Current Debates in International Criminal Justice

Report on the 10th Summer School & Conference of the South-African German Centre for Transnational Criminal Justice at Humboldt-Universität zu Berlin, 18 June to 7 July 2018

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On 18 June 2018, the tenth Summer School of the South-African German Centre for Transnational Criminal Justice[1] was opened by Prof. Gerhard Werle (Humboldt-Universität zu Berlin, Co-Director of the Centre) at Humboldt-Universität zu Berlin. Since 2008, 116 students have graduated the Centre at Masters level and eleven students at PhD level from a total of 19 countries. Prof. Werle, on behalf of the funders, directors, and coordinators of the Centre, expressed his delight at having built such a large network of scholars and practitioners from all over the African continent. Prof. Eva Inés Obergfell (Vice President for Academic Affairs of Humboldt-Universität zu Berlin) then welcomed the LLM students to Berlin, emphasizing the university's international focus and her gratitude for the program's success story over the past ten years.

I. Judge *Piotr Hofmański*: The Bemba Appeals Judgment – A Milestone in International Criminal Law

The opening address of the Summer School was delivered by Prof. *Piotr Hofmański*, Judge of the Appeals Chamber of the International Criminal Court ('ICC' or 'the Court'). Judge *Hofmański* spoke about the Appeals Chamber's judgment in the case against Jean-Pierre Bemba Gombo.[2] By a majority of three judges, the Appeals Chamber had overturned the Trial Chamber's judgment and acquitted Bemba of all charges. Judge *Hofmański*, jointly with Judge Sanji Mmasenono Monageng, issued a dissenting opinion.[3] Although his presentation was originally titled "The Bemba Appeals Judgment – A Milestone in International Criminal Law", Judge *Hofmański* commented that a question mark must now be added at the end because, due to the lack of unanimity on crucial issues, the judgment was not the expected milestone. Still, he emphasized that it presents serious procedural and substantial implications for future ICC decisions and international criminal justice in general.

Judge *Hofmański* highlighted several contentious legal issues by explaining the perspectives of both the majority and the dissenting judges. In his view, the most important aspect of the decision was the standard of review to be applied by the Appeals Chamber. In previous decisions, the Appeals Chamber had held that it should only intervene when it cannot see how any reasonable Trial Chamber could have reached the finding.[4] In this case, the majority introduced a stricter standard, according to which the Appeals Chamber must overturn factual findings of the Trial Chamber if they can reasonably be called into doubt.[5] In contrast, the minority opinion called for a greater degree of appellate deference, arguing that the conventional standard of review was correct because the Trial Chamber is in a better position to determine the facts and evidence.[6]

Judge *Hofmański* then addressed the contentious issue of the scope of the case. The majority had decided that the charges were framed too broadly to amount to a meaningful formulation of the charges as required by Article 74 (2) of the ICC Statute and rule 52 (b) of the ICC's regulations.[7] Judge *Hofmański* pointed out the necessity to differentiate between the prosecutorial function of determining the scope of the case and the judicial function of fact-finding as well as the right of the accused to be informed about the charges against him. He argued that Article 74 (2) in its essence reflects the accusatorial principle and ensures that it remains within the responsibility of the Prosecutor to frame the charges and define the scope of the case. Therefore, he concluded that the broad formulation of the charges does not violate Article 74 (2).[8] He expressed his worry that the level of detail the Prosecutor is now required to adhere to at the confirmation stage may impede future prosecutions.

With regard to command responsibility, Judge *Hofmański* outlined the contentious nature of the provision and identified several points of controversy. For example, pertaining to a potential requirement of a causal link, he explained that different readings of Article 28 of the ICC Statute ("as a result of") are possible and opined that, in the light of the principle of culpability, some element of causality is necessary.

Throughout his presentation, Judge *Hofmański* highlighted that the ICC Statute is influenced by two legal traditions, the Common Law and the Civil (or Romano-Germanic) Law, which has resulted in many uncertainties and ambiguities in the Statute. This, he explained, is part of the reason why international criminal law is so interesting to scholars and practitioners alike. Judge *Hofmański* expressed his hope that although the judgment left many questions unanswered, the separate and dissenting opinions will provide comprehensive

[1] For more information about the Centre, visit http://www.transcrim.org/ (26.3.2019).

