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# International Criminal Law, Justice and Lawyers: Interview with sir Geoffrey Nice

## **Personal data**

*Sir Geoffrey Nice QC has practiced as a barrister since 1971. He worked at the International Criminal Tribunal for the Former Yugoslavia – the ICTY – between 1998 and 2006 and led the prosecution of Slobodan Milošević. Much of his work since has been connected to cases before the permanent International Criminal Court – Sudan, Kenya, Libya – or pro bono for victims' groups – Iran, Burma, North Korea – whose cases cannot get to any international court. He has been a part-time judge since 1984 sitting at the Old Bailey and has sat as judge in other jurisdictions, tribunals and inquiries. Geoffrey Nice was made a Knight Bachelor in 2007 and in 2009, he was named Vice-Chair of the Bar Standards Board. In 2012 he was appointed the Professor of Law at Gresham College.*

## **International criminal courts**

### **1. Sir Geoffrey, could you explain importance of international criminal courts in the context of mass atrocities? Are they even important?**

They have been immensely important, in my view.

Simply by their creation and operation they have allowed every educated world citizen *now* to expect that mass atrocities committed in war *will* be subject to accountability. There was no such expectation – none – to this effect before 1993 (when ICTY and ICTR for Rwanda were established).

We are far from the day when all, or even many, mass atrocity crimes will come before a court. But the international criminal courts have by their existence brought the expectation that they should be dealt with in court. This overwhelmingly important change in public expectations could - and should - lead us to the next expectation of the educated citizen, namely that there need not be war at all if countries are obliged to arbitrate and negotiate before firing a shot.

Public expectation can, generally, eventually drive politicians to do what the public wants. The expectation created by the international tribunals could lead in time to the true goal of every ordinary citizen, namely that they can live in peace with their neighbours.

### **2. You were working at ICTY for more than eight years, in your opinion what was the main role (or goal) of that tribunal?**

There were various stated goals for the ICTY including dealing with threats to international peace and security, bringing justice to victims, contributing to restoration and

maintenance of peace (see UN Resolution 808 of 1993) as well as the straightforward prosecution of those responsible for serious violations of international humanitarian law.

Over time the *practical* or *realistic* goal of the tribunal became, much as with any criminal justice system, the trial and punishment for those apprehended and convicted of grave crimes. That goal was narrowed after a few years to the apprehension and trial of perpetrators in *senior* political or military positions.

### 3. Did ICTY achieve that goal?

It certainly returned a large number of trials and many convictions with substantial prison sentences imposed.

Whether it achieved any of the wider objectives – in particular any aspects of reconciliation – is unclear and open to doubt. Reconciliation in the region is by no means established for the long term.

### 4. What is the legacy of ICTY?

Hard to be sure this close in time to the closing down of the Tribunal (with the Mechanism dealing with ‘run-off’ cases since the end of 2017). My best guess would be that its legacy in order of importance *will* be that it:

- Established that international tribunals *can* function and bring in results that are satisfactory to many; therefore, although there will no appetite for any future *ad hoc* tribunals of this kind (because too slow and too expensive) a functioning model has been created and future courts – including the ICC if it survives – should be able to draw on ICTY experience and work in more effective ways;
- Created immense libraries of evidence about the conflicts of the 1990s in the Western Balkans that may make revision of history by future generations much more difficult if and when people try to rely on inaccurate accounts of those conflicts to justify future aggression or wars;
- Established through that evidence how it is that ordinary people can commit dreadful criminal acts when badly led; just possibly this may bring some general awareness of the aetiology of the commission of mass crimes that will allow international and national organisations to stop, or at least reduce, other such dreadful acts *before* they have started;
- Convicted certain individuals in the Western Balkans, punishing them in ways that may help the victims come to terms with the history of gross criminality that they have suffered;
- (Just possibly) created an environment where reconciliation may be possible, especially if reconciliation is eventually fostered by all warring states (Croatia, Bosnia, Serbia, Montenegro, Kosovo, Macedonia) living under the EU umbrella against a background international justice system that can be seen to have provided a measure of accountability for all sides

### **„Justice for all and how to achieve it”**

The book „Justice for all and how to achieve it” is a guideline for a modern time lawyers and other readers interested in law in the age of human rights. It gives us answers to some interesting questions. Are the international criminal tribunals experiments or work in progress? Are the legal processes a tool to rewrite history? Is law the new religion and are

its high priests, the lawyers and judges, really all that bad? Sir Geoffrey Nice applies his knowledge and experience in addressing these and many other issues. The book covers many parts of the world and takes us through different parts of history while giving us answers to many questions which are dealing with human rights and justice in modern age. Every lawyer should read it in order to widen horizons.

##### **5. What are the most important qualities a good lawyer has to possess?**

I have been an advocate – a courtroom lawyer essentially – all my working life and can only really speak for this kind of lawyer, who needs:

- Limitless energy and a willingness to work morning to night 7 days a week if the case he is working on needs it;
- An ability to find interest in more or less every case that may come her/his way. Before I worked on the conflicts of the Western Balkans – which I found inexhaustibly interesting - I was fortunate to have been able to find something of interest in nearly every case I did – from the simplest road traffic case to the most gruesome murder or drugs case to a medical negligence action against a doctor or a case challenging government action. The advocate is looking after someone - or some body – at a time of crisis and the ability to find interest in those crises - and in what is asked of the advocate to sort them out – makes it much much easier to find the limitless energy I refer to as the first quality;
- An ability to confront unexpected difficulties and not to give in to powerful courtroom opponents, judges or external forces. Appendix 1 of my book sets out the problems I faced in dealing with serious internal political difficulties caused by Mrs del Ponte, the ‘Prosecutor’ of the ICTY, and immense external forces – the state of Serbia and a major western power in particular. It was the apprenticeship of facing progressively powerful and difficult individuals in courts over decades of being an advocate that may have equipped me to facing up to and challenging these foes, even if I did not *always* succeed in what I tried to achieve in the interests of justice (as the detail in the Appendix reveals)

##### **6. What are the roles and responsibilities of law school professors in educating new generations of lawyers?**

Not necessarily a question I am best placed to answer.

