tribunal for Rwanda, and assisting victims in cases before the International Criminal Court. He continues to work at the UN as an expert sitting on the Working Group on Arbitrary Detention (2014–2020). Professor Adjovi has also been the lead counsel for Rev. Mtikila before the African Court on Human and Peoples’ Rights, successfully litigating the issue of independent candidates in elections in Tanzania. He has recently represented the administration of the International Court of Justice in a labor dispute before the United Nations Appeals Tribunal. Professor Adjovi also sits on editorial committees for the legal publications *African Yearbook of International Law* of the African Foundation for International Law and the *International Legal Materials* of the American Society of International Law.

Dr. Ramona Pedretti
Swiss Federal Supreme Court

Ramona Pedretti is the author of the book ‘Immunity of Heads of State and State Officials for International Crimes’ (2014) and other publications in public international law. She recently was a postdoctoral research fellow and visiting scholar at Columbia University. She currently clerks at the Swiss Federal Supreme Court.

Dr. Athaliah Molokomme
Attorney General of Botswana

Athaliah Molokomme obtained her Bachelor of Laws degree from the University of Botswana and Swaziland in 1981, and a Masters in Law from Yale Law School, USA in 1983. She obtained a PhD in Law at Leiden University, the Netherlands, in 1991. She has taught law at the University of Botswana for more than 15 years, and researched and published extensively in the fields of family law, women and law, customary law and employment law. For the past three decades, she has been a regular speaker at national, regional and international conferences, workshops and seminars on a wide range of subjects including human rights and international criminal justice. Dr Molokomme has served on several boards, commissions and professional organisations at national, regional and international levels, and is a founding member of several human rights organizations. From July 1998, she was founding head of the Gender Unit at the Secretariat of the Southern African Development Community (SADC), until May 2003 when she was appointed judge of the High Court of Botswana. In October 2005, she was appointed to her current position of Attorney General of the Republic of Botswana, whose main constitutional task is Principal Legal Advisor to the Government of Botswana. In this role, she also represents the Government in various national, regional and international bodies.

**Panel 4:
Superior Order:
Focus on superior
order according
to Article 33 of the
Rome Statute**

Abstract

The fourth Nuremberg Principle deals with “Superior Orders”. It remains one of the most intricate questions, whether acting upon a government order relieves criminal responsibility. In Article 8 of the IMT Statute a general excuse by superior order was ruled out, whereas it could establish a mitigating circumstance for the determination of punishment. Of course, this rule was crafted with a view to the political and military leaders of Nazi-Germany. Principle four thus deviates from the IMT’s provision having in mind also the ordinary soldier. If the perpetrator acted upon order and had no moral choice, he would be excused. In modern international criminal law, this issue is much debated. The ICTY Appeals Chamber had accepted an excuse of duress for the subordinate, who followed orders. The Rome Statute foresees in Article 33 a complex norm establishing, as a special case of a mistake of law according to Article 32 II, an excuse for war crimes only unless the perpetrator knew of the unlawfulness or the order was manifestly unlawful. The law thus shifted from the moral choice-argument to a rather objective test with regards to unlawfulness. In this panel, this historic development will be of issue as well as the general functioning of military law and responsibility in a strictly hierarchical order. The complementary issue of “command responsibility” will also be addressed.

Panelists

Professor Charles H. B. Garraway CBE
University of Essex

Charles H. B. Garraway served for thirty years as a legal officer in the United Kingdom Army Legal Services, initially as a criminal prosecutor but latterly as an adviser in the law of armed conflict and operational law. He represented the UK Ministry of Defense at numerous international conferences. He was also the senior Army lawyer deployed to the Gulf during the 1990/91 Gulf Conflict. On retirement, he spent three months in Baghdad working for the Foreign Office on transitional justice issues and six months as a Senior Research Fellow at the British Institute of International and Comparative Law before taking up the Stockton Chair in International Law at the United States Naval War College, Newport, Rhode Island in August 2004 for the year 2004/5. He was a Visiting Professor at King’s College London from 2002 to 2008, teaching the Law of Armed Conflict, and an Associate Fellow at Chatham House from 2005 to 2012. He is currently a Fellow at the Human Rights Centre, University of Essex and was awarded an Honorary Doctorate by the University in 2012. In December 2006, he was elected to the International Humanitarian Fact Finding Commission under Article 90 of Additional Protocol I to the Geneva Conventions of 1949, of which he was a Vice-President from 2012–2015. He worked for the British Red Cross from 2007 to 2011 and now works as an independent consultant. He was appointed CBE in 2002. He has worked on a number of expert groups and was, from 2008 to 2013, the General Editor of the United Kingdom Manual on the Law of Armed Conflict.