[2] ICC (Appeals Chamber), Decision of 8 June 2018, ICC-01/05-01/08 A (The Prosecutor v. Jean-Pierre Bemba Gombo).

[3] Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański, ICC-01/05-01/08-363-Anx 1-Red 08-06-2018 1/269 EC A (The Prosecutor v. Jean-Pierre Bemba Gombo), https://www.icc-cpi.int/RelatedRecords/CR2018_02987.PDF (26.3.2019).

[4] Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański (fn. 3), para. 9.

[5] Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański (fn. 3), para. 46.

[6] Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański (fn. 3), para. 7.

[7] Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański (fn. 3), paras 98–116.

[8] Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański (fn. 3), paras 19–22.

material for further analysis, and he encouraged the students and participants to read both the judgment and the opinions.

II. Alumni Conference on Current Debates in International Criminal Justice

During the tenth anniversary Summer School, the Centre hosted an Alumni Conference on "Current Debates in International Criminal Justice", which took place between 21 and 23 June 2018 at Humboldt-Universität zu Berlin. The participants were welcomed by Prof. *Martin Eifert*, Dean of the Law Faculty, who praised the impressive number of graduates and career paths which have emanated from the program.

1. Judge Ekaterina Trendafilova: Tendencies and Developments in International Criminal Justice

The keynote speech was delivered by Judge *Ekaterina Trendafilova*, who was a Judge at the International Criminal Court between 2006 and 2015 and currently serves as the first President of the Kosovo Specialist Chambers. Judge *Trendafilova* is a long-time friend of the Centre and had previously addressed students both in Berlin and in Cape Town. In her presentation, she spoke about the current status, problematic issues and the development of international criminal law. According to Judge *Trendafilova*, the fight against impunity is a common goal of national and international institutions, with the primary responsibility resting on the national jurisdictions.

Judge *Trendafilova* briefly summarized the history of international criminal law, dating back to the famous trial against Peter Hagenbach in 1474, and traced the development throughout the past century. In this regard, she referred to the Versailles Treaty, the trials of Nuremberg and Tokyo and the establishment of the ad hoc tribunals. Finally, Judge *Trendafilova* noted the recent tendency of establishing different kinds of internationalized institutions, such as the Special Tribunal for Lebanon, the Extraordinary Chambers in the Courts of Cambodia, the Extraordinary African Chambers and the Kosovo Specialist Chambers. With regard to the International Criminal Court, Judge *Trendafilova* pointed out that it is currently beyond the realm of possibility for the Court to achieve universality, because the big powers are, regrettably, not interested to join. In her view, despite harsh criticism and the continued threat of withdrawals, the Court has proven that it will hold anyone accountable for crimes against the international community, regardless of status and capacity, as illustrated by the pending case against Al Bashir. She explained that measures have been taken to address the main concerns voiced by ICC member states, particularly as pertaining to the allegation that the proceedings are slow, costly and inefficient. However, Judge *Trendafilova* also pointed out that ICC proceedings are naturally voluminous and contain complicated legal issues. As examples, she mentioned the question of immunity in the case against Al Bashir, the request made by the Prosecutor to the Pre-Trial Chamber on whether the mass displacement of the Rohingya people falls under ICC jurisdiction and the issue of crimes committed outside the territory of the concerned state in the Afghanistan situation. According to *Trendafilova*, the complex nature of the ICC Statute and the different legal backgrounds of the judges pose additional challenges.

In the second part of her address, Judge *Trendafilova* spoke about the Kosovo Specialist Chambers, which were established by the parliament of Kosovo after negotiations between many international actors following a constitutional amendment. She noted that the drafters tried to correct some of the concerns raised in past ICC proceedings and that, like the ICC Statute, the Law of the Specialist Chambers includes a combination of the best approaches from Common Law and Civil Law traditions. Further, Judge *Trendafilova* remarked that the procedure of selecting judges has been improved. She explained that judges are selected based only on merit, through a robust exam-like process conducted by an independent panel, and without a limitation on the number of judges from each country. In concluding her presentation, Judge *Trendafilova* highlighted the privileged position of the Kosovo Specialist Chambers and their potential to improve by drawing lessons from other regional and international criminal justice mechanisms.

