

KAS INTERNATIONAL REPORTS

PROCESSING THE PAST



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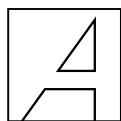
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■ **Corporate Social Responsibility and Climate Protection in China – The Contribution of Chinese Enterprises to Sustainable Development**

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Klingelhöferstraße 23
10785 Berlin
Germany
Phone (030) 2 69 96-33 83
Fax (030) 2 69 96-35 63
Internet: <http://www.kas.de>
<http://www.kas.de/internationalreports>
e-mail: stefan.burgdoerfer@kas.de

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BIC COBADEFF

Editor:

Dr. Gerhard Wahlers

Editorial Team:

Frank Priess
Dr. Wolfgang Maier
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Jens Paulus

Editor-in-chief:

Stefan Burgdörfer

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EDITORIAL

Dear Readers,

In March, the Kenyan people elected Uhuru Kenyatta as their new President, although he is currently facing charges of crimes against humanity at the International Criminal Court in The Hague. He is accused of having been partly responsible for the violence following the presidential elections in 2007, when people from different ethnic backgrounds fought one another in the streets. The unrest claimed over 1,000 lives, and up to 600,000 people were driven from their homes. In Kenya, politics are conducted along ethnic dividing lines; this was true in 2007 and still applies today. The only presidential candidate, who did not want to address one particular ethnic group but all Kenyans, Martha Karua, only attracted one per cent of the votes. But Kenyatta's election victory is not only due to the fact that he was able to win support from his own people, the Kikuyu. It is also an indication of the fact that many Africans are either not even aware of the International Criminal Court or are questioning its legitimacy.

If Kenyatta is found guilty in The Hague, the warrant for his arrest is as unlikely to be executed as that against Omar al Bashir. The Sudanese President, who is also facing charges at the International Criminal Court, has been travelling unimpeded around Africa for years. Heads of state, who condone his activities, criticise the Court as an instrument that is being operated in a colonial spirit, implementing politically opportune decisions of Western states. In their view, this is also illustrated by the court case against Laurent Gbagbo, the former President of Côte d'Ivoire, who used military force against Alassane Ouattara after Ouattara defeated him in the 2010 elections. He is now on trial at The Hague. His political friends are calling it "winner's justice". They are asking why no criminal prosecutions are being sought in relation to the plundering and rapes perpetrated by Ouattara's troops. Whatever the verdict will be in the Gbagbo case in The Hague, it is doubtful whether

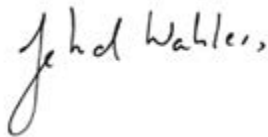
it will contribute to reconciliation and to efforts to come to terms with the past in Côte d'Ivoire in the foreseeable future. This illustrates that the court cases conducted in the Netherlands may fail to have the intended impact, at least in the short and medium terms. They may proceed perfectly in terms of legal process and yet meet with rejection. They may even make the rapprochement between victims and perpetrators, the discussion of issues between groups of the population and the development of a joint view of history more difficult for some time.

This can be seen clearly from the International Criminal Tribunal for the former Yugoslavia. For the first time, four authors of the *International Reports* are reporting on the same subject from the perspective of their respective countries, and anyone reading their conclusions will arrive at a mixed verdict. On the one hand, the trials against members of the military and of the government from the period of the Yugoslav wars are providing an important service by collecting facts that are indispensable for allowing people to reappraise the past as objectively as possible. On the other hand, they actually make this work most difficult, at least in the short term. It has been mostly Serbs who have been found guilty in The Hague while members from other ethnic groups were acquitted. As a result, numerous Serbs, including members of the government, are rejecting the verdicts as purely political. It is they, too, who are talking of "winners' justice". The Croats and Bosnians, on the other hand, are using the acquittals as an opportunity to point out that they had merely defended themselves. But serious breaches of the Geneva Convention, genocide and crimes against humanity can be perpetrated in a defensive war as well.

When societies have experienced periods of great injustice and devastating violence, coming to terms with the past as well as those responsible being convicted in a court of law are very important. Both must go hand in hand in order for perpetrators and victims to be able to live in peace with one another. In Germany, the Nuremberg Trials and the subsequent court proceedings laid the foundations for the society's efforts to address the crimes perpetrated during the Nazi period. Even though it took some time – Germany would have made less intensive efforts to deal with its own

guilt if these trials had not taken place. On the basis of this experience, the Konrad-Adenauer-Stiftung has been calling attention to the importance of addressing the past for decades in its international cooperation work. Such efforts must always include the legal proceedings, and the International Criminal Court established on the initiative of the United Nations is the appropriate institution for this.

In order to avoid being seen as a political actor dominated by Western interests, the Court should complement its legal proceedings with more intensive informative activities in the affected countries. But international donors should only support the setting up of a criminal court under the auspices of the African Union if they are convinced of the honourable intentions of the initiators. Otherwise, one would arrive at a situation such as that existing in the Human Rights Council of the United Nations, which is dominated by countries that question the universality of human rights. The international community should also work towards all states submitting to the jurisdiction of the Court in The Hague. To this day, the USA, China and Russia, amongst others, have still not signed the Statute of Rome, which has been very detrimental to the acceptance of the Court. Whether they will sign in the foreseeable future is more than doubtful. Efforts must be made to encourage acceptance of the verdicts of the International Criminal Court in the perpetrators' countries as well. That is the only way to provide a proper basis for people to come to terms with the past and for reconciliation.



Dr. Gerhard Wahlers
Deputy Secretary General

gerhard.wahlers@kas.de

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND COMING TO TERMS WITH THE PAST IN THE AFFECTED COUNTRIES

Henri Bohnet / Anja Czymmeck / Michael A. Lange / Sabina Wölkner

The break-up of Yugoslavia in the period from 1991 to 1999 was characterised by bloody wars, which made the former brother nations of Tito's multinational state into bitter enemies. To the present day, the aftermath of the conflicts still affects democratic development in the majority of the Yugoslav successor states and the relationships between them. Genocide, expulsions, killings and destruction: the understanding that each nation has of the causes and the instigators of the conflicts and of the individual war crimes frequently differs greatly from that of its neighbours. In many cases, their own role in the war is glorified and their activities are justified as representing a necessary war of liberation to gain national independence. In this view of the past, Bosniaks, Croats and Serbs see themselves as victors and victims in equal measure. That makes it difficult to hold a self-critical dialogue about the events of the war. One female journalist put it succinctly: "We all want reconciliation, but nobody wants to accept responsibility!"¹

Against this backdrop, efforts to investigate and address their own crimes are meeting with great resistance on the part of the population. Membership in the European Union is an aim all the states of the former Yugoslavia are striving for – which has only become reality for Slovenia up to date



Henri Bohnet is Resident Representative of the KAS in Belgrade.



Anja Czymmeck is Resident Representative of the KAS in Skopje.



Dr. Michael A. Lange is Resident Representative of the KAS in Zagreb.



Sabina Wölkner is Resident Representative of the KAS in Sarajevo.

1 | Duška Jurišić, Editor in Chief at the weekly magazine *Dani*, during a discussion on *Deutsche Welle* about religions in Bosnia and Herzegovina, Sarajevo, Oct 2011.

and is expected to take place for Croatia in July this year. This can only be achieved through regional reconciliation on the basis of comprehensive efforts to address the past. Reason being, good neighbourly relations represent one of the membership criteria.

It must be borne in mind that full cooperation of the Yugoslav successor states with the International Criminal Tribunal for the Former Yugoslavia (ICTY) is a prerequisite to EU membership for all former warring parties. Twenty years after the establishment of the ICTY in The Hague, there is no doubt about the central role the Tribunal plays in prosecuting the most notorious war

Being the first international tribunal after the war crime trials in Nuremberg and Tokyo following the Second World War, the ICTY's work has paved the way for the establishment of other regional criminal courts.

criminals and in documenting war crimes for the purpose of establishing an independent representation of the causes of the wars, the sequence of events and ultimately facilitating a historiography that is as objective as possible. With it being the first international tribunal after the war crime trials in Nuremberg and Tokyo following the Second World War, the ICTY's work has paved the way for other regional and international criminal courts to be established.

Since the extradition to The Hague in 2011 of the accused Ratko Mladić and Goran Hadžić, who had been on the run for many years, the focus in the Western Balkans has moved to the trials themselves and lately to the recent and impending verdicts.² The latest acquittals of the Croatian generals Ante Gotovina and Mladen Markač, of the Serb former Chief of the General Staff of the Yugoslav Army, Momčilo Perišić, as well as of the Kosovan Ramush Haradinaj last autumn, have once again illustrated the impact of the decisions made in The Hague on politics and public debate in the countries of the former Yugoslavia. The question of the work required to come to terms with the past in each country and of regional reconciliation appears more current than ever.

2 | Cf. Table 1, Prosecutions of the ICTY (at the end of this article).

COMING TO TERMS WITH THE PAST IN CROATIA

After the closure of the Office of the Prosecutor of the ICTY in 2010, the ICTY field office in the Croatian capital of Zagreb (and in Priština) also closed its doors recently, on 31 December 2012. This occurred in the course of the preparations to conclude the activities of the ICTY and in line with the expiry of the corresponding United Nations mandate. Now, only the ICTY offices in Belgrade and Sarajevo will remain in existence until the end of December 2014.³ The closure of the office in Croatia, and thereby the end of an important “phase of coming to terms with the past”, has come just in time before the country is due to join the European Union, an event scheduled for 1 July 2013. In connection with the activities of the ICTY, the country had been accused for a number of years of having “never completely got rid of the legacy of the Tuđman era”⁴. The relationship between Croatia and the ICTY covers a long and varied history, which began in May 1993 with the establishment of the Tribunal in accordance with Resolution 827 of the UN Security Council and has now concluded with the closure of the last field office.

From Croatian view the end of an important “phase of coming to terms with the past” comes just in time before joining the EU on 1 July 2013.

Croatia and the ICTY

For many years, Croatia was considered to be a Yugoslav successor state that, to a large degree, refused to cooperate with the ICTY. This frequently voiced accusation was mainly based on the demonstrably unsatisfactory cooperation with the Tribunal during the Tuđman era (1996–1999), which continued for some time during the subsequent government period of Iвица Račan (2000–2003).⁵ On 19 April 1996, the Croatian Parliament had approved

3 | “ICTY closes its field office in Croatia and Kosovo”, Zagreb, 31 Dec 2012 (Hina).

4 | Karl-Peter Schwarz, “Freispruch in Den Haag: Entlastung und Erleichterung”, *Frankfurter Allgemeine Zeitung*, 16 Nov 2012, <http://faz.net/aktuell/politik/-11962945.html> (accessed 12 Mar 2013).

5 | In the following text, reference is made to the detailed description of the relationship between Croatia and the ICTY: Vjerman Pavlakovic, “Better the Grave than a Slave: Croatia and the International Criminal Tribunal for the former Yugoslavia”, in: Sabrina P. Ramet, Konrad Clewing and Reneo Lukic, “Croatia since independence”, *Südosteuropa Arbeiten*, No. 131, 447–477, here 451 et sqq.

A resolution from 5 March 1999 stated that pertinent military operations on Croatian territory did not represent war crimes but defensive actions to liberate occupied areas and that these fell under Croatian jurisdiction, if any.

a bill that wrote cooperation with the ICTY into constitutional law in the belief that the Tribunal would predominantly prosecute war crimes committed by Serbs. However, on 5 March 1999, this was followed by a resolution, which stated that pertinent military operations on Croatian territory did not represent war crimes but defensive actions to liberate occupied areas and that these fell under Croatian jurisdiction, if any. Due to this stance, there had been only one trial of a Croatian citizen at a Croatian court by the end of the Tuđman era, while guilty verdicts had been handed down against around 400 Serbs (some in absentia) on account of war crimes.

The ICTY had hoped that the new Prime Minister Račan would bring about change and facilitate more comprehensive investigation work, and the new government coalition also immediately expressed willingness to hand the prosecution of war criminals in Croatia over to the ICTY. But it soon became clear to the new government that the majority of the Croatian public disapproved of such cooperation. After the sentencing of the so-called Gospic Group around Mirko Norac, who had been the youngest Croatian general at the time, this attitude culminated in enraged protestors holding large-scale demonstrations. Over 150,000 Croatians protested against the sentencing of these “war heroes” in Split and condemned head of government Račan, who had made serious efforts to improve cooperation with the ICTY, as a “traitor” and “unpatriotic fellow”.

