

Victims of International Crimes

Veranstalter: Center for Conflict Studies; International Research and Documentation Centre War Crimes Trials; Thorsten Bonacker; Christoph Safferling

Datum, Ort: 06.10.2011-08.10.2011, Marburg

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The international conference „Victims of International Crimes“ was held at the University of Marburg from 6 - 8 October. This conference was organized by the 'Center for Conflict Studies' and the 'International Research and Documentation Centre War Crimes Trials', represented by Thorsten Bonacker and Christoph Safferling respectively. The main sponsors were the Foundation Remembrance, Responsibility and Future (EVZ) and the German Research Foundation (DFG).

The conference was conceptualized to focus on key legal aspects of victims of international crimes: The definition of victims; victimization processes; victim participation and protection in criminal trials as well as victim's and civil society's role in Transitional Justice processes. The organizers chose to focus on the legal remedies, and from there grouped complementing perspectives. Due to the large variety of attempts to show best practice examples as well as the limits of legal approaches a truly interdisciplinary approach was established in order to comprehend the complex role of victims in Transitional Justice.

In the first panel, 'Victimization in macro crimes', the speakers outlined the different victimizing experiences victims can endure. In this respect BORIS BARTH (Konstanz) employed the example of the 'Genocide Convention' to show the limits to certain victim groups and their struggle for acknowledgment. He was advocating a modernization of this Convention from 1948 concerning more recent conflicts, a proposal which led on well to SUSANNE BUCKLEY-ZISTEL's (Marburg) contribution in which she illustrated key issues concerning Gender Justice when looking at Transitional Justice mechanisms. In her presentation Buckley-Zistel referred to first findings research which demonstrated that even Transitional Justice instruments such as

courts, truth commissions and reparation programmes continue to sustain Gender stereotypes and may not address all (sexual) experiences by women and men in an appropriate manner.

HOLGER-C. ROHNE (Heidelberg) presented a macro level victim centered study, which asked what victims in a war context mostly suffer from and what it is they think will bring them relief. Already here it became obvious that it regularly depends on the political, cultural and economic background in terms of what victims want and that in return truly responsive mechanisms must answer these prevailing political and societal conditions.

The second panel went on to ask what role victims play in Transitional Justice processes and what kind of avenues the international community has thus far made available for them. From the perspective of the victims right movement in Guatemala RAQUEL ALDANA (Sacramento) used this case study to show how the victims right movement was able to strongly advocate the implementation of Transitional Justice mechanisms and stressed the importance of the Inter-American Human Rights System, which was able to enforce the respective national projects for achieving justice. In her overview of the different forms, application processes and possible outcomes of individual and collective reparations, CARLA FERSTMAN (London) shed light on the highly complex issue of reparations. Finally, KATHARINA PESCHKE (The Hague) discussed how individual victims can apply to the ICC Trust Fund for compensation, which she indicated as quite a bureaucratic endeavour with only limited resources.

In general the conference managed to successfully combine interesting case studies with theoretical discussions on victim participation. Thus the next panel discussed the role of civil society actors: VEITH STRASSNER (Mainz) worked out the interrelationships between governments and civil society actors as well as the logic behind their bargaining. CHRISTOPH SPERFELDT (Phnom Penh) outlined the important outreach work done by civil society actors, particularly considering that the Extraordinary Chambers in

the Courts of Cambodia do not have the capacity to undertake such measures. He was also pointing out that civil society groups' interests might not always match up with victims' interests. Sperfeldt, along with many other contributors at the conference, stressed the insufficient resources available throughout the justice process allocated to including victims' voices and to public information programmes on the ECCC.

MARCEL BAUMANN (Freiburg) came back to the question of 'who is a victim' and showed that in longer, ongoing conflicts it is extremely difficult if not impossible to draw a clear distinction between perpetrator and victim groups. The discussion continued on the speakers' conclusion that civil society actors can further secondary conflicts and thus raising the question about their moral authority.

On Friday, the conference started with the individual and collective aspects of defining victims. MICHAEL J. KELLY (Omaha, Nebraska) started the discussion by asking 'How many victims do we need to establish a crime under the jurisdiction of the International Criminal Court?' and countered by asking 'Is the crime of relevance to define the victims?' He continued to discuss the process of acknowledging certain victims for this will have important implications for the reparative justice process. MICHAEL HUMPHREY (Sydney) argued in favour of the victim-perpetrator dichotomy in law, because criminal trials represent a political will to condemn committed wrongs and to establish some kind of symbolic justice.

