

Master in International Affairs (MIA)

Academic year 2009 - 2010

Post-Conflict Justice

E608 – Fall – Post-Conflict Justice – 6 ECTS
Mondays, 14:15-16:00 (CV513)

Course Description

The course analyzes national and international attempts to promote or to consolidate peace processes and rule of law after periods of gross human rights violations and/or conflicts. These processes aim at sanctioning war criminals, preventing the repetition of these violations, fostering the rule of law and promoting “reconciliation” in societies that have been divided by war. These objectives are often in tension with one another. One of the goals of the course is to explore with the students the complex relationship between justice, peace and social reconstruction. We will look in particular at the work achieved by some international or hybrid criminal tribunals and truth commissions. In doing so, we will examine the establishment, the functioning and the efficiency of these public policies of reconciliation.

> PROFESSOR

Pierre Hazan
pierre.hazan@graduateinstitute.ch
079 282 55 65
022 908 58 19
Office: CV 303
Office hours:
Wednesdays, 12h30-14h00

> ASSISTANT

Rachelle Cloutier
rachelle.cloutier@graduateinstitute.ch
022 908 59 48
Office : Rigot 35
Office hours: By appointment

Syllabus

Course Website

http://graduateinstitute.ch/mia/mia/mia_non_compulsory_courses_2/post_conflict_justice_2.html

Requirements

Students will be evaluated on the following requirements:

1. For 60% of the grade: A research essay of approximately 5000 words. This essay will answer a specific question to be chosen through class and in private meetings. The students will make a 20-30 minute long oral presentation of their paper and of their main arguments. During the presentation, you cannot read your paper, but you can have notes. This paper will be handed to the other students a week before the relevant class.
2. For 30% of the grade: A final take-home exam consisting of two essay questions (out of a choice of three) (1500 words each question). The exam will be distributed December 7 and is due December 18, 2009.
3. For 10 % of the grade: Active and high-quality participation will be taken into account.

Readings

The required readings which are book chapters and journal articles are assembled in a course reader; other required readings such as news articles are available directly from web sites. Optional readings (such as books) will be placed on reserve at the library.

Course Outline & Readings

Session 1 (September 21) Introduction: Definition, Dilemmas, Debate of Post-Conflict Justice

No required readings

Session 2 (September 28) Transitional Justice Genesis: The Politics of the Inter-Allied Military Nuremberg Tribunals

Readings:

1. Jackson, Robert, "Opening Statement at the Nuremberg trials", 21 November 1945, http://avalon.law.yale.edu/imt/chap_05.asp
2. Jaspers, Karl, *La culpabilité allemande*, Paris, Editions de Minuit, 1990, pp. 25-58.
3. Maguire, Peter, *Law and War, An American Story*, New York, Columbia University Press, 2001, chap. VI and Conclusion.
4. Sands, Philippe (ed.), *From Nuremberg to The Hague, The Future of International Criminal Justice*, Cambridge, Cambridge University Press, 2003, pp. 1-30.

Optional readings:

1. Interallied Military Nuremberg Tribunals, selected documents, Yale Law School, http://avalon.law.yale.edu/subject_menus/imt.asp
2. Gardner, Feldman Lily, "The Principle and Practice of 'Reconciliation' in German Foreign Policy Relations with France Israel, Poland and the Czech Republic", *International Affairs*, vol. 75, no. 2, April 1999, pp. 333-356.
3. Taylor, Telford, *The Anatomy of the Nuremberg Trials: a Personal Memoir*, New York, Littlebrown, 1993.
4. Wieviorka, Annette, *Les procès de Nuremberg et de Tokyo*, Bruxelles, Editions Complexe, 1996.

Session 3 (October 5) The Eichmann Trial: Reformulating National Identities Through Trial

Readings:

1. Arendt, Hannah, *Eichmann in Jerusalem: A Report on the Banality of Evil*, Penguin Classics, 1994, Chapter 1 "The House of Justice", pp. 3-21.
2. Segev, Tom, "Israel and the memory of the Holocaust", *Le Monde Diplomatique*, April 2001, <http://mondediplo.com/2001/04/13eichmann>.
3. Jankelevitch, Vladimir, *L'imprescriptible*, Paris, le Seuil, 1986, pp.17-63.

