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Nuremberg Forum 2017

**10 years after the Nuremberg
Declaration on Peace and Justice
“The Fight against Impunity
at a Crossroad”**

20 – 21 October 2017

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

Program

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10 years after the Nuremberg Declaration on Peace and Justice “The Fight against Impunity at a Crossroad”

20–21 October 2017
Nuremberg, Germany

In June 2007, high-ranking UN mediators, practitioners in the fields of transitional justice, criminal law and development, as well as civil society representatives from all parts of the world met in Nuremberg at a ground-breaking conference (“Building Peace and Justice”), organized by the Governments of Finland, Germany and Jordan as well as several civil society institutions (notably ICTJ and CMI), to analyze the synergies and tensions between the goals that need to be tackled in post-conflict situations: peace and security, justice, and (social) development. The conference decided to summarize its main findings in the “Nuremberg Declaration on Peace and Justice” that was on the agenda of the UN General Assembly and the ICC Review Conference.

Ten years later, several trends can be observed: mechanisms to apply international criminal law (ICL) have multiplied and a considerable wealth of judicial practice has accumulated; at the same time, the global political context has changed, new crises have unfolded, and some fundamental tenets, spelled out in the Nuremberg Principles and in the agenda of the 2007 conference, are still not generally accepted, notably the avoidance of impunity, the need to promote peace, security, justice and development in tandem, and the need to involve victims in the quest for peace and justice as the bases for societies’ efforts to deal with the past and to achieve well-being for all.

In the Nuremberg Forum 2017 (comprising distinguished personalities with relevant expertise), the International Nuremberg Principles Academy wants to elucidate developments since 2007, with a particular focus – in line with the Academy’s mandate – on analyzing progress and challenges in the application of international criminal and humanitarian law and related human rights, and in the fight against impunity.



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20 October 2017

08:30–09:00 **Registration of participants**

09:00–09:20 **Opening Remarks**

Michael Koch, German Ministry for Foreign Affairs, Legal Adviser
Navanethem Pillay, President of the Academy’s Advisory Council

09:20–09:50 **Keynote address**

Silvia Fernández de Gurmendi, President of the International Criminal Court

Judge Fernández de Gurmendi is President of the International Criminal Court since March 2015, having served as judge at the ICC since 2010. After attaining a doctorate in international criminal law Judge Fernández de Gurmendi worked at the Argentinean Ministry of Foreign Affairs and quickly moved to the permanent mission at the UN.

She went on to fulfil an important role in drafting the Statutes of the ICC and setting up some of the procedures to be used at the ICC. In 2003 she left the Ministry of Foreign Affairs to become advisor to the Court’s first Prosecutor. In 2006 she returned to the Ministry to serve as director for human rights before returning to the ICC in 2010.

In 2007, along with other practitioners, diplomats and academics, she had been one of the co-authors of the Nuremberg Declaration on Peace and Justice.

09:50–10:15 **Coffee break**

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10:15–11:30

Panel 1:

The Nuremberg Declaration on Peace and Justice Today

Based on a mandate given by the conference “Building Peace and Justice” (Nuremberg, June 2007), a group of international experts working under the auspices of Óscar Arias, then President of Costa Rica, elaborated the Nuremberg Declaration on Peace and Justice that was brought to the attention of the UN General Assembly in 2008 and of the ICC Review Conference in 2010. The Declaration contains definitions, principles and recommendations that take a holistic view on issues of peace, justice and impunity, dealing with the past, and development. The Declaration aspired to guide those involved at the local, national and international levels in all phases of conflict transformation, including mediation, post-conflict peacebuilding, development, and the promotion of transitional justice and the rule of law. With regard to ending impunity, the Declaration held that there is an emerging norm under international law according to which the most serious crimes of concern to the international community must not go unpunished. As a minimal application of this principle, amnesties must not be granted to those bearing the greatest responsibility for genocide, crimes against humanity and serious violations of international humanitarian law. With regard to making peace, the Declaration recognized the imperative to stop the fighting and end the suffering, but demanded that negotiations must build the foundation for both peace and justice.