The antipathy of the Croatian people toward the ICTY reached a crescendo with the ultimately fruitless prosecution of former General Janko Bobetko, Chief of Staff for the “Medak Operation”, which even made tempers flare in the Croatian Parliament. A large majority (70 per cent of respondents) expressed their opposition to Bobetko's extradition.⁶ “The crisis came to end on 29 April 2003 when Bobetko died without ever seeing his indictment. Bobetko's death, along with the February demonstrations in Split over the Norac Case, represented two key moments in Croatia's relations with The Hague.”⁷ After President Tuđman and

6 | Ibid., 457.

7 | Ibid.

Defence Minister Susak, Chief of Staff Bobetko was now the last Croatian military leader sharing chief responsibility who had escaped the grasp of the ICTY “by natural means”.

Carla Del Ponte, Chief Prosecutor of the ICTY, was interested in bringing everyone who bore responsibility to court regardless of his ethnicity. Still, there was an increasing impression among Serbs that the Tribunal was a purely anti-Serb institution.⁸ This is the reason why the case of the Croatian General Gotovina suddenly acquired particular importance.⁹



Chief Prosecutor Carla Del Ponte was interested in bringing everyone who bore responsibility to court regardless of his ethnicity. | Source: © ICTY.

When the former Croatian government under Račan no longer responded with the required commitment to Del Ponte's efforts in the aftermath of the experience made in Split, yet was simultaneously accused by the opposition of surrendering Croatia's greatest war hero to the ICTY, there was nothing it could do to prevent Račan's electoral defeat in the autumn of 2003, which had already been on the cards. There was an early change in government after he had been in his position for just three years.¹⁰ The ICTY also remained a continuous “complication in domestic politics” for the successor government under Ivo Sanader.¹¹

8 | Ibid., 458.

9 | Ibid.

10 | Ibid., 453 et seq.

11 | Ibid., “The Sanader era 2004-present”, 461-464.

Sanader's ultimate aim was to cooperate with the ICTY, while at the same time countering attempts to "falsify history", for instance by frequently calling the ICTY's presentation of the case into question, often using dubious sources.

Verdicts against Former Generals Gotovina and Markač

After former Croatian general Ante Gotovina, who had been on the run since being indicted in 2001, had been arrested and subsequently convicted, relations between Croatia and the ICTY improved further. The Tribunal cleared the way for Croatia to begin membership negotiations with the European Union.¹² Once General Markač had also surrendered

Gotovina and Markač had commanded "Operation Storm" in 1995. 200,000 Serbs from Krajina had to leave the area and over 1,700 were killed. The generals were sentenced to 24 and 18 years' imprisonment respectively.

to the authorities and had been handed over to the ICTY, the Tribunal pronounced the trial verdicts against the two generals Gotovina and Markač after lengthy negotiations, sentencing them to 24 and 18 years' imprisonment respectively. The two had commanded "Operation Storm" in 1995, during the course of which over 200,000 Serbs from Krajina had to leave the area and over 1,700 were killed. There was a great deal of disappointment about the two verdicts among the Croatian public, but it did not trigger major demonstrations. The Croatians placed their hope in the appeal, which was scheduled to start immediately.

On 16 November 2012, the ICTY's appeals chamber converted the verdicts into "acquittals due to lack of evidence" by a narrow majority of three of the five voting judges. The judges argued it had not been proven that the flight or exodus of the Serbs at the end of the war in Croatia (1991-1995) had been due to an "organised campaign of expulsion", which Generals Gotovina and Markač had been accused of. In the justification of their appeal ruling, the

12 | The start of membership negotiations, which had originally been planned for March 2005, had to be postponed until October, by which time Carla Del Ponte had expressed her satisfaction with the cooperation of the Croatian government in the case of Gotovina. Leading EU politicians once again called on Croatia's neighbouring countries to engage in comprehensive cooperation with the ICTY and hoped that there would be progress in the reconciliation process in the Balkans. Cf. "Kroate Gotovina auf den Kanaren verhaftet", *Frankfurter Allgemeine Zeitung*, 8 Dec 2005, <http://faz.net/aktuell/politik/-1281323.html> (accessed 12 Mar 2013).

judges further explained that the verdicts in the original trial had been based on the assumption that it was reasonable to consider all artillery hits at a distance of over 200 metres from legitimate military targets “targeted attacks on civilians”. That was an unjustified assumption. In addition, the trial court had incorrectly assumed that there had been “a joint criminal enterprise, the common purpose of which was the forcible and permanent removal of the Serb population from the Krajina region”.¹³ The present court was not able to follow this reasoning and therefore acquitted the defendants of all these charges.

The ICTY trial court had incorrectly assumed that there had been “a joint criminal enterprise, the common purpose of which was the forcible and permanent removal of the Serb population from the Krajina region”.

Croatian Reactions to the ICTY Verdicts

In Croatia, the acquittals were followed on an enormous screen by thousands of citizens assembled on the central square of the capital Zagreb and greeted with enthusiastic cheering. There were similar scenes of jubilation at such events in other Croatian towns, including Pakoštane and Đurđevac, the hometowns of the two defendants. Hundreds of Croatian veterans, who had appeared in their uniforms, had tears in their eyes when Gotovina spoke to them on Jelačić Square in Zagreb on the actual evening of the day the verdicts were pronounced.¹⁴ Croatian politicians celebrated the generals’ acquittal as a “victory for Croatia”, including the Croatian Defence Minister Ante Kotromanić, who said the truth had finally won.¹⁵

On the very same day the verdicts had been pronounced, Gotovina and Markač were in fact met at Zagreb Airport by Prime Minister Zoran Milanović and Speaker of the Parliament Josip Leko, and welcomed home that evening at a reception hosted by President Ivo Josipović. Milanović seized the opportunity to thank Gotovina and Markač for what they had taken on in defence of an independent

13 | Cf. “Jubel in Kroatien über Freispruch der Generäle Gotovina und Markač”, *Frankfurter Allgemeine Zeitung*, 17 Nov 2012, <http://onleihe.de/static/content/faz/20121117/F121117/vF121117.pdf> (accessed 12 Mar 2013).

14 | Cf. Nina Brnada, “Ante Gotovina: Der Held, der keiner sein will”, *Der Standard*, 26 Nov 2012.

15 | Cf. “Pobjedila je istina, idem po generale Vladinim avionom”, *Večernji list*, 16 Nov 2012, <http://vecernji.hr/komentar/475953> (accessed 12 Mar 2013).

The judges' decision had not been unanimous, which only demonstrated how close the truth and untruth were to each other, the two generals were now "innocent" people.

Croatia.¹⁶ At an extraordinary press conference, he stressed that it had taken 17 long years, after all, to bring these difficult proceedings to a close. Even though the judges'

decision had not been unanimous, which only demonstrated how close the truth and untruth were to each other, the two generals were now "innocent" people. But the verdict did not mean the war had not been bloody or that no mistakes were made.¹⁷ The acquittal thus did not change the fact that there was also a need in Croatia to make intensive efforts to address the war crimes committed by Croats.¹⁸

The Speaker of the Parliament Leko described the day the verdicts were announced as a "great day for Croatia". The verdict was proof of the fact that Croatia had conducted a justified defensive war according to the rules of international law.¹⁹ Visibly relieved, President Josipović finally commented on the "just verdict" of the Tribunal in a television address, adding that the court had recognised that the defendants bore no personal responsibility for the civilian victims of "Operation Storm".²⁰

Reactions of the Serbs Living in Croatia to the ICTY Verdicts

The most important political representative of the Serb minority in Croatia, the Member of Parliament and Chairman of the Foreign Affairs Committee of the Croatian Parliament (Sabor), Milorad Pupovac, on the other hand, commented in his speech in Parliament that the acquittals might be a great day for Croatia, but if the generals were not culpable, one had to be allowed to ask who should be called to account for the war crimes perpetrated in Krajina, which were beyond doubt.²¹ To Serbs, taking back Krajina

16 | Cf. "Premijer Milanović: 'Pao nam je kamen sa srca! Gotovini i Markaču hvala što su toliko izdržali za Hrvatsku'", Jutarnji list – Portal Jutarnji hr, 16 Nov 2012, <http://jutarnji.hr/1066731> (accessed 12 Mar 2013).

17 | Ibid.

18 | Cf. n. 13.

19 | Cf. "Leko: ovo je priznanje da smo vodili pravedan, obrambeni rat", 24 sata, 16 Nov 2012, <http://24sata.hr/politika/-289758> (accessed 12 Mar 2013).

20 | Cf. n. 13.

21 | Cf. Interview with Milorad Pupovac, "Ich habe 20 Jahre an das andere Kroatien geglaubt", *Der Standard*, 24 Nov 2012, <http://derstandard.at/1353207154088> (accessed 13 Mar 2013).

by military means continues to represent a “criminal” operation; to Croats, on the other hand, it represents the successful reconquest and liberation of Croatian territory. Pupovac criticised both views as being too one-sided, which meant that there was a need to keep working with Croats and Serbs to address these dark aspects of the war and to continue collaboration in this area.²²

In Pupovac’s opinion it was regrettable that there were a sizable number of Croatians who interpreted the Tribunal’s verdict not as freedom for two individuals, but generally as “freedom from guilt” and as a victory of the type of politics that Croatia had been trying to distance itself from since 2000.²³ In a subsequent testimony, Pupovac specified his statements saying that although the ICTY had acquitted the two generals with respect to the charges contained in the indictment, it had not clarified who did bear political responsibility for the war crimes and what a sustainable solution to the problem of the Serb minority in Croatia should look like.

Pupovac criticized that although the ICTY had acquitted the two generals with respect to the charges contained in the indictment, it had not clarified who did bear political responsibility for the war crimes.

On the question as to how the Serb community in Croatia was intending to deal with the verdict, Pupovac said: “It is not the worst that they have experienced. After having been driven away and stigmatised and losing their jobs, the question for them is not whether they are satisfied or not, but whether they can be free from fear.” And he added: “If we now join the EU with the dominant logic that the ‘war is over’ and that the issue of war crimes has therefore been dealt with, a new canon is being established.”²⁴ This was why the Serbs would continue to take the current Croatian government at its word when it said it wanted to preserve the rights of the Serb minority and why they would also check this on the basis of the government’s attitude towards the right to bilingual road signs in areas such as the town of Vukovar where Serbs make up over a third of the population, a right which is enshrined in the Croatian constitution.

22 | Cf. Marina Karlović Sabolić, “Milorad Pupovac: Hrvatsko pravosuđe riskira da bude sudionik u zločinu”, *Slobodna Dalmacija*, 8 Dec 2012, <http://urednik.slobodnadalmacija.hr/Spektar/tabid/94/articleType/ArticleView/articleId/196042/Default.aspx> (accessed 13 Mar 2013).

23 | Cf. n. 21.

24 | Ibid.

It remains in the interests of the Serb minority in Croatia for bilateral relations between Zagreb and Belgrade to improve again after having suffered badly through the arguments after the announcement of the ICTY verdicts.

Be that as it may, it remains in the interests of the Serb minority in Croatia for bilateral relations between Zagreb and Belgrade to improve again after having suffered badly through the arguments put forward by both sides subsequent to the announcement of the ICTY verdicts. According to Pupovac, especially the first visit by a Croatian Prime Minister to Belgrade since March 2009 provided some cause for hope. This visit would also bring about noticeable improvements in the standing of the respective minorities in the neighbouring country.²⁵

COMING TO TERMS WITH THE PAST IN SERBIA

Since the beginning of its work twenty years ago, the International Criminal Tribunal for the Former Yugoslavia has had difficulty being accepted by the Serbian public. The acquittals of Gotovina, Markač and Haradinaj hardened the impression in the country that the court was established with a bias "against Serbia". This was the conclusion voiced by Serbia's President Nikolić in a public response to the acquittal of the Croatian generals.²⁶ The great disappointment in Serbia about the acquittals and the jubilation in Zagreb and Priština illustrate how deep the divides between the former brother countries still are. Each country has its own interpretation of its role during the Yugoslav wars and of the roles played by the others.²⁷

25 | "Milanović i Dačić u Beogradu: odnose odlediti, resetirati i početi ispočetka", *Novilist*, 16 Jan 2013, <http://tinyurl.com/b54bz3v> (accessed 13 Mar 2013).

