Workshop Report

Global Cooperation in Transitional Justice: Ambiguities, Paradoxes and Possibilities

Duisburg, 2–3 April 2014

Workshop organized by
Käte Hamburger Kolleg / Centre for Global Cooperation Research (KHK/GCR21)
Introduction

On 2 and 3 April 2014, the Käte Hamburger Kolleg / Centre for Global Cooperation Research (KHK/GCR21) organized and hosted an international workshop entitled ‘Global Cooperation in Transitional Justice: Ambiguities, Paradoxes and Possibilities’. Through thought-provoking presentations and lively discussion by invited guests and our own fellows, the workshop sought to address the multifaceted nature of global cooperation in transitional justice. This was done by covering issues concerning, among other topics, the democratic transition of post-communist societies, post-apartheid, post-military and post-conflict transitions as well as preparations for transition in areas currently in conflict. Furthermore, major features of transitional justice were discussed including its interdisciplinary nature, implications for intercultural exchange, global governance, and legitimacy.

This exploration raised many pertinent questions regarding the current state of academic research on transitional justice: What are the prevalent modes of global cooperation in transitional justice, their ambiguities and contestations? How are they played out in global and local encounters? What is the role of global cooperation in imagining alternative schemas and possibilities for transitional justice? And how could such imagining address, rather than reinforce, current fissures in transitional justice?

1st Panel: Global/Local Interrelatedness

Claus Leggewie (KHK/GCR21) began the workshop with a short introduction on transitional justice in global cooperation by emphasizing its ever-changing nature and importance in post-conflict environments. The first panel was chaired by Rainer Baumann (KHK/GCR21), who also led the subsequent discussion.

Local and Global Spaces of Transitional Justice

Susanne Buckley-Zistel, Philipps-University Marburg

Buckley-Zistel presented an innovative critique of transitional justice studies. Most pertinently, the intrinsic connection between the local and the global has been ignored by researchers and practitioners. She defined the local as a space where real social relations between autonomous individuals occur. She suggested it is most helpful to use the tools provided by spatial theory and post-colonial studies to analyse this interconnectedness. Indeed, the global should be considered the dominance of one locality over the others. However, since this asymmetrical relation is vague, more research needs to be completed in order to understand its function. Buckley-Zistel concluded by recommending researchers to look at South-South relations to uncover this dynamic of transitional justice.

During the discussion Joachim Savelsberg (KHK Recht als Kultur) asked which local space is ultimately the dominating force on the global level. Tobias Debiel (KHK/GCR21) suggested drawing clearer delineations of what is exactly meant by global, national, and local spaces. Andrew Cooper (KHK/GCR21) saw a problem
Local and Global Spaces of Transitional Justice and Memory  
_Jaroslava Gajdosova, KHK/GCR21 and New York University in Prague_

Gajdosova provided an actor-based examination of transitional justice and memory in post-communist Eastern European states. Her major analytical concern was how post-communist societies commemorate trauma in transition. Relatedly, major problems arise when focusing on the period of transition in these countries since elites were mostly in charge of post-communist transition. Therefore there was a participatory and democratic deficit throughout the transition. Gajdosova stressed that this democratic deficit has led to problems in deliberation on the past and that now could be the most appropriate time to begin a discursive process on this often obscured period. Savelberg started the discussion by asking which models of participation exist in these countries to remember the past. Gajdosova mentioned the imperative role of the media in remembering the past, but submitted that this has hitherto been a failure. This platform must be tweaked in order to allow more discourse and exchange on memory of the communist era and the transition toward capitalism.

2nd Panel: Global Epistemic Communities and Actors

Transitional Justice: The Emergence of a New Epistemic Community  
_Anne Krüger, Humboldt-University Berlin_

After a short introduction by the chair Silke Weinlich (KHK/GCR21), Krüger introduced her main interest in studying the roots and emergence of transitional justice in the late 1980s and early 1990s. Using the sociology of knowledge she argued that the development of transitional justice was based on the development of an epistemic community consisting of scholars, civil society and even politicians. Information on this new innovative concept was shared between regions at academic conferences and through publications. Through this growing interest and the establishment of organizations like Beyond Conflict, transitional justice quickly became an accepted instrument by both governmental and non-governmental actors. This epistemic community has so firmly established itself that the question facing actors that is no longer if but instead how the past should be discussed.