Professor Yoram Dinstein
Tel Aviv University

Yoram Dinstein is a member of the Institute of International Law, Professor Emeritus at Tel Aviv University (Israel), and since 2010 President of the United Nations Association of Israel. In the past, he served as President, Rector and Dean of the Faculty of Law of Tel Aviv University. Professor Dinstein was twice a Stockton Professor of International Law at the United States Naval War College (2002/2003, 1999/2000). He was also a Humboldt Fellow at the Max Planck Institute for International Law at Heidelberg, Germany, (2000/2001). He is the author of ‘The Defence of Obedience to Superior Orders in International Law’ (reprinted with a new postscript preface by Oxford University Press in 2012).

Professor Christoph Safferling
Friedrich-Alexander-Universität

Christoph Safferling is Professor of Criminal Law, Criminal Law Procedure, International Criminal Law and Public International Law at the Erlangen-Nürnberg University, Germany. He is Director of the Research Unit International Criminal Law at the same University. Moreover he is the Whitney R. Harris International Law Fellow of the Robert H. Jackson Center in Jamestown N.Y. Since 2012, he is member of the Independent Academic Commission at the German Federal Ministry of Justice for the Critical Study of the National Socialist Past. He has been the speaker of the Founding Commission of the International Nuremberg Principles Academy from 2010–2012. His main fields of research are: contemporary legal history, international criminal law and the subjective elements of the crime. He has published several articles and books in the field of criminal law, international law and human rights law, inter alia ‘International Criminal Procedure’ in 2012 and ‘The Nuremberg Trials: International Criminal Law since 1945’ in 2006. Safferling is co-editor of the German Law Journal and the Revista Internazionale di Diritto Penale. He studied Law in Munich and London and received his doctoral degree from the University of Munich in 1999.

Panel 5: Fair Trial: Focus on procedural trial structure and defense rights

Abstract

Francois Roux and Steven Kay QC will deal with developments from the IMT to the ICC and STL and the questions of how to build the international criminal justice of tomorrow with a special focus on the role of the defense. Since the Nuremberg trials, and the birth of international justice in 1945, until its most recent developments, the place of the defense in the international criminal justice has significantly evolved. While Defense matters were initially neglected before the first international tribunals (including the first ones of the modern era, the ICTY and the ICTR), they have been increasingly taken into consideration over the last twenty years. For example, defense's interests are now represented within the Special Tribunal for Lebanon (STL) by an independent organ, the Defense Office and stakeholders slowly understand that there cannot be justice without a credible Defense. The main speaker Francois Roux and the respondent Steven Kay QC will analyze the pattern of this evolution, each one with the unique and critical perspective that they have as defense counsel having practiced for years before different international tribunals. One focus will be on the analysis of the quality of investigations and proper disclosure of evidence from Nuremberg until today and whether it has improved to a national standard. Another focus will be on the trials in absentia before the STL and its implications for the defense. The speakers will also share their views on and ideas for the international criminal justice of tomorrow. In particular, Mr Roux will develop some possible avenues for a reform of the procedural system of the international criminal law which should, according to him, include more characteristics of the inquisitorial model in order to increase its efficiency during the trial phase. Steven Kay QC – with his common law background – will respond to this.