Ten years later, it is pertinent to ask ourselves whether these aspirations have become a reality. With regard to the Declaration’s tenets, the panellists will analyse the progress achieved (in conceptualization and in practice) and the persisting shortcomings and challenges, and they will also look at the „bigger picture“. Have peace-builders, mediators, development agents and practitioners of transitional justice embraced the holistic view called for by the Declaration? Has the proliferation of justice mechanisms (ranging from international and hybrid tribunals to specialized national jurisdictions) and of mechanisms addressing the expectations of victims contributed to more sustainable peacebuilding? Has the acceptance of such mechanisms grown among affected populations and among public opinion in general? Present-day conflicts in which the quest for ending impunity, for social justice and for reconciliation does not rank high on the peace-makers agenda: are they dwindling exceptions to a generally positive trend, or are they symptoms of a much broader countercurrent imposed by developments at the geopolitical level?

Speakers ▶ to be confirmed

- ▶ **Navanethem Pillay**, President of the Academy’s Advisory Council, former UN High Commissioner for Human Rights; former judge at the ICTR and the ICC
 - ▶ **David Tolbert**, President of the International Center for Transitional Justice (ICTJ)
- Moderator:
- ▶ **Christian Much**, retired German diplomat; former Interim Director of the Academy; co-author of the Nuremberg Declaration on Peace and Justice

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11:30–13:00

Panel 2:

Justice, Prevention and the End of Impunity

In post-conflict and other fragile contexts, attempts to address past abuses face considerable challenges. Where institutions are fragile or corrupt, the dynamics of conflict are complex and shifting, exacerbated by such issues as inequality and marginalization. Moreover, when powerful political actors are implicated in serious crimes, the quest for justice often faces a deep and long-term struggle. Thus, the fight against impunity is an ongoing challenge, particularly when there is a shrinking political will on the international level to support accountability efforts.

Following the UNSG report in 2004, transitional justice is regarded as an essential part of the United Nations’ post-conflict reconstruction and peacebuilding agenda. In post-conflict settings, criminal justice and other transitional justice measures can contribute to restoring peace in a number of ways, including, e.g., by establishing individual accountability; contributing to deterring future violations; promoting reconciliation at a societal and/or individual level; providing redress to victims; removing perpetrators from positions of power and responsibility; restoring trust in state institutions; reinforcing respect for the rule of law; building capacity through security sector and judicial reforms.

In certain instances transitional justice measures have also the potential for destabilizing or derailing a peace process; especially if they identify perpetrators who may still have a grip on power. Critically, in highly politicized and volatile environments, prosecutorial discretion in criminal proceedings can generate criticism of selectivity and victors’ justice. Some of these dilemmas surfaced in cases such as the former Yugoslavia, Uganda; or when the International Criminal Court (ICC) refused to lift its indictment of Lord’s Resistance Army leader Joseph Kony, and more recently in Colombia.

Through the lens of transitional justice and peacebuilding, the panel will discuss the opportunities and challenges arising from the justice agenda in post-conflict and fragile contexts. Specifically, the panelists will consider how attempts to justice should take into account several variables including the historical nature of the conflict, the abuses committed, the main protagonists, the security environment as well as the political factors, including the involvement of international actors and the perceived legitimacy of justice initiatives.

Speakers ▶ **Chandra Sriram** (UEL): Relationship between TJ and security

- ▶ **Viviane Dittrich** (Nuremberg Academy): Conflict prevention and the link between peace building and justice
 - ▶ **Susanne Buckley-Zistel** (University Marburg): The acceptance of the Nuremberg Principles in Non-Western Societies
- Moderator:
- ▶ **Christoph Safferling** (University Erlangen-Nuremberg)

13:00–14:00

Lunch

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14:00–15:30

Panel 3: Forgotten Voices: Catering to the Needs of Victims

International criminal justice processes are, historically, focused on the criminal accountability of the accused and the procedural fairness of the proceedings. With the advent of modern international criminal justice, in particular with the creation of the International Criminal Court, there has been an increasing awareness of the rights of victims, leading to their participation in proceedings and, in some instances, to receive reparations, compensation and assistance.

