



Geoffrey Nice Foundation on
Law, History, Politics, and Society
in the context of Mass Atrocities

REPORT

on the annual conference

**“The ICC and the Future of Investigation and Prosecution of
Political Violence and Mass Atrocities”**

The Hague, 19-21 November 2016

The Geoffrey Nice Foundation in cooperation with Pro-Demos organised and hosted an alumni event to coincide with the 15th session of the Assembly of States Parties to the International Criminal Court meeting (the ASP) on the weekend of 19th–21st November 2016. A vigorous public debate of the future of the ICC has been triggered by the recent withdrawals of three African states from the ICC (South Africa, Burundi and Gambia). ProDemos in cooperation with the Geoffrey Nice Foundation organised a series of lectures on the future of the investigation and prosecution of mass atrocities and war crimes.

The alumni weekend was attended by 30 young professionals (academics, lawyers, policy makers, and human rights activists) who were, for the most part, former participants in the Geoffrey Nice Foundation’s annual summer school, held in Dubrovnik, Croatia for the past three years. The events were open for public and some additional 20 people came on Saturday’s and Sunday’s sessions, held at ProDemos.

The weekend consisted of a series of lectures, informal talks, working group sessions as well as a visit to the International Criminal Tribunal of the Former Yugoslavia and attendance at an official side event of the ASP concerning crimes against humanity perpetrated in North Korea, which was hosted by the Geoffrey Nice Foundation in cooperation with other partners. The remainder of this report will provide some more detailed coverage of the events referred to above.

Alumni participants:

1. Aarif Abraham
2. Umar Ali
3. Christopher Blessey
4. Ivana Bošnjaković
5. Jamie Brown
6. Jennie Collis
7. Simon Crowther
8. Jasmina Đapo
9. Giulian Hamitaj

10. Rabah Kherbane
11. Halil Kosumi
12. Nikolai Markov
13. Ehlimana
Memišević
14. Clara-Lou Michal
15. Nikola Puharić
16. Branimir Renja
17. Wasja Rijs
18. Jonas Spitra
19. Višnja Sijačić
20. Leutrim Syla
21. Lino Vaessen
22. Daniel Wand
23. Annika Weikinnis

Faculty members:

24. Vincent Cillessen
25. David Hawk
26. Marie Ursula Kind
27. Eunkyong Kwon
28. O’Gon Kwon
29. Gjylieta Mushkolaj
30. Tatjana Meijvogel-Volk
31. Sir Geoffrey Nice
32. Sir Nick Parker,
33. Hamid Sabi
34. Kim Hyeong Soo,
35. Nicolai Sprekels, Giordano-Bruno-Foundation/Chairman of Saram e.v.
36. Nevenka Tromp

Alumni:

Saturday, 19th November 2016

Morning Lectures

10:30-11:00 - Arrival

11:00-11:30 - Opening by Tatjana Meivogel-Volk

11:30-12:30 - Sir Geoffrey Nice “Brexit, ICC and the Future of International Legal Regimes”

12:30-13:30 - Vincent Cillessen: “Innovations in War Crimes Investigations: International

cooperation and the role of Europol and Eurojust”

The day begun with an introduction from Dr. Nevenka Tromp who welcomed everyone to the weekend, explained the motivation and purpose behind the event, and outlined the events that would take place over the course of the weekend. Tatjana Meijvogel-Volk of Pro Demos, then provided some information on the role and work of Pro Demos, and welcomed us to the building. Sir Geoffrey Nice then spoke about ‘Brexit, the ICC, and the Future of International Legal Regimes’; he said that there was the need for us, as members of society, to listen and understand the views and ‘the fears’ of the ‘blue collar worker’ about the process of globalisation that has resulted in their jobs being sent, or at risk of being sent, abroad and their communities changing; he referred to the Brexit vote and the election of Donald Trump as president-elect of the United States of America as an expression of the concerns felt by such people and the failure of the liberal elite to listen to those concerns over very many years. He also noted that this rejection of the liberal consensus was perhaps present in the decisions of three African states to withdraw from the Rome Statute of the International Criminal Court.