Panelists

Mr. Francois Roux
Special Tribunal for Lebanon

François Roux, a distinguished defense lawyer in the field of international justice, joined the Special Tribunal for Lebanon as Head of Defense Office on 9 March 2009. Mr. Roux, a French citizen, has been an attorney for 38 years and is influenced by the life and thinking of Mahatma Gandhi, who was also a lawyer. Since the late 1970s, he has defended Polynesian (French Polynesia) and New Caledonian Kanak separatists in the French Pacific Territories. In that capacity, he played a role in the peace agreements between the Kanak Liberation Movement and the French Government which resulted in the 1988 Matignon Agreements and the Nouméa Accord of 1998. In 1994, he also assisted the Tuareg rebels during the peace agreements with the Government of Niger. Since 1999, Mr. Roux has represented several accused and suspects before various international criminal jurisdictions, including the International Criminal Tribunal for Rwanda and the International Criminal Court, and he represented Duch before the Extraordinary Chambers in the Courts of Cambodia (ECCC). Mr. Roux was a consultant to the American defense team assigned to represent Zacarias Moussaoui following the attacks of 11 September 2001 and he assisted his American colleague Gerald Zerkin in arguing against the death penalty. In France, he has defended José Bové, an anti-globalisation farmer and trade unionist, against the fast-food company McDonald's, as well as representing the French agricultural trade union Confédération Paysanne and the Mouvement des faucheurs volontaires anti-OGM, a group of citizens who use civil disobedience to express their opposition to genetically modified organisms. He has acted successfully in various cases before the European Court of Human Rights in Strasbourg and the United Nations Human Rights Committee in Geneva. He is an Officer of the National Order of the Legion of Honour and a Knight of the National Order of Merit. Mr. Roux has written several articles on human rights and international criminal justice which have appeared in leading newspapers, including *Le Monde*, *Libération* and *Le Temps*. He was the head of a French law firm in Montpellier in the south of France specialising in criminal law, international relations, the law of persons, public law, mediation and human rights. His motto is 'Better to light a candle, however small, than to curse the darkness'. He has just published in French and English: 'Justice internationale ; la parole est à la Défense' (Indigène Editions, 2016).

Mr. Steve Kay QC

9 Bedford Row Chambers

Steven Kay QC became Head of Chambers at 9 Bedford Row in May 2016. He is a leading international criminal lawyer with a global reputation who has been in many of the landmark cases that have established modern international criminal law. Steven Kay is experienced in advising clients at the crisis stage of an international situation by setting out their options and guiding their responses, whilst also making the preparations necessary for future litigation. International cases are complex and demanding, they require a careful exercise of judgment and a thorough understanding of the issues involved so that a case is ready by the time you arrive in court. Experience has shown that good systems for the collection and management of evidence are necessary and Mr Kay assembles highly able team members to perform these tasks. The presentation of that material in oral or written form is crucial and it is here where his advocacy and presentational skills are able to make the difference in a clear, understandable and accurate presentation of a case either through the questioning of witnesses or speeches.

Ms. Natalie von Wistinghausen

Special Tribunal for Lebanon

Natalie von Wistinghausen, who was born in Brussels, Belgium, was admitted to the Berlin Bar, Germany, in 2001. Since being called to the Bar, Ms. von Wistinghausen specialises in criminal defense as a trial advocate and has acquired a wide-ranging legal experience in domestic and international legal criminal work. She was admitted to the List of Counsel at the International Criminal Court and the ICTR. Before the ICTR a, she was Legal Assistant in the defense team of Justin Mugenzi, Minister for Commerce, who was acquitted on appeal in February 2013. In Germany, she defended a Rwandan former mayor, who was accused of charges relating to the Rwandan genocide in 1994. She represented him before the Higher Regional Court of Frankfurt am Main. Natalie von Wistinghausen was admitted to the List of Counsel of the Defense Office at the Special Tribunal for Lebanon in 2009, and assigned in 2016 to protect the interests and rights of one of the accused in the case of The Prosecutor v. Ayyash et al.

Panel 6:
The Crimes:
Focus the debate to encompass certain transnational crimes into international criminal law

Abstract

Using the proposed African Court of Justice (ACJ) as a reference point, the panel members will discuss the opportunities and difficulties likely to arise in an “extended” Regional Criminal Court as a result of the incomplete or unsettled definition of newly introduced crimes; the possible causal relationship between transnational crimes and core international (sixth Nuremberg Principle) crimes; direct vs. diffuse victimization and victimless crimes; overlapping spheres of jurisdiction; the risk that protests against a focus on black-on-black crime at the ICC will lead to a judicial theatre at the ACJ showcasing white-on-black crime (e.g. environmental racism, foreign business bribery); as well as more practical issues of workload, expertise, and budget.