At the ICTY and the ICTR, victims were essentially limited to the role of witnesses, even if there was more attention paid to them at the rhetoric level. While there was a “Victims and Witnesses Unit”, these units essentially were witness units, providing protection and social and psychological support to victim witnesses during their testimony but limited afterwards. In the Ad hoc Tribunals there were also relocation programs for those who were seriously threatened. At the ECCC, which followed the civil law approach, victims were provided the opportunity to participate as *partie civile* in the proceedings, represented by co-lead counsel (post Duch trial). The *partie civile* approach allowed victims’ representatives to access court files and engage in cross examination. However, there was no effective provision for reparations and the court was limited to ordering symbolic reparations (e.g. memorials).

The Rome Statute has provided a greater role for victims in the proceedings, represented as a group(s) by a counsel in the proceedings. The victims’ counsel can examine witnesses, make submissions and represent victims as a group(s). Thus, in the ICC victims (through their legal representatives) are actual participants in the proceeding.

Under the Rome Statute, victims can also make claims for reparations, either directly from the perpetrator or via the Victims’ Trust Fund, which also has a program that provides assistance to affected communities. While the ICC’s Trust Fund is an important innovation, it also has certain limitations. Moreover, some victims can feel constrained in testifying in a court, leading to comparisons with truth commissions and other processes which have leeway to do the same. The panel will discuss and assess the evolution of the role of victims and discuss the challenges ahead.

- Speakers**
- ▶ **Anita Ušacka** (Former Judge, ICC): Where do we stand in the fights for accountability and against impunity for international crimes?
 - ▶ **Sarah Kasande** (ICTJ Uganda): The role of the victims in the International system of Criminal Justice
 - ▶ **Fiona McKay** (Open Society Initiative): What has changed regarding victims’ rights in the last 10 years?
- Moderator:
- ▶ **William Boudron** (SHERPA)

15:30–16:00

Coffee break

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16:00–17:30

Panel 4: Reconciliation

In the aftermath of massive human rights abuses, victims struggle to coexist with perpetrators or to trust the state; likewise, perpetrators often find it difficult to reintegrate into a society ruptured in part by their actions. Reconciliation processes aim to build or repair these relationships in societies that have been heavily disrupted and where governance structures and rule of law are fragile or not existent. In these contexts, reconciliation can have different meanings and different objectives. As for transitional justice processes in general, national contexts determine what reconciliation means, what relationships need to be restored, and how much progress can be made. For instance, post-conflict societies may emphasize reconciliation as coexistence, whereas fragile states with weak institutions may seek reconciliation as a means towards resilience.

To the extent that transitional justice processes contribute to recognizing victims, restoring trust in the state and among its citizens, and preventing future violations, they can foster reconciliation efforts. Critically, when transitional justice mechanisms are conceived, designed and implemented in a participatory and inclusive manner, they can meaningfully contribute to reconciliation at both individual and societal levels. Confronting harsh and uncomfortable truths in the short and medium terms can be a prerequisite to achieving long term reconciliation that is based on the respect of the rights and dignity of others, can be embraced by different parts of the society and is rooted in values of democracy and peaceful coexistence. In the short term, however, some mechanisms, like criminal trials or truth commissions, can also generate the opposite effect and polarize further societies that are already fractured, particularly if these mechanisms are perceived as illegitimate or biased.

Drawing on experiences from Bosnia Herzegovina, Kenya and other Africa countries, panelists will discuss the challenges and opportunities for transitional justice processes in contributing to reconciliation through their processes and outcomes.