REGINA MÜHLHÄUSER (Hamburg) shifted the focus by stressing the socially constructed nature of victims and perpetrators. She used the example of the prevailing (West) German narrative of rape conducted by the Red Army in the aftermath of the Second World War, and outlined the political reasons for why only rape conducted by Soviet soldiers is remembered.

BRIGITTE BAILER (Wien) highlighted the often successful attempts by perpetrators and broader parts of perpetrator society to present themselves as victims and the strategies and fora they use to this end. In her presentation she showed that if it had not been for the Allied Forces there would have been even more

revanchist policies and myths.

During the fifth panel the conference came back to one of its main focuses, International Criminal Law, and explored achievements and limits concerning the 'Protection of Victims in Criminal Trials.' After introducing the different protection mechanisms of the prosecutors and the victim protection office, DANIELA KRAVETZ (The Hague) in her discussion of legal proceedings argued that it is still the defendant who is the main concern in trials at the ICTY. Kravetz came to the conclusion that still there is no effective victim protection in place.

NATALIE VON WISTINGHAUSEN (Berlin) also stressed that the international courts cannot protect witnesses in their home countries and are thereby losing important evidence. She continued by asking in how far the presumption of innocence is upheld, when there is the prominent picture of the innocent victim who only tells his/her story. MARK DRUMBLE (Washington DC) in his presentation pursued a similar argumentation, when he was confronting the audience with results from ethnographic and anthropologic research concerning the way we usually think of child soldiers. In his opinion we need to reformulate law and should consider applying the law in a shifting manner, depending on the minor defendants' reality. He pled for an interdisciplinary approach to fully understand the origins and consequences of the conflict in question, recruitment logic as well as the social structures within rebel armies.

A special form of participation - Civil Party Participation at the ECCC - was introduced by SILKE STUDZINSKY (Berlin), another practitioner who outlined the inadequate resources provided to Civil Parties despite a commitment from the ECCC to include victims' voices. In regard to the political and social setting trials are embedded in, Studzinsky forecasted that when the Cambodian government's discontent continues it will be the victims' rights which will be constrained first. The next panellist, CORNELIUS NESTLER (Cologne), talking about 'Victims in national trials' also decided to present a specific case: The trial against John Demjanjuk. Nestler - a victims' representative within this trial - fol-

lowed his preceding speakers in exemplifying how victims can be wrong, and thus showed how difficult evidence gathering can be.

FRANZISKA ECKELMANS (The Hague) explained the participation regime of the Rome Statute and reminded the audience that the ICC judges can order victims to be represented through their attorneys only. Also STEFANIE BOCK (Goettingen) pled for a 'balance of arms' concerning the rights of the defendant and those of witnesses, and argued that faster proceedings are of interest to all participants. The discussion then centred on two questions: first, in how far does it make sense to conduct trials when witnesses fear threats and violence, and second, on which violence are we to concentrate on prosecuting: current or former human rights abuses?

On the last day, the conference offered yet another highlight: keynote speaker THEO VAN BOVEN (The Hague). In his speech he advocated the victim-oriented perspective in International Law and Transitional Justice processes. As other speakers before him, he acknowledged the aims achieved by pointing to the fact that by now a moral obligation to support victims has been established, even if there is still no legal one. To van Boven the main reason why current laws are not responsive lays in the missing efforts of joint cooperation between practitioners and theorists. Thus international law lacks an interdisciplinary approach, not to mention most governments' lack of political will to prosecute and pay reparations and the problems associated with power politics. Even regarding their basic individual and collective rights - to know the truth, to gain justice and to receive reparations - victims cannot expect any funding. Here he pointed to the European Union, which also only acknowledges a narrow victim approach and is thereby missing its (historical) obligations. Coming back to the individual conflict areas he stressed the importance of improving living conditions, health and social services, which might be of more benefit to victims and wider society than the prosecution a few major war criminals. Theo van Boven thus „took perspective“ for victims and by identifying key issues left the audience with a positive outlook.

In order to reflect on the manifold ap-

proaches and perspectives given each topic, the conference concluded with a roundtable discussion: RAQUEL ALDANA (Sacramento), acknowledging the incapacities of law and persecution, also recalled their advantages as official paths and as adequate answers to mass atrocities. The task lying ahead of us is to define victim participation more accurately with regard to the demands of justice. GERD HANKEL (Hamburg) stressed the major aims of peace and reconciliation, which - with the case of Rwanda in mind - can mean painful processes for all of the parties concerned. He focussed on the example of instrumentalisation of the Rwandan victim category in order to show that „taking perspectives“ is not always the right path for reconciliation. After talking about key issues with regard to victim participation at the ICC the honoured guest Judge HANS-PETER KAUL (The Hague) introduced yet another perspective: The only way to stop victimization is to put more efforts into the prevention of violence, i.e. the crime of aggression.