2. The Legitimacy Debate: Selectivity and Power

Judge *Trendafilova*'s keynote speech was followed by the first panel, chaired by *Angela Mudukuti* (International Criminal Justice Lawyer with the Wayamo Foundation) with *Dr. Sara Kendall* and *Selemani Kinyunyu* as panelists. *Dr. Sara Kendall* (University of Kent) opened the panel with a presentation on power, politics and the ICC. She noted that the moral imperative of international criminal law, ending impunity, suggests that the field works through cosmopolitan, apolitical consensus. However, she explained that this construction of international criminal law as a collective international project devoid of political interests seems to contrast with its work in practice, particularly its selective enforcement. *Dr. Kendall* argued that in contrast to assertions that politics have no place within the field, the legal domain is another side of political contestation. In the context of a possible current legitimacy crisis of the ICC, she further spoke about withdrawals, the tension surrounding the Al Bashir arrest warrant, the responses of several African states to the Kenya situation before the ICC and the role of victims in the proceedings. To conclude, *Dr. Kendall* noted that legitimacy is also a question of an institution's work in practice. *Selemani Kinyunyu* (Senior Policy Officer for Political and Legal Matters at the African Union Advisory Board on Corruption, speaking in an individual capacity) focused on the tension between the African Union and the ICC. He identified five areas of concern for the African Union: the sequencing of peace and justice and the consequences of judicial interventions in peace negotiations, the role and powers of the United Nations Security Council, the discretionary prosecutorial powers, immunity of heads of state and the application of the principle of universal jurisdiction by domestic courts. With respect to the legal issues, *Kinyunyu* noted that it is important to resolve these unsettled questions. Pertaining to the ICC, he recommended an improvement of communication and outreach as well as a better understanding of political contexts. He also opined that victims must be put at the center of trials.

To conclude, *Kinyunyu* noted that in order to reform international criminal justice, all stakeholders must work towards a more just world order, including a reform of the United Nations Security Council.

3. The Regionalization of International Criminal Justice: The African Criminal Court

The second panel was chaired by Prof. *Moritz Vormbaum* (Westfälische Wilhelms-Universität Münster) and the panelists were Prof. *Gerhard Kemp*, *Dr. Fatuma Mninde-Silungwe*, *Dr. Juliet Okoth* and *Dr. Marshet Tadesse Tessema*. Prof. *Gerhard Kemp* (Stellenbosch University) examined the African Criminal Court. He explained that regionalization is not a foreign concept in Africa: for example, beginning in the 1860s, internationalized tribunals were set up to try individuals responsible for transatlantic slave trade and piracy. Prof. *Kemp* further mentioned the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the Extraordinary African Chambers set up to try Hissène Habré as recent examples. In this regard, he argued that the contemplated African Criminal Court should be viewed as a positive step in the regionalization of criminal justice. *Dr. Fatuma Mninde-Silungwe* (United Nations Development Programme, Malawi) examined the crimes included in the Malabo Protocol and concluded that certain definitions of the core crimes have been improved, for example, rape as genocide. She further noted that the Protocol has incorporated certain crimes very peculiar to Africa, such as the crime of the unconstitutional change of government. *Dr. Mninde-Silungwe* opined that when the legal texts are implemented with the best intentions, the African Criminal Court will be beneficial to the administration of criminal justice at the regional level. *Dr. Juliet Okoth* (University of Nairobi) noted that the success of the African Criminal Court will depend on the willingness of African leaders to cooperate and to incorporate the provisions into their domestic jurisdictions. According to her, some states have been reluctant to do so; for example, the crime of illicit enrichment is not criminalized in Kenya, a signatory to the Malabo Protocol. *Dr. Okoth* further opined that the immunity clause in the Malabo Protocol should be amended. *Dr. Marshet Tadesse Tessema* (Jimma University) explained that the process of adopting the Malabo Protocol was rushed and that many of the provisions are unclear. He opined that these defects should be rectified before the instrument enters into force. With regard to the relationship between the African Union and the ICC, *Dr. Marshet* noted that it is not regulated in the Protocol, but that this should not be interpreted as limiting the cooperation between the two courts.