Following this talk, we heard from **Mr Vincent Cillessen**, from the Dutch War Crimes Unit, who spoke about his work and the work of the War Crimes Unit. During his talk, which was titled ‘Innovations in War Crimes Investigations: International Cooperation and the Role of Europol and Eurojust’, Mr Cillessen outlined that the role of the Unit was to investigate war crimes and crimes against humanity that had been committed by Dutch nationals abroad or where the victims of such crimes were Dutch nationals. His unit also has have jurisdiction when the perpetrator is residing in the Netherlands (not being a Dutch national). The speaker emphasised the relatively limited nature of the Unit’s jurisdiction but that it had a large amount of work. Mr Cillessen further touched upon a number of issues related to his work including the significance and impact of diplomatic immunity rules, the relationship between politics and law, information sharing and related to this the roles of Europol and Eurojust, and how the Unit uses information collected about war crimes and crimes against humanity alleged to have been committed outside of The Netherlands by individuals on the ground, including videos which are created and uploaded to YouTube.

Working Group Sessions

After the lunch break, the working groups convened to begin their discussions on the topics they had selected in advance of the weekend. The working groups, each consisting of around 8 participants, looked at the following issues: the relationship between peace and justice in Colombia; the challenges faced by the International Criminal Court including the recent withdrawals of three African States Parties; alternatives other than through the International Criminal Court to prosecute crimes committed in Syria; and the political, legal, and military responses to terrorism. The groups were tasked with producing a form of presentation in which they would provide one or more policy recommendations as well as identify further areas for academic and/or policy research. The groups were joined by faculty members who offered thoughts on their discussions and also their proposed ideas.

Evening Lectures

Location: MOOOF, Binckhrostdaan 135, 2516BA The Hague

19,00-21,00 – Sir Nick Parker “Evaluating the Threat of Terrorism from North Ireland to Iraq: a Military Perspective”; **Jamie Brown** “Cyber Terrorism”

After having dinner at Restaurant Loic, the participants and faculty members, also joined by former Ambassador for War Crimes-at-Large, Stephen Rapp, and renowned journalist, Marlise Simons, retired to Pianino Theatre in order to hear two informal talks. One of these was delivered by General Sir Nicholas Parker and the other by Jamie Brown, a former participant at the Geoffrey Nice Foundation summer school in Dubrovnik and currently employed by the Council of Europe. Sir Nick spoke about the role of the military in different types of conflicts and the difficulties that they encounter with different missions, particularly in respect of non-traditional conflicts such as where terrorist tactics are involved, which he did with reference to his own personal experiences of military interventions in Northern Ireland, Sierra Leone, and Afghanistan. Jamie Brown then spoke about terrorism and the difficulties associated with counter-terrorism activities, particularly cyber terrorism, drawing of his experience at the Council of Europe and research that he had previously conducted. The talks were followed by a lively question and answer session.

Sunday, 20th November 2016

Morning Lectures

11:00-12:00 - Dr. Nevenka Tromp “Prosecuting Political Leaders”

12:00-12:30 - Marie-Ursula Kind “Post-Conflict Kosovo and Transitional Justice”

12:30-13:00 – Hamid Sabi: “No Hiding Place: Accountability for Mass Atrocities in National Jurisdictions”

The second day started with three lectures by **Dr. Nevenka Tromp, Marie Ursula-Kind, and Hamid Sabi**. **Dr. Tromp** spoke on the topic of prosecuting political leaders and within that broad framework discussed the issues surrounding the prosecution of individuals by international criminal tribunals including that such trials fail to explicitly make a finding as to the responsibility of a particular state or state apparatus which is wanted by victims because it is usually the case with politically motivated crimes that the actual perpetrators are merely part of a system of governance and it is that mechanism that facilitates the commission of international crimes. Dr Tromp also discussed the important role of international criminal tribunals in providing a historical record of events that took place.