- Speakers**
- ▶ **Betty Murungi** (former Kenya Truth Commissioner): The role of truth in reconciliation
 - ▶ **Barney Afako** (Conciliation Resources): Demobilization, disarmament and reintegration in the African context
 - ▶ **Velma Šarić** (Director Peace and Conflict Research Centre): Reconciliation amidst competing conflict narratives
- Moderator:
- ▶ **Elena Baylis** (University of Pittsburgh)

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09:00–10:30

**Panel 5:
Development in the Service of Transitional Justice**

Supporting accountability for past atrocities, in fragile states and in countries transitioning from conflict or repressive regimes is a challenging field for development donors. In contexts where the state is failing and where alleged perpetrators still detain powers, programs advancing a justice agenda might have a higher potential to generate a negative shift in the internal political dynamics, to be perceived as one sided, ineffective or difficult to measure. Donors might choose to support less politicized and more neutral sectors, where impact is more easily measurable and immediate.

The last ten year witnessed major changes and trends at policy level that could contribute to a more effective integration of justice and accountability issues in development cooperation programs. The World Bank's World Development Report entitled Conflict, Security, and Development (2011) linked for the first time transitional justice to security and development. Also in 2011, the New Deal for engagement in fragile states set out in its five peace-building and state-building objectives (PSGs) that justice and good governance are paramount to traditional aid development goals. Moreover, in an unprecedented approach, the New Deal places the burden on donors to engage with the obstacles to pursuing these goals and the risks associated with working in unstable and fragile contexts.

Beginning in 2011, ICTJ, UNDP, the ICC focal points for Complementarity, Denmark, South Africa, and Sweden held a series of high level meetings on „Supporting Complementarity at the National Level“, allowing international and national justice actors and development practitioners to discuss ways to strengthen cooperation between development and rule of law actors in order to support domestic systems investigating serious crimes.

In 2015, the adoption of the Sustainable Development Goals (SDGs) helped to solidify a framework for understanding and advocating the value and fit of transitional justice within broader international development policies. In particular, SDG 16 incorporates peace and justice as explicit and related development goals, emphasizing the importance of rule of law, access to justice, and inclusive institutions.

The panel will discuss how development donors and agencies can integrate support for judicial mechanisms and other transitional justice programs in their agendas, what factors affects their decision to engage in transitional justice processes and how they determine the specific initiatives that they will support.

- Speakers** ▶ **Marieke Wierda** (Dutch Foreign Ministry): Stabilization, Development and Transitional Justice
- ▶ **to be confirmed**: The international agenda for enabling justice, rule of law and the satisfaction of basic needs through development programs
 - ▶ **Andras Vamos-Goldman** (Justice Rapid Response) (to be confirmed): Assistance to ailing national judiciaries
- Moderator:
- ▶ **Noura Hamladji** (UNDP)

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10:30–12:00

**Panel 6:
Political Impediments to the Fight Against Impunity**

Justice and reparations mechanisms contribute to the fight against impunity, but bringing suspected perpetrators of international criminal law violations before a court or tribunal or holding them liable through other judicial mechanisms is often dependent on both national and international politics. At the international level, the prevailing power structures and the politics of the UN Security Council, in particular of its veto powers, can be obstacles to the equitable administration of justice. At the national level, various factors may stand in the way of justice: political self-interest, a government's (un)willingness to arrest or surrender a certain suspect wanted at international level, regional considerations, the 'will of the people' as expressed through referenda, and sentiments like denial, vengeance or 'security/reconstruction first' that may exist in the aftermath of a conflict both among a traumatized population and the disempowered old elites. Likewise, one must also consider how the new landscape of crimes and perpetrators, such as terrorism or corporate crimes, might be dealt with within this setting.