4. Universal Jurisdiction Revisited: German Prosecutions of International Crimes Committed in Syria

The third panel was chaired by *Debora Orina* (Associate Legal Officer with the United Nations High Commissioner for Refugees, Geneva). The panelists were *Dr. Julia Geneuss*, *Wolfgang Kaleck* and *Christian Ritscher*. *Dr. Julia Geneuss* (University of Hamburg) explained the historical development of the principle of universal jurisdiction. In Germany, *Dr. Geneuss* noted, the principle of universal jurisdiction is used for purposes of gathering and securing evidence. She explained that the procedural mechanism employed by the investigators is the structural investigations approach, which means that criminal investigations are directed not against individuals or specific crimes but concern all crimes potentially committed, for example, by the Syrian regime or the opposition groups. She compared this approach to the preliminary examinations conducted by the ICC Prosecutor. *Christian Ritscher* (Federal Public Prosecutor in the War Crimes Unit of the Federal Public Prosecutor's Office in Germany) gave an overview on the work of his Unit regarding crimes committed in Syria. He explained that criminal investigations commenced in 2011, in the wake of the Arab Spring. *Ritscher* noted that there is a lot of evidence in Germany today due to a high number of refugees from Syria and that arrest warrants have been issued against IS fighters as well as regime members for war crimes and crimes against humanity. *Wolfgang Kaleck* (Founder and Director of the European Center for Constitutional and Human Rights, Berlin) explained the importance of universal jurisdiction for NGO lawyers and activists. The European Center for Constitutional and Human Rights has the intention of challenging and holding the powerful accountable under international law. *Kaleck* noted that universal jurisdiction can be used as a tool to litigate these cases. According to him, the Syrian case illustrates the importance of applying universal jurisdiction as a last resort to prosecute international crimes.

5. Victims' Roles in International Criminal Justice

Brenda Akia (PhD candidate at Humboldt-Universität zu Berlin) chaired the fourth panel with the discussants *Dr. Philipp Ambach*, Prof. *Chantal Meloni*, *Dr. Charity Wibabara* and *Marian Yankson-Mensah*. *Dr. Philipp Ambach* (Chief of the Victims Participation and Reparations Section in the ICC Registry) explained that victims' participation in international criminal proceedings is a rather new concept only recently adopted by the ICC, which has since been replicated in Cambodia, Lebanon, Kosovo, Central African Republic and Senegal. *Ambach* stressed that victims' participation in the proceedings is different from reparations, as victims' participation is premised on the retributive idea of justice. He explained that the ICC awards reparations to participating victims only in the case of a conviction of the accused, which has been challenged as a shortcoming. Prof. *Chantal Meloni* (University of Milan/European Center for Constitutional and Human Rights) focused on victims' participation at the preliminary examination stage of the ICC. She opined that there is a gap in the ICC system with regard to the tools victims have at their disposal at this stage of the ICC proceedings as compared to the huge prosecutorial discretion. Particularly, Prof. *Meloni* criticized the ICC's lack of review mechanisms and avenues for the victims and civil society to challenge the Prosecutor's decision not to open an investigation. *Dr. Charity Wibabara* (National Prosecutor of Rwanda) spoke about victims' roles in the proceedings following the Rwandan genocide. She explained that the Statute of the International Criminal Tribunal for Rwanda did not include any provisions

on reparations and that the victims did not receive compensation. Before the Rwandan *Gachacha* courts, which were restorative in nature, only property offenses were compensated. *Dr. Wibabara* concluded that the needs of the Rwandan genocide victims were only selectively taken into consideration. *Marian Yankson-Mensah* (Project Officer at the International Nuremberg Principles Academy) focused on transitional justice and the rights of victims in Ghana. She explained that Ghana's Truth and Reconciliation Commission recommended several reparation measures in 2004. The government focused only on monetary compensation, which, according to *Yankson-Mensah*, raises questions on how Ghana has addressed victims' rights to truth and to other forms of reparations such as memorization. She opined that other transitional justice mechanisms are needed to complement the Commission's recommendations.