Marie-Ursula Kind then delivered a very informative and interesting lecture on ‘Post-Conflict Kosovo and Transitional Justice’ drawing on, and speaking to, her experience as a Senior Transitional Justice Adviser for the UNDP/OHCHR/UN Women Joint Project ‘Support to Transitional Justice in Kosovo’, to which she was seconded from the Swiss Expert Pool for Civilian Peacebuilding, as well as her other diverse experience working in the region. Marie-Ursula Kind explained the importance of transitional justice mechanisms including their role in facilitating storytelling through, for example, truth commissions, the provision of medical and rehabilitation services, achieving justice and accountability, and securing guarantees of non-recurrence. After explaining how the Kosovo court was created, she identified some of the difficulties associated with facilitating transitional justice in the region including that both national and local level prosecutions had not yet targeted mid-level perpetrators, primarily for political reasons, and that this created a dangerous impunity gap.

Finally, **Hamid Sabi**, another faculty member of the Geoffrey Nice Foundation summer school, spoke about a new project with which he is involved called 'No Hiding Places'. Mr Sabi spoke about how the project intended to shine a light on the conflicts and crimes that are beyond the reach of the traditional justice mechanisms and which have taken place, and also continue to take place, with relative impunity such as the crimes that are being committed in Syria. Drawing on his own knowledge and experience of highlighting the crimes that were perpetrated in Iran following the revolution, Mr Sabi identified some of the difficulties associated with pursuing individual perpetrators within national jurisdictions; using some of his personal experience by way of illustration, and encouraged us all to think about other ways to address the accountability and impunity gap that exists in respect of many situations around the world.

Working Group Sessions and the Plenary

After a lunch break, the working groups reconvened to continue with their discussions and to complete the final preparations for their presentations to be delivered in the plenary session. Over the few hours that the groups had been together they had managed to produce very coherent and interesting presentations. After one hour the groups convened in the Parliament Chamber of Pro Demos to deliver their presentations in the presence of faculty members. The first presentation was on alternatives to prosecuting crimes committed in Syria; the group first explained why it was not possible for the ICC to initiate a prosecution in Syria at the present time, namely because it lacked jurisdiction, and then went on offer some possible alternatives for prosecuting crimes that had been committed. This included the use of universal jurisdiction and there was also some discussion about the potential for the creation of a hybrid tribunal.

The next presentation looked at the resolution of the civil conflict in Colombia, which had taken place between the FARC and the Colombian government, and considered the relationship between peace and justice in this situational context. Firstly, the group took a poll of the audience to establish whether its members attached greater importance to peace or justice, and perhaps quite surprisingly, the majority would sacrifice accountability for long term peace. After this an overview of the conflict was provided and then the presentation took the form of a mock debate in which competing views about the relative importance of peace and justice were exchanged.

The third presentation look at the political, legal, and military responses to terrorism. The group first explained that there was not a universally accepted definition and identified some of the conflicting features of different definitions. They then told us that they had spent a lot of their time discussing the issue of defining terrorism and then presented the definition that they had agreed upon. In the question and answer session that followed, the relevance and importance of defining terrorism was the subject of intense discussion as was the definition that the group had provided. During their presentation the group also identified some of the potential responses to terrorism which included the use of autonomous weapons systems which also sparked some debate between the group and the audience.

The final presentation concerned the challenges faced by the International Criminal Court and, more specifically, the three African states that had recently withdrawn from the Rome Statute. The presentation took the form of a TV style debate in which an 'uninformed observer' posed a series of questions about the ICC to two teams; a pro-ICC team and a team that was more critical of the Court. The questions included 'what is the purpose of the ICC?'

and ‘why are states leaving?’, and this allowed the teams to engage in some analysis of the issues facing the ICC and to offer some views about the way forward. This was followed by a member of the group, acting as the President of the Assembly of States Parties of the ICC, offering some conclusions about the challenges faced by the Court and what needs to be done to address the concerns raised by the African States Parties that have withdrawn from the Court.