The discussion began with Noemi Gal-Or (KHK/GCR21) expressed concern on the normative expectation among scholars and other actors that democracy is always the end goal. Much time was spent debating the validity of the term ‘community’. Weinlich suggested an introduction of more causal mechanisms in order to clarify the difference between institutionalization and the development of an epistemic community.
Actors in Transnational Knowledge Transfer in Transitional Justice: A Historical Perspective
Stephan Scheuzger, University of Bern

Historian Stephan Scheuzger continued this examination of the foundations of transitional justice knowledge transfer by presenting the complex history of truth commissions. Scheuzger emphasized that while transitional justice has dramatically expanded, its foundations paradoxically remain ignored. It foundations began when the academic community reacted to human rights violations in the late 1980s, when the term transitional justice became a new field of research. Truth commissions, as an alternative way to deal with the past, spread throughout the world and by the early 2000s, this practices became standardized and highly innovative. This led to the creation of new organizations to deal with the past and increased participation of civil society.

In the discussion Scheuzger emphasized that there have been three main periods of transitional justice and it is possible that it has entered a fourth stage of decreasing relevancy. Savelsberg highlighted the importance of players and methods in these truth commissions. Debiel stressed that it is important to remember the original meaning of transitional justice was linked to democracy and not post-conflict. This underlines the need for different concepts for different contexts of transitional justice.

3rd Panel: Representations of Atrocities in Global Perspective

Global Human Rights Law and National Cultures: Representing, Remembering and Controlling Mass Atrocities”
Joachim Savelsberg, Käte Hamburger Kolleg „Recht als Kultur”, Bonn

The third panel was chaired by Volker Heins (KHK/GCR21) and started with a presentation by Savelsberg. It looked at the cultural effects in the aftermath of an international trial by examining collective representations, memory links, and focusing on the problematic communication to civil society through media representations of the Dafur conflict. His major interest was seeing if judicial proceedings have a cultural effect that makes mass atrocities less likely to occur in the future. By empirically focusing on micro and macro forces through interviews with journalists and quantitative analysis of media reports, Savelsberg found country-specific patterns. For example, due to cultural and historical reasons the media in the USA was more likely to claim that Dafur was a case of genocide than the media in Germany or Ireland. Savelsberg concluded that global judicial decisions affect representations throughout the world and that these representations are mediated by national forces.

In the discussion Markus Böckenförder (KHK/GCR21) shared thoughts on his stay in Sudan and remarked on the sensationalist nature of the USA’s reaction to the conflict. This often led to a simplistic portrayal of good (black Christians) versus bad (Arab Muslims). The issue of journalists in Southern regions such as Africa was also discussed. It was suggested that more research be executed on these local actors.
Holocaust Remembrance in Transnational and Global Perspective

_Birgit Schwelling_, KHK/GCR21 and University of Konstanz, Germany

Schwelling’s presentation focused on the UN resolution on Holocaust Remembrance (60/7) and provided an analysis of this resolution in terms of cultural globalization. One important feature in this resolution is the use of the term ‘remembrance’ instead of ‘memory’. Remembrance elicits collectivity whereas memory is more individualistic. Schwelling submitted that this document consequently contains three assumptions by the UN. Firstly, it serves as an example of global cooperation reliant on a foundation myth by the UN. Secondly, the document decontextualizes memory by connecting the Holocaust to the creation of the UN Charter and emphasizing the universality of the event. The term Holocaust is effectively separated from the Jewish experience. Thirdly, global and local interconnectedness is assumed. The Holocaust was ultimately then used as a way to talk about human rights violations in general. Discussion on Schwelling’s presentation revolved around the decontextualized nature of this document. Issues of practicality of analysing the significance of memory were also debated. Buckley-Zistel suggested looking at the Holocaust as an example for other struggles. Finally, the controversial example of the Armenian genocide was talked about in detail.

4th Panel: Country Case Studies and Lessons from Experiences of Others

Syrian Transitional Justice and National Reconciliation

_Radwan Ziadeh_, Syrian Center for Political and Strategic Studies, Washington, D.C.

The second day of the workshop started with a panel chaired by Frank Gadinger (KHK/GCR21) on transitional justice in different countries. The first presentation by Radwan Ziadeh focused on notions of transitional justice in the Arab world and a specific concept for the Syrian civil war. He gave a short overview on the developments of the civil war and the mass atrocities committed in Syria. He especially focused on the devastating impacts of the air strikes and the use of chemical weapons by the Bashar al-Assad regime. He stated that the international justice system failed Syria and introduced an action plan on transitional justice in Syria. Though the conflict is still ongoing and the result is unknown, the action plan recommend a special court for Syria, national search for missing persons from both sides and the involvement of the victims within the process.

During the discussion Ziadeh reflected on the chances for such a process and the dilemma between justice and stability after a conflict. Noemi Gal-Or raised the question of how to implement transitional justice and Ziadeh suggested that a military defeat would open up options for transitional justice more likely than a negotiated settlement. He also emphasized the dilemma of divided memory in the Syrian public. The role of the International Criminal Court was debated as
well as the concept of “Responsibility to protect” and its effects on the regime change in Libya.

