



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

REPORT ON THE MASTER CLASS

Conflict Beyond the Reach of Law: Emerging World Order and the Search for Adequate Responses to Political Violence

This Master Class is a joint venture between the Geoffrey Nice Foundation, University of Amsterdam and the Serbian Helsinki Committee for Human Rights. It was held between 04 July and 15 July at the Inter-University Centre (IUC) in Dubrovnik, Croatia.

The annual Master Class - three consecutive years to date and continuing - is run in Dubrovnik on a non-profit basis. Faculty members are reimbursed for their travel and are provided with student level lodging in Dubrovnik. They receive no teaching fees.

Ten students from the Balkan region and from The Netherlands receive scholarships made available by Erasmus Plus through the Access Europe (a University of Amsterdam/Free University venture); one third of the students receive scholarships from their professional training organisations / employers (Inner Temple London, Lincoln's Inn London, UK Ministry of Defence, Ministry of Defence of Netherlands). Other students pay fees from their own funds.

INTRODUCTION

This Master Class addressed the new challenges humanity has been facing after the end of the Cold War 25 years ago. It explored military, political, diplomatic, humanitarian and legal responses to political violence and mass atrocities in armed conflicts and in state oppression based on four case studies – Iran, North Korea, Gaza and the Balkans.

IRAN

Iran's "constitutional" monarchy was brought to an end by the Revolution of 1978-79. On the 15th November 1979, the Islamic State of Iran, based on the Constitution that gave Muslim Supreme Leader Khomeini unlimited power, was established. After the revolution, between 1981 and 1988, a large number of supporters of the previous regime were arrested and brought before Islamic courts. Many were executed. The new regime

reacted with great violence against any form of protest or opposition to the supreme leader and his followers. Aside from the internal tensions, the Islamic Republic of Iran had been engaged in a major war with neighbouring Iraq from September 1981 onwards. After the Islamic Republic halted the July 1988 incursion into its territory by Mujahideen forces from Iraq, Ayatollah Khomeini issued a fatwa. This fatwa established Death Commissions that were to sentence to death not only People's Mujahideen of Iran (MKO) members whom they considered *mohareb* [waging war on God], but also other political opposition groups.

The Death Commissions were made up of a religious judge, the local prosecutor and a representative of the Ministry of Intelligence, along with other state officials. They interrogated those who were suspected of not subscribing to the Islamic faith and opposing the new regime. Those who maintained non-conforming views were executed. The only exceptions were "public heretics" (those who were not born to a Muslim father), to allow them to convert to Islam, on pain of death; those who refused were tortured. Innate heretics - those born Muslims, who had left the faith - were executed, including those who agreed to return to Islam. Victims of the Islamic Republic of Iran were diverse. Women in prison were segregated from men and forced to wear black chadors. Certain interrogators considered them "unclean" and refused to touch them, and some of them were beaten in sacks. Minors were imprisoned for political offences; some aged fourteen to sixteen. Children as young as twelve were converted into repenters and made to execute their fellow prisoners. Even though Iran signed the UN Convention on the Rights of the Child, young children were hanged, lined in front of firing squads, or even killed under torture just like other political prisoners. Families of political prisoners attested to brutal treatment at the hands of agents of the regime. For some, the only visit was the one prior to the prisoner's execution. Many witnesses reported religious or ethnic discrimination in addition, particularly against Kurds and Bahá'is, who faced continuous persecution. Other victims included opposition groups of the Islamic supreme leader and communists. Islamic Republic of Iran has never been compelled to deal with the mass atrocities from 1980s by the international community. In 2012, the Iran diaspora established an informal People's Tribunal for Iran with hearings held in London and The Hague.