Evening Lectures

Location: MOOOF, Binckhroostlaan 135, 2516BA The Hague

19,00-21,00 – Gjyljeta Mushkolaj “Background and Legitimacy of the Kosovo Special Court”; **Daniel Wand** “Future of the International Criminal Court”

After having a dinner at Restaurant Loic, everyone once again retired to Pianino Theatre to hear another two talks; this including the Ambassador of Kosovo to The Netherlands, Vjosa Dobruna. The lectures on the second night were delivered by **Dr. Gjyljeta Mushkolaj**, Associate Professor at the Faculty of Law, University of Pristina and faculty member of the Geoffrey Nice Foundation summer schools, and **Mr Daniel Wand**, another former participant in the Geoffrey Nice Foundation summer school and a current PhD candidate at the School of Politics and International Studies at the University of Leeds and visiting scholar at the Vrije Universiteit Amsterdam.

Dr Mushkolaj spoke about the new Kosovo court and its legitimacy; she provided some background as to how the court came about and was developed, and then went on to discuss some of the issues surrounding this newly established criminal justice institution. Daniel Wand spoke on the topic of the future of the International Criminal Court including the challenges faced by the Court and he also discussed the reasons given by the three African states for withdrawing from the Court and what needs to be done by states and the court to address the concerns that have been raised. This was followed by another engaging question and answer session during which a number of issues were discussed including the difficulties faced by courts in gathering evidence where they are based far away from where the crimes they try are committed and the issue of head of state immunity.

Monday, 21st November 2016)

Visit to the ICTY

In the morning the group visited the International Criminal Tribunal for the Former Yugoslavia which included watching a documentary produced by the outreach division of the ICTY concerning the crimes committed in Prijedor during the Balkans conflict and the investigations and prosecutions at the ICTY that followed. This was a very interesting experience for the participants and we learnt a lot. We were also given an engaging and informative presentation by the Tribunal’s spokesperson and former head of outreach, Mr Nenad Golčevski, on the work of the ICTY including the convictions that it has secured and the important function played by victim witnesses in trials which involved showing us a number of interesting video clips. We were also shown the main courtroom of the ICTY and given an explanation of its layout.

ASP Side Event: Crimes against Humanity in North Korea

After our visit to the ICTY, the participants headed to the ASP side event on North Korea and crimes against humanity co-convened by the Geoffrey Nice Foundation in cooperation with the Giordano Bruno Foundation, and sponsored by the Embassy of the Republic of Korea in the Netherlands and the International Coalition to Stop Crimes against Humanity in North Korea. The very important and timely event took place at the Marriott Hotel next to the World Forum conference centre where the annual ASP meeting was taking place. The event was attended by around 140 people including a number of distinguished delegates and guests including the Director of the Trust Fund for Victims of the ICC. The panel event, moderated by Dr Nena Tromp, consisted of a number of distinguished speakers which looked at the issues involved from a number of different perspectives.

This event was organised by the International Coalition to Stop Crimes against Humanity in North Korea together with the Geoffrey Nice Foundation on Law, History, Politics, and Society in the Context of Mass Atrocities and the Giordano Bruno Foundation, and was co-hosted by the Embassy of the Republic of Korea to the Kingdom of the Netherlands.

ORGANISER: ICNK (International Coalition to Stop Crimes against Humanity in North Korea)

CO-ORGANISERS: Geoffrey Nice Foundation on Law, History, Politics and Society in the Context of Mass Atrocities, Giordano Bruno Foundation

CO-HOST: Embassy of the Republic of Korea to the Kingdom of the Netherlands

SPEAKERS (in the order of presentation)

- Kim Hyeong Soo, a defector who used to work at the Kim's Family Health Care and Longevity Institute
- Eunkyong Kwon, Secretary General of ICNK
- O'Gon Kwon, former ICTY Judge
- David Hawk, Member of ICNK Steering Committee and *author on North Korea's Hidden Gulag*
- Nicolai Sprekels, Giordano-Bruno-Foundation/Chairman of Saram e.v.
- Sir Geoffrey Nice, Prosecutor of Slobodan Milošević at the ICTY/Co-founder of Geoffrey Nice Foundation

