



## **SCL Lecture**

# **Mass Atrocities Trials as a Tool to Control Historical Narrative**

On 28 September 2016, the T.M.C. Asser Instituut, in collaboration with the Coalition for the International Criminal Court and the Grotius Centre for International Legal Studies of Leiden University, hosted a new lecture in its Supranational Criminal Law Lecture series. This lecture was entitled 'Mass Atrocities Trials as a Tool to Control Historical Narrative' and featured presentations by Gordana Knežević, Sir Geoffrey Nice and Dr Nevenka Tromp.

Following opening remarks by Dr Ulad Belavusau, Senior Researcher in European Law at the Asser Institute, Gordana Knežević, a Journalist-Editor at Radio Free Europe, started the discussion. Ms Knežević began with some of her personal reflections about living in Sarajevo during the dissolution of the former Yugoslavia and focused on how, when Aryeh Neier travelled to Bosnia and Herzegovina in order to teach the inhabitants how to accurately collect evidence and report incidents, accountability for crimes largely seemed to be as realistic as science fiction. Fast forwarding to the present, she examined the role of the International Criminal Tribunal for the former Yugoslavia (ICTY) in making and shaping history in the Balkans. Ms Knežević argued that the Balkan nations are effectively "getting history wrong" and that national revisionist narratives remain pervasive. In examining this, Ms Knežević pointed to several reasons for the emergence of counter-narratives: the ICTY's failure to connect its work and judgments with the citizens of the states that emerged from the former Yugoslavia; the differing experiences of the war throughout the former Yugoslavia; and a "collective amnesia" with regards to the past. Going forward, she advocated for better education throughout the Balkans, emphasising the need for books that distil the war and the work of the ICTY into a more accessible format to help better shape the historical narrative.

Sir Geoffrey Nice, the Principal Trial Attorney prosecuting Slobodan Milošević at the ICTY, spoke next about the gap between public expectations of legal processes and the actual results ultimately delivered in relation to the historical record. Sir Geoffrey initially reflected upon his arrival at the ICTY, mentioning the political pressures the court experienced and how this can interfere with any historical record produced as a result of the trial. He then moved on to warn against relying upon legal processes in order to tell history, providing certain historical examples in which trials appeared ultimately to be predetermined, political acts. While acknowledging that records of evidence at trial are very important, Sir Geoffrey suggested that the law sometimes gives itself false credit and that it is important that courts, lawyers and the public remain realistic about how much legal processes can add to the historical record.

He concluded with a quote from Former ICTY Judge Patricia Wald:

*"Initially the Tribunal was urged to make detailed findings about the social and political etiology of events leading up to the atrocities on trial. This, it was suggested, would provide an antidote to revisionist history by preserving adjudicated accounts of what actually happened in the foreplay to the Bosnian conflict. As a result, dozens of pages in ICTY judgments focus on the causes and precursors of the 1991 outbreak of hostilities. However, commentators, citizens, and officers of the implicated countries increasingly suggest that the adversarial trial process and the findings of judges may not produce the best approximations of history. Moreover, the "adjudication" by ICTY of who started, prolonged, or ended the war and why in the context of criminal proceedings without the states themselves having input is basically unfair, or at least does not contribute to future reconciliation."*<sup>1</sup>

Dr Nevenka Tromp, author of the book 'Prosecuting Slobodan Milošević. The Unfinished Trial' and lecturer at the University of Amsterdam, concluded the presentations with her insightful remarks about the value of unfinished trials to the historical record. Dr Tromp suggested that criminal trials may not ultimately contribute to the historical record as is commonly suggested as they may be influenced by external actors and the adversarial system is not necessarily focused on establishing the truth. She briefly outlined three possible approaches to history that she encountered in writing her book: the relativist approach, which suggested that Milošević and Serbia were important in Yugoslavia's disintegration but that they were reactors rather than drivers; the intentionalist approach, through which historians focus on the political and military elite and their intentions throughout the war; and the apologist approach, which deflects criticism of Milošević as he stood up to the whole world. Dr Tromp further argued that judgments – once all legal remedies are exhausted – remain fixed in time. Moreover, the responsibility for historical interpretation should not be left to judges but, instead, the record left through the trial process is valuable when it is scrutinised and compared with other historical sources.

The lecture was followed by a lively Q&A session, moderated by Dr Ulad Belavusau.

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<sup>1</sup> P. Wald, 'The International Criminal Tribunal for the Former Yugoslavia Comes of Age: Some Observations on Day-To-Day Dilemmas of an International Court' (2001) 5 *Washington University Journal of Law & Policy* 87, available at [http://law.wustl.edu/harris/documents/p\\_87\\_Wald.pdf](http://law.wustl.edu/harris/documents/p_87_Wald.pdf).