Optional readings:

1. Hausner, Gideon, *Justice à Jérusalem, Eichmann devant ses juges*, Paris, Flammarion, 1996.
2. Seguev, Tom, *The Seventh Million: The Israelis and the Holocaust*, New York Hill & Wang, 1993.
3. Novick, Peter, *Holocaust in American Life*, Boston, Houghton Mifflin Co, 1999.
4. Margalit, Avishai and Gabriel Motzkin, "The Uniqueness of the Holocaust", *Philosophy and Public Affairs*, 1996, pp. 64-83.
5. Wieworka, Annette, *L'ère des témoins*, Paris, Plon, 1998.

Session 4 (October 12)

The Fall of the Berlin Wall and the Emerging Toolkit of Transitional Justice

Readings:

1. Carothers, Thomas, "The End of the Transition Paradigm", *Journal of Democracy*, vol. 13, no. 1, January 2002, pp. 1-21.
2. Derrida, Jacques, « Le siècle et le pardon », *Le Monde des Débats* 9, December 1999, pp. 10-17. <http://hydra.humanities.uci.edu/Derrida/siecle.html>
3. Kritz, Neil (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 1 *General Considerations*. Vol. 2, *Country Studies*. Vol. 3, *Laws, Ruling, and Report*. Washington, DC, United States Institute of Peace Press, 1995, pp. XIX-XXX.
4. Bloomfield, David, Teresa Barnes and Luc Huyse, *Reconciliation After Violent Conflict, A Handbook* Stockholm, Institute for Democracy and Electoral Assistance, 2003, pp. 10-32.
5. UN Security Council, *Report of the Secretary General on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, August 23, 2004.

Optional readings:

1. Barkan, Eleazer, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, New York, Norton and Company, 2000.
2. Bassiouni, Cherif, *Post Conflict Justice*, New York, Transnational Publishers, 2002.
3. Garapon, Antoine, *Des crimes qu'on ne peut ni punir ni pardonner : pour une justice Internationale*, Paris, Odile Jacob, 2002.
4. Hayner, Priscilla B., *Unspeakable Truths: Confronting State Terror and Atrocity*, New York, Routledge, 2001.
5. Lefranc, Sandrine, *Politiques du pardon*, Paris, PUF, 2002.
6. Minow, Martha, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston, Beacon Press, 1998.
7. Ricœur, Paul, *La mémoire, l'histoire et l'oubli*, Paris, Seuil, 2000.
8. Stover, Eric and Harvey Weinstein (eds.), *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge, Cambridge University Press, 2004.
9. Teitel, Ruti, *Transitional Justice*, New York, Oxford University Press, 2000.

Session 5 (October 19)

The International Tribunal for Former Yugoslavia: Is Justice Effective in a Time of War?

Readings:

1. Dizdarevic, Zlatko and Gigi Riva, *J'accuse l'ONU*, Paris, Calmann-Lévy, 1995, pp. 13-31.
2. Hazan, Pierre, *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia*, College Station, Texas, Texas A&M University Press, 2004, pp. 64-89.
3. Moore, Jonathan (ed.), *Hard Choices, Moral Dilemmas in Humanitarian Intervention*, Lanham MD, Rowman and Littlefield Publishers, 1998, pp.195-211.

Optional readings:

1. Cassese, Antonio, "The ICTY: A Living and Vital Reality", *Journal of International Criminal Justice*, vol. 2, no.2, 2004, pp. 585-597.
2. Gallois, Pierre-Marie and Jacques Vergès, *L'apartheid judiciaire: le tribunal pénal international arme de guerre*, Lausanne, L'Age d'Homme, 2002.
3. Holbrooke, Richard, *To End a War*, New York, Random House, 1999.
4. Rohde, David, *A Safe Area – Srebrenica: Europe's Worst Massacre since the Second World War*, London, Pocket Books, 1997.
5. Rudolph, Christopher, "Constructing an Atrocities Regime: The Politics of War Crimes Tribunals", *International Organization*, vol. 55, no. 3, Summer 2001, pp. 655-691.
6. Scharf, Michael, *Balkan Justice: The Story behind the First International War Crimes Trial since Nuremberg*, Duham, Carolina Academic Press, 1997.

