

Opening of the Cologne Center for Advanced Studies in International History and Law (CHL)

Double Standards in International Law?

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On 16 September, 2024, the Cologne Center for Advanced Studies in International History and Law (CHL) was inaugurated. The three founding directors, professors Fabian Klose, Angelika Nußberger, and Claus Kreß LL.M., hosted an international symposium in celebration of this occasion. In two panels, historians and legal scholars discussed double standards in international peace and security law and the role of human rights as a rhetorical device in foreign policy. Samuel Moyn concluded the Symposium with an engaging keynote lecture on “A Letter to Hans Kelsen on the Use of Force”.

The newly established CHL aims to provide long-term space and resources for interdisciplinary exchange between law and history. University Rector Professor Joybrato Mukherjee, in his welcoming speech, highlighted the uniqueness of the CHL in Germany. Lena Altman, Co-CEO of the Alfred Landecker Foundation, a key supporter of the CHL's central pillars the *Colleg Konrad Adenauer* as well as the *Hans Kelsen Visiting Professorship*, emphasised that the Center offers future leaders the opportunity to tackle the complex challenges of our time. This is to be realised through the interdisciplinary approach of the Center, allowing participants to learn from the best in their fields while integrating diverse perspectives.

I. Double Standards in International Peace and Security Law?

The first panel of the symposium, moderated by Claus Kreß, focused on the topic “Double Standards in International Peace and Security Law?”. Kreß highlighted the tension often present in international law, where legitimacy is the key currency, but is challenged by accusations of double standards. In the light of these reflections, he addresses the need for conceptual clarity: What exactly does the accusation of double standards mean, and how should scholars and practitioners address it?

Andrew Thompson, professor at the University of Oxford and the first Senior Fellow of the Colleg Konrad Adenauer of the CHL, explored the historical perspective of double standards in the law of armed conflict. He discussed the drafting of the 1949 Geneva Conventions, noting that the 1977 Additional Protocols would not have been adopted in their current form without pressure from central figures in African states, as the former president of Mauritania Moktar Ould Daddah and the former Executive Secretary of the Organisation for African Unity's Liberation Committee Hashim Mbita who pointed out double standards. Particularly, the inclusion of national liberation wars in exercise of the

right to self-determination under international law in Article 1 IV AP I was a breakthrough attributed to the efforts of these endeavours. Thompson argued that while double standards are inherent to international law, they can be changed when exposed and addressed through legal and political processes.

David Kretzmer, emeritus professor at Hebrew University of Jerusalem and former vice-chair of the UN Human Rights Committee, analysed the concept of double standards as a set of principles applied more strictly to one state than another. He opened by showing that there are wide-scale public perceptions of double standards regarding the use of force and law of armed conflict. These double standards, he noted, could be based on two allegations: inconsistency and hypocrisy. Kretzmer also questioned whether legal norms can always be applied objectively and neutrally. With regard to the objectivity of those applying the law, he pointed out that independence does not necessarily go together with neutrality. In practice, norms are often vague, such as the proportionality requirement in the law of armed conflict. Kretzmer mentioned the inherently political dimension of international law, as all actors – whether political decision-makers, legal advisors, experts or judges – bring their own prejudices with them. This is especially the case when the decision-making bodies are comprised of states that invariably act to further their own interests. Kretzmer concluded by stressing the role of legal scholars in clarifying ambiguous norms and reducing the scope for arbitrary interpretations. Moreover, he highlighted the scholars' duty to expose double standards, in particular within one's own state, by "speaking truth to power".

Chile Eboe-Osuji, Distinguished International Jurist at Toronto Metropolitan University and former president of the International Criminal Court, concluded the talks by asserting that double standards are an unavoidable reality of life made inevitable by the absence of a central superior political authority to enforce international law impartially – an accepted feature of the international order. Drawing from Stoic philosophy, he suggested that while acknowledging this fact, one should not be deterred by it; it is better to accept double standards as a "Stoic challenge" that calls for a work-around. He emphasised that despite the lack of a central authority to enforce international law, double standards should not be passively accepted. Eboe-Osuji reminded of the 1919 Paris Peace Conference, at which the Allies took a one-sided view of responsibility under international law in view of their superior position of power, and he recalled the bombings of Hiroshima and Nagasaki – as well as Dresden – that remained unpunished as international crimes at the end of the Second World War. However, the lack of efforts to achieve equal justice in the past because of double standards cannot be the point of reference for today's efforts for justice such as is required in the context of the war in Ukraine, Hamas attack of 7 October 2023 and Israeli military operations in Gaza since. In that regard Eboe-Osuji recalled the thoughts of former International Court of Justice judge Thomas Buergenthal to the effect that hypocrisy of states is not to be seen only as

an obstacle, but rather a cornerstone for the development of international law of human rights.

In the following discussion, participants engaged in a lively debate on the role of double standards in the context of colonial history and current international politics. Thompson clarified that pointing out double standards was a means of addressing colonial inequalities. Furthermore, there was a discussion on the need for international law to evolve in order to address epistemic injustices. The issue of “whataboutism” was also raised, referring to an argumentative strategy where accusations of double standards are often used to deflect from one’s own wrongdoing. Since international law is driven by political actors, the question arises as to what legal professionals can actively do. The panel emphasised the importance of ensuring that the judiciary remains free from politicisation. Eboe-Osuji concluded by referencing Robert H. Jackson and his advocacy for the pursuit of a “rule of law among nations”, for which the consistent enforcement of responsibility under international law is indispensable.