6. What is Missing in the Current Framework of International Criminal Justice?

The conference's final panel was chaired by *Dr. Hannah Woolaver* (University of Cape Town). Discussants were Prof. *Florian Jeßberger*, Prof. *Volker Nerlich*, *Victoria Olayide Ojo* and Prof. *Andreas Zimmermann*. Prof. *Florian Jeßberger* (University of Hamburg) first spoke about corporate criminal liability. While noting that corporate entities are often involved in the commission of international crimes, he opined that there are many arguments against amending the ICC Statute to include corporate criminal liability. He stressed the difficulties of attributing responsibility to corporations and explained that there is few practice or case law in this regard. Pertaining to terrorism, Prof. *Jeßberger* stated that it is a transnational crime and not a crime under international law. He concluded that the current international legal framework is sufficient and that there is a gap in the domestic and international enforcement of international criminal law rather than in its substance. Prof. *Volker Nerlich* (Legal Advisor at the ICC Appeals Division) focused on procedural difficulties at the ICC pertaining to the area of mass criminality and explained that many of the Court's procedural rules have been borrowed from the domestic procedural laws. However, he noted that these procedural provisions come from jurisdictions which rarely deal with mass criminality cases. According to Prof. *Nerlich*, the ICC faces similar challenges as mass criminality trials at the domestic level, such as lengthy procedures, appropriate rights of the accused and efficiency. He argued that new procedural approaches must be developed at the international level in order to overcome these challenges. With regard to economic crimes, *Victoria Olayide Ojo* (PhD candidate at Humboldt-Universität zu Berlin) explained that many wars are rooted in social tensions emanating from the violations of political and economic rights. She opined that the ICC Statute can be used to fight the economic aspect of international crimes, pointing out, for example, the crime against humanity of enslavement as well as the war crimes of destruction of civilian properties, hostage taking, destruction of enemy property and pillaging, which all have a link to economic violence. What is required, according to *Olayide Ojo*, is prosecutorial interest and an expansive interpretation of the existing provisions. Prof. *Andreas Zimmermann* (University of Potsdam) noted that any amendments to the ICC Statute are subject to Article 121 and will only apply to states that have accepted them. According to Prof. *Zimmermann*, this will create a "jurisdiction à la carte". Amending the ICC Statute has proved difficult over the past twenty years, for political as well as technical reasons. With the many challenges the ICC is facing, such as the threat of withdrawals, the debate around immunities and the lack of effective cooperation, he opined that amendments to the Statute may prevent further ratifications and cautioned against them. Prof. *Zimmermann* also highlighted the troubling jurisdictional scheme of the crime of aggression, which may deter the Security Council from further referrals.

III. Summer School on Transnational Criminal Justice

Besides the Alumni Conference panels, six further presentations and workshops took place in the course of the tenth Summer School of the South African-German Centre for Transnational Criminal Justice.

1. Prof. Martin Heger: European Criminal Law

Prof. *Martin Heger* (Humboldt-Universität zu Berlin) addressed the group on European criminal law, noting that while a European criminal code does not exist, there is a criminal regime in the European Union. He traced the development of European criminal law from the 16th through the 19th century and highlighted the importance of case law as well as the treaties of Maastricht, Amsterdam and Nice in this evolution. Prof. *Heger* then discussed the innovations of these treaties regarding the single market as well as the area of freedom, security and justice and noted that the EU's particular interest lies in fighting against supranational and transnational crimes. Additionally, the important role and drawbacks of the dual principles of mutual recognition and mutual trust were explored. Prof. *Heger* also introduced the audience to the European arrest warrant regime and pointed out cases in which it has been successfully used.

2. Prof. Ryszard Piotrowicz: Human Trafficking

In his presentation on human trafficking, Prof. *Ryszard Piotrowicz* (Aberystwyth University) contended that while human trafficking had human rights implications, it was not a human rights violation. Human rights, according to *Piotrowicz*, do not encompass the protection against violations by private or third parties, in this case, the traffickers. However, he noted that human trafficking attracts state responsibility with regard to the failure to provide protection from being trafficked. Prof. *Piotrowicz* explained that trafficking consists of three elements, namely, the action element, the means element and the purpose element. He contended that, unlike in the case of smuggling, the means element of trafficking nullifies any meaningful consent.