Session 6 (October 26)

The International Tribunal for Rwanda: Genocide and Hate Media

Readings:

1. Della Morte, Gabriele, "De-Mediatizing the Media Case, Elements of a Critical Approach", *Journal of International Criminal Justice*, vol. 3, no. 4, 2005, pp. 1019-1033.
2. Straus, Scott, "What is the Relationship between Radio and Violence: Rethinking Rwanda's 'Radio Machete'", *Politics & Society*, vol. 35, no. 4, 2007, pp. 609-637.
3. Thompson, Allan (ed.), *The Media and the Rwanda Genocide*, London, Pluto Press, 2007, chapters 4 (Des Forges) and 5 (Chrétien), pp. 41-61.

Optional readings:

1. Chrétien, Jean-Pierre, *Rwanda: les médias du génocide*, Paris, Karthala, 2000.
2. Cruvellier, Thierry, *Un Nuremberg pour le Rwanda?*, Paris, Calmann-Lévy, 2006.
3. Snyder, Jack and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice", *International Security*, vol. 28, no. 3, Winter 2003/4, pp. 5-44.
4. Staub, Ervin, "Justice, Healing, and Reconciliation: How the People's Courts in Rwanda Can Promote Them", *Peace and Conflict: Journal of Peace Psychology*, vol. 10, no. 1, 2004, pp. 25-32.
5. Website of the ICTR: <http://69.94.11.53/>

Session 7 (November 2)

The South African Truth and Reconciliation Commission: the Truth vs. Justice debate

Readings:

1. Brody, Reed, "Justice, the First Casualty of Truth", HRW, <http://www.hrw.org/en/news/2001/04/12/justice-first-casualty-truth>
2. Amy Gutman and Dennis Thompson, "The moral Foundations of Truth Commissions", pp. 22-45, in Rotberg, Robert and Dennis Thompson (eds.), *Truth versus Justice: The Morality of Truth Commissions*, Series in the University Center for Human Values, Princeton, Princeton University Press, 2000.
3. Tutu, Desmond, *There is no Future without Forgiveness*, New York, Doubleday, 1997, pp. 13-33.
4. Wilson, Richard, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, Cambridge, Studies in Law and Society, 2005, pp. 1-30.

Optional readings:

1. Boraine, Alex, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*, Oxford, Oxford University Press, 2000.
2. Gibson, James L., "The Contributions of Truth to Reconciliation: Lessons from South Africa", *Journal of Conflict Resolution*, vol. 50, no. 3, June 2006, pp. 409-432.
3. Gibson, James L., "The Truth About Truth and Reconciliation in South Africa", *International Political Science Review*, vol. 26, no. 4, 2005, pp. 341-361.
4. Mamdani, Mahmood, "Reconciliation without Justice", *Southern African Review of Books*, vol. 46, 1996, pp. 3-6.
5. O'Connell, Jamie, "Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?", *Harvard International Law Journal*, vol. 46, no. 2, Summer 2005, pp. 295-345.

Session 8 (November 9)

The Moroccan Truth and Reconciliation Commission, Forgiveness and Impunity

Readings:

1. Hazan, Pierre, *Morocco Betting on a Truth and Reconciliation Commission*, United States Institute of Peace, Washington D.C., Special Report no. 165, July 2006, <http://www.usip.org/files/resources/sr165.pdf>

2. Human Rights Watch, *Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present*, vol. 17, no. 11, November 2005.
3. His Majesty King Mohammed VI, « La commission équité et réconciliation et le rapport sur le développement humain au Maroc », Discours royal, Rabat, January 6, 2006.
4. Instance Équité et Réconciliation, « Synthèse du rapport final (résumé) », Rabat, IER, 2005, http://www.ier.ma/article.php3?id_article=1496

Optional readings:

1. Basri, Driss, « Me juger, c'est juger Hassan II », *La Vérité* (Rabat), no. 195, 21-27 janvier 2005.
2. Hazan, Pierre, *Juger la guerre, juger l'histoire, du bon usage des commissions vérité et de la justice internationale*, PUF, 2007, pp 139-193.
3. Zeghal, Malika, *Les islamistes marocains : Le défi à la monarchie*, Paris, La Découverte, 2005.
4. Slyomovics, Susan, *The Performance of Human Rights in Morocco*, Philadelphia, University of Pennsylvania Press, 2005.