**Horns of Dilemmas: Transitional Justice, Global Cooperation and Modern Law**  
*Abou Jeng, KHK/GCR21 and University of Warwick*

In his presentation Abou Jeng focused on processes of transitional justice in Sierra Leone, Liberia, Gambia and Ghana. He elaborated on the role of modern law in transition processes and argued that modern law erode legitimacy as legalities are being negotiated and that it manifests organized irresponsibility. His concept of modern law consisted of four dimensions: law as irresponsibility, as violence, as means to an end and as sufferance. Within the context of global Human Rights he distinguished between the Human Rights community (UN-organisations and programmes with legal personnel) and Human Rights movements (NGOs and activists, with less institutional power).

He also referred to the negative influence of economic sanctions on civilians and questioned the role of UNDP within transition processes, arguing that the international institutions should focus on stability instead of justice.

Böckenförde started the discussion with a question on the role of NGOs and the constitution as part of the transitional justice process. Anne Krüger suggested taking a more detailed look at power structures behind law. Jeng further elaborated on the four dimensions of modern law on the case of Libya. In this context, Ziadeh raised the issue of Responsibility to Protect and the new Brazilian concept of Responsibility while Protect.

**5th Panel: Global Cooperation in International Justice**

*Noemi Gal-Or, KHK/GCR21 and Kwantlen Polytechnic University, Canada*

The final panel was chaired by Markus Böckenförde, who also led the wrap-up. The first presentation by Noemi Gal-Or focused on the principle of complementarity (PoC) within the statutes of the International Criminal Court (ICC). She suggested that this principle should be expanded to regional courts and not only applied for the relation between the ICC and national jurisdiction. So far the PoC gives primacy to national criminal jurisdiction. The ICC steps in only if this state is not able or willing to fulfil this duty. Gal-Or emphasized the impunity gap of ICC trials that mostly focus on “big fishes” and leave out many perpetrators on lower levels. To close this gap she suggested regional courts step in and become local interpreter for the ICC.

In the discussion Ziadeh criticized the lack of strengthening of national jurisdiction by the ICC and that victims are not involved enough in the trials. Abou Jeng asked if regional courts need a Charta as well and Savelsberg wondered about the consequences of reforms of the ICC. Gal-Or emphasized that the ICC is a new institution that needs to be refined and Böckenförde
suggested that while the ICC addresses individuals and regional courts can address states, the complementarity of this must be questioned.

The International Criminal Court and State Cooperation - Self-referrals as panacea?
Ignaz Stegmiller, Justus-Liebig-Universität Gießen

In his presentation Stegmiller emphasized global cooperation using the example of the ICC. He described the establishment of the Court as a product of successful cooperation and further elaborated on the different trials of the Court. These can be divided by three trigger mechanisms of state referral, referrals of cases to the ICC by the UN-Security Council or initiated by the prosecutor on its own notion. So far most of the ICC trials have been state referrals and the ICC only carries out trials on African countries, which raised heavy criticism by the African Union. At the end of his presentation, Stegmiller also referred to the legitimacy spheres of the ICC, with an inner legitimacy of normative rules and an outer legitimacy on settings of the Court as well as influence by the Security Council, state parties and regional organisations. A third sphere of legitimacy can be added on a philosophical level to debate the purposes of the ICC-approach on global justice.

The discussion focused on the critique which submits that so far the ICC only puts African countries on trial since it is a region where it is politically easier for the ICC to investigate. In connection to the previous presentation, Claus Leggewie stressed the issue of the character of a region and the ambivalence of the concept. Stegmiller further explained the fragmentation of the law of the ICC by the limit of its state parties and emphasized the need of the ICC to strengthen the justice system of nation states.

Wrap-up

The final debate during the workshop linked the presenters’ different topics with the Centre’s overall theme of global cooperation. The presenters raised issues on actor constellations in global cooperation like the need to reframe the understanding of local and global as interdependent actors (Buckley-Zistel) and that commonly defined problems and shared goals are essential for cooperation as well as community building (Krüger). Also Gajdosova stressed the need to get out of the paradigm on cooperation as an end-oriented perspective and strengthen the role of agencies. Abou Jeng connected global cooperation to developments in modern law and elaborated on human rights communities and movements that work in global cooperation. Savelsberg, Gal-Or and Stegmiller took the ICC and the products of successful global cooperation but also referred to the restrictions. Also the UN resolution on Holocaust Remembrance as was reflected upon as a product of global cooperation (Schwelling).
At the end of the workshop Markus Böckenförde and Claus Leggewie thanked the participants and especially the organizing fellows for the workshop. The group ended this event by debating publication options on the topic of transitional justice.

Christopher Smith, Annegret Kunde