26 | See Florian Bieber, "Hague Verdicts Don't 'Justify' Croatia's, Kosovo's, Wars", *BalkanInsight*, 29 Nov 2012, <http://balkaninsight.com/en/article/hague-verdicts-don-t-justify-croatia-s-kosovo-s-wars> (accessed 19 Mar 2013).

27 | The fact that these are still fuelling conflict today is illustrated by the dispute about a memorial for Albanian rebels in the Presevo Valley in southern Serbia. The rebels were classed as terrorists by the Serbian authorities, the memorial was declared illegal and removed in January, which elicited large-scale protests among the local population. One of the consequences was the destruction of hundreds of Serb graves in Kosovo. For further details see Marija Ristić, "Serbia Removes Albanian Guerrilla Monument", *BalkanInsight*, 20 Jan 2013, <http://balkaninsight.com/en/article/serbia-removes-albanian-guerrilla-monument> (accessed 13 Mar 2013).

What is needed is a stronger focus on the war crime victims, of whatever nationality, and continuing efforts to determine the identity of those who were responsible for the crimes. And particularly in Serbia, addressing its own past and accepting the central role that the Milošević regime played in the wars is more essential now than ever.

EU Integration as an Incentive

Good neighbourly relations between the states of the Western Balkans are of central significance to their integration into the EU. This membership criterion is currently of critical importance in Serbia, as the next step on its way to joining the EU depends upon it:

the start of membership negotiations. Belgrade's relations with the ex-Yugoslav neighbouring countries are still characterised to a large extent by a skewed view of its own past, which makes a proper evaluation of present-day political reality difficult. The refusal to recognise Kosovan independence, the political support of Serb minorities, which is viewed as disproportionate by Sarajevo and Podgorica, and interference in Bosnia-Herzegovina and Montenegro, as well as the continuing distrust shown towards Croatia – in the eyes of many people outside Serbia is all a result of Serbia's refusal to acknowledge its role in the wars of the nineties. When one looks at the political leaders, who currently hold power in Belgrade and who, like the President, the Prime Minister and his Deputy, began their political career under Milošević, a normalisation of the relations between Serbia and its neighbours does indeed appear problematic.

Belgrade's relations with the ex-Yugoslav neighbouring countries are still characterised to a large extent by a skewed view of its own past, which makes a proper evaluation of present-day political reality difficult.



Ratko Mladić (left) and Radovan Karadžić in Pale, 1993: The surrender of the defendants was a precondition for the opening of EU accession talks. | Source: © Stringer / epa / picture alliance.

Be that as it may, there are some indications that the Belgrade leadership, that was elected to office last summer, has recognised the need for improved political contacts with the immediate neighbours and intends to win back ground lost by its predecessors. Berlin in particular made it clear to Belgrade from the beginning where it should focus on in its foreign affairs activities. The more concrete the membership perspective becomes for Belgrade, the more important the Copenhagen criterion of good neighbourly relations becomes for the assessment of the progress made by the largest state in the Western Balkans in terms of democratisation and reform. Belgrade hopes to be given a date for the start of the membership negotiations by the end of this year. Serbia will be required not only to implement internal reforms, but also to find a peaceable way of interacting with Kosovo, which declared independence five years ago. To this end, Belgrade and Priština have been conducting a technical dialogue with EU support since 2011, which was extended to the political level with the meetings between the Prime Ministers of the two countries last autumn. Political dialogue is necessary to build trust and to find a sustainable solution for Northern Kosovo, where a Serb-dominated population lives outside the direct influence of the Kosovan state authority.

Without regular political exchanges between the former warring parties, i.e. not only with Priština but also with Zagreb and Sarajevo, it is hard to see how the necessary conditions can be created for good neighbourly relations, which would hopefully not only prevent the integration of unresolved problems into the EU (such as the case of the divided Cyprus, for instance), but also further regional reconciliation and thereby political stability in the Western Balkans. The Serbian Prime Minister Dačić thinks that these have been hampered as a result of the latest acquittals by the ICTY. In his opinion, the acquittals have also discredited the reputation of the court in Serbia and put Belgrade's cooperation with The Hague into question.²⁸ However, after the public outrage over the holiday period at the turn of the century had calmed down, Belgrade appeared to continue its activities on both the technical and political level pragmatically and constructively. The dialogue with Priština resumed in mid-January at both levels; shortly beforehand, the first visit by the Croatian Prime Minister to Belgrade was conducted in a professional and goal-oriented manner.

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Social Environment Hinders Efforts to Come to Terms with the Past

But will the continuation of the Serbian matter-of-fact neighbourhood policy bring about a similar matter-of-fact assessment of the country's own past? Comprehensive efforts to address the past are, after all, not an explicitly formulated membership criterion. In actual fact, against the backdrop of the great disappointment about the acquittals among large parts of the public and the accompanying perception of a court that is biased against Serbia, the conditions for addressing the war crimes of their own side and establishing historic facts have become considerably more difficult in Serbia. The activities of the forces in civil society, which have been working in Serbia alongside the ICTY's activities for years and which promote an honest approach to the wars and its victims, are met with increasing resistance and bewilderment. The most important state institution for addressing the war crimes issue, the War

28 | See Vladan Marjanović et al., *V.I.P. Daily News Report*, V.I.P. News Services, 20 Nov 2012.

Crimes Prosecutor's Office of Serbia and its public prosecutor, are also encountering greater obstacles to making progress with criminal prosecutions in the country within this toxic environment.

Why – as many people are asking – should Serbia punish perpetrators for crimes committed during the wars when the others escape punishment in spite of clearly documented crimes against Serbs? The following questions were posed by the Serbian Deputy Prime Minister Vučić at a discussion of the latest ICTY progress report to the UN Security Council with respect to the latest acquittals: “Do Serbs actually also have a right to justice? Who is responsible for the numerous killings of Serb civilians in Croatia? If Gotovina and Markač aren't guilty, then who is? The Tribunal has left this question unanswered. Since its inception, it has convicted a number of former Serbian political and military leaders on account of war crimes. At the same time, it has failed to convict a single high-ranking official from Croatia or Bosnia, and it has also failed to convict a single Albanian official for crimes against humanity.”²⁹ Vučić's speech demonstrated the tendency on the Serbian side to extend the responsibility for the wars and the committed crimes to the other warring parties. To date, there has been no explicit recognition of Serbia's central role under Milošević's leadership and of the crimes perpetrated in his name, which is also illustrated by the fact that the majority of the people indicted by the ICTY are Serbs.³⁰

There is a tendency on the Serbian side to extend the responsibility for the wars to the other warring parties. There has been no explicit recognition of Serbia's central role under Milošević.

Insufficient Attention Paid to the Victims of the Conflicts

It seems that the reactions to the acquittals not only in Serbia but also in Croatia and in Kosovo indicate that the

29 | United Nations Security Council, 6880th meeting, 5 Dec 2012, http://un.org/ga/search/view_doc.asp?symbol=S/PV.6880 (accessed 13 Mar 2013).

30 | The historian Holm Sundhausen provides the following figures for the overall 161 defendants at the ICTY: 66 Bosnian Serbs, 26 Serbs, 19 Bosnian Croats, 11 Croats, 9 Bosniaks, 6 Kosovo Albanians, 4 Croatian Serbs, 3 Montenegrin Serbs, 2 Albanians and 2 Macedonians as well as 13 other defendants whose provenance is not clearly identified. Cf. Holm Sundhausen, *Jugoslawien und seine Nachfolgestaaten 1943-2011*, Böhlau Verlag, 2012, 422.

search for justice has pushed the acknowledgement of the war crime victims into the background, at least temporarily. From the Serbian viewpoint this applies particularly to the most significant crime against ethnic Serbs committed during the wars: "Operation Storm". Now that generals Gotovina and Markač have been acquitted, the victims associations are renewing their demands for the search for and conviction of those responsible. The Serbian Justice Minister recently made a point of touching on these demands during a visit to the ICTY Chief Prosecutor Serge Brammertz in The Hague. "All the victims of Serb nationality [...] in the territories of the Republic of Croatia and of Kosovo have been left without the conviction of those responsible for the crimes perpetrated against them."³¹ In his latest report to the UN Security Council, in which he commented on the court proceedings against Gotovina, Markač and Haradinaj, Brammertz stated that "there can be no doubt that serious crimes were documented in the course of the proceedings. The victims of those crimes have the right to justice. Therefore, I encourage the national authorities in the region to continue the fight against impunity within their jurisdictions."³²

ICTY Chief Prosecutor Serge Brammertz stated that the victims had the right to justice. He encouraged the national authorities in the region to continue the fight against impunity within their jurisdictions.

As all sought war criminals have now been surrendered to The Hague, the majority of the trials have already been concluded and the last on-going trials, particularly the ones of Karadžić and Mladić, are progressing, the Tribunal wishes to implement the "completion strategy" for its work envisaged by the UN mandate. One more reason why it is becoming increasingly important for the national war crimes offices in the region to deal with outstanding issues with the focus on the victims, particularly those that were affected by "Operation Storm". The Serbian office has been working on this task for ten years, and its efforts have been monitored with a critical eye by domestic human rights organisations. These welcome the prosecution and conviction of war criminals on home soil, but criticise the slow progress of the investigations and trials, particularly

31 | See "Tribunal Delimično Svestan Odgovornosti", Serbian Ministry of Justice, 17 Jan 2013, <http://www.mpravde.gov.rs/cr/news/vesti/tribunal-delimicno-svestan-odgovornosti.html> (accessed 13 Mar 2013).

32 | N. 29.

those involving high-ranking military personnel. They also complain about deficiencies with respect to witness protection, which plays a vital role for the successful outcome of criminal proceedings.³³

Serbia's Contribution to Criminal Prosecutions and Coming to Terms with the Past

President Nikolić, Prime Minister Dačić and Deputy Prime Minister Vučić, leader of the largest government party, used to be high-ranking followers of Milošević. None of them has ever publically shown remorse for their services rendered to the former regime. Nikolić's statements made shortly after he took office, asserting that the Croatian town of Vukovar, the location of numerous war crimes, was a Serb town and that the killing of the Bosniak population in Srebrenica had not amounted to genocide, have further had a long-lasting detrimental impact on Belgrade's relations with Croatia and Bosnia. To this day, the Croatian President Josipović refuses to meet with his Serbian counterpart until he withdraws his statements.

In spite of all this, there are some encouraging signs. Deputy Prime Minister Vučić has affirmed several times that Serbia would fulfil its international obligations and therefore also continue its cooperation with the ICTY. In addition to the extradition of Mladić and Hadžić under Nikolić's predecessor, this includes the uncovering of the networks that had protected them for years, but also the punishment of crimes at a national level. In this context, the Deputy Public Prosecutor for War Crimes in Serbia described the cooperation and regular exchange of information with his Croatian and other colleagues as very good and important in a recent public debate.³⁴ A protocol between Serbia and Bosnia is due to enter into force soon, which is intended to facilitate the exchange of evidence for war crimes and make it

A protocol between Serbia and Bosnia is due to come into force soon, which is intended to facilitate the exchange of evidence for war crimes and make it unnecessary for parallel investigations to be carried out in both countries.

33 | See Humanitarian Law Center, "Report on war crime trials in Serbia in 2012", 18 Jan 2013, <http://www.hlc-rdc.org/?p=22309&lang=de> (accessed 13 Mar 2013).

34 | See the event report on the debate: "Debata o suđenjima za ratne zločine u Srbiji u 2012. Godini", Medija Centar Beograd, 17 Jan 2013, <http://www.mc.rs/debata-o-sudjenjima-za-ratne-zlocine-u.4.html?eventId=8831> (accessed 13 Mar 2013).

unnecessary for parallel investigations to be carried out in both countries. In addition, the visit by the Croatian Prime Minister to Belgrade in January attracted great interest from the Serbian public. According to media reports, topics covered at the meeting included the work with the ICTY and mutual accusations of genocide at the Tribunal.

