

REPORT

MASTER CLASS ON “LAW, HISTORY, POLITICS, AND SOCIETY IN THE CONTEXT OF MASS ATROCITIES”

HELD AT THE INTER-UNIVERSITY CENTRE IN DUBROVNIK, CROATIA

FROM 30 JUNE TO 11 JULY 2014

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Introduction

International and national criminal tribunals dealing with mass atrocities have highlighted the need to research the impact of legal procedures on historical interpretations of armed conflicts, war violence, its causes, and consequences.

In the unfolding scholarly debate about the impact of international criminal courts, there is growing understanding that criminal proceedings dealing with mass atrocities and political violence always have a number of ‘extra-legal’ impacts, which yet have to be articulated fully.

Objectives

The Master Class's held at the IUC Dubrovnik had for its objective to advance a multidisciplinary approach to International Criminal Justice through exploration of legal, historical, political and sociological methodologies by a balanced mixture of students of different disciplines. The faculty of lecturers included academics with backgrounds in law, history, political science and sociology, together with politicians, international lawyers and human rights activists. The Master Class was held in the Croatian university town of Dubrovnik, a site accessible to participants from the region where there have been recent conflicts. The regional 'constituency' of students was expanded by involvement of participants from Western Europe and the USA. Given that the majority of universities in the region do not have a curriculum dealing with international criminal courts in the context of Transitional Justice, this Master Class was designed to fill a gap in curricula for students from the region. Students from outside the region were enabled to enrich their academic curricula by the interdisciplinary approach and by interaction with colleagues from the region where the mass atrocities had occurred.

Description of the Concept

Law: The legal processes used at international criminal courts were initially based on the Common Law's adversarial system, but, over the years, have incorporated a number of elements from the Civil Law's inquisitorial system – becoming a hybrid of the two. Establishing guilt or innocence as expressed in judgments is the primary task of all legal processes. To understand what is a legal injustice one has to understand the applicable normative system, rules of procedure and legal theories as well as the evidence given at the particular trial. These subjects would normally only be of professional interest to lawyers, judges, scholars and students of law. However when dealing with mass atrocities and political violence there is a growing awareness of a need for a multi- and interdisciplinary approach to research and to the teaching of institutionalised legal responses to mass atrocities.

History: Mass atrocities trials produce extensive trial records that eventually become historical sources. At every war crimes trial, history will inevitably be discussed because, first, all sides - prosecution and all accused – will use the historical background to explain the conflict and its violent nature from their points of view. Second, all sides might call expert witnesses on history to inform or educate the

judges about the conflict. Third, every trial record will become a historical source and might contribute to new or extended historical interpretations of the given historical period. Yet, the lawyers and judges may draw very different conclusions from those drawn by historians, despite working from the same trial records.

Politics: New post-conflict political elites will try to interpret the ‘Legal Narrative’ as told in the courtroom and Legal Justice as articulated in court judgments to their own ends. There are different ways for political elites to (ab)use mass atrocities trials in achieving objectives other than justice. They might use trials to influence the processes of shaping collective memory about the conflict or by stressing the wrongdoings and criminality of the ‘other side’ in the conflict while downplaying the role of their own side. They might try to use the existence of war crimes courts to get rid of political rivals by influencing the indictment strategy of the courts – for example, by selectivity in what incriminatory evidence they provide to an international prosecutor from state archives. They may use the mass atrocities trials for immediate political objectives, such as accession to the EU.

Society: What is the impact of mass atrocities trials on post-conflict societies? What is the reaction of the victims, of the Media and of NGOs? How easy or difficult is it for non-specialists to understand legal proceedings and to appreciate the impact of ‘Retributive Justice’, which is perpetrator oriented? What about ‘Restorative Justice’, which is victim oriented? How does one achieve reconciliation in post-conflict societies where the perpetrators and victims remain living close to, or even intermingled with, each other? Should reconciliation be a goal of Retributive Justice at all?

Target Group: MA and PhD students of Law, History, Sociology, Politics, International Relations, Journalism, European Studies and related subjects.