NORTH KOREA

Since the division of the Korean peninsula in 1945 into South Korea - the 'Republic of Korea' and North Korea - the 'Democratic People's Republic of Korea' (DPRK) - North Korean citizens were exposed to violations of almost every aspect of their human rights. According to the Report of the UN Commission of Inquiry "systematic, widespread, and gross human rights violations have been and are being committed by the Democratic People's Republic of Korea, its institutions and officials" at a scale without parallel in the contemporary world - including extermination, murder, enslavement, torture, imprisonment, rape, forced abortions, and other sexual violence. Citizens are denied the right to have access to information from independent sources. State-controlled media are the only permitted sources of information. Access to television and radio broadcasts, as well as to the Internet, is severely restricted, and all media content is heavily censored

and must comply with directives issued by the Workers' Party of Korea. A special unit of the State Security Department for covert intelligence and digital operations use sophisticated, imported monitoring devices to detect mobile phone users who tried to make calls out of the country. Individuals whose conversations were overheard could be arrested if they were found calling someone in South Korea, or if they requested money to be sent to them. According to the above-mentioned UN Commission of Inquiry report the State operates an all-encompassing indoctrination machine that takes root from childhood to propagate an official personality cult and to manufacture absolute obedience to the Supreme Leader (Suryong), effectively to the exclusion of any thought independent of official ideology and State propaganda. The government uses threats of detention, forced labour, and public executions to generate fearful obedience, and imposes harsh restrictions on freedom of information and movement, both within the country and across its borders. The government also practices collective punishment for supposed anti-state offences, effectively enslaving hundreds of thousands of citizens, including children, in prison camps and other detention facilities where they face deplorable conditions and forced labour. The secretive totalitarian economy has increasingly isolated itself from the world. Its activities violated international agreements, thus inviting sanctions against it. However, while the DPRK has been repeatedly sanctioned by the United Nations (UN), the US, Japan, Canada, Australia and the European Union, the regime has shown little inclination to comply with international agreements. The UN sanctions against North Korea were geared towards preventing the proliferation of nuclear, chemical or biological weapons and delivery systems, as well as transactions involving technology, material or financial resources connected to its weapons of mass destruction (WMD) and missile programmes. After North Korea's first nuclear test in 2006, an embargo was imposed on military and technological materials, as well as luxury goods. In addition, the freezing of financial assets abroad was demanded. But have the sanctions worked?

GAZA

The Israel-Palestinian conflict is a long standing historical and political conflict where two parties – the Jewish and Palestinian – strive to establish their states on contested territories to which both sides aspire. The modern day conflict which has roots dating from the 1947 Israel-Arab war, was won by Israel. Israel subsequently drew its state borders, which were never accepted by its Palestinian citizens. The struggle for control of territory between two nations continued but with there being two Palestinian territories - Gaza Strip controlled by Hamas and West Bank under control of Fatah government - as centres of the conflict. The Gaza Strip is located in the southwestern part of Israel state and has an area of 360 km² with an estimated population of 1.8 million people. Hamas is a Sunni Islamic organization with Khaled Mashal as its leader, who controls Gaza Strip, with Palestinian Nationalism, Sunni Islamism and anti-Zionism ideologies. After 38 years of Israel armies presence on the Gaza strip, they withdrew in 2005. However fighting in Gaza, between Israeli and Hamas fighters, known as the Gaza conflict, continued through 2006, 2008, 2010, 2011, 2012, 2013 and 2014 with military

campaigns by the Israel army – IDF - on the territory of Gaza. The military campaign of July 2014 known as “Operation Protective Edge” led to a yet another UN commission of inquiry. On 23 July 2014, the Human Rights Council adopted Resolution S/21-1 in which it decided to establish an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014. In its report of 24 June 2015 the commission was able to gather substantial information pointing to serious violations of international humanitarian law and international human rights law by Israel and by Palestinian armed groups. In some cases, the commission states, these violations may amount to war crimes. Finally, it urges that immediate steps be taken to ensure accountability, including the right to an effective remedy for victims. However, the CoI did not lead to any follow up and Gaza remains occupied and isolated.