Central Role Played by Civil Society

Non-government organisations and human rights activists in Serbia are continuing to publicly push for efforts to address the past and for recognition of the role Serbia played during the Yugoslav wars. With their numerous annual meetings at a variety of levels, they are far ahead of the politicians and are already providing important impulses for regional reconciliation. The head of the local Helsinki Committee points to the way Germany dealt with its past as a model for the region. She also interprets the latest verdicts as an opportunity for Serbia to finally abandon the incorrect idea of the Yugoslav wars, according to which all warring parties were equal and bore the same degree of responsibility for the break-up of Yugoslavia and for the crimes that were perpetrated in the process. She believes that this incorrect interpretation makes reconciliation with neighbours impossible, but that particularly the nationalists, who have just come back into government, could start speaking differently about the past.³⁵ After all, they cannot be accused of a lack of patriotism.

The head of the local Helsinki Committee believes that incorrect interpretation of history makes reconciliation with the neighbours impossible. Particularly nationalists could start speaking differently about the past.

Other human rights activists in Serbia stress the need to uncover the truth about the fate of all the war victims, if possible, in collaboration with the neighbouring countries and their victims organisations, documentation centres and media representatives. In their eyes this is one of the most important tasks not just of the politicians but also of civil society. For many Serbian human rights defenders, the work of the ICTY in documenting crimes, collecting witness statements and determining the sequence of events during the wars as objectively as possible also plays a significant

35 | Cf. interview with Sonja Biserko: Dejan Kožul, "An Opportunity to End the Vicious Cycle of War", Heinrich Böll Stiftung, 24 Dec 2012, http://rs.boell.org/downloads/sonja_biserko_-_english.pdf (accessed 13 Mar 2013).

role. This is the only way to make progress in coming to terms with the past in Serbia and in the region and to allow a largely objective historiography of the break-up of Yugoslavia to be written.

Looking to the future, it is up to the younger generation – and this is evidenced by numerous initiatives from abroad but also from Serbia – to exercise tolerance towards neighbours and thereby smooth the path for regional reconciliation.

An increase in interactions through seminars, academic and school exchanges and further regional projects are helping break down mistrust and promote acceptance of different opinions. But without comprehensive education and information initiatives for young people in the Western Balkans, for instance with the aid of classroom materials prepared by a bi- or trilateral historians commission, there will be room for contradicting and competing interpretations of history. This would continue to give nationalists the opportunity to play down the country's responsibility for its own past.

Without comprehensive education for the young people in the Western Balkans, there will be room for competing interpretations of history. This would give nationalists the opportunity to play down the country's responsibility.

THE TRIALS AT THE INTERNATIONAL TRIBUNAL FROM THE VIEWPOINTS OF MACEDONIA AND KOSOVO

The decisions of the ICTY in The Hague have caused both jubilation as well as horror in Macedonia and Kosovo depending on people's different viewpoints, which are sometimes difficult to comprehend for Western observers. These reactions show that both countries are still caught in the grip of the past and that old wounds remain far from being healed.

The ICTY Cases from Macedonia

The International Criminal Tribunal for the Former Yugoslavia has so far held two trials against Macedonian citizens: against Ljube Boškoski, the former Macedonian Interior Minister, and against Johan Tarčulovski, former police officer in the President's Security Unit in the Interior Ministry. The two men are the only Macedonians involved in the armed conflict of 2001 who have been brought before the Tribunal. The charges against them must be seen in light of years of political tensions between the ethnic

Albanian minority and the Macedonians, which culminated in an armed conflict in 2001. During that time, there were frequent armed skirmishes between the Albanian National Liberation Army NLA (UÇK) and the Macedonian National Army.

The attack on Ljuboten on 12 August 2001, a village north of the capital Skopje with a majority ethnic Albanian population, was the last confrontation before the Ohrid Framework Agreement, which was signed a day later and brought a negotiated end to hostilities.³⁶ During the police attack, seven men of ethnic Albanian extraction were killed and over 100 unarmed civilians arrested. Numerous houses were set ablaze, shot at and damaged. After an investigation of the events in the village, The Hague brought charges against Boškoski and Tarčulovski in 2005. As the Interior Minister, Boškoski was responsible for the police and thus bore overall responsibility for the operation. The prosecution worked on the assumption that he knew about the illegal activities of the police during the attack on the village or that he should have at least known. The bill of indictment included the suspicion that

Boškoski himself had visited Ljuboten and met the police units, which were headed by Tarčulovski at the time. The public prosecutor accused the former Interior Minister of having done nothing to investigate the events and punish the perpetrators. Tarčulovski was accused by the Tribunal of having planned and organised the illegal attack on Ljuboten. It was assumed that he had convinced the army and police chiefs in the Ljuboten area to support the attack and that he had ordered a reserve police unit to be armed, coordinated this activity and then personally overseen the attack.

The public prosecutor accused Tarčulovski of having convinced the army and police chiefs in the Ljuboten area to support the attack and that he had then personally overseen the attack.

36 | Cf. ICTY, "Boškoski & Tarčulovski", Case Information Sheet, http://icty.org/x/cases/boskoski_Tarčulovski/cis/en/cis_boskoski_Tarčulovski_en.pdf (accessed 25 Mar 2013); cf. Anja Czymmeck, "Zehn Jahre Ohrider Rahmenabkommen", KAS Länderbericht, 12 Aug 2011, http://kas.de/wf/doc/kas_23618-1522-1-30.pdf (accessed 13 Mar 2013); Anja Czymmeck and Kristina Viciska, "A Model for Future Multi-Ethnic Coexistence? Macedonia 10 Years After the Ohrid Framework Agreement", *KAS International Reports*, Nov 2011, 72, <http://kas.de/wf/en/33.29404> (accessed 13 Mar 2013).

The trial against the two Macedonians started on 16 April 2007 and lasted a year. On 10 July 2008, Boškoski was acquitted of all charges, but Tarčulovski was given a twelve-year prison sentence.³⁷ The trials in The Hague had attracted a great deal of public interest in Macedonia, because it was the first time Macedonians were brought to court. Interior Minister Gordana Jankulovska and Justice Minister Mihajlo Manevski attended court personally on the days the verdicts were announced in The Hague. Their presence was to signal to the international community that the Macedonian government would not forget those who, in its opinion, had defended the country and its citizens in the armed conflict. On his arrival at Skopje Airport, the acquitted Boškoski was welcomed by thousands of citizens and followers of the VMRO-DPMNE party, which he belonged to at the time, including head of government Nikola Gruevski.

The four “Hague cases” in Macedonia. They relate to war crime charges against commanding officers and members of the UÇK, which operated in Macedonia in 2001.

To date, the “Ljuboten case” is the only one from Macedonia that has been dealt with in The Hague, and Johan Tarčulovski is the only Macedonian citizen in prison due to an ICTY conviction. There have been four further cases with a link to Macedonia, which are referred to as “Hague cases” in Macedonia. They relate to war crime charges – abduction, abuse, ill-treatment and killing – against commanding officers and members of the Albanian Liberation Army ANA (UÇK), which operated in Macedonia in 2001 during the armed conflict. In 2008, Chief Prosecutor Del Ponte handed these cases back to the Macedonian Public Prosecutor’s Office in fulfillment of request thereof by Macedonia.³⁸ In 2011, the Macedonian Parliament, in which the government coalition comprising VMRO-DPMNE and the Albanian party DUI had a majority, decided that these cases fell under an amnesty law. This was a course of action that had been pushed for particularly by the Albanian coalition partner, because numerous former members and commanding officers of the Liberation Army are now DUI Members of Parliament, notably their leader Ali Ahmeti. There was also

37 | “Бошковски и Тарчуловски” (Boškoski and Tarčulovski), Akademik, <http://akademik.mk/trial/Boškoski-i-tarchulovski> (accessed 13 Mar 2013).

38 | “The Former Yugoslav Republic of Macedonia Requested to Defer Five Cases to the Competence of the International Tribunal”, ICTY, 7 Oct 2002, <http://icty.org/sid/8069> (accessed 13 Mar 2013).

unofficial speculation about the idea that the DUI had made it a condition of entering into a coalition with the VMRO-DP-MNE that such an amnesty law would be approved, which would then stop the trials.

The degree to which Macedonian politics is dominated by these conflicts is illustrated in the current discussions on what is referred to as defenders bill. The DUI is strongly advocating that the status of the former members of the Liberation Army should be clarified in the legislation and that they should be awarded pensions, special insurances and privileges as war veterans like the members of the Macedonian National Army. The dispute about this bill is threatening to break up the government coalition. It has still not been resolved because the bill has still not gone through.

In October 2012, the family members of the victims of the “Hague cases” demanded a constitutional examination of the amnesty law, but the Macedonian Constitutional Court rejected a further examination, which meant that amnesty remained in force.³⁹ Even as

The Macedonian Constitutional Court rejected a further examination of the amnesty law that family members of the victims had asked for, which meant that the amnesty remained in force.

it was being approved by the government coalition, the law triggered heated reactions and political upheaval. The opposition Social Democrats spoke out against it. In agreement with a large proportion of the Macedonian experts, they argued that such a decision on court cases should not be taken in Parliament, but should be dealt with in regular court proceedings. In September 2011, Amnesty International called upon the Macedonian government to rethink the matter: “The parliament’s decision is clearly inconsistent with international law and will leave the victims and their relatives without access to justice.”⁴⁰

39 | Republic of Macedonia, Constitutional Court, Adjudication No. 158-2011-0-0, 31 Oct 2012, <http://www.constitutionalcourt.mk/domino/WEBSUD.nsf> (accessed 13 Mar 2013); cf. also Sinisa Jakov Marusic and Sase Dimovski, “Macedonian Court Rejects Review of War Crimes Amnesty”, *BalkanInsight*, 31 Oct 2012, <http://balkaninsight.com/mk/article/macedonian-court-rejects-review-of-war-crimes-amnesty> (accessed 13 Mar 2013).

40 | Amnesty International, “Macedonia: Time to deliver justice to the victims of war crimes”, press release PRE01/435/2011, 1 Sep 2011, <http://amnesty.org/en/for-media/press-releases/macedonia-time-deliver-justice-victims-war-crimes-2011-09-01> (accessed 13 Mar 2013).

The events and discussions relating to the “Hague cases” and the amnesty law also illustrate the ethnic tensions and divisions in Macedonia. The ethnic Albanian population as well as all Albanian parties have welcomed the decision of the ICTY and the amnesty granted subsequent to the transfer of the defendants. The ethnic Macedonian majority, on the other hand, strongly criticised the decision. It views the amnesty for the defendants in the Hague cases as a capitulation on the part of Macedonia and as a politically motivated reconciliation that was imposed on the country. This view was demonstrated clearly once more at the end

Many Macedonians had complained that a Macedonian had been convicted as a war criminal alongside Serbs although the country had extracted itself from former Yugoslavia without bloodshed.

of 2012 when not only the Croatian generals Gotovina and Markač were acquitted by the ICTY, but so was the former commander of the UÇK and Kosovan Prime Minister Ramush Haradinaj. Many Macedonians had considered the guilty verdict that the acquittal reversed as unjust. They had complained that a Macedonian had been convicted as a war criminal alongside Serbs although Macedonia had been the only country that had extracted itself from the former Yugoslavia without bloodshed. With opinions such as this, any evidence that the court may have does not appear to be of any importance; instead, people work on the basis of a kind of “national proportionality”, which indicates a peculiar understanding of jurisdiction on the part of the Macedonian side.

Addressing the events of the past and dealing with the resulting findings are and will remain extremely difficult issues in Macedonia. This is not only evidenced by the cases described here but also by the discussions about the Lustration Law, which is to regulate access to public office for people who collaborated with the secret service in the Communist era. In July, a new bill was pushed hastily through Parliament, without giving the parliamentary committees and groups sufficient time for consultation and discussion and without consulting civil society representatives on the bill. For this reason, the law continues to draw criticism, and the government is being accused of merely seeking to remove undesirable political opponents from public life using the new regulations. Once again, there is no common denominator in this area that could help bridge the divide between the ethnic groups or contribute to improving political culture. Johan Tarčulovski, who was

sentenced to 12 years prison, was recently released after having served two third – eight years – of his sentence and was welcomed in Macedonia by the Prime minister and enthusiastic supporters.⁴¹

The ICTY Cases from Kosovo

The reaction of the UN war crimes tribunal to the war in Kosovo during the years 1998 and 1999 began while there was still intensive fighting in Kosovo. On 24 May 1999, a judge confirmed the charges against Slobodan Milošević. It was the first indictment of a President in office at an international court. After the intervention by NATO troops in Kosovo in June 1999, the territory became subject to a comprehensive investigation in connection with war crimes in Southeast Europe. During the following months, forensic teams from over ten countries exhumed bodies at various locations, where Serbs were said to have killed Kosovo Albanians. During the following four years, the court charged Serbs with extensive war crimes perpetrated in Kosovo in 1999⁴² as well as six Albanians with crimes against Serbs and against Albanians who had collaborated with the Serbs.

