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Transitional Justice in Israel and Palestine

Final Report on the activities hosted by the Max Planck Institute for Comparative Public Law and International Law (MPIL) in Heidelberg, Germany, within the joint project between the MPIL and the Minerva Centers for Human Rights in Tel Aviv and Jerusalem, Israel, on Transitional Justice (TJ).

Contents

Introduction	2
Budget	3
The doctoral researcher at MPIL Heidelberg	3
Collaboration between MPIL and Minerva Centers	7
Activities Organized by the Minerva Centers in Israel	9
i. International Conferences	9
ii. Workshops	10
iii. Local-Level Conferences and Collaborations	10
iv. Research Group with the Van Leer Jerusalem Institute	11
v. University Courses	12
Conclusion	12

Introduction

The term “Transitional Justice” (TJ) encapsulates a broad spectrum of legal and societal measures with the aim of guiding the shift from conflict and oppression toward a state of peace and justice. This research field focuses on the complex and prolonged aspects of development and reconciliation processes. It engages with fundamental aspects of international human rights and international law. The critical components of addressing, acknowledging, punishing, and mediating past injustices play a pivotal role in gradually dissipating fear and mistrust among diverse population groups. They contribute to the restoration of trust in the protective and regulatory functions of the state, fostering the cultivation of a sustainable foundation of values for collective future endeavors.

Nevertheless, the established mechanisms present significant dilemmas. For instance, navigating investigations and prosecution of war crimes in the context of intra-state, ethnically, or religiously motivated conflicts poses numerous challenges. Determining the conditions necessary for effective collaboration among states, international organizations, civil society actors as well as corporate and other private actors raises complex questions.

In a collaborative effort between the Max Planck Institute for Comparative Public Law and International Law (MPIL) in Heidelberg, Germany, and the Minerva Centers for Human Rights at the Hebrew University of Jerusalem (HUJI) and Tel Aviv University (TAU), in Israel, this project united leading entities in foundational research. Supported by a funding **totaling EUR 748,700**, young researchers on both sides were supported in the highly topical project “Transitional Justice in Israel and Palestine” over four years from **2019 to 2023**. The success of this project hinged on intensive personal exchange through conferences, reading groups, research stays, as well as individual doctoral and post-doctoral projects.

Budget

The Transitional Justice Project was awarded EUR 748,700 in total. **EUR 182,700 were allocated to the MPIL** for hiring a doctoral researcher and sponsoring her travels to Israel to participate in the events organized by the Minerva Centers. The budget of MPIL Heidelberg was used accordingly.

	<u>2019-</u> <u>20</u>	<u>2020-</u> <u>21</u>	<u>2021-</u> <u>22</u>	<u>2022-</u> <u>23</u>	<u>Total</u>
<u>MPIL</u>					
1 Doctoral salary	42,000	44,600	44,600	47,500	178,700
Project and travel funds	1,000	1,000	1,000	1,000	4,000
					182,700

The doctoral researcher at MPIL Heidelberg

The project envisaged sponsorship of one doctoral researcher based at the MPIL. The position was announced publicly and attracted applications from all over the world. Based on the academic credentials, writing sample, reference letters, and interviews conducted in Berlin, professor Anne Peters hired Julia Emtseva, a lawyer and transitional justice scholar from Kyrgyzstan. Julia started her position in December 2019. Throughout the project, Julia has been working on her doctoral thesis titled “Privatized Justice: The Role of Private Actors in Transitional Justice Processes”, where she explored the evolving landscape of transitional justice with a focus on the growing involvement of private actors as sponsors and privatizers of transitional justice processes. Traditionally associated with state-led initiatives, the design and implementation of transitional justice mechanisms have changed. Increasingly, the presence of private actors, such as **philanthropic foundations, NGOs, and corporations** is becoming more prominent. Such actors now play pivotal roles by providing financial, technical, and even operational support to transitional justice efforts globally. Julia’s study highlights how both for-profit and nonprofit entities often operate with a “business logic”,

engaging in similar practices and organizational structures. She considered the distinction between for-profit and nonprofit irrelevant for defining their status and responsibilities under international law within TJ initiatives. The categorical differentiation between these organizational structures does not significantly influence the evaluative framework concerning their legal standing and obligations within international law.

Private involvement in transitional justice recently became visible for most followers of world affairs. After Russia's invasion of Ukraine in early 2022, private actors invested massive resources in helping the victims of Russian aggression and investigating international crimes on Ukrainian territory. The Open Society Foundations (OSF), the world's third largest philanthropic fund, pledged USD 25 million to help Ukrainian civil society groups with post-conflict reconstruction, among other things. With this sum, the OSF launched the Ukraine Democracy Fund, which will work toward attracting more donations from private foundations and other private sector entities. The collected funds go, inter alia, to several Ukrainian and foreign NGOs that work to document violations of international law by Russian forces. For instance, organizations like Truth Hounds, Bellingcat, and eyeWitness collect evidence and testimonials to create detailed files of potential crimes with the goal of espousing international or domestic judicial proceedings.

These examples are not unique. Whether it involves private investigators traveling to conflict zones to collect evidence for future criminal prosecutions or big corporations and philanthropic foundations providing financial or technical support to truth commissions, reparation funds, or international tribunals, private actors are increasingly taking TJ matters into their hands. Building upon such examples, Julia's thesis explores the expanding but overlooked roles of private actors as sponsors and privatizers of transitional justice. The concept of privatized justice, thus, evolves to encompass a range of activities undertaken by private actors in TJ. Her work also aims to examine whether these developments can be tackled by the existing legal frameworks, which limit or facilitate the delivery of justice in novel ways.

Julia's thesis promises to be a valuable contribution to the literature on private involvement in public processes. The relationship between private actors and conflicts is generally well studied. Existing research notably elucidates the private actors' roles in fueling wars through financial support and assistance. Until now, there is a gap in understanding the private actors during post-conflict or post-crisis phases. There is in particular a lack of exploration from the perspective of public international law.

Prior scholarship, while addressing certain participatory roles of private actors like filing applications on behalf of the victims or amicus curiae briefs, had not elaborated a nuanced view. It had not taken note of the differences between private actors supporting justice projects by **funding** them or doing **advocacy** and those actors who actually **perform public functions** such as private organizations that collect evidence for international crimes or foundations that design and implement reparation programmes for victims of gross human rights violations. The scant attention that (public) international law scholarship has paid to these issues so far is probably inter alia due to the disciplinary boundaries that leave private actors mostly outside international legal frameworks. Julia's work provides a comprehensive analysis of private engagement in TJ. It maps the breadth of private actors' participatory roles within TJ mechanisms and in cooperation with the UN, examines the risks associated with these roles, and explores possible international legal frameworks to capture this participation.

Most participatory roles necessitate decision-makers (governments or international organizations) to grant private actors some form of access to a TJ process. Decision-makers, however, often face challenges in fulfilling their mandates due to factors like limited funding, political, or diminished legitimacy. This makes certain states and IOs more inclined to permit private actors to offer formal or informal services. Since it is unattainable to look at how individual states make decisions on who to grant access to when it comes to TJ, Julia's thesis instead explores how international organizations approach cooperation with private actors when it comes to public good projects. In the example of the UN, her study analyzes related

internal principles and guidelines, identifying strengths and weaknesses of international organizations law.

However, private actors may also enter the domain of TJ without state or IO consent. Julia, therefore, looks at private engagement in TJ through an unconventional prism of privatization and develops two novel concepts that have the potential to tackle different modes of private engagement: nonprofit privatization and implicit privatization. While nonprofit privatization is privatization by nonprofit organizations whose aim is not generating profit, implicit privatization is when a private actor takes over a TJ-related function without the state's consent or authorization.

Lastly, her work offers an analysis of international legal responsibility associated with private engagement in TJ and argues that new perspectives on the law are needed to guarantee that private actors involved in public projects could also be held responsible for assuming the mantle of authority and accountable for any misconduct that could arise from it.

The thesis has been submitted for the examination at the Freie Universitaet Berlin in February 2024 and the colloquium (final stage of the *Dissertationsverfahren*) is scheduled for 20th June 2024. Prof. Dr. Helmut Aust from the Freie Universitaet Berlin has written the second review and will, together with Prof. Anne Peters, take part in the colloquium chaired by Prof. Heike Krieger. The academic lecture given by Julia Emtseva in order to satisfy the final dissertation requirement is: "The Right to Strike under International Law".

Besides her doctoral thesis, Julia published two scholarly pieces related to the project. These are published **open access** and can be accessed through the links below.

- Philanthropic Justice: The Role of Private Foundations in Transitional Justice Processes. In: Michigan Journal of International Law Vol. 44 Iss. 2 (2023), 219-263 (2023). doi: <https://doi.org/10.36642/mjil.44.2.philanthropic>
- Philanthrocapitalism, transitional justice and the need for accountability. JusticeInfo.net, 12 October 2020 <https://www.justiceinfo.net/en/45639-philanthrocapitalism-transitional-justice-need-accountability.html>.

Collaboration between MPIL and Minerva Centers

The TJ project has also fostered close cooperation between researchers from the MPIL and Minerva Centers. While working on her thesis, Julia traveled to Israel and stayed at the HUJI for the period of **6 weeks from April to mid-May of 2023**. During her research stay, she continued her research but most importantly connected to the colleagues at the Minerva Centers and the two post-doctoral researchers. Dr. Uri Ansenberg, who has a PhD in Real-Estate Valuation and Organization of the City from University of Manchester, focuses in his postdoctoral project on “The unique economic-judiciary system of property arbitration as it operates as a successful mediating force within East-Jerusalem”. Dr. Michal Braier, who holds a PhD in Urban Informalities and Liminal Citizenships and the State from Ben-Gurion University of the Negev focuses in her postdoctoral project on “Urban planning as a reparative tool: towards a transitional justice approach to the housing crisis in Palestinian East Jerusalem”.

Anne Peters also spent four weeks in Israel in May 2023. While serving as a visiting professor at Tel Aviv University, she visited the Jerusalem Minerva Centre and was informed about current staff and ongoing projects. This period of intensive collaboration aimed to enhance the synergy between researchers, share insights, and contribute to the collective goals of the project. The connections established and knowledge shared during this research stay contributed to building a robust network and fostering a collaborative research environment, laying the groundwork for future advancements and collaborative initiatives in the field of transitional justice, also after the project’s end.

Besides, at the early stage of the project, two post-doctoral researchers planned to visit the MPIL. Unfortunately, their plans were interrupted by the COVID-19 pandemic and their stays were moved to the online format.

One online event was organized to bring together the three researchers affiliated to the TJ project: Dr. Limor Yehuda, Dr. Jeremie Bracka, and Julia Emtseva. The overarching theme of the online event was “Rethinking Transitional Justice”, where Julia Emtseva gave a brief overview of the transitional justice’s state of the art and examined this emerging field of

international law in the light of the recent United Nations Security Council open debate dated 13th of February, 2020. This open debate was the first time the Council held a meeting on transitional justice as a thematic issue and focused on how the Security Council can better support transitional justice initiatives in country-specific contexts. In this regard, a central aim was for those member states with experience in dealing with transitional justice initiatives to share their views, including lessons learned, challenges, and the role of the international community. Limor Yehuda presented her project titled “Rethinking Transitional Justice in Intractable Conflicts”, in which she examined the applicability of tools and mechanisms of TJ in situations of unresolved/ongoing group-conflicts, reporting that their impact is quite limited and questionable. She examined to which extent, and in what way, mechanisms and methods of TJ, such as truth commissions, reparations and apologies, are applicable and promote justice, peace and reconciliation in situations of intractable conflicts; and, if the impact of these methods is questionable, what could be the alternatives. Jeremie Bracka presented his research on transitional justice for the Middle East and designing an unofficial Israeli-Palestinian Truth and Empathy Commission. In his presentation, he considered the potential role of unofficial truth-telling and justice-seeking measures in the Israeli-Palestinian conflict. Drawing on existing civil society projects, the IPTEC is designed to address the history and potential abuses committed by both nations through victim testimony and historical inquiry. The IPTEC would address some of the key divisive issues comprising the conflict, namely the significance of 1948 and the Palestinian right of return, 1967, the Israeli-Jewish settlements, as well as the Second Intifada, with its legacy of human rights abuse and political violence (2000-2005). Jeremie Bracka challenged the prosecution preference at the International Criminal Court by offering an alternative lens of “restorative justice” and “empathy”.

Dr. Limor Yehuda worked on various projects related to transitional justice throughout her fellowship. For instance, Dr. Yehuda worked on “Rethinking Peace in Israel/Palestine” (in Hebrew) as well as on “Theorizing Transition in Intractable Conflict: From Oppression to Parity and Cooperation in Israel/Palestine”. Her book titled “Collective Equality: Human Rights and Democracy in the Resolution of Ethnonational Conflicts” based on her PhD thesis was

published by Cambridge University Press in 2023. Dr. Yehuda came to Heidelberg in November 2023 to present her book at the MPIL.

Dr. Jeremie Bracka was a Post-doctoral Fellow and lecturer in the law faculty at the Hebrew University Minerva Center for Human Rights (Jerusalem). He has worked as a legal advisor at the Israeli Ministry of Foreign Affairs and the Israeli High Court of Justice. His PhD focused on building an unofficial grass-roots Israeli-Palestinian Truth and Empathy Commission. He has an extensive list of publications on the topic of transitional justice, with a special focus on the Israeli-Palestinian conflict.

Activities Organized by the Minerva Centers in Israel

The Minerva Centers in Israel have utilized their project funding to organize a series of conference, workshops, and research groups (a separate report on their activities will be provided by the respective Centers).

i. International Conferences

The project's impact extends globally through its annual international conferences, often conducted in partnership with colleagues from Tel Aviv University. Every June of each year starting from 2020, the conference took place either online (due to the COVID-19 pandemic) or in hybrid/in-person format.

- Annual Conference of 2020: "Transitional Justice and the Crisis of Democracy" (online)
- Annual Conference of 2021: "The Scripts and Settings of Transitional Justice: Procedure, Protocol, Form" (online), the doctoral researcher, *Julia Emtseva*, presented her project at this conference.
- Annual Conference of 2022: "Transitional Justice – A Time for a Material Turn?" (online)
- Annual Conference of 2023: "Transitional Justice Beyond the State: Non-State Actors as Objects and Agents in Transitional Justice Processes" (in-person in Jerusalem)

Video recordings of the conference sessions are available on the Jerusalem and Tel-Aviv branches' websites (<https://en.minervacenter.huji.ac.il/conferences-and-lectures>).

ii. Workshops

The series of workshops conducted in Jerusalem on gender and transitional justice stands as an important component of the project's initiatives. In 2022, the workshops commenced with a workshop entitled "The Study of Women and Gender in Palestinian Society in Israel". This in-person workshop provided a platform for comprehensive discussions on the nuanced intersections of gender, identity, and justice within the Palestinian context in Israel. Building on this foundation, the subsequent workshop in the same year, titled "Gendering Transitional Justice", delved into the complex dynamics of incorporating gender perspectives into transitional justice processes. This interactive session aimed at fostering a deeper understanding of the role gender plays in shaping justice mechanisms and societal transitions. Furthermore, in 2023, the series continued with the workshop titled "Beyond Denial: Accountability and Recognition of Violence as a Key to Processes Promoting Justice between Women". This in-person event explored strategies to address and recognize violence, emphasizing its critical role in espousing justice and solidarity among women. These workshops collectively contributed to advancing knowledge and promoting dialogue and inclusivity within the transitional justice discourse.

iii. Local-Level Conferences and Collaborations

The project sought to make an impact at the grassroots level by organizing two single-day conferences on transitional justice in mixed Arab-Jewish cities, held in person in Lod (2022) and Jerusalem (2023). The first conference, held in Lod in 2022, served as a platform for addressing transitional justice issues within the unique context of a mixed Arab-Jewish city. Participants engaged in discussions on the challenges and opportunities for justice in such diverse urban settings. Building on the success of the inaugural conference, the project organized a subsequent event in Jerusalem in 2023, further extending the dialogue on transitional justice to a different local setting. The collaboration with colleagues from Tel Aviv

added valuable perspectives and expertise to these conferences, enhancing the overall impact and reach of the transitional justice initiatives at the local level.

Moreover, the project researchers organized a conference in collaboration with the Hebrew University's Truman Research Institute for the Advancement of Peace, focusing on the theme "Place Names as an Arena in the Israeli-Palestinian Conflict and as a Lever for Peace". This in-person conference, held in May 2022, brought together experts, scholars, and stakeholders to discuss the role of urban spaces in the escalation/de-escalation of the conflict. The conference aimed to explore how place names serve as both a contested arena in the ongoing conflict and a potential tool for fostering peace. The collaboration with the Truman Research Institute, renowned for its dedication to advancing peace initiatives, added depth and credibility to the discussions.

iv. [Research Group with the Van Leer Jerusalem Institute](#)

A commendable aspect of the project is the establishment of a multi-year research group on partnership-based Israeli-Palestinian peace in collaboration with the Van Leer Jerusalem Institute. Within this partnership, a conference titled "A Partnership-Based Israeli-Palestinian Peace – Toward a Changed Paradigm" was organized in May 2023.

This conference, held against the backdrop of the shifting landscape in Israeli-Palestinian discourse, provided a platform for the exploration of the emerging partnership paradigm. In the aftermath of the stalling two-state solution and the deepening apartheid realities, the partnership paradigm has gained traction, offering an alternative lens through which to envision the resolution of the Israeli-Palestinian conflict. This paradigm acknowledges the inherent integration of Israeli Jews and Palestinian Arabs across the entire region and emphasizes equality and shared rights as foundational principles. The conference aimed to propel this paradigm into academic and civil society discussions, transcending the limitations imposed by the traditional separation model. It sought to challenge established norms in constitutional, social, economic, and political discourse, expanding the boundaries of acceptable research and action. The conference served as a catalyst for a deeper

understanding of the evolving models of peace and decolonization, laying the groundwork for future academic research, social initiatives, and cultural endeavors in the Israeli context.

v. University Courses

The project-based courses designed for the HUJI students constitute a significant endeavor aimed at generating meaningful discourse, interaction and ties between Jewish and Palestinian students, who normally interact rarely if at all. The courses represent a deliberate effort to bridge existing divides and facilitate a constructive exchange of ideas within an academic framework. In doing so, the project-based courses contributed to the broader goals of the Transitional Justice Project by nurturing an atmosphere of inclusivity and understanding among the student community at the HUJI.

Conclusion

The joint project on Transitional Justice in Israel and Palestine, conducted collaboratively by the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany, and the Minerva Centers for Human Rights at the Hebrew University of Jerusalem and Tel Aviv University in Israel, has from our perspective been successful. Over the course of four years (2019-2023), the project has made contributions to the field of transitional justice through various avenues. On the Israeli side, the project was naturally affected by the terror attacks of 7th October 2023 and the ensuing disruption of academic life. On the Heidelberg side, Julia Emtseva's finalization of her dissertation was unaffected.

To sum up, the establishment of annual year-long post-doctoral research fellowships has been a cornerstone, hosting in total **eight post-doctoral researchers** who added intellectual depth and diversity to the ongoing investigations. The doctoral researcher, Julia Emtseva, based at the Max Planck Institute, wrote and completed a dissertation on "Privatized Justice: The Role of Private Actors in Transitional Justice Processes." Her work explored the evolving landscape of transitional justice, addressing the increasing involvement of private actors and raising critical questions about the implications for the existing international legal order. Julia

will develop the manuscript into a book, hoping to submit the book manuscript to an international publisher within the next months.

Overall, the collaborative project between the MPIL and the Minerva Centers for Human Rights achieved the project goals. By focusing on various thematic areas such as the legal construction of identities, the role of civil society and the private sector, and the gender aspect – the project has not only advanced academic discourse but has also actively engaged with (memory) political and societal changes. We expect the outcomes to serve as a basis for continued research, collaboration, and for a nuanced understanding of Transitional Justice within and beyond the Israeli-Palestinian context.

Julia Emtseva and Anne Peters