FORMER YUGOSLAVIA

International Criminal Tribunal for Former Yugoslavia - ICTY

Many authors have noted that, while war crimes are committed around the world every day, national and international laws designed to punish these acts are invoked only under favourable political circumstances. In international law this has resulted in some well-known initiatives aimed at addressing the individual criminal responsibility of high-level political and military officials. In 1945, *ad hoc* military tribunals in Nuremberg and Tokyo were established to try high-level German and Japanese perpetrators. But it was not until nearly the end of the 20th century that international political circumstances allowed for the establishment of another such tribunal, to address individual criminal responsibility for crimes committed on the territory of the former Yugoslavia. The UN Security Council (UNSC) laid the groundwork for creation of the ICTY in two Resolutions. UNSC Resolution 808 of February 1993 announced the establishment of an international tribunal to prosecute persons responsible for serious violations of international humanitarian law in the former Yugoslavia. The initial mandate of the ICTY was to put an end to such crimes and to take effective measures to bring the persons responsible for them to justice. UN Resolution 827 of May 1993 confirmed this mandate and asserted that the Tribunal would “contribute to ensuring that such violations of international humanitarian law are halted and effectively redressed,” and further, that one of the objectives of the ICTY was “to contribute to the restoration and maintenance of peace.” It was also at this time that the ICTY Statute was adopted, making the foundation of the Tribunal concrete. Once brought to life, the ICTY was afforded considerable power, as it was established under Chapter VII of the UN Charter – “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression” – compelling all UN states to cooperate. Other *ad hoc* and hybrid tribunals, for Rwanda, Cambodia, Sierra Leone, and Lebanon soon followed. Finally, the International Criminal Court (ICC) – the first permanent court with jurisdiction to address crimes committed in armed conflicts – was established in 2002. The ICTY was established in the middle of the violent conflict in BiH. In February 1993, parties to the conflict were presented with a plan known as the Vance-Owen Peace Plan (VOPP) which, if accepted, would have left BiH as a single state divided into ten ethnically-defined cantons. Negotiations definitively failed on 5 May 1993 when Bosnian Serb leaders rejected the plan. Less

than three weeks later, the UNSC announced the establishment of the ICTY at a public hearing, on 25 May 1993. The ICTY's creation was labelled by some as a 'fig leaf', alluding to the inability of the International Community to stop the commission of crimes in BiH through a peace settlement or military intervention.¹ Indeed, the creation of the Tribunal did not bring peace nor did it deter the warring sides from committing further crimes. The gravest crimes of the war in BiH were committed by Serb forces in the summer of 1995, in the areas of Srebrenica and Žepa, two years after the Tribunal was established; and the Kosovo conflict followed five years after the ICTY was created. The question arises whether the creation of the ICTY – or any international criminal court for that matter – can compensate for political, diplomatic, and military failures to end an ongoing military conflict, to secure a long-lasting political solution, or to contribute to reconciliation after the end of a conflict. Should one expect that legal remedies can resolve political, military, and diplomatic problems during an ongoing armed conflict or in the post conflict period?

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11. Sir Geoffrey Nice, Inner Temple Inn / Gresham Professor of Law / University of Buckingham, UK
12. Professor Mark Osiel, Iowa University, US
13. General Sir Nick Parker, UK
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15. Benedict Rogers, Christian Solidarity Worldwide, London, UK

¹ Hagan, Justice in the Balkans, 60, 62.

16. Hamid Sabi, London, UK
17. Shadi Sadr, Iran, UK
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32. Alya YAMAKOGLU, TURKEY

PROGRAM

Arrival, Sunday, 3 July

Monday, 04 July

09,00-10,00 - Opening lecture and Introduction: Nevenka Tromp

10,00-11,00 – Sergei Karaganov “Scenarios For The Future World Order”

11,30-12,45 – Geoffrey Nice, “Legal Response to Mass Atrocities: History of the International Criminal System”

12,45-13,00 – Introduction to Group Projects

16,30-18,00 – Assignment of Group Topics

18,00-19,00 - Practicum for students: Exercises performed by students on short case study of fictional war crimes trial, and other exercises, to show radical differences in approaches to setting historical / judicial accounts of events.

Tuesday, 05 July

09,00-11,00 – Hamid Sabi, “Absolute Impunity; How to Construct a Religious Totalitarian Dictatorship – Pathology of the Judicial System of The Islamic Republic of Iran”

11,30-13,30 – Hamid Sabi, “Crimes Against Humanity in Islamic Republic of Iran and Accountability”

13,30-16,30 – Lunch discussions, “Iran's People's Tribunal”

16,30-17,30 – Film Seminar, “Iran's People's Tribunal”

18,00-19,30 – Plenary discussion / Student practicum

Wednesday, 06 July

09,00-11,00 – Shadi Sadr, “Legal Responses to the Human Rights Abuses and Mass Atrocities in Iran”

11,30-13,30 – Shadi Sadr “Political Changes in Iran and Rethinking for Human Rights Strategies”

13,30-16,30 – Lunch discussions

16,30-17,30 – Plenary

18,00-19,30 – Don Ferencz “Legal Innovations: how to deal with mass atrocities?”