Panelists

Dr. Olaoluwa Olusanya
 Aberystwyth University

Olaoluwa Olusanya’s current work focuses on transitional justice. He is involved in various capacities with Veterans, including: Founder and Project Manager Veterans Legal; Elected Board Member of the Ceredigion Armed Forces Community Covenant Strategic Board (CAFCCB); Principal Investigator Veterans Oral History Project (VOHP), a Heritage Lottery funded project; Member of the Governance & Steering Panel UK Veterans Research Hub; Member of the Governance Board of the Veterans and Families Institute, Anglia Ruskin University; Member Three Counties Advocacy Strategy Group, West Wales Mental Health Voluntary Sector Ex Service Personnel Network; Honorary Visiting Fellow at Anglia Ruskin’s Veterans and Families Institute; Founding Member of the Veterans Education Training Evaluation Research and Audit Network. He developed the first live client based multidisciplinary clinical legal education module in the UK with a strong community service focus.

Professor Ademola Abass
 Institute for Security Studies

Ademola Abass joined the Institute for Security Studies in August 2014 as head of the African Center for Peace and Security Training in the Addis Ababa office. Before that he was the Head of Peace and Security and a Research Fellow at the United Nations University Institute for Comparative Regional Integration Studies in (Belgium). Ademola has taught law at various British universities and is currently Adjunct Professor of International Law at the University of Leuven Belgium, and Visiting Lecturer to the War Studies Department, King’s College, London. He was the African Union first Expert on Regional Mechanisms, and has consulted for international organizations and states in peace and security and international law. Ademola is a Solicitor and Barrister of the Supreme Court of Nigeria, a member of the Academic Council of the United Nations, and a Fellow of the Cambridge Commonwealth Society. He attended the Universities of Lagos, Nottingham and Cambridge, and holds LLB and LLM degrees and a PhD in Public International law.

Professor Alexander Zahar
 Wuhan University

Alexander Zahar, originally from Greece, completed his university studies in New Zealand and University College London. He specialized in criminal law and worked as a judicial advisor at the United Nations’ two ad hoc international criminal tribunals (the ICTY and ICTR) for a total of seven years. After teaching at Law schools in Australia for over a decade, he is presently a Research Professor of Law at Wuhan University School of Law, Hubei Province, China. Professor Zahar has published extensively on topics in international criminal law.

**Panel 7:
Modes of Liability:
Focus on chain of
command responsibility
and sexual crimes**

Abstract

The panelists will discuss several aspects of this topic, including the evolution of command responsibility for sexual violence crimes referencing recent case-law, the link between Nuremberg Principle seven and this form of liability for these crimes, and whether crimes of sexual violence are and should be treated differently than other crimes in assessing criminal liability based on superior responsibility. The panel will also discuss the superior responsibility *mens rea* requirement, and the reality that it has proven more difficult to obtain convictions for sexual violence than for other crimes based on the foreseeability of such criminal conduct. The panel will also examine the bases for criminal culpability of commanders in military justice systems, whether civilian justice systems adjudicating international crimes have sufficient understanding of command culture and military operational practice to be able to use these forms of liability to establish individual criminal responsibility, and whether superior responsibility liability for international crimes as applied in civilian criminal justice systems has insulated superiors (military, police, paramilitary or other) from the responsibility that they would bear had they been tried in a military justice system.