The major outcome of the conference was an informed, interdisciplinary discussion on the key concepts and definitions of victims and perpetrators and to what extent one can maintain a clear distinction between the two. Victims and perpetrators are not homogenous groups, and the law can only bring justice to each accordingly when it is accompanied by other approaches to explore the complexity of historical conflicts. Also it needs to be further explored what 'victimization' means to the individuals in question. This necessitates questioning whether current Transitional Justice programmes reduce their victimization, or whether society has different needs. It also became clear that civil society and victim group participation play an ambivalent role in gaining peace and reconciliation. It was highlighted by the audience that victims' expectations of trials need to be dampened and that Transitional Justice needs to be understood as processes of trial and error. At the conclusion of the conference it was clear to all participants that there are many areas for improvements concerning victim participation in TJ processes; what form these improvements should take remains open to further research.

Conference overview:

Welcome Addresses

Joachim Schachtner (Vice-President of the University)

Rudolf Kriszeleit (Ministry of Justice of Hesse, State Secretary)

Mathias Bös (Director of the Centre for Conflict Studies)

Eckart Conze (Director of the International Research and Documentation Centre War Crime Trials)

Panel 1: Victimization in Macrocrimes

Chair: Stefan Kirsch (Attorney)

Boris Barth (University of Constance), Victims of Genocide and Crimes against Humanity

Holger-C. Rohne (Attorney), Victims' View on Transitional Justice

Susanne Buckley-Zistel (University of Marburg), Gender Issues in Victimization

Panel 2: Victims in Transitional Justice Processes

Chair: Anika Oettler (University of Marburg)

Carla Ferstman (Redress, London), Reparation issues: Collective and Individual Aspects

Sam Garkawe (Southern Cross University, Lismore), Victims at the ICC and the Nuremberg Trials

Raquel Aldana (University of the Pacific, McGeorge Law School), A Victim-Centered Evaluation of Truth Commissions and Trials

Katharina Peschke (ICC Trust Fund), The ICC Trust Fund

Panel 3: The Role of Civil Society Actors

Chair: Thorsten Bonacker (University of Marburg)

Veith Straßner (University of Mainz), Victim Groups and Associations

Christoph Sperfeldt (Asian International Justice Initiative Civil Society), Victims and the Khmer Rouge Tribunal

Marcel Baumann (University of Freiburg), Politics of Victimhood

Panel 4: Definition of victims: individual and collective aspects

Chair: Chandra Lekha Sriram (University of London)

Michael J. Kelly (Creighton University), Defining Victims in the ICC Statute

Michael Humphrey (University of Sydney), The Individualising Discourse of Law: Victims in Truth Commissions and Trials

Regina Mühlhäuser (Hamburg Institute for Social Research), Sexual Violence in German Victimhood Discourse

Brigitte Bailer (Documentation Centre of Austrian Resistance), They Were All Victims: The Selective Treatment of the Consequences of National Socialism

Panel 5: Protection of Victims in Criminal Trials

Chair: Frank Höpfel (Wien)

Daniela Kravetz (International Criminal Tribunal for the Former Yugoslavia, Prosecutor) Protection of victims

Natalie von Wistinghausen (Berlin, International Criminal Tribunal for the Former Yugoslavia), Victims as Witnesses - Views from the defence

Mark Drumbl (Washington & Lee), Upholding „Fairness“: Human Rights and Witness protection

Panel 6: Participation of Victims in Criminal Trials

Chair: Rianne Letschert (Tilburg University)

Silke Studzinsky (ECCC), Civil Party Participation at the ECCC

Cornelius Nestler (Cologne), Victims in National Trials

Franziska Eckelmans (The Hague), ICC Participation of victims at the ICC

Stefanie Bock (Goettingen), Victims of civil war

Keynote Speech

Franz Kahle (Major of the city of Marburg), Welcome Addresses

Theo van Boven (Maastricht University), Keynote Speech: Victim-oriented Perspectives: Rights and Realities

Roundtable discussion: Victims' Rights and Peace

Chair: Alexandra Kemmerer (Berlin)

Judge Hans-Peter Kaul (ICC)

Gerd Hankel (Hamburg Institute for Social Research)

Raquel Aldana (University of the Pacific, McGeorge Law School)

Endnote: Christoph Safferling (University of Marburg)

Tagungsbericht *Victims of International Crimes*.
06.10.2011-08.10.2011, Marburg, in: H-Soz-u-Kult 11.02.2012.