Until 2003, the court charged Serbs with extensive war crimes perpetrated in Kosovo in 1999 as well as six Albanians with crimes against Serbs and against Albanians who had collaborated with the Serbs.

The first members of the Albanian Liberation Army UÇK, who were indicted, comprised the group of Haradin Balaj, Isak Musliu and the well-known UÇK commander and leading politician of the present PDK party, Fatmir Limaj. They were accused of having imprisoned people illegally and of having tortured and executed Albanians who collaborated with the Serbian military as well as Serb and Albanian civilians.⁴³ The arrest of the defendants in March 2003⁴⁴ caused a great deal of discussion and complaints in

41 | Sinisa Jakov Marusic, "Macedonia Stages Hero's Welcome for Tarculovski", *BalkanInsight*, 11 Apr 2013, <http://balkaninsight.com/en/article/macedonia-thorws-hero-s-welcome-for-tarculovski> (accessed 18 Apr 2013).

42 | ICTY, litigation No. IT-03-66-T, verdict on Fatmir Limaj, Isak Musliu and Haradin Bala, 30 Nov 2005, <http://icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf> (accessed 19 Mar 2013).

43 | "Fatmir Limaj del në gjyqin e Hagës", *BBC Albanian*, 4 Mar 2003, http://bbc.co.uk/albanian/news/2003/03/030304_limajhague.shtml (accessed 13 Mar 2013).

44 | N. 42.

Kosovo. People interpreted the arrests as an attempt by the ICTY to offset the crimes perpetrated by the Serbian and Kosovan sides against one another to avoid convicting Serbs of war crimes. The hearings relating to this group were based mainly on statements made by witnesses who were involved with the prison in Llapushnik, Kosovo. There was suspicion that numerous Serbs and Albanians had been ill-treated and killed in the period between 1998/1999.

On 30 November 2005, the ICTY sentenced Haradin Balaj, who had been a warden at the Llapushnik prison, to a 12-year jail term on account of abuse, torture and murder. Isak Musliu and Fatmir Limaj, on the other hand, were acquitted. There was not sufficient evidence that could be brought before the court that would have proved the involvement of the two men in the abuse that took place at the prison.⁴⁵ The acquittals met with a positive response in Kosovo. In the eyes of the Kosovans, it proved that the war of the Kosovo Albanians had represented a war of liberation, which was not based on an organised campaign to torture and kill Serbs and Albanians. This opinion was also voiced by former President Ibrahim Rugova, Prime Minister Bajram Kosumi and Hashim Thaçi, leader of the Democratic Party of Kosovo (PDK).⁴⁶

Serbian politicians complained that the ICTY's decision was a bad signal for the Serbs living in Kosovo. International representatives in Priština and UNMIK stated that the ICTY decision had to be respected.

The people who were dissatisfied with the ICTY verdict were the Serbs living in Serbia and in Kosovo. Serbian politicians complained that the decision was a bad signal for the Serbs living in Kosovo.⁴⁷ International

embassy representatives in Priština and the UN mission UNMIK went to the public with a joint declaration, which stated that the ICTY decision had to be respected and that all Kosovo citizens were called upon to respond to it with circumspection.⁴⁸ In the meantime, the ICTY decided on 31

45 | The Hague Justice Portal, "Limaj, Fatmir", <http://haguejusticeportal.net/index.php?id=6114> (accessed 13 Mar 2013).

46 | Media House Kosova, "Përshëndetet lirimi i Limajt dhe Musliut", *Rugova Update*, 1 Dec 2005, <http://rugovaupdate.blogspot.com/2005/12/prshndetet-lirimi-i-limajt-dhe-musliut.html> (accessed 13 Mar 2013).

47 | "Bogdanoviq: Lirimi i Limajt 'skandaloz'", *Radio Europa e Lirë*, 2 May 2012, <http://www.evropaelire.org/archive/news/20120502/704/704.html?id=24567843> (accessed 13 Mar 2013).

48 | "UN court acquits top Kosovo rebel", *BBC News*, 30 Nov 2005, <http://news.bbc.co.uk/2/hi/4485658.stm> (accessed 13 Mar 2013).

December 2012 to release Haradin Balaj two years early for good behaviour after 11 years in prison in response to a request by the defence.

Further persons indicted by the ICTY include the former Prime Minister and leader of the party Alliance for the Future of Kosovo (AAK), Ramush Haradinaj, and the so-called Dukagjini Group, consisting of Haradinaj's comrades-in-arms Lahi Brahimaj and Idriz Balaj. They were charged in March 2005.⁴⁹ Haradinaj was accused of having been responsible for the abuse and killing of people in the war zone of Dukagjini in his role as leader of the UÇK. There had already been rumours about an indictment shortly after the Kosovo elections in 2004. At that time, the Democratic League of Kosovo (LDK) was considering entering into coalition with the AAK, which would then elect Haradinaj Prime Minister of the country. Numerous newspapers reported at the time that President Rugova was under enormous international pressure not to enter into this coalition as an indictment of Haradinaj was to be made public in the near future. Many also advised Haradinaj against joining the government as his indictment was thought to be forthcoming. In spite of this, the two politicians agreed to form a coalition, which then proceeded to elect Haradinaj head of government.

When the indictment was then pronounced as expected, it came at an emotionally very critical time, just one year after the bloody confrontations between Serbs and Albanians around the town of Graçanica in March 2004.

The indictment came at an emotionally very critical time, just one year after the bloody confrontations between Serbs and Albanians. 18 Kosovan citizens from all ethnic groups were killed.

18 Kosovan citizens from all ethnic groups were killed in the process. Many people were driven away, their homes were destroyed, as were cultural and religious facilities. Many feared that this type of escalation could happen again all too easily.⁵⁰ On 8 March 2005, Haradinaj resigned as Prime Minister and announced his voluntary transfer to

49 | ICTY, "Haradinaj et al. The Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj", Case Information Sheet, http://icty.org/x/cases/haradinaj/cis/en/cis_haradinaj_al_en.pdf (accessed 13 Mar 2013).

50 | International Crisis Group (ICG), "Kosovo after Haradinaj", *Europe Report*, No. 163, 26 May 2005, 1, http://crisisgroup.org/-/media/Files/europe/163_kosovo_after_haradinaj.pdf (accessed 13 Mar 2013).

The Hague. He implied that he considered it an obligation under international law and a mission to protect the purity of the war of liberation fought by the UÇK.⁵¹ The impact of this conduct was important for the internal stability of Kosovo, but Haradinaj's action was also welcomed at an international level.⁵²

During the trial, the defence produced a number of witnesses, who were to refute maltreatment and murders in the war zone of Dukagjini. The trial was accompanied by mutual accusations of witness intimidation, which could not be proved, however. On 3 April 2008, the Tribunal acquitted Haradinaj and his UÇK comrade-in-arms Idriz Balaj due to lack of evidence; Lahi Brahimaj, on the other hand, was sentenced to six years in prison on account of torture.⁵³ In 2010, the trial was reopened with the justification that some witnesses, whose testimony might be crucial, had not been heard.⁵⁴ The resumption triggered a strong response in Kosovo as it was interpreted as being purely political and as people thought that the Chief Prosecutor Del Ponte appeared to show a tendency to hold both sides, Serbs and Kosovans, equally responsible.

The resumption of the process in 2010 triggered a strong response in Kosovo. People thought that the Chief Prosecutor Del Ponte appeared to show a tendency to hold both sides, Serbs and Kosovans, equally responsible.

The resumption of the trial against Haradinaj, Balaj and Brahimaj proved to be a lengthy affair. It was not until 29 November 2012 that the ICTY came to a decision, acquitting the defendants due to lack of evidence.⁵⁵ The Tribunal still assumed that the UÇK had kidnapped, tortured and murdered Serbs, Albanians and Roma in the war, but it had proved impossible to find witnesses that were prepared to make statements in Kosovo, a country characterised by a strong clan and family structure. The acquittals were greeted with jubilant celebrations in Kosovo. Thousands of the country's citizens mobbed the central square in Priština, where the announcement of the verdicts was being broad-

51 | *Ibid.*, 2.

52 | Lundrim Aliu, "Kosovo Prime Minister Resigns to Face War Crimes Charges at The Hague", *Southeast European Times*, Priština, 9 Mar 2005, http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2005/03/09/feature-01 (accessed 13 Mar 2013).

53 | N. 49.

54 | *Ibid.*

55 | *Ibid.*

casted live by Kosovan television. Haradinaj received a hero's welcome on his return to Kosovo. He said that he was now ready to play an active part in Kosovan politics once more. Prime Minister Thaçi assessed the verdict as conclusive proof of a cleanly conducted war of liberation by the Kosovars.⁵⁶ On the Serbian side, the acquittal was interpreted as a blow against Serbia. President Nikolić expressed doubts about the reliability of the verdict and voiced the opinion that the UN Tribunal had been established to “convict the Serb people” – an opinion shared by many Serbian politicians.⁵⁷

The ICTY cases in Kosovo illustrate how strong the power of established politicians with firm roots in the country is and that there is always a great deal of fear and trepidation involved in coming forward as a witness against former UÇK functionaries. This situation is not likely to change in the future, which means that many perpetrators will remain unidentified.

RECONCILIATION IN BOSNIA AND HERZEGOVINA – ONE STEP FORWARD, TWO STEPS BACK

In Bosnia and Herzegovina (B&H), there are numerous reconciliation initiatives. However, nearly eighteen years after the end of the war, the results of the efforts are meagre. There is still not much effort being made in addressing the war and the events of the past openly. This failure means that the ethnocentric views of history and concepts of the enemy are being cemented in people's minds. The problem is the failure of politicians to act. While the country's parties do not mind the national divides, because they help them to mobilise their voters, the regional initiatives do not get to the root of the problem. And there are also limits to what international justice can accomplish. The trials and verdicts

While the country's parties do not mind the national divides, because they help them to mobilise their voters, the regional initiatives do not get to the root of the problem. And there are also limits to what international justice can do.

56 | “Thaçi welcomes the verdict for release of Ramush Haradinaj and his comrades-in-arms”, Kosovapress, 29 Nov 2012, <http://kosovapress.com/?cid=2,86,156417> (accessed 13 Mar 2013).

57 | “Verdict unjust, political, say Serbian officials”, News Agency B92, 29 Nov 2012, http://b92.net/eng/news/politics-article.php?yyyy=2012&mm=11&dd=29&nav_id=83397 (accessed 13 Mar 2013).

of the ICTY did not help to develop a joint understanding of history in B&H. In spite of this, there may be opportunities for a reconciliation process in view of the changes taking place in society. The desire for mutual understanding is increasing among the people. Nationalism is losing some of its impact.

A Society Torn Apart

Because of the war, which lasted four years, Bosnia-Herzegovina has lost a considerable proportion of its former population. Beforehand, some 4.4 million people lived in B&H according to the 1991 census. 44 per cent of these were Muslim Bosniaks, 31 per cent Serbs and 17 per cent Croats. Approximately 100,000 people lost their lives in the fighting and half of the population was driven out. Around 7,500 people are living in refugee camps.⁵⁸ For many, the war is therefore still part of everyday reality, even after all these years.

The country's society has been torn apart. In spite of attempts to make it possible for people to return to their home localities, the composition of the population has changed irrevocably through war, people fleeing and being driven out. It is true that different ethnic groups continue to live together in many places. But before the war the composition was far more heterogeneous. The number of mono-ethnic communities has increased.⁵⁹

Internally displaced persons mainly migrated to the country's larger cities. Many of them remained there. Those who have returned to their often rural home areas are fighting catastrophic economic conditions there. Although the situation is difficult everywhere in Bosnia and Herzegovina, the unemployment rate tends to be much higher away from the

58 | Over half the population were driven from their homes towns and villages. Some 1.2 million of these fled abroad. According to estimates, around 800,000 citizens stayed there. After the war, approx. one million people returned to their former home towns and villages. 50 per cent of these were "minority returnees", i.e. returnees, who are now part of the minority in their home community.