Course Directors

Sonja Biserko, President of the Helsinki Committee for Human Rights of Serbia,
Sir Geoffrey Nice QC, Former Principal Prosecutor in the ICTY Case against Slobodan Milošević and Gresham Professor of Law, United Kingdom
Nena Tromp, Former Leadership Researcher for the Prosecution at the ICTY; Lecturer at the Department of European Studies at the University of Amsterdam, The Netherlands).

Faculty members

Right Honourable Lord Iain Bonomy (Former ICTY Judge and former Judge of Court of Appeal of Scotland)
Ms. Haydee Dijkstal (International Criminal Lawyer, The Hague, The Netherlands)
Mr. Rodney Dixon QC (International Criminal Lawyer, Temple Gardens Chamber, London, UK)

Dr. Ivanka Dodovska (Faculty of Law, University of Skopje, The Republic of Macedonia)

Professor Robert Donia (University of Michigan, USA; Prosecution Expert Witness at ICTY)

Professor Žarko Korać (Member of Parliament of the Republic of Serbia)

Judge Joanna Korner, QC (Former ICTY Prosecutor, Judge in UK)

Professor Gjylieta Mushkolaj (Faculty of Law, University of Priština)

Madam Doris Pack (EU Parliament Member)

Professor William Schabas (University of Leiden, The Netherlands/University of Middlesex, UK)

Dr. Bill Wechsler (The Balkan Institute, Priština, Kosovo)

Participants

1. Anika Auweiler (NL/Germany)
2. Alexandru Muraru (Romania)
3. Dea Marić (Croatia)
4. Gemma Whitehouse (UK)
5. Luz Balaj (Kosovo)
6. Pem Tshering (Bhutan)
7. Janna Bijzen (NL)
8. Ileen Vaart (NL)
9. Slaven Rašković (Croatia)
10. Anna Gopsill (UK)
11. Aferdita Ndrepepaj (Albania)
12. Natalie Connor (UK)
13. Hikmet Karčić (Bosnia-Herzegovina)
14. Hannah Wright (UK)
15. Jovana Kokir (Serbia)
16. Gent Salihu (Kosovo)
17. Marieke Zoodsma (NL)
18. Josipa Jakšić (Croatia)
19. Dorien Admiraal (NL)
20. Samantha Godec (UK)
21. Mara Tromp (NL)
22. Simon Crowther (UK)
23. Ekatarina Gabareva (Russia)
24. Koen Kluessien (NL)
25. Kastriot Orana (Kosovo)
26. Elise Noordeloos (NL)
27. Geert Luitjens (NL)
28. Edita Miftari (Bosnia-Herzegovina)
29. Evin Zengin (UK)
30. Omar Soliman (UK)
31. Natasha Vidova (Macedonia)

All participant received upon the completion of the Master Class a Certificate of Attendances Issued by Interuniversity Centre of Dubrovnik.

PROGRAMME

Sunday 29 June

Arrival

Day 1

Monday 30 June

09,00 - 10,00 – Sonja Biserko, Geoffrey Nice, Nena Tromp “Introduction”

10,00 - 10,45 – Nena Tromp “Why Here?”

10,45 - 11.15 - Break

11,15-12,45 – Geoffrey Nice - “International Criminal Courts: Why bother?”

12,45-13,30 – Group Formation and Introduction by Joanna Korner and Haydee Dijkstal to the case of Robert Walkinshaw

13,30- 16,00 – Lunch Group Sessions discussion the question “Why Here and Why Bother?”

16,00-19,00 –Plenary Session chaired by Iain Bonomy and William Schabas.

DAY TWO

Tuesday 01 July

09,00-11,00 – William Schabas: “Present and Future of International Criminal Courts: from ICTY and ICTR to the ICC”

11,00-11,30- Break

11,30-13,30 - Iain Bonomy “Judgments and Legal Narrative as a Lasting Legacy of the International Criminal Trials dealing with the Individual Criminal Responsibility”

13,30-16,00 – Lunch Group Session – i.e. lunch in small discussion groups discussing the topic “Present and Future of the International Criminal System”

16,00-19,00 – Plenary Session chaired by Geoffrey Nice and Robert Donia.