Panelists

Professor Olympia Bekou
University of Nottingham

Olympia Bekou is Professor of Public International Law and Head of the International Criminal Justice Unit of the University of Nottingham Human Rights Law Centre. Professor Bekou read law at the Democritus University of Thrace in Greece and was subsequently admitted to the Greek Bar. She completed the LLM in International Law at the University of Cambridge and obtained her PhD in International Criminal Law from the University of Nottingham, for which she had been awarded a NATO Fellowship. Professor Bekou joined the School of Law at the University of Nottingham in September 2002 and currently teaches Public International Law and International Criminal Law. In recent years, Professor Bekou has been a Fellow of the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany, and she has also held visiting positions at the TC Beirne School of Law, University of Queensland, Australia, the University of Nantes, France and Istanbul Bilgi University, Turkey, where she researched and taught International Criminal Law. Professor Bekou has provided research and capacity building support for 63 States, intensive training to more than 75 international government officials, drafting assistance to Samoa (with legislation enacted in November 2007), Fiji, and Jamaica, and has been involved in training the Thai Judiciary. She has also undertaken capacity building missions in post-conflict situations such as Uganda, the DRC, and Sierra Leone. Professor Bekou is solely responsible for the National Implementing Legislation Database (NILD) of the International Criminal Court's Legal Tools Project. A qualified lawyer, Professor Bekou is also Deputy Director of the Case Matrix Network and a member of the Advisory Board and Editor of the Forum for International Criminal and Humanitarian Law. In 2014, Professor Bekou authored a single expert report for the European Parliament, entitled 'Mainstreaming Support for the ICC in the EU's Policies', which she presented before its sub-committee on Human Rights (DROI).

Ms. I. Maxine Marcus

Prosecution Expert to National Jurisdictions on Cases Involving International Crimes

Maxine Marcus is a International Crimes Prosecutor and Investigator: Expert in transformative justice for conflict-related sexual violence. She has more than twenty years' international criminal law practice in the field (Chad (for Darfur), Sierra Leone, Bosnia-Herzegovina, Kosovo, Ingushetia (for Chechnya), Côte d'Ivoire, Ethiopia, Kenya, Rwanda, Guatemala, and Guinea) and in the courtroom (STL and ICTY). Advisor to UN Commission of Inquiry for Guinea, OHCHR Fact Finding Mission for Sri Lanka, CAR Panel on Sexual Exploitation and Abuse by Peacekeepers, and the UK PSVI Protocol and Global Summit. Ms. Marcus is a faculty member for Institute for International Criminal Investigations and Justice Rapid Response/UN Women, visiting lecturer at Transitional Justice Institute in Belfast and The Hague Academy of International Law. She is currently developing and implementing a complementarity project which provides technical peer-to-peer mentoring for national legal practitioners who are investigating and litigating cases involving war crimes, crimes against humanity, and genocide in their national jurisdictions.

Ms. Brenda J. Hollis

Residual Special Court for Sierra Leone

Brenda Joyce Hollis was appointed Prosecutor of the Residual Special Court for Sierra Leone in February 2014 by the Secretary-General of the United Nations, having served as Prosecutor of the Special Court for Sierra Leone from February 2010 until its closure in December 2013, also by appointment of the Secretary General of the United Nations. From 2007 Ms. Hollis led the prosecution against former Liberian President Charles Taylor, culminating in September 2013 in appellate confirmation of guilt on all charges and a sentence of imprisonment for 50 years. Prosecutor Hollis first worked in the Special Court in 2002 and 2003, and again in 2006, when she served as an expert consultant to the Office of the Prosecutor, where she provided legal and tactical advice to the Prosecutor, acted as team leader, assisted in evidence-gathering missions, and was the primary drafter of seven of the eight original indictments, including that against Charles Taylor. She is currently the Reserve International Co-Prosecutor, Extraordinary Chambers in the Courts of Cambodia (ECCC), appointed by Royal Decree. Ms. Hollis also served as a member of the Office of the Prosecutor at the International Criminal Tribunal for Yugoslavia from 1994 to 2001 where she served as co-counsel and lead counsel in a number of historic prosecutions, including the Tadic case, the first litigated case at the Tribunal, the first case in which rape was charged as torture, and also served as lead counsel in the preparation of the case against former Serbian President Slobodan Milosevic until her departure from the ICTY in 2001. From 2001 to 2007, 2014 to present, Ms Hollis acted as Expert Legal Consultant on international criminal law and procedure. During this period she trained judges, prosecutors and investigators at courts and international tribunals in Indonesia, Iraq and Cambodia, national prosecutors and investigators in Rwanda, and human rights monitors in Turkey, Jordan, Lebanon and Syria, and members of an Afghanistani NGO. She also assisted victims of international crimes in the Democratic Republic of Congo and in Colombia to prepare submissions requesting investigations by the Prosecutor of the International Criminal Court.

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