59 | For instance Mostar: 1991, 126,000 inhabitants, of these: 35 per cent Bosniaks, 34 per cent Croats, 19 per cent Serbs, today: 111,000 inhabitants, of these 47 per cent Bosniaks, 48 per cent Croats, 3 per cent Serbs (estimates by the daily newspaper *Oslobodjenje*).

large urban centres.⁶⁰ The returnees are particularly badly affected by unemployment. It is all the more difficult for them to find a job because they see themselves confronted with a different ethnic mix within the community, in which they now often represent a minority. Discrimination is rife.

The splits in society are also reflected in the administrative structure of the country. Bosnia and Herzegovina is divided into two entities, the Federation of B&H with around 2.3 million inhabitants, mainly Croats and Bosniaks, and the Republika Srpska (RS) with around 1.4 inhabitants, of which Serbs in effect constitute the majority. In addition, there is the District of Brčko with 75,000 inhabitants, which was under the direct supervision of the international community until recently.⁶¹ At the same time, supervision of Bosnia and Herzegovina continues in the form of the High Representative (HR).⁶² Large sections of the former Serb

60 | There are different figures on unemployment in B&H. The Foreign Investors Council assumed around 43 per cent in 2011. See: Foreign Investors Council BiH, "Macroeconomic Overview", <http://fic.ba/macro.html> (accessed 13 Mar 2013). But according to the ILO definition, the figure was only around 28 per cent. The latter figure takes into account the widespread black market labour. The figures come from the Agency for Statistics BiH, <http://bhas.ba/index.php?lang=en> (accessed 13 Mar 2013). In 2010, the unemployment rate in Maglaj, a town of average size in Central Bosnia, was around 63 per cent, in Srebrenica, Eastern Bosnia, it was 48.05 per cent. However, once again one must assume that the figures would be lower if you took the black economy into account. In central Sarajevo, on the other hand, only around 16 per cent were registered unemployed. For Maglaj, Srebrenica and Sarajavo Center, see the figures in: Moje Mjesto, Analitika, Centar za druzstveni istrazivanje, <http://mojemjesto.ba/en> (accessed 13 Mar 2013).

61 | The supervision of Brčko was suspended on 31 Aug 2012. "Brčko Supervisor Roderick Moore Suspends Functions", OHR Press Office, 31 Aug 2012, http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=47427 (accessed 13 Mar 2013).

62 | The Office of the High Representative was established in 1995 with Resolution 1031 of the UN Security Council and is responsible for the implementation of the civilian aspects of the Dayton Peace Agreement. The current High Representative is the Austrian diplomat Valentin Inzko. The HR has far-reaching powers. In the event of violations of the Dayton Peace Agreement, he can enforce decisions and – if necessary – even remove people from their posts. He reports only to the Peace Implementation Council and not to the government of Bosnia-Herzegovina. The international community has been pressing for several years for the OHR to be closed and for Bosnia-Herzegovina to be released into sovereignty. However, the requisite conditions (5 plus 2) have not yet been met.

population from the areas of the Federation of B&H now live in Banja Luka, the largest town of Republika Srpska. Bosniaks and Croats, on the other hand, who fled from the territory of what is now the RS, have settled in the urban centres of the Federation.⁶³

The Limits of Criminal Justice

The court proceedings in The Hague are of great significance for Bosnia and Herzegovina as it was on the country's territory that the worst crimes were committed. The list is topped by the genocide in Srebrenica, Eastern Bosnia, on the territory of what is now the Republika Srpska.

To cover up the murders, the military units exhumed the bodies after the massacre and put them back in the ground at various locations around Srebrenica. This made the identification of the victims more difficult.

In July 1995, Serb troops under the command of the former general of the RS armed forces, Ratko Mladić, murdered around 8,000 Bosniak men and adolescents. It is not only the large number of victims that makes this crime one of the worst in the second half of the 20th century. It also stands out because of its cruelty. To cover up the murders, the military units exhumed the bodies after the massacre and put them back in the ground at various locations around Srebrenica. This made the identification of the victims more difficult. Many of the bereaved are still waiting for the opportunity to bury their murdered family members or friends.⁶⁴

63 | This includes in particular Sarajevo, Mostar and Tuzla. But many others fled abroad and stayed there.

64 | In 2012, 520 newly identified victims were buried. A similar number is expected for 2013. On the background to this see: Sabina Wölkner and Ivana Marić, "15 Jahre Srebrenica – Zeit für Versöhnung?", KAS Länderbericht, 19 Jul 2010, http://kas.de/wf/doc/kas_20155-1522-1-30.pdf (accessed 13 Mar 2013).

65 | A survey carried out by the Bosniak newspaper *Dnevni Avaz* showed that approx. 47 per cent of the respondents had been surprised by the arrest. But just under 50 per cent had expected it. Less than 3 per cent stated that they had no opinion on the matter, in: *Dnevni Avaz*, 27 May 2011, 3.



The genocide in Srebrenica in July 1995 is known as the most serious war crime in Europe since the end of the Second World War. In July 1996 the ICTY for the first time instructed to open one of the mass graves. | Source: © ICTY.

Mladić's arrest in Serbia in May 2011 was a sensation for the people in Bosnia and Herzegovina. Quite a number of them had given up hope that it would ever happen.⁶⁵ However, for the victims' family members, the ICTY trial against him does not bring much comfort. It won't bring the dead back to life. But many people are convinced that Mladić will receive his just punishment. Senida Karović, the Chair of the Union of Civilian Victims of War in Sarajevo Canton, declared: "The pain is so strong that I shall never experience total satisfaction. But what is needed is the moral satisfaction that the person who has perpetrated evil against innocent citizens from Bosnia and Herzegovina is finally being called to account."⁶⁶ The Bosniak politician Sadik Ahmetović, who comes from Srebrenica, added: "The arrest brings satisfaction. It shows that the truth will come out eventually, albeit slowly."⁶⁷ But not all politicians in Bosnia and Herzegovina are celebrating this event. The reactions of the Bosnian Serbs were much cooler. A statement by the Serb Presidency Member Nebojša Radmanović merely said that Serbia had fulfilled an international condition with the arrest.⁶⁸ And the President of the Republika Srpska, Milorad Dodik, announced that he would not be

66 | Žana Kovačević, "BiH: Hapšenje Mladića satisfakcija za sve žrtve", *Radio Slobodna Evropa*, 26 May 2011, http://slobodnaevropa.org/content/bih_hpsenje_satisfakcija_za_sve_zrtve/24205952.html (accessed 13 May 2013).

67 | Ibid.

68 | Ibid.

congratulating Serbia's President Tadić on the event, and he added: "The arrest will not jeopardise the stability of the Republika Srpska."⁶⁹ The RS President and Chairman of the "Alliance of Independent Social Democrats" (SNSD) does not acknowledge the genocide in Srebrenica. He denies it regularly, often in the run-up to elections.⁷⁰ This pleases the Serb nationalists and provokes the Bosniaks. Dodik and his political entourage believe that it helps them to score with the voters. Surveys show that many Serbs reject Mladić's extradition. Over half of them accuse the ICTY of being biased.⁷¹ And this situation is not helped by the fact that Chief Prosecutor Brammertz declared Mladić's arrest an important day for international truth.⁷²

In order not to upset the voters, Bosnian Serb politicians avoid talking about the charges against the ex-general in public. They explain that the extradition was necessary in order not to jeopardise Serbia's path to join the EU.

Many Serbs think that they are being pilloried unfairly. The acquittals of the Croatian generals Gotovina and Markač strengthen this perception.⁷³ In order not to upset the voters, Bosnian Serb politicians therefore avoid talking about the charges against the ex-general in public. They explain that the extradition was necessary in order not to jeopardise Serbia's path to join the EU.⁷⁴ But even this is one step too far for some. Mladen Bosić, Chairman of the "Serbian Democratic Party", the party that Karadžić once led, accuses Serbia of bending its

69 | "Mladićevo hapšenje neće se odraziti na mir i stabilnost u RS-a", *Klix vijesti*, 26 May 2011, <http://klix.ba/vijesti/bih/110526085> (accessed 13 Mar 2013); "Dodik: Nisam Tadiću čestitao hapšenje Mladića", *Klix vijesti*, 2 Jun 2011, <http://klix.ba/vijesti/bih/110602002> (accessed 13 Mar 2013).

70 | Sabina Wölkner, "Lokalwahlen in Bosnien und Herzegowina: Ist der Nationalismus auf dem Rückzug?", *KAS Länderbericht*, 9 Oct 2012, http://kas.de/wf/doc/kas_32356-1522-1-30.pdf (accessed 13 Mar 2013); "Dodik ponovio u Srebrenici: Ovdje nije bilo genocida!", *Vijesti*, 24 Sep 2012, <http://vijesti.ba/vijesti/bih/107068-.html> (accessed 13 Mar 2013).

71 | According to a survey, 34 per cent support the arrest, 40 per cent believe that Mladić is a war hero. 53 per cent accuse the ICTY of bias. "Limited Support for Mladic Arrest: Poll", *Bosnia Daily*, 17 May 2011, 11.

72 | Mirjana Rakela, "Brammertz: Važan dan za međunarodnu pravdu", *Radio Slobodna Evropa*, 26 May 2011, <http://slobodnaevropa.org/content/brammertz/24205937.html> (accessed 13 Mar 2013).

73 | See also the sections about Croatia and Serbia in this article.

74 | Srđan Janković, "Konačno suočavanje Srbije sa haškim obavezama", *Radio Slobodna Evropa*, 26 May 2011, <http://slobodnaevropa.org/content/crna/24206134.html> (accessed 13 Mar 2013).

will to the demands of the West without getting anything in return.⁷⁵ To avoid coming across as a traitor to his country, Dodik's Prime Minister Aleksandar Džombić, announced that the RS government would make available the funds for Mladić's defence.⁷⁶ This did not happen in the end. But Džombić had actually pursued a different objective with his action. He was appealing to the Serb population and intended to confirm its ethnocentric image of history. In this image, the Bosnian Serbs see themselves as victims of war like the other ethnic groups do; there is no sign of a self-critical examination of the past.



The RS President Milorad Dodik regularly denies the genocide in Srebrenica, often in the run-up to elections. | Source: servis DS / flickr (CC BY).

While the trial against Mladić is taking place, Radovan Karadžić, RS President during the war, currently also has to account for his actions before the judges in The Hague. Like Mladić, he is accused of the most serious war crimes and human rights violations. Furthermore, ex-general Zdravko Tolimir, who was known as Mladić's "right-hand man", recently received a life sentence for his crucial involvement in the planning and implementation of the Srebrenica

75 | Eldin Hadžović and Dražen Remiković, "Mladić Divides Bosnia Once Again", Birn, <http://bim.ba/en/271/10/32562/?tpl=30> (accessed 13 Mar 2013).

76 | Aleksandar Dzombic, "Izdvojiti cemo novac za odbranu Mladica", Mojevijesti, 2 Jun 2011, <http://mojevijesti.ba/novost/85127> (accessed 13 Mar 2013).

Massacre.⁷⁷ These trials and verdicts are considered important achievements as they are bringing to light facts about the war crimes committed and are holding the perpetrators to account.⁷⁸ The services that the ICTY is rendering in this respect are undisputed. However, the reactions seen in Bosnia and Herzegovina illustrate the limits of international justice. The Tribunal has not succeeded in initiating a self-critical examination of the war in Bosnia and Herzegovina.⁷⁹

Srebrenica survivor Hasan Nuhanović thinks that the international community has never allowed any investigation of its own failure in the war-torn areas to be conducted or accepted any responsibility for it.

Not everyone thinks that this is exclusively a result of the lack of interest by the local population, such as the Bosnian Serbs. According to Srebrenica survivor Hasan Nuhanović, the international community also bears some responsibility for this development. He thinks that it applies double standards and that it has never allowed any investigation of its own failure in the war-torn areas to be conducted or accepted any responsibility for it.⁸⁰ Nuhanović considers this scandalous. He lost his parents and brother in Srebrenica. Last year, he went to a Dutch court and charged the Dutch Blue Helmets with responsibility for the death of his family members. And the court did indeed hold the Netherlands responsible for the victims' death.⁸¹ This victory serves as a sign of hope for other bereaved families. They too want to bring charges.⁸²

77 | "Ex-General Tolimir zur lebenslanger Haft verurteilt", *Zeit Online*, 12 Dec 2012, <http://zeit.de/politik/ausland/2012-12/kriegsverbrechen-gerichtshof-zdravko-tolimir-urteil> (accessed 13 Mar 2013).