DAY THREE

Wednesday 02 July

09,00-11,00 – Joanna Korner “International Criminal Trials: Fair or What?”

11,00-11,30 – Break

11,30-13,30 – Nena Tromp “Mass Atrocities Trials: Retributive, Restorative Justice and Reconciliation”

13,30-16,00 - Lunch Group Session

16,00- 19,00 – Film Seminar on the tension between Law and Justice: “Billy Budd”

DAY FOUR

Thursday 03 July

09,00-11,00 – Geoffrey Nice “Political Leaders on Trial”

11,00-11,30 – Break

11,30-13,30 – Rodney Dixon: “Trying Political Leaders: Immunity, Self-representation, Trials in Absentia”

13,30-16,00 - Lunch Group Session

16,00- 18,00 – Plenary Session chaired by Joanna Korner and Iain Bonomy.

18,00-19,00 – Task Force Meeting

DAY FIVE

Friday 04 July

09,00-11,00 – Robert Donia "The Witness Who Saw Nothing: ICTY Proceedings Through the Eyes of an Expert Historical Witness"

11,00-11,30 - Break

11,30-13,30 – Film Seminar on Trying political leaders, “Milošević on Trial”

13,30-16,00 - Lunch Group Session

16,00-18,00 – Plenary Session chaired by Rodney Dixon and Sonja Biserko.

DAY SIX

Saturday 05 July

09,00-11,00 - Robert Donia “Text, Context, and Pretext: Dueling Historical Narratives in the ICTY Courtroom”

11,00-11,30 - Break

11,30-13,30 - Iain Bonomy “Writing a Judgment in a Mass Atrocity Trial

FREE AFTERNOON

DAY SEVEN

Sunday 06 July

16,30-18,30 – Sightseeing of Dubrovnik starting at the IUC

DAY EIGHT

Monday 07 July

09,00-11,00 – Nena Tromp “Establishing a Record: Historical Narrative about the Yugoslav Wars according to Milošević’s Trial Record”

11,00-11,30 –Break

11,30-13,30 – Professor Gjylieta Mushkolaj “Legal and Historical Post-conflict Narratives: the Case Study of Kosovo”

13,30-16,00 – Lunch Group Sessions

16,00-19,00 – Film Seminar “Snijegt/Snow” on post-conflict societies and search for truth.

DAY NINE

Tuesday 08 July

09,00-11,00 – Ivanka Dodovska “The Macedonian Media and the Trial of the ICTY Indictee Johan Tarchulovski”

11,00-11,30 – Break

11,30-13,30 – Sonja Biserko “Achievements and Shortcoming of the ICTY in the Region: A View of a Human Rights Advocate from Serbia”

13,30-16,00 - Lunch Group Session

16,00-19,00 – Film Seminar “Town Without Pity”.

DAY TEN

Wednesday 09 July

09,00-11,00 – Hikmet Karičić “Missing Persons Project in BiH; Slaven Rašković “Working with the Victims in Croatia”

11,00-11,30 – Break

11,30-13,30 – Dea Marić “Writing and Re-Writing History: a Critical Survey of Croatian History Textbooks”; Bill Wechsler “Education Initiatives in Post-Conflict Kosovo”

13,30-16,00 – Lunch Group Sessions

16,00-19,00 – Doris Pack “Politics Outside Courtroom: The EU, the ICTY and the EU Accession Policy”

DAY ELEVEN

THURSDAY 10 July

09,30-11,00 – Žarko Korać, “Politics and the ICTY: a View from a Politician from Serbia”

11,00-11,30 – Break

11,30-13,30 - Plenary Discussion on Law and Politics

13,30-16,00 – Lunch

16,00-19,00 - Haydee Dijkstal and Geoffrey Nice legal exercise for students.

20,00 – 24,00 – **Course Dinner**

DAY TWELVE

Friday 11 July

09,00-11,00 – “Evaluations of the Course”

11,00-11,30 – Break

11,30-13,30 – Plenary Session: Recommendations

END OF THE COURSE

Follow-Up Activities:

- **Publishing the Lectures as a Book**
- **Organising Next Year Master Class “History of Genocide as Told in Courts”**