MODERATOR

- Dr. Nevenka TROMP, University of Amsterdam

TOPICS

- Appropriate strategies to ensure accountability for crimes against humanity committed by the authorities of the DPRK, especially through the International Criminal Court
- Victims' testimonies on human rights abuse - such as torture, enforced disappearance and other inhumane acts amount to crimes against humanity - and criticism about the DPRK authorities responsible for such violation of human rights law
- National mechanisms to exploit labour, which is allegedly pertinent to enslavement
- Crimes against humanity committed in political prison camps, detention facilities and other institutions responsible for crimes against humanity

- Why the soft diplomacy will not "open up" DPRK and is actually supporting - unintended – the Human Rights Crimes by the Regime
- Referral to the ICC and the alternatives

In March 2016, stimulated by a recommendation of the Commission of Inquiry, the UN Human Rights Council established a group of independent experts to explore appropriate ways to seek accountability for crimes against humanity committed in the DPRK. The experts were asked to recommend mechanisms of accountability to secure truth and justice for the victims of such atrocities, including a referral to the ICC. The ‘side event’ on DPRK, to take place at the Assembly of States Parties Conference, will address the widespread and systematic attacks directed against civilians in the DPRK including torture, enforced disappearance, enslavement, and other inhumane acts. In addition to addressing possibilities of an ICC referral, this panel will also consider other available approaches how to stop human right abuses in DPRK and how to hold to account those responsible for these abuses.

PROCEEDINGS

Before the panellists began their interventions, the audience had the privilege of hearing briefly from His Excellency **Judge O-Gon Kwon** who emphasised the importance of the panel that had been convened and the need to address the issues that it would consider. Following this we heard from the first speaker, **Kim Hyeong Soo**, a defector of the North Korean regime, who spoke about his experiences of living inside North Korea and his escape, providing an insight into the extent of the repressive nature of the state. **Mr Hyeong Soo** was asked by an audience member whether he still had contact with his wife or other family in North Korea, and he replied that his wife now lives with him in South Korea having also managed to escape and that he maintained contact with some individuals in North Korea who were able to communicate with him by using Chinese mobile phones. Next we heard from **Eunyoung Kwon**, Secretary General of the International Coalition to Stop Crimes against Humanity in North Korea (ICNK) who has been recognised for her work is helping to establish the UN Commission of Inquiry on North Korea. Eunyoung Kwon spoke about the use of forced labour by the North Korean regime which, she said, amounts to slavery and a crime against humanity.

David Hawk, prominent human rights researcher and advocate, a member of the steering committee of ICNK, author of *North Korea's Hidden Gulag* and former Executive Director of Amnesty International USA, addressed the audience on the content of his research, and particularly his book. He spoke about the political work camps that had been established by the regime and of crimes against humanity clearly committed in those camps. His accounts were all based on information obtained from interviews with former detainees of the camps who had either escaped or been released and then defected, or from former prison guards who had also defected to the Republic of Korea. He also spoke about how some of the camps, including *Camp 22*, had been closed and that the fate of the prisoners was unknown. He explained the role of satellite imagery in establishing the existence and location of the political prison camps which corroborates the testimony of former prisoners and guards. Prof. Hawk was asked a question from the audience about whether the internal structure and organisation of the North Korean regime was well understand and he explained that it was, in

fact, quite well understood because of the information that had been provided by defectors.

Nicolai Sprekels of the Giordano Bruno Foundation spoke to the audience about the fact that his organisation had established that North Korean citizens were being used as slave labour by companies operating in European states. He explained that such individuals would be closely guarded by North Korean officials, would not be allowed to interact with society in the European countries, and that their meagre wages would be sent back to North Korea to support the regime. He said that this was a form of slavery which could be addressed by European states.