Over the last ten years, progress in the fight against impunity has been unsatisfactory. The number of justice and reparations mechanisms has increased, and justice issues have found their way into the agenda of an increasing number of civil society organisations, governments and institutions, as well as development organisations, working in the post conflict context. At the same time, the human rights discourse that prevailed in the 90's has, to some extent, been replaced by the security paradigm. A new generation of authoritarian and populist leaders is occupying some of the political front benches, and some important States have withdrawn their signature from, or have never signed the Rome Statute. New political fault lines have emerged within the Security Council and within or between regions. Against the backdrop of these competing trends, panellists will examine how the Nuremberg Principles fare today and what ought to be done so that they continue to be a landmark in the quest for sustainable peace.

- Speakers** ▶ **Serge Brammertz** (MICT): The politics of international justice
- ▶ **Maria Camila Moreno** (ICTJ): Transitional Justice in divided societies
 - ▶ **Athalia Molokomme** (Ambassador, Botswana's Permanent Representative to the UN Office in Geneva): The Rome Statute and regional politics
- Moderator:
- ▶ **Martin Klingst** (DIE ZEIT)

12:00–13:00

Lunch break

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13:00–16:30

Panel 7 and 8: Peace and Justice

Peace negotiations are increasingly seen as more than discussions between warring parties: they often include representatives of the people most directly affected by the conflict – the victims – and of society more generally. These processes have multiple and often competing objectives: putting an end to conflicts; addressing on-going humanitarian crises; proposing viable solutions for the underlying causes of conflicts and finding ways to address the needs of victims. Yet the prospect of dealing with the egregious violations of human rights and humanitarian law committed in conflicts frequently represents a profound challenge for progress. Some countries addressed the crimes committed during the conflict through different types of criminal justice mechanisms, while other transitional justice tools and mechanisms are also seen as viable options to answer victims' quest for dignity and justice, in conditions where there exist significant political constraints and where the institutional settings, the political power struggles, the social structures, the type of conflicts and violations are profoundly different.

The **first panel** will focus on practical examples where the question of justice formed a significant part of the post conflict context. It will raise questions on substance, process and participation and review how the processes actually worked in practice. Among others, the following questions might guide the discussions: Were there particular contextual factors that influenced the inclusion or exclusion of justice issues, such as international law or the balance of political power among the different actors? Did the exclusion of justice issues from negotiations or an agreement negatively or positively affect broader peace process? To what extent can it be said that transitional justice approaches have been important or essential to the durability of the peace process?

The **second panel** will discuss the challenges, options and implications of different approaches to justice in ongoing or foreseeable peace processes. Among others, the following questions might guide the discussions: How are the requests from victims' groups be taken into account? What could the quality of the outcome of "justice issue" be? To what extent is it important or essential to the durability of the peace process?

13:00–14:30

Lessons learned

- Speakers**
- ▶ Rwanda (**Nicole Palmer**, KSC)
 - ▶ Guatemala (**Claudia Paz y Paz**, former Attorney General Guatemala) (to be confirmed)
 - ▶ Bosnia Herzegovina (**Gerald Gahima**, Judge at War Crimes Chamber in Bosnia-Herzegovina; Former Prosecutor General in Rwanda)
 - ▶ Afghanistan (**Ahmad Nader Naderi**, Strategic Advisor to Afghan Presidency)
- Moderator:
- ▶ **Mark Kersten** (Wayamo Foundation)

14:30–15:00

Coffee break

15:00–16:30

Current challenges

- Speakers**
- ▶ Colombia (**Nelson Camilo Sánchez León**, Dejusticia)
 - ▶ Central African Republic (**Patryk Labuda**, Harvard Law School)
 - ▶ Syria (**Dr. Radwan Ziadeh**, Head of Commission on Transitional Justice)
 - ▶ South Sudan (to be confirmed)
- Moderator:
- ▶ **Iavor Rangelov** (LSE)

16:30–17:00

Closing Remarks

- ▶ **Navanethem Pillay**, President of the Academy's Advisory Council
- ▶ **Zeid Ra'ad Al Hussein**, UN High Commissioner for Human Rights
- ▶ **Klaus Rackwitz**, Director of the International Nuremberg Principles Academy

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