Session 9 (November 16) The Universal Jurisdiction Debate: Pinochet and Habré Cases

Readings:

1. Roth, Kenneth, "The Case For Universal Jurisdiction", *Foreign Affairs*, September/October 2001.
2. Kissinger, Henry, "The Pitfalls of Universal Jurisdiction", *Foreign Affairs*, July/August 2001.
3. HRW, *Bringing a dictator to Justice*, 29 September 2005, <http://www.hrw.org/en/reports/2005/09/29/bringing-dictator-justice>
4. HRW, *The Case Against Hissène Habré, an "African" Pinochet*, 30 September 2005, <http://www.hrw.org/legacy/english/docs/2005/09/30/chad11786.htm>
5. HRW, "Justice and the general", 10 December 2006, <http://www.hrw.org/en/news/2006/12/11/pinochet-justice-and-general>

Optional readings:

1. Henzelin, Marc, "La compétence pénale universelle, une question non résolue par l'arrêt Yerodia", *Revue générale de droit international public* (RGDIP), 2002, vol. 107, pp. 819-854. http://www.lalive.ch/files/mhe_La_competence_universelle_une_question_non_resolue_par_larret_Yerodia_2002.pdf
2. Cour Internationale de Justice, République Démocratique du Congo contre Belgique, avril 2002, <http://www.icj-cij.org/docket/files/121/8126.pdf>
3. Roth-Arriaza, Naomi, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, Philadelphia, Pennsylvania Studies in Human Rights, 2005.

Session 10 (November 23) The Peace vs. Justice Debate: Uganda and Sierra Leone Cases

Readings:

1. FIDH, *Reflections on the Concept 'Interests of Justice' in Article 53 of the Rome Statute*, Paris, FIDH, June 20, 2005.
2. Hazan, Pierre, *Juger la guerre, juger l'histoire, du bon usage des commissions vérité et de la justice internationale*, PUF, 2007, pp. 194-225.
3. HRW, *The Meaning of 'The Interests of Justice' in Article 53 of the Rome Statute*, HRW Policy Paper, New York, June 2005.
4. Kim Marshall, "Too late for revenge", *IHT*, 15.7.2009, <http://www.nytimes.com/2009/07/16/opinion/16kim.html>
5. Richard Goldstone, "Bringing War Criminals to Justice during an Ongoing War", in Moore, Jonathan (ed.), *Hard Choices, Moral Dilemmas in Humanitarian Intervention*, Lanham MD, Rowman and Littlefield Publishers, 1998, pp. 195-210.
6. Southwick, Katherine, "Investigation War in Northern Uganda, Dilemmas for the International Criminal Court", *Yale Journal of International Affairs*, Summer-Fall 2005, pp. 105-119.

Optional readings:

1. Cassese, Antonio, "A Big Step Forward For International Justice", December 2003, *Crimes of War project*, http://www.crimesofwar.org/icc_magazine/icc-cassese.html
2. Mégret, Frédéric, "Three Dangers for the International Criminal Court", *Finnish Yearbook of International Law*, vol. 12, 2001, pp. 193-247.
3. MacPherson, Martin, *Open Letter to the Chief Prosecutor of the International Criminal Court: Comments on the Concept of the Interests of Justice*, Amnesty International, June 17, 2005.
4. Shaw, Rosalind, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, United States Institute of Peace Special Report 130, February 2005.

Session 11 (November 30) The Peace vs. Justice Debate Follow-up: ICC vs. Sudan

Readings:

1. Cayley, T. Andrew, "The Prosecutor's Strategy in Seeking the Arrest of Sudanese President Al Bashir on Charges of Genocide", *Journal of International Criminal Justice*, vol. 6, no. 5, November 2008, pp. 829-840.
2. Ciampi, Annalisa, "The Proceedings against President Al Bashir and the Prospects of their Suspension under Article 16 ICC Statute", *Journal of International Criminal Justice*, vol. 6, no. 5, November 2008, pp. 885-897.
3. De Waal, Alex, "Unchartered Waters", 3.5.2009, *Blog: Making sense of Darfur*, <http://blogs.ssrc.org/darfur/2009/03/05/unchartered-waters/>
4. Dicker, Richard, "When Peace talks undermine Justice", *NYT*, 4.7.2008, <http://www.nytimes.com/2008/07/04/opinion/04iht-edicker.1.14242031.html>
5. Gosnell, Christopher, "The Request for an Arrest Warrant in Al Bashir: Idealistic Posturing or Calculated Plan?", *Journal of International Criminal Justice*, vol. 6, no. 5, November 2008, pp. 841-851.
6. Graham, Franklin, "Put Peace Before Justice", *NYT*, 3.3.2009, http://www.nytimes.com/2009/03/03/opinion/03iht-edgraham.1.20557630.html?_r=1

Optional readings:

1. Grono, Nick and David Mozersky in openDemocracy, "Sudan and the ICC: A Question of Accountability", 31 January 2007, <http://www.crisisgroup.org/home/index.cfm?id=4640&l=1>
2. "Arab ministers criticise ICC Sudan charges", 19 July 2008, *Reuters*, <http://www.alertnet.org/thenews/newsdesk/L19276258.htm>
3. Sluiter, Göran, "Obtaining Cooperation from Sudan — Where is the Law?", *Journal of International Criminal Justice*, vol. 6, 2008, pp. 871-884.

Session 12 (December 7) The Reinvention of Traditional Justice (gacaca and achioli justice)

Readings:

1. Amnesty International, "Rwanda: Gacaca - gambling with justice", 19 June 2002, <http://www.amnesty.org/en/library/asset/AFR47/003/2002/en/dom-AFR470032002en.html>
2. Huyse, Luc and Mark Salter, *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, June 2006, Stockholm, IDEA, pp. 1-58. <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/TraditionalJusticeReconciliationafterViolentConflict.pdf>
3. Refugee Law Project, *Peace First, Justice Later: Traditional Justice in Northern Uganda*, Working Paper 17, July 2005.

Optional readings:

1. Allen, Tim, *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, London, Zed Books, 2006.
2. Des Forges, Alison, *Leave None to Tell the Story: Genocide in Rwanda*, New York, Human Rights Watch, 1999.
3. Prunier, Gerard, *The Rwandan Crisis: History of a Genocide*, New York, CUP, 1995.

4. Waldorf, Lars, "Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice", *Temple Law Review*, vol. 79, no. 1, 2006.
5. Ugandan Amnesty Commission, http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=39&Itemid=79

Session 13 (December 14) The Special Tribunal for Lebanon: Transitional Justice before Transition?

Readings:

1. ICTJ, "A Handbook, The special tribunal for Lebanon", April 2008, <http://www.ictj.org/images/content/9/1/914.pdf>
2. Al-Sharif, Osama, "Hariri's tribunal will polarize Lebanon", *Daily Star*, 16 March 2009, http://star.com.jo/index.php?option=com_content&task=view&id=15158&Itemid=57
3. Bolopion, Philippe et Mouna Naïm, « L'ONU impose le 'tribunal Hariri', la majorité politique libanaise se réjouit », Paris, *Le Monde*, 1er Juin 2007.
4. Carton, Aurélie, « Liban : le tribunal de tous les dangers », Amnesty International, May 2007, http://docs.google.com/Doc?id=dg39sr4t_133cj782tqs
5. Corm, Georges, « Le tribunal Hariri, une arme locale et régionale », Alger, *El Watan*, 12 July 2007, http://www.algeria-watch.org/fr/article/pol/liban/tribunal_hariri.htm
6. Evans, Gareth, "The Hariri Tribunal: Separate the Political from the Judicial", ICG, 19.7.2007, <http://www.cggl.org/scripts/opinion.asp?id=208>
7. HRW, "Lebanon: Hariri Tribunal Can Restore Faith in Law", http://docs.google.com/Doc?id=dg39sr4t_130gz24cbdh
8. United Nations Security Council Resolution, n. 1757, 30 May 2007, <http://www.un.org/apps/news/infocus/lebanon/tribunal/docs.shtml>
9. Mégret, Frédéric, "A special tribunal for Lebanon: the UN Security Council and the emancipation of International Criminal Justice", *Leiden Journal of International Law*, vol. 21, issue 2, June 2008, pp. 485-512.
10. Wierda, Marieke, Habib Nassar and Lynn Maalouf, "Early Reflections on Local Perceptions, Legitimacy and Legacy of the Special Tribunal for Lebanon", *Journal of International Criminal Justice*, vol. 5, no. 5, November 2007, pp. 1065-1081.

Optional readings:

1. Official Website for the Special Tribunal for Lebanon, <http://www.stl-tsl.org/>
2. Human Rights Watch, 30.5, "Establishing the Hariri Tribunal", <http://www.hrw.org/en/news/2006/04/30/establishing-hariri-tribunal>
3. Special Tribunal for Lebanon Monitor, <http://cldh-tribunal-liban.blogspot.com/2007/11/issam-fars-sera-entendu-comme-tmoin.html>