Finally, Sir **Geoffrey Nice**, Prosecutor of Slobodan Milošević and Co-Founder of the Geoffrey Nice Foundation, spoke to the audience about the means by which accountability for crimes against humanity committed by the North Korean regime can be established other than by traditional criminal justice mechanisms such as the International Criminal Court, which doesn't have jurisdiction over the situation for two reasons: first, North Korea is not a 'States Party' to the Rome Statute and, second, there is no possibility, at the moment, of a referral of the situation to the Court by the UN Security Council because China would veto any proposed referral. Sir Geoffrey spoke of the importance of *formal* UN fact finding commissions of enquiry, like the one established for the situation in North Korea and which reported recently, and the power of *informal* tribunals for establishing historical records of crimes committed and identifying individual perpetrators, like the one established to consider the crimes committed by the Iranian revolutionary regime, with which Sir Geoffrey had been involved. After the panellists had concluded their interventions, the moderator took a number of questions from the floor. A member of the audience asked the panel about what South Korea was doing in order to help those who defected from North Korea as it was his understanding from speaking with people who had defected that the support wasn't available and that this led to many individuals returning to the DPRK. One of the panellists responded that there was a lot of help available from the South Korean government for defectors and that some people went back to the DPRK because of threats that were being made against their families. Another similar question raised was why there wasn't pressure being put on the Chinese government to stop sending people who had escaped back to the DPRK in contravention of the principle of non-refoulement. The panel agreed that more need to be done to put pressure on China to stop sending people back.

Alumni Weekend De-Brief and Discussion of the Future of the Sir Geoffrey Nice Foundation

After the North Korea side event, participants and faculty members were invited by Sir Geoffrey Nice and Dr. Nevenka Tromp to provide some feedback on the alumni reunion weekend and to discuss and offer any suggestions on how the organisation should be taken forward. There was an overall feeling of immense satisfaction with the alumni weekend and many expressed the view that they hoped it would continue to happen in the future. It was explained that it would be the student participants, or a committee comprising of student participants, that would take the lead in arranging the event next year. A suggestion was made, which was met with wide acceptance, that the alumni weekend, or at least part thereof, could take the form of a conference where individual participants could present their PhD research or any other research, academic or otherwise, that they had been conducting. This would be accompanied by a series of lectures by professionals and experts, as had occurred this year with great success.

There was, however, also a general consensus that the Foundation should remain true to its core of providing summer schools and educating individuals on multidisciplinary approaches to studying, understanding, and developing solutions to mass armed conflicts and mass atrocity crimes, which had been the original purpose for establishing the organisation. The participants also provided some ideas about what other activities and initiatives they would like to see the Geoffrey Nice Foundation engaging in and to which they could contribute. Ideas included the production of expert reports by groups of students independently or in collaboration with faculty members, both for specific purposes and to be hosted on the Geoffrey Nice Foundation's website for general inspection; the writing of Op-Eds by students under the name of the Geoffrey Nice Foundation or jointly between two or more members of the Foundation; the use of Twitter to promote the Foundation's activities and initiatives like the North Korea event that it hosted that day; and the establishing of different research groups for interested persons to share ideas, discuss research, and hopefully collaborate on output. There was, however, also a general consensus that the Foundation should remain true to its core of providing summer schools and educating individuals on multidisciplinary approaches to studying, understanding, and developing solutions to mass armed conflicts and mass atrocity crimes, which had been the original purpose for establishing the organisation.

Summary and Conclusion

The weekend was evaluated as very successful. The participants had the opportunity to study and learn about topics and issues that they had not necessarily been previously engaged in for a substantial period of time, and to engage in discussion and debate with their peers on a range of different issues. They had the benefit of many excellent lectures, talks, and interventions from faculty members, as well as the opportunity to meet and engage with individuals whom they had met at the summer school or whom they had not previously met but had shared interests. The alumni weekend clearly achieved its objective of laying the beginnings of the foundations of the future Geoffrey Nice Foundation.