78 | A list of the reasons can be found in: Martina Fischer, "Friedens- und Versöhnungsprozess im westlichen Balkan – Von den Schwierigkeiten des Umgangs mit gewaltsamer Vergangenheit", Berghof Working Paper, No. 4, http://berghof-conflictresearch.org/documents/publications/wp4d_mf_znf.pdf (accessed 13 Mar 2013).

79 | *Ibid.*, 6 et seq.

80 | Nuhanovic examines the accusations in his book *Under The UN Flag: The International Community and the Srebrenica Genocide*, Sarajevo, 2007.

81 | Amnesty International, "Court rules Netherlands responsible for three Srebrenica deaths", 5 Jul 2011, <http://amnesty.org/en/news-and-updates/court-rules-netherlands-responsible-three-srebrenica-deaths-2011-07-05> (accessed 13 Mar 2013).

82 | Adelheid Wölfl, "Folgenschweres Srebrenica-Urteil", *Der Standard*, 6 Jul 2012, <http://derstandard.at/1308680581653/Folgenschweres-Srebrenica-Urteil> (accessed 13 Mar 2013).

Half-Hearted Policies

The pressure exerted on the international community by civil society is no doubt increasing.⁸³ Besides Hasan Nuhanović, the Berlin artist Phillip Ruch criticised the United Nations for not being prepared to face up to its responsibility. He used his “Column of Shame” erected in front of the Brandenburg Gate to condemn the failure of the UN to prevent the massacre in Srebrenica. The memorial was cheered by the Bosniaks.⁸⁴ But however important this discussion is for assessing the international crisis intervention in the former Yugoslavia, it cannot replace the efforts that need to be made by the ethnic groups in Bosnia and Herzegovina to come to terms with the events during the wars. The contribution by the country’s politicians is not sufficient. Although there is no lack of initiatives, some of which are conducted at the highest political level, these have not gone beyond general declarations of intent so far. The Istanbul Declaration, for instance, which was introduced with great fanfare, soon disappeared from the public scene.

The Istanbul Declaration, which was introduced with great fanfare after negotiations between Serbs and Bosniaks, soon disappeared from the public scene.

That is hardly surprising as the Declaration, which was initiated by Turkish President Abdullah Gül and signed jointly with Serbian President Boris Tadić and Bosniak Presidency Member Haris Silajdžić on 24 April 2010, only contained vague objectives. Those involved stressed that they would “take all the necessary steps to secure peace, stability and prosperity in the region”.⁸⁵ But what these steps would entail remained open. In spite of the anodyne nature of the Declaration, it prompted harsh criticism from

83 | Heather McRobie is one of the people putting forward this demand, “What stands in the way of Bosnia reconciliation”, *The Guardian*, 21 Jun 2010, <http://guardian.co.uk/commentisfree/2010/jun/21/bosnia-still-waits-reconciliation> (accessed 13 Mar 2013).

84 | Ruch erected a mound of 16,744 shoes that he had collected in Bosnia-Herzegovina. Above it he put a sign showing the abbreviation for the United Nations. The shoes represented the Srebrenica victims. Cf. Philipp Lichterbeck, “16.744 Schuhe”, *Der Tagesspiegel*, 8 Jul 2010, <http://tagesspiegel.de/kultur/1877478.html> (accessed 13 Mar 2013).

85 | Igor Jovanovic, “New Beginnings in the Balkans?”, International Relations and Security Network (ISN), ETH Zurich, 21 May 2010, <http://isn.ethz.ch/isn/Digital-Library/Articles/Detail/?id=116496> (accessed 13 Mar 2013).

Serb Presidency Member Radmanović, who said that it was unnecessary and would not contribute to stability in Bosnia and Herzegovina.⁸⁶ He accused Silajdžić of having exceeded his authority by signing the Declaration. What was needed was to come to agreements through mutual consultation.⁸⁷ This argument reveals the intention of his frontal attack, which had little to do with the actual content of the agreement. Instead, it demonstrates the on-going conflict that has been simmering for years between Bosniak politicians such as Silajdžić and the Bosnian Serb representatives such as Radmanović. While the majority of the Bosniaks promote the strengthening of the national state, the Serbs want a decentralised state structure, in which the Republika Srpska can enhance its autonomy. The Croats' position is somewhere in the middle. Leading Croat politicians are, however, moving towards the "Serb way of thinking" and increasingly demanding a federal unit of their own, in which Croats represent the majority.⁸⁸

Bosniaks promote the strengthening of the national state, the Serbs want a decentralised state structure, in which the Republika Srpska can enhance its autonomy. The Croats' position is somewhere in the middle.

Radmanović interpreted the signing of the agreement as an attack on the "national interest" of the Serbs in Bosnia and Herzegovina, specifically on the autonomy of the Republika Srpska. The leader of his party, RS President Dodik, argued in a similar vein. Radmanović's criticism of the Turkish initiative was partly motivated by election tactics and was intended to elicit support for himself and Dodik's SNSD during the upcoming parliamentary and presidential elections in October. This suspicion was confirmed by the fact that Radmanović suddenly did not have any objections to follow-on meetings. Such as the meeting in Karađorđevo, one year on from Istanbul, at the invitation of Serbian President Tadić, at which Turkish President Gül was also present. Radmanović arrived in the company of the Croat Presidency Member Željko Komšić.

86 | "Nebojša Radmanović: Deklaracija nepotrebna", Blic online, 26 Apr 2010, <http://srb.time.mk/read/f6129acac5/a2be1d2e51/index.html> (accessed 13 Mar 2013).

87 | "Radmanović: Silajdžić krši Ustav BiH!", Vesti online, 25 Apr 2010, <http://vesti-online.com/Vesti/Ex-YU/47841/Radmanovic-Silajdzic-krsi-Ustav-BiH> (accessed 13 Mar 2013).

88 | Cf. "Čović: Zalagat ćemo se za treći entitet i Mostar kao stolni grad", Hercegovina.info, 26 Aug 2011, <http://hercegovina.info/vijesti/vijesti/politika/covic-zalagat-cemo-se-za-treci-entitet-i-mostar-kao-stolni-grad> (accessed 13 Mar 2013).

He had previously retained his office during the elections by a narrow margin, and the SNSD had attracted the largest number of votes. There were, however, changes on the Bosniak side. Silajdžić was replaced by Bakir Izetbegović, who had won against the incumbent in the presidential elections.

But in Karađorđevo, the results lagged behind expectations once again.⁸⁹ The background to the difficulties was the planned referendum in the Republika Srpska. Dodik was keen to hold a plebiscite with the aim of undermining the legitimisation of the central state criminal court and public prosecutor's office.⁹⁰ This was a demand that the international community rejected.⁹¹ Dodik's intention to hold the referendum overshadowed the discussions in Karađorđevo and pushed the actual agenda topics into the background. Serbia's controversial extradition requests were discussed, prompted by the arrest of Ejup Ganić, a Presidency Member of the Republic of B&H during the war, and of the former military commander of Sarajevo, Jovan Divjak; the events had had a substantial negative effect on relations between Serbia and Bosnia-Herzegovina.⁹²

89 | "Leaders of Serbia, Bosnia, Turkey discuss cooperation in Karadjordjevo", Daily tPortal.hr, 26 Apr 2011, <http://daily.tportal.hr/124532/Leaders-of-Serbia-Bosnia-Turkey-discuss-cooperation-in-Karadjordjevo.html> (accessed 13 Mar 2013).

90 | Ian Traynor, "Bosnia in worst crisis since war as Serb leader calls referendum", *The Guardian*, 28 Apr 2011, <http://guardian.co.uk/world/2011/apr/28/bosnia-crisis-serb-leader-referendum> (accessed 13 Mar 2013).

91 | An intervention by the EU made it possible to dissuade Dodik from pursuing this idea. The High Representative of the Union for Foreign Affairs and Security Policy, Lady Ashton, offered him an "EU-led structured dialogue on justice" if he gave up his plans for a referendum. See also "Fulfilling the Promise of the Structured Dialogue", BiH Dayton Project, 8 Mar 2012, <http://bihdaytonproject.com/?p=1155> (accessed 13 Mar 2013).

92 | Serbia accused both of war crimes against JNA soldiers in the so-called "Dobrovoljacka Street incident". On the background see: Sabina Wölkner, "Ambivalente Versöhnung: Belgrad, Srebrenica und der Fall Ejup Ganic", KAS Länderbericht, 22 Apr 2010, http://kas.de/wf/doc/kas_19423-1522-1-30.pdf (accessed 13 Mar 2013); regarding the Divjak case: Adelheid Wölfl, "Österreich hat Fehler gemacht", 15 Jun 2011, Interview with Jovan Divjak, *Der Standard*, <http://derstandard.at/1310511388117> (accessed 13 Mar 2013); "Court sets ex-Bosnian leader free", *CNN*, 27 Jul 2010, <http://cnn.com/2010/WORLD/europe/07/27/england.bosnian.extradition> (accessed 13 Mar 2013).

However, the heads of state did not succeed in resolving the issues, although the location seemed ideal for setting a new course in the tri-lateral relations. Many years previously, on 25 March 1991, Croatia's President Franjo Tuđman and the Serbian President Milošević had held talks in Karađorđevo about the crisis in Yugoslavia. It is said that it was also there that the splitting of Bosnia and Herzegovina between the two countries had been agreed.⁹³

The meeting of the heads of state had offered an opportunity to dispel the dark legacy of Karađorđevo in the heads of many people. There had been hope for a chance "to finally address and put to rest the evil ghosts and vampires of the past".⁹⁴ This hope remained unfulfilled. The issue was not put to rest, partly because this was not what Serbia and Croatia were focusing on. EU-related questions of regional cooperation were more important to the two countries.⁹⁵

The participants of the third meeting in February 2012 near Sarajevo had actually agreed to come to a consensus on the issue of prosecuting war criminals. But this came to nothing.

There were no tangible results from the third meeting either, which took place in Bosnia and Herzegovina in February 2012 on Mt. Jahorina near Sarajevo. This meeting was also attended by the Croatian President Ivo Josipović. The participants had actually agreed to come to a consensus on the issue of prosecuting war criminals. But this came to nothing. Presidency Member Komšić rejected the proposal by Croatia's President Josipović to bring the accused to court in their current country of residence. In Komšić's opinion, they should be prosecuted where they committed their crimes. In most cases this would mean Bosnia and Herzegovina.⁹⁶ Komšić's motivation was clear. He wanted to prevent war criminals who had fled to Serbia or Croatia from potentially being given lesser sentences

93 | Cf. ICTY, "Testimony of Stjepan Mesić from a transcript of the Milošević trial", 2 Oct 2002, http://icty.org/x/cases/slobodan_milosevic/trans/en/Q21002ED.htm (accessed 13 Mar 2013).

94 | "Komšić: Samit u Karađorđevu obračun s duhovima prošlosti", *vijesti.rs*, 26 Apr 2011, <http://www.vesti.rs/Vesti/komsic-samit-u-karadjordjevu-obracun-s-duhovima-proslosti.html> (accessed 19 Mar 2013).

95 | Including the battle against money laundering and international crime as well as trade issues in the context of Croatia joining the EU. "Jahorina: Završen samit Srbije", *Hrvatske and BiH, Nova Srpska Politicka Misao*, 3 Feb 2012, <http://mail.nspm.rs/hronika/jahorina-završen-samit-srbije-hrvatske-i-bih.html> (accessed 13 Mar 2013).