II. Human Rights as a Rhetoric Device in Foreign Policy

At the beginning of the second panel “Human Rights as a Rhetoric Device in Foreign Policy”, chair Angelika Nußberger shared her thoughts regarding the first panel, highlighting two discussion poles: an idealistic approach, which sees common standards as an indispensable “key currency” of the community, and a pragmatic position, which accepts the inevitability of double standards as a starting point for further efforts.

The first speaker, historian Jan Eckel, professor at University of Freiburg, illustrated how double standards are inherent in the discussion on human rights as a rhetorical and ultimately political tool. Eckel based his analysis on a discursive approach drawing on three episodes from history. Eckel characterised the claim to universality as a dilemma: on the one hand, it provides the rationale for the soft power of human rights, but on the other puts human rights advocates in an intricate position if they are unable to demonstrate that they employ their standards equally everywhere. In the first episode, Eckel illustrated the image politics behind the criticism of Russian labour camps on the one hand and the life standards of African Americans on the other. He then demonstrated how this rhetoric entered the national political discourse analysing allegations of double standards against the Carter administration by members of the American republican party. Finally, he described the way eschewing double standards became not only part of the identity of but also a major challenge for NGOs established in the 1970s. The episodes illustrated how discussions about double standards turned into an important discursive arena, in which the legitimacy of human rights politics was negotiated. Brought forward by actors of very different ideological persuasions, accusations of double standards translated political criticism into a supposedly universal language.

The subsequent presentations were each dedicated to a case study.

International law professor Shin Hae Bong, Aoyama Gakuin University identified a double standard in Japan's human rights policy towards South and North Korea. While Japan was seeking support from the international community regarding the abduction of Japanese citizens to North Korea in the 1970s and 80s, it almost completely disregards criticism of its own human rights policy in relation to South and North Korea. Thus, Japanese politicians largely deny the sexual enslavement of Korean women, the so-called "comfort women", before and during the Second World War. After the end of a long silence in the 1990s, following a lawsuit brought before the Japanese courts by one of the victims, the Japanese government remains reluctant to acknowledge the real dimensions of the crimes. Shin argued that this policy not only has negative social consequences such as hate speech, but ultimately prevents Japan from becoming a role model for human rights in Asia. In conclusion, Shin appealed to the responsibility of civil society to work together as human rights activists across national borders to counter the manipulation of the human rights discourse.

In the second case study, professor Ruth Halperin-Kaddari, an expert in family law and international women's rights at Bar-Ilan University and former vice-chair of the Committee on the Elimination of Discrimination against Women, analysed possible double standards within the UN concerning the investigation of the use of sexual violence as a weapon of war by Hamas in its attack on Israel on 7 October 2023. In her analysis, Halperin-Kaddari, differentiated between the Commission of Inquiry of the Human Rights Council, as a political mechanism, and UN Women, which qualifies as a professional-administrative body in her view. Halperin-Kaddari proceeded with a horizontal comparison regarding sexual violence against Palestinian women and a vertical comparison as regards the course of action in comparable situations, such as the bodies' reaction to corresponding violations of international law in Bucha, Ukraine. Despite repeated references to the complexity and possible ambiguities in the analysis, Halperin-Kaddari concluded that, in the horizontal as well as vertical comparison, the approach of both bodies with regard to the investigation of corresponding crimes against Israelis was less prompt, comprehensively, condemnatory and explicit in its legal conclusion.

The ensuing discussion focused, among other issues, on the impact of international law in general, the discourse beyond the legal discourse and possible causes for double standards, particularly in the case of sexual offences. Shin advocated that the national reappraisal of international crimes committed in the past should not be approached with shame, but rather as an opportunity for a dignified new beginning. Responding to Andrew Thompson's remarks, she compared Germany and Japan's attitude towards their own past. Claus Kreß addressed the risks emanating from unwarranted accusations of double standards if unanswered or distracting international attention from the most serious human rights violations.

III. A Letter to Hans Kelsen on the Use of Force

The symposium culminated in the captivating keynote lecture "A letter to Hans Kelsen on the Use of Force". The lecturer, professor Samuel Moyn, introduced by Fabian Klose, is an expert in international law as well as a historian at Yale University. As Fabian Klose

observed afterwards, in his lecture, Moyn impressively linked the history of a family, international law as well as politics based on a single hitherto neglected archive document: a letter addressed to Hans Kelsen, one of the greatest legal theorists and international lawyers of the last century. In the course of the lecture, the author of the letter, John Fried, turned out to be Kelsen's nephew and an international lawyer who was part of the Lawyers Committee on American Policy Towards Vietnam in the US at the end of the 1960s. In his letter, Fried devoted all his effort to convince his uncle to become a supporter of his activism against the Vietnam War. In his fascinating and thorough analysis of the letter, Moyn not only offered revealing insights into the legal and political debate in the US during the 1970s regarding the Vietnam War, but he simultaneously developed a fresh perspective on Hans Kelsen's personality and his late work. Finally, Moyn extrapolated three essential questions from this glimpse into the past which remain decisive to this day: The relationship between emotions and law, a possible tendency for the UN Charter to depart from its original intention of securing peace, and the relationship between politics and law. The pertinence of these questions became apparent when Moyn addressed them to the audience in the final part of his lecture. At the end of the successful first CHL symposium, nothing seemed more fitting than the invitation to ask those questions – inspiring questions as a symbol for the upcoming work of the CHL.