Like many advocates of my age in the UK I did not read law at university (in my case I studied Philosophy, Politics and Economics). It was thought preferable to study something for its own sake and later to do the law course, as I did after a couple of non-legal jobs at the Bar School in London. So, I never encountered university law professors at their work for undergraduate students.

But, from other experience, I reckon they should make sure that they do not let their own lack of practical experience in courts allow them to pass on too rosy a view of the law to their students. They should be aware of the shortcomings of the law – of the kind I describe in many chapters of my book – of which the non-lawyer citizen is usually unaware.

Shortcomings in the law itself and shortcomings of political will that can corrupt legal processes are among the things those who believe they want a life in the law may have to face and it is vital that they do not join a profession with an unrealistic understanding of what may be involved. Further, the realistic appreciation of the shortcomings of legal systems that law professors should provide will instil in the lawyers they teach a real appreciation of what the ‘rule of law’ should be even if in the immediate circumstances they may face in any particular country it is not always honoured in full.

## 7. What are the biggest challenges and obstacles in achieving justice in modern world?

Political expediency that stops laws being written that *should* be written and political manipulation that interferes with legal processes that *should* operate for the common good.

Unwritten laws – gender equality laws in many nations for example or an international law banning war, as obvious examples – reflect local or international political preferences that are not those of the public they serve. There are uncountable examples of laws that only get enacted after decades of resistance to public pressure: laws bringing race equality in the USA or South Africa, votes for women in the UK and other European countries, or gay rights almost everywhere.

There was quite a bit of manipulation at the ICTY and in other international courts, as I reveal in chapters in the book dealing with tribunals that work but that fail to deliver to the best of their potential ability. In national systems around the world similar problems can be found although in the UK I have been fortunate in living in a country where for various reasons the legal system is probably *fairly* 'clean'.

## 8. How do you see the future of human rights? What will be the main tools to achieve justice for all?

What are these 'human rights' of which it is so fashionable to speak? Those codified in the 1948 UN Declaration or the European Convention are often cited as are the rights of 'natural law' set out during the age of revolutions and Enlightenment.

But people around the world have been developing rights accorded to them as humans for thousands of years, and it is probably helpful to think of those rights as theirs *because of their being human* and therefore rights that *can not* be taken away: the right to life, to freedom of movement, to security etc.

Codifications since WWII have helped because they have made certain rights *seem* impossible to withdraw - e.g. the right to freedom from torture. But it is not at all certain that these rights will remain for ever or for every citizen of the world.

The return of some countries – if it happens – to national state insularity brings with it the real possibility of particular 'universal' rights being withdrawn in some asserted local national interest, something the UK – as an example - may be preparing to do as it withdraws from EU. The UK's right-wing promise to replace the EU charter or the European Convention (enshrined in the work of the ECtHR) is a real concern. May the UK water down rights if it judges it 'in the national interest' to do so? Of course. And what is true for the UK may be true for many other countries. Sticking firmly to what the 1948 Declaration says and the European Convention says is the best way of protecting the citizen from the short-term whims of politicians whose interest is so often in generation of personal power.

Determination by activists and by the ordinary citizen (in demonstrations where necessary) to avoid any dilution or removal of any of the truly essential rights of humans is what can force politicians whose interests by no means always coincide with those of the people they are supposed to serve to honour the real rule of law and to preserve justice for all. We must fear the eating away of human rights, perhaps by seeing them as human lives of the kind Pastor Niemöller wrote of in WWII in his guiding and inspiring poem for any and every lawyer and politician truly interested in saving the nation societies of our planet and the planet itself from harming or destroying itself.

*First, they came for the Socialists, and I did not speak out—  
Because I was not a Socialist.*

*Then they came for the Trade Unionists, and I did not speak out—  
Because I was not a Trade Unionist.  
Then they came for the Jews, and I did not speak out—  
Because I was not a Jew.  
Then they came for me—and there was no one left to speak for me.*

Human rights need guarding just as humans needed guarding in WWII and with the same recognition that the instinct of humans to do nothing until it is too late comes with a real and terrible risk.

### ***Final comments***

#### **9. What is your message to law students?**

Recognise that legal systems serve societies properly when they operate well.

For this legal systems need really skilled technicians – lawyers of all kinds – to do that.

Lawyers should appreciate when they start in practice that they are as important to the *legal system* and the ‘*rule of law*’ whether they write wills, represent people in family proceedings or work in international courts trying war crimes.

Lawyers wherever possible should ensure they have a ‘home’ legal system – probably a national one – where there is an acknowledged set of ethical standards to follow and support for maintenance of standards if the lawyer finds herself/himself being put at risk or under temptation to break ethical standards.

Lawyers must also recognise that they serve the law best when they maintain objectivity and avoid any excessive emotional involvement in their work. They can of course be activists or politicians outside their work and be as emotional then as they like. But at work they will serve the law and their clients far better by keeping that professional distance that permits them to see their client’s problems objectively and to advise and to act accordingly.