96 | *Ibid.*

there, or, as happened in the case of Ganić and Divjak, citizens from Bosnia and Herzegovina having to be extradited to Serbia on the basis of disputed extradition requests. Radmanović thought otherwise. This meant that the Presidency of Bosnia and Herzegovina could not make a valid decision. The only support for Josipović's initiative came from Serbia's President Tadić. The reason that an agreement was subsequently made after all, on 31 January 2013, was due to the fact that the Public Prosecutors from Bosnia-Herzegovina and Serbia had declared the agreement a technical matter under pressure from the international community. This meant that it no longer required the approval of the Presidency. Bosniak victims' associations responded unfavourably to this decision.⁹⁷

The meagre results from the meetings illustrate that they are rather symbolic in character. That is not likely to change greatly in the near future either; in fact, the impact of future meetings may even diminish. One of the reasons is a statement by Tadić's successor Tomislav Nikolić, with which he affronted his counterparts in the neighbouring countries. Nikolić expressed the worry that "Bosnia and Herzegovina is breaking up in front of our eyes".⁹⁸ This expression of concern did not go down well with the Bosniak politicians. The Bosniak Presidency Member Izetbegović promptly cancelled his attendance at Nikolić's inauguration.⁹⁹ And the series of meetings initiated in Istanbul has also been suspended. Matters have actually calmed down somewhat since then. There are even indications of a rapprochement.¹⁰⁰

97 | For instance Murat Tahirovic, President of the organisation "Victims and Witnesses of Genocide in Srebrenica", in *Bosnia Daily*, 1 Feb 2012, 6.

98 | "Izetbegovic pisao Nikolicu: BiH nece nestati", *Nezavisne novine*, 23 Oct 2012, <http://www.nezavisne.com/novosti/bih/Izetbegovic-pisao-Nikolicu-BiH-nece-nestati-164267.html> (accessed 13 Mar 2013).

99 | "Nakon Josipovića, i Izetbegović i Türk objavili da neće na Nikolićevu inauguraciju", *Hrvatska riječ*, 7 Jul 2012, <http://hrvatska-rijec.com/2012/06/nakon-josipovica> (accessed 13 Mar 2013).

100 | The "Croatian Democratic Union" (HDZ BiH) and the "Croatian Democratic Union 1990" (HDZ 1990) claim to represent the interests of Croats in Bosnia and Herzegovina. The Bosnian "Party of Democratic Action" (SDA) sees itself as a bulwark for the "protection of the Bosniaks". The Bosnian Serb parties are fighting to enforce the "interests of the Serbs". Only the "Social Democratic Party" (SDP) appears to be an exception. It sees itself as a multi-ethnic party. But its members are predominantly Bosniaks.

But the foundations are still rather fragile. After all, the meetings had shown that in view of diametrically opposed positions, compromise is frequently unachievable. In many instances, it was Bosnia and Herzegovina that was the stumbling block, as its Presidency was not able to come to a decision due to the different points of view about the events of the war.

Nationalism and the Desire for a Rapprochement

The conflicts between the Members of the Presidency have their roots in domestic politics, in the day-to-day party-political wrangling in Bosnia and Herzegovina. The so-called "national interest" is at the centre. This is the crucial point of reference for the policy approach taken by the political forces, each of which sees itself as the protector of "its" group of the population.¹⁰¹ To get ahead in the struggle for power, these "national interests" are also frequently talked up for political reasons. The debate is therefore characterised by nationalist rhetoric, which usually intensifies in the run-up to elections. In 2006, Haris Silajdžić's Party for Bosnia and Herzegovina (SBiH) went into the race with the slogan "100 per cent Bosnia and Herzegovina" and occasionally openly demanded the dissolution of the Republika Srpska. Although this generated some radicalisation on the Serb side, this stance went down well with the Bosniaks. Silajdžić came through in the race for the Bosniak Presidency post.¹⁰² This example shows that it is still possible for political actors to use nationalism as a tool in the struggle for power in divided societies such as Bosnia and Herzegovina. Many have therefore fallen in with the habit of repeatedly making references to "national

Nationalist rhetoric usually intensifies in the run-up to elections. In 2006, Haris Silajdžić's SBiH went into the race with the slogan "100 per cent Bosnia and Herzegovina".

101 | The "Croatian Democratic Union" (HDZ BiH) and the "Croatian Democratic Union 1990" (HDZ 1990) claim to represent the interests of Croats in Bosnia and Herzegovina. The Bosnian "Party of Democratic Action" (SDA) sees itself as a bulwark for the "protection of the Bosniaks". The Bosnian Serb parties are fighting to enforce the "interests of the Serbs". Only the "Social Democratic Party" (SDP) appears to be an exception. It sees itself as a multi-ethnic party. But its members are predominantly Bosniaks.

102 | Christina Catherine Krause and Ivana Marić, "Analyse der allgemeinen Wahlen in Bosnien und Herzegowina am 1. Oktober 2006", KAS Länderbericht, 9 Oct 2006, http://kas.de/db_files/dokumente/laenderberichte/7_dokument_dok_pdf_9319_1.pdf (accessed 13 Mar 2013).

interests".¹⁰³ This explains why reconciliation initiatives rarely seem to have any impact in politics. The desire to overcome the differences is modest as these are precisely what keeps the political actors in power. This political approach is encouraged by the fact that the state is structured along ethnic lines, which virtually provokes conflicts based on "national interests".

However, there have been some indications since the parliamentary and presidential elections in 2010 that the influence of nationalism is lessening. Silajdžić was the first to be affected by this. He was the one among the Bosniak candidates who played the national card most strongly. But this time, it did not convince the Bosniaks and they elected the more moderately acting Bakir Izetbegović. There was also some differentiation taking place in the political spectrum. Since the foundation of the "Alliance for a Better Future of BiH" (SBBBiH), no Bosniak party could claim any longer that it was the only one to represent the interests of "its" ethnic group.¹⁰⁴ And this had consequences. Other topics, such as the economy, came to the fore and so did therefore the question as to what the parties were offering to overcome the problems.¹⁰⁵

Some indications suggest that the influence of nationalism is lessening. The SBiH played the national card most strongly. But the Bosniaks elected the more moderately acting Bakir Izetbegović.

There are also signs of a turnaround in the Serb party landscape. Dodik's hopes to attract sufficient votes during last year's local elections with the usual nationalist bombast, were not fulfilled. His party suffered high losses.¹⁰⁶ Instead of the danger to the Republika Srpska from "Sarajevo's centralists" evoked by Dodik, the election campaign was dominated by topics of domestic politics such as economic development, expansion of the infrastructure and reducing

103 | Bodo Weber, "Plötzlich ist wieder von "Krieg" die Rede", *Zeit Online*, 20 Oct 2009, <http://zeit.de/2009/45/oped-Bosnien-Politik> (accessed 13 Mar 2013).

104 | The party was voted into government straightaway. Cf. Sabina Wölkner, Ivana Marić and Sabrina Isic, "Neuer Wein in alten Schläuchen? Bosnien und Herzegowina hat gewählt", KAS Länderbericht, 6 Oct 2010, http://kas.de/wf/doc/kas_20748-1522-1-30.pdf (accessed 13 Mar 2013).

105 | This was the reason why Radončić had concentrated on economic issues in his election campaign. Ibid.

106 | Wölkner, n. 70.

unemployment. The fight against corruption also played a role. Voters did not think that Dodik's SNSD had convincing answers to these questions.¹⁰⁷

The changes in voting behaviour are going hand in hand with a rise in the levels of trust between the ethnic groups. A recent survey by the Gallup Balkan Monitor confirms the shift. While 51 per cent of Bosniaks stated in 2006 to have a great deal or some trust in Serbs or Croats, the figure had risen to 60 per cent by 2010. A similar development was found for the Croats. In 2006, around half of the Croatian respondents felt that they could trust Serbs or Bosniaks. In 2010, this feeling applied to 73 per cent (Serbs) and 63 per cent (Bosniaks). And for Serbs as well the figure rose from around 50 per cent to 67 per cent (Croats) and 62 per cent (Bosniaks).¹⁰⁸

These positive changes in the population may exert pressure on the politicians and encourage them to enter into more cross-ethnic compromises in their decision-making.

Ethnic identity is still important to the country's inhabitants. 68 per cent of the Serbs, 48 per cent of the Croats and 50 per cent of the Bosniaks confirmed that they identified strongly or very strongly with their nationality.

But it does not mean that nationalism will disappear from the political scene in Bosnia and Herzegovina. As long as there is no reform of the state structures, the fight for the "national interests" will remain pivotal for the parties. Ethnic identity is also still important to the country's inhabitants. 68 per cent of the Serbs, 48 per cent of the Croats and 50 per cent of the Bosniaks confirmed that they identified strongly or very strongly with their nationality. But thanks to the newfound trust among the population, there might be fewer nationalist excesses in politics. The reason is simple: they will no longer be of great benefit to the political actors.

Whether this shift will also open a window for reconciliation is not clear. Although a recent study about reconciliation and trust in Bosnia and Herzegovina has shown that the desire for reconciliation has risen amongst the respondents

107 | The SNSD only came first in 18 localities. It had been as many as 41 in the previous elections. Ibid.

108 | "Focus on Bosnia and Herzegovina", *Gallup Balkan Monitor*, Nov 2010, 4 et seq., http://balkan-monitor.eu/files/Gallup_Balkan_Monitor-Focus_On_Bosnia_and_Herzegovina.pdf (accessed 13 Mar 2013).

who had classed themselves religious,¹⁰⁹ such an attitude does not automatically entail the desire to address the past and possibly even accept some responsibility for it.¹¹⁰ The majority of the respondents have reservations about initiatives focusing on the past. To them it seems more important to further mutual understanding, peace and trust. The responses were not significantly influenced by level of education, gender or age. Only religion proved to be a relevant factor.¹¹¹ Nor did the responses vary greatly between Bosniaks, Serbs and Croats. A glimmer of hope therefore remains that society in Bosnia and Herzegovina will grow to become whole again. But there is still a long way to go where coming to terms with the past is concerned.

Hope Lies with Civil Society

After nearly eighteen years since the end of the war, reconciliation in Bosnia and Herzegovina is still in its infancy. This is due to a lack of willingness to engage in a self-critical analysis of the events of the war. While local politicians are not interested because they benefit from the national differences in terms of political power, the population has different ideas about reconciliation. Many think that confronting the past is not very helpful in encouraging the development of trust between the ethnic groups. Neither did the ICTY succeed in strengthening the desire for addressing the past with its trials and verdicts. This is illustrated by the reactions of the Bosnian Serbs to Ratko Mladić's arrest. They underline the limits of the impact that international justice can have in encouraging the process of reconciliation.

The ICTY did not succeed in strengthening the desire for addressing the past with its verdicts. The reactions of the Bosnian Serbs to Mladić's arrest underline the limits of the impact that international justice can have.

109 | The respondents who classed religion as important were more positively inclined towards reconciliation initiatives. See George Wilkes et al., *Pomirenje i izgradnja povjerenja u Bosni i Hercegovini. Ispitivanje javnih stavova u četiri grada i regiona Banja Luka, Bugojno, Mostar i Sarajevo*, Centar za empirijska istraživanja religije u BiH, Sarajevo, i Project on Religion and Ethics in the Making of War and Peace, The University of Edinburgh, Sarajevo, 2012.

110 | Ibid., 11.

111 | Ibid., 15 et seq.

The hope therefore has to be that civil society will set this process going by its initiatives. But the international community must also play its part by encouraging the politicians to provide greater support to civil society initiatives. There is a danger, however, that these efforts will once again remain largely ineffectual for as long as there are no reforms of the state structures that would eliminate the causes of nationalism in Bosnia and Herzegovina. At the same time, it will be important to stimulate economic development, to help displaced people who have returned to their home communities to reintegrate with society there, but also to encourage greater diversity in the new, rather monoethnic communities in the country.

CONCLUSION

Reconciliation is considered to be the key to overcoming hostilities. It guards against further violence and is therefore a prerequisite to peace.¹¹² However, it is not clear which type of reconciliation will have the desired effect. Nor

To initiate a reconciliation process some favour a top-down approach. Others stress the relevance of bottom-up initiatives, which emerge from the level of civil society.

under which conditions it can contribute to peace building and conflict transformation.¹¹³

The only thing everyone agrees on is that it is a complex concept, which demands a great deal from all those involved. Victims have to forgive oppressors. The perpetrators of crimes have to admit their guilt.¹¹⁴ There are a number of approaches to initiating a reconciliation process. While some favour a top-down approach, others stress the relevance of bottom-up initiatives, which emerge from the level of civil society.¹¹⁵ Criminal justice is also a means to further reconciliation. The International Criminal Tribunal for the Former Yugoslavia represