

Master in International Affairs (MIA)

Academic year 2008 - 2009

Post-Conflict Justice

E608 - Spring - Post-Conflict Justice - 6 ECTS
Mondays 12:15-14:00 (SGAS)

Course Description

The course analyzes the 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, at 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, as well as some demands for reparations for historical wrongs. In doing so, we will examine the establishment, the functioning and the efficiency of these public policies of reconciliation.

> PROFESSOR

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Syllabus

Course Website

http://graduateinstitute.ch/mia/courses/mia_non_compulsory_courses/post_conflict_justice.html

Requirements

Students will be evaluated on the following requirements:

1. For 40% of your grade: one 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 minutes 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 20% of your grade: a critical review of approximately 1000 words on the readings of a particular session. This paper should present the main arguments of the various texts and identify their main strengths and weaknesses. It is due before the beginning of the relevant class.
3. For 30% of your grade: a final take-home exam consisting of two essay questions (out of a choice of three) (1500 words each question) distributed during the last session of class and due for June 1st 2009.
4. For 10% of your grade: active and high-quality participation will be taken into account.

Readings

Course readings are obtainable in three forms. The required readings which are book chapters are assembled in a course reader. The required readings which are journal articles will be available (via a clickable link) from the course website. Further readings (optional) which are books will be placed on reserve at the library (some of them may still be in the ordering process though).

Course Outline & Readings

Session 1 (February 16) **Introduction: Definition, Dilemmas, Debate of Post-Conflict Justice**

No required readings

Session 2 (February 23) **Transitional Justice Genesis: The Politics of the Inter-Allied Military Nuremberg Tribunals**

Readings:

1. Jackson Robert *Opening Statement at the Nuremberg Trials*, August 12, 1945, http://avalon.law.yale.edu/imt/imt_jack02.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](http://www.columbia.edu/~c4m/press/) 2001, chap. VI and Conclusion
4. Sands Philippe (éd.) *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* 75.2, April 1999, p. 333-356.
3. Taylor Telford *The Anatomy of the Nuremberg Trials: a Personal Memoir*, New York, Littlebrown, 1993
4. Wiewiorka Annette *Les procès de Nuremberg et de Tokyo*, Bruxelles, Editions Complexe, 1996

Session 3 (March 2) **The Eichmann Trial: Reformulating National Identities Through Trial**

Readings:

1. Arendt Hannah *Eichmann à Jerusalem, Report on the Banality of Evil*, Penguin Classics, 1997, pp. 1-28
2. Segev Tom « Le tournant du procès Eichmann » *Le Monde Diplomatique*, Avril 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*, pp.64-83, 1996.
5. Wieworka Annette *L'ère des témoins*, Paris, Plon, 1998

Session 4 (March 9)

The Fall of the Berlin Wall and the Emerging Tool Kit of Transitional Justice

Readings:

1. Carothers Thomas "The End of the Transition Paradigm", *Journal of Democracy*, Volume 13, Number 1, January 2002, pp 1-21
2. Derrida Jacques « Le siècle et le pardon », *Le Monde des Débats* 9, décembre 1999, pp. 10-17. <http://www.hydra.umn.edu/derrida/siecle.html>
3. Kritz Neil (éd.) *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 (March 16)

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, TX, Texas A&M University Press, 2004, pp. 64-89
3. Moore Jonathan (éd.), *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, 2004, No.2, 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* 55.3, Summer 2001, p. 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 (March 23)

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*, Volume 3, Number 4, Pp. 1019-1033
2. Straus Scott "What is the Relationship between Radio and Violence : Rethinking Rwanda's 'Radio Machete'", *Politics Society*, 2007, 35, 609.
<http://users.polisci.wisc.edu/straus/Straus%20Radio%20P&S%202007.pdf>
3. Thompson Allan (ed.) *The Media and the Rwanda Genocide*, London, Pluto Press, 2007, pp. 41-61

Optional readings:

1. Chrétien Jean-Pierre *Rwanda: les médias du genocide*, 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* 28.3, Winter 2003/4, p. 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* 10.1 2004, p. 25-32
5. Website of the ICTR: <http://69.94.11.53/>

Session 7 (March 30)

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

Readings:

1. Brody Reed "Justice, the First Casualty of Truth", HRW, http://hrw.org/english/doc/2001/04/30/global12849_txt.htm
2. Rotberg Robert and Dennis Thompson, eds., *Truth versus Justice : The Morality of Truth Commissions*, Series in the University Center for Human Values, edited by Amy Gutman, 6, Princeton, Princeton University Press, 2000
3. Tutu Desmond *Il n'y a pas d'avenir sans pardon*, Albin Michel, Paris, 2000, pp. 21-41.
4. Wilson Richard *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, Cambridge, Studies in Law and Society, 2001, pp. 1-27

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* 50.3 June 2006, p. 409-432
3. Gibson James L. « The Truth About Truth and Reconciliation in South Africa », *International Political Science Review*, 26.4 2005, p. 341-361
4. Mamdani Mahmood « Reconciliation without Justice », *Southern African Review of Books* 46, 1996, p. 3-6
5. O'Connell Jamie « Gambling with the Psyche : Does Prosecuting Human Rights Violators Console Their Victims », *Harvard International Law Journal* 46.2, Summer 2005, p. 295-345

Session 8 (April 6)

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/pubs/specialreports/sr165.pdf>

- Human Rights Watch. *Morocco's Truth Commission : Honoring Past Victims during an Uncertain Present*, Vol 17, No. 11, November 2005
- 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
- Instance Equité et Réconciliation *Résumé du rapport final*, Rabat, IER, 2005, http://www.ier.ma/fr/article.php?id_article=1496

Optional readings:

- Basri Driss « Me juger, c'est juger Hassan II », *La Vérité* (Rabat), no. 195, 21-27 janvier 2005
- El_Ouadie Salah "Lettre ouverte à mon tortionnaire", *Libération* (Maroc), 16 avril 1999, voir <http://www.acat.asso.fr/dudh/tortionr.html>
- Hazan Pierre *Juger la guerre, juger l'histoire, du bon usage des commissions vérité et de la justice internationale*, PUF, 2007, pp 139-193
- Zeghal Malika *Les islamistes marocains : Le défi à la monarchie*, Paris, La Découverte, 2005
- Slyomovics Susan *The Performance of Human Rights in Morocco*, Philadelphia, University of Pennsylvania Press 2005

Session 9 (April 20)

The Universal Jurisdiction Debate: Pinochet and Habré Cases

Readings:

- Roth Kenneth "The Case For Universal Jurisdiction", *Foreign Affairs*, September/October 2001
- Kissinger Henry, The Pitfalls of Universal Jurisdiction, *Foreign Affairs*, July/August 2001
- HRW, *Bringing a dictator to Justice*, Sept 29, 2005, <http://www.hrw.org/legacy/english/docs/2005/09/30/chad11797.htm>
- HRW, *The Case Against Hissène Habré, an "African" Pinochet*, Sept. 30, 2005, <http://www.hrw.org/legacy/justice/habre/>
- HRW, *Justice and the general*, Dec. 10, 2006 <http://www.hrw.org/en/news/2006/12/10/pinochet-justice-and-general>

Optional readings:

- 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
- Cour Internationale de Justice, République Démocratique du Congo contre Belgique, Avril 2002, <http://www.icj-cij.org/docket/files/121/8126.pdf>
- Roth-Arriaza Naomi *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, Philadelphia, Pennsylvania Studies in Human Rights, 2005

Session 10 (April 27)

The Peace vs. Justice debate: Uganda and Sierra Leone cases

Readings:

- FIDH, *Reflections on the Concept « Interests of Justice » in Article 53 of the Rome Statute*, Paris, FIDH, June 20, 2005
- Hazan Pierre *Juger la guerre, juger l'histoire, du bon usage des commissions vérité et de la justice internationale*, PUF, 2007, pp 194-225
- HRW, *The Meaning of 'The Interests of Justice' in Article 53 of the Rome Statute*, HRW Policy Paper, New York, June 2005
- Allen Tim *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, London, Zed Books, 2006, chapter 4, pp 72 -95
- Southwick Katherine « Investigation War in Northern Uganda, Dilemmas for the International Criminal Court », *Yale Journal of International Affairs*, Summer-Fall, 2005

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* 12, 2001, p.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 (May 4)

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*, 2008, 6, 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*, 2008, 6, pp. 885-897
3. Gosnell, Christopher "The Request for an Arrest Warrant in Al Bashir: Idealistic Posturing or Calculated Plan?" , *Journal of International Criminal Justice*, 2008, 6, pp. 841-851
4. Sluiter Göran "Obtaining Cooperation from Sudan — Where is the Law?" , *Journal of International Criminal Justice*, 2008, 6, pp. 871-884
5. ICC Prosecutor's Statement on the Prosecutor's Application for a warrant of Arrest under Article 58 against Omas Hassan Ahmad al Bashir

Optional readings:

1. Grono Nick and David Mozerky 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/emailafriend.htm>

Session 12 (May 11)

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
4. Allen Tim *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, London, Zed Books, 2006, chapter 6, pp 128 -195

Optional readings:

1. Des Forges Alison *Leave None to Tell the Story: Genocide in Rwanda* , New York, Human Rights Watch, 1999
2. Prunier Gerard *The Rwandan Crisis: History of a Genocide*, New York, Columbia University Press, 1995
3. Waldorf Lars « Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice », *Temple Law Review*, vol. 79, no. 1, 2006
4. Ugandan Amnesty Commission, Amnesty Commission Report 2004/2005, Kampala, <http://www.amnestycom.go.ug>

Session 13 (May 18)

The debate over Reparations for Slavery at the Durban Conference

Readings

1. Boisson de Chazournes Laurence, Jean-François Quéguiner and Santiago Villalpando Eds. *Crimes de l'histoire et réparations : les réponses du droit et de la justice*, Bruxelles, Editions de l'Université de Bruxelles 2004, pp. 179-201
2. Bruckner Pascal *La tyrannie de la pénitence*, Paris, Grasset, 2006, pp. 13-39
3. Hazan Pierre *Juger la guerre, juger l'histoire*, PUF, 2007, pp 95-138
4. Lantos Thomas "The Durban Debacle : An Insider's View of the UN World Conference Against Racism", *The Fletcher Forum of World Affairs* 26.1 Winter/Spring, 2002, p. 31-52
5. McDougall Gaye "The World Conference against Racism: Through a Wider Lens", *The Fletcher Forum of World Affairs* 26.1 Summer-Fall 2002, p. 135-151, <http://fletcher.tufts.edu/forum/archives/pdfs/26-2pdfs/mcdougall.pdf>

Optional readings:

1. Brooks Roy L. *Atonement and Forgiveness : A New Model for Black Reparations*, Berkeley, University of California, 2004
2. Fanon Frantz *Les damnés de la terre*, Paris, La Découverte, 2002
3. Marc Ferro (ed) *Le livre noir du colonialisme, XVIe-XXIe: de l'extermination à la repentance*, Paris, Robert Laffont, 2003
4. Plumelle-Urbe Rosa Amelia *La férocité blanche, des non-blancs aux non-aryens, génocides occultés de 1492 à nos jours*, Paris, Albin Michel, 2001
5. Posner Eric and Adrian Vermule "Reparations for Slavery and Other Historical Injustices", *Columbia Law Review* 103.3 April 2003, p. 689-748

Session 14 (May 25)

The Special Tribunal for Lebanon: Transitional Justice before Transition?

Readings:

1. A Handbook, The special tribunal for Lebanon, ICTJ, avril 2008
<http://www.ictj.org/images/content/9/1/914.pdf>
2. Boloïon Philippe et Mouna Naïm « L'ONU impose le « tribunal Hariri », la majorité politique libanaise se réjouit », Paris, *Le Monde*, 1er Juin 2007
3. Carton Aurélie « Le tribunal de tous les dangers », Amnesty International, May 2007,
http://docs.google.com/Doc?id=dg39sr4t_133cj782tqs
4. Corm Georges, « Le tribunal Hariri, une arme locale et régionale », Alger, *El Watan*, 12 juillet 2007,
http://www.algeriawatch.org/fr/article/pol/liban/tribunal_hariri.htm
5. Evans Gareth, « The Hariri Tribunal : Separate the Political from the Judicial », ICG, 19.7.2007,
<http://www.cggl.org/scripts/opinion.asp?id=208>
6. HRW, « Lebanon: Hariri Tribunal Can Restore Faith in Law »,
http://docs.google.com/Doc?id=dg39sr4t_130gz24cbdh United Nations Security Council Resolution Nr 1757, 30 May 2007, <http://www.globalpolicy.org/intljustice/tribunals/lebanon/2007/res1757.pdf>

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".
3. Special Tribunal for Lebanon Monitor, <http://cldh-tribunal-liban.blogspot.com/2007/11/isssam-fars-sera-entendu-comme-tmoin.html>