19,30-21,30 – Croatian Premier of the documentary: “Nuremberg: its Lessons for Today.” The original film was co-written and directed by Stuart Schulberg and in 1948.

Thursday, 07 July

9,00-11,00 – Benedict Rogers, “Search for an Adequate Response to Stop Mass atrocities in North Korea I”

11,30-13,30 – Sarah Son, “Search for an Adequate Response to Stop Mass atrocities in North Korea II”

13,30-16,30 – Lunch discussions

16,30-18,30 – Film Seminar, “Conspiracy” (Wannsee Conference

18,30-19,30 – Plenary Session



Friday, 08 July

09,00-11,00 – Avi Shlaim, “Middle East: The Israeli-Palestinian Conflict in Historical Perspective”

11,30-13,30 – Avi Shlaim, “Middle East: Israel, Hamas, and the wars in Gaza”

13,30-16,30 – Lunch discussions

16,30-17,30 – Nick Parker, “The Use of Military Force to Address Contemporary Security Challenges - Israel and ‘Operation Protective Edge’, 2014”

18,00-19,00 – Plenary Session

Saturday, 09 July (Half Day)

09,00-11,00 – Rodney Dixon, “Political leaders and Criminal Accountability”

11,30-13,30 – Joanna Korner, “Fairness of the International Criminal Courts”

Afternoon Free

Sunday, 10 July

Morning Free

16,00 Sightseeing Tour

Monday, 11 July

09,00-11,00 – Iain Bonomy “Retributive Justice at the International Criminal Courts”

11,30-13,30 - Bob Donia “Expert Witness”: Clio Goes to Court: Trials as Consumers and Producers of History”

13,30-16,30 – Lunch discussions

16,30-17,30 – Sonja Biserko, “Transitional Injustice in the Post-Conflict Balkans”

18.00-19,30 - Film Seminar – BBCfilm ‘CONSPIRACY’ – the Wannsee Conference

Tuesday, 12 July

09,00-11,00 – Mark Osiel, “Hard Choices in Transitional Justice”

11,30-13,30 – Kate Clark, “Restorative Justice in Gaza and the West Bank: Avenues to Justice for Palestinians under Occupation and Blockade”

13,30-16,30 – Lunch discussions

16,30-18,00 – Film seminar “Slobodan Milošević on Trial”

Wednesday, 13 July

09,00-11,00 – Bob Donia, “Are War Crimes Trials Obsolete ?”

11,30-13,30 – Kate Clark, “Restorative Justice in Bosnia”

13,30-16,30 – Lunch discussions

16,30-17,30 – Gjylieta Mushkolaj, “Kosovo Special Tribunal: a Triumph of Justice or Politics?”

18,00-19,00 – Plenary

20,00 – 21,30 - Book Launch – “Prosecuting Slobodan Milošević: The Unfinished Trial” by Nevenka Tromp.

Panel discussion with Pero Poljanić – the War-Time Mayor of Dubrovnik



Thursday, 14 July

09,00-11,00 – Steven Rapp, “Future of the International Legal Regime”

11,30-12,30 – Steven Rapp “Conflicts within the Reach of Law”

12,30-13,30 - Ben Ferencz “Video Lecture: Past and Future of International Criminal System”

13,30-16,30 – Lunch discussions

16,30-18,30 – Group Presentations on Research Seminar Findings part.1 (1 to 4 Group)

18,30-20,30 – Group Presentations on Research Seminar Findings part.2 (5 to 8 Group)

Friday, 15 July

10,00-12,00 – Evaluation of the Course

12,00 – The End

OUTPUT

Participants were divided into eight groups each consisting of four members. Two groups were assigned to one of the four case studies.

- **PRESENTATIONS** – at the end of the second week the groups presented their recommendations for the case studies allocated to them.
- **WRITTEN REPORT WITH RECOMMENDATION** – the final version of all eight reports will be published at the GNF website.

FINANCES

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CONTRIBUTORS

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