3. Dr. Juliet Okoth: Asserting Complementarity or Refusal to Cooperate – Kenyan Court's Interpretation of Requests to Surrender Suspects to the International Criminal Court

Dr. Juliet Okoth (University of Nairobi) hosted a workshop on the topic of complementarity. With regard to the 2007-2008 post-election violence in Kenya, *Dr. Okoth* focused on the cases before the ICC as well as some relevant domestic decisions. Addressing the Kenyan court's decisions on requests to surrender, *Dr. Okoth* mentioned the case against Walter Osapiri Barasa, in which the Kenyan court declined the accused's petition to be tried in Kenya. However, *Okoth* noted that in the case against Paul Gicheru & Paul Kipkoech Bett, the Kenyan court agreed that the respondents had a right to be tried in Kenya. She highlighted the contradictory nature of the interpretation of the modes of surrender in both cases. *Dr. Okoth* further explained that while the distinction between extradition and surrender is clear, it remains open whether the bar to extradition processes should also apply to surrender processes. She concluded by advocating for a pro-ICC approach in the interpretation of domestic law.

4. Prof. Lawrence Douglas: Aggression, Atrocity and the Problem of the Criminal State

In his presentation on Aggression, Atrocity and the Problem of the Criminal State, Prof. *Lawrence Douglas* (Amherst College) explained that there has been a tension between the "aggression paradigm" and the "atrocity paradigm" throughout the history of international law. At the Nuremberg trial, the main criminal acts charged and adjudicated were crimes against peace, whereas crimes against humanity required a link to either crimes against peace or war crimes, and thus to war. Therefore, Prof. *Douglas* opined that the "aggression paradigm" seemed to have triumphed at the Nuremberg Trial. This triumph, however, was short-lived, as Prof. *Douglas* then explained. According to him, the erosion of the "aggression paradigm" and the shift to the "atrocity paradigm" was demonstrated by the adoption of the Genocide Convention in 1948, which no longer required a connection to war. Prof. *Douglas* noted that throughout the second half of the 20th century, the triumph of the "atrocity paradigm" solidified. Although the International Criminal Court now has jurisdiction over the crime of aggression, Prof. *Douglas* contended that serious doubts remain whether this crime will play a meaningful role in practice.

5. Dr. Matthias Korte: Combatting Corruption – International Legal Instruments

Dr. Matthias Korte (Head of the Division "Economic Crime, Computer Crime, Corruption related Crime and Environmental Crime" in the German Federal Ministry of Justice and Consumer Protection) provided a general overview of the international legal instruments for combatting corruption. He started his presentation with the legal regime for corruption at the level of the European Union and the Council of Europe. *Dr. Korte* also highlighted the importance of the 2003 African Union Convention on Preventing and Combating Corruption and other international, regional and African legal frameworks against corruption. In conclusion, *Dr. Korte* showcased the relevant provisions of the United Nations Convention against Corruption of 2003 as well as the United Nations Convention against Transnational Organised Crime of 2000.

6. Dr Leonie Steinl & Dr Aziz Epik: Sentencing and Reparations at the International Criminal Court

Dr. Leonie Steinl (University of Hamburg) and *Dr. Aziz Epik* (Humboldt-Universität zu Berlin) jointly facilitated a workshop on the sentencing and reparations regime at the ICC. *Dr. Epik* highlighted the sentencing objectives of the ICC. He noted that the main aims of sentencing are retribution, deterrence and rehabilitation, including elements of positive general prevention. *Dr. Epik* stated that in the determination of the sentence, major factors to be considered include the gravity of the offense, culpability of the offender and individual circumstances. Highlighting the two-fold nature of the gravity of the crime, *Dr. Epik* explained the importance of considering the seriousness of the offense and the harm caused, including the individual responsibility of the offender. He opined that the narrow range of applicable sentences is concretized by weighing the relevant factors such as the gravity in concerto, the individual circumstances of the convicted person as well as the mitigating and aggravating circumstances. *Dr. Steinl* focused on the legal regime of reparations. She noted that victims are entitled to five forms of reparations, namely, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The importance of the role of the Trust Fund for Victims was additionally highlighted. *Dr. Steinl* opined that as provided for in Article 75 of the ICC Statute, it is a core responsibility of the Court to establish principles relating to reparations to or in respect of the victims. In the determination of the reparations award, whether individual or collective, *Dr. Steinl* noted that the decision of the Court may include a determination of the scope and extent of damage suffered, including loss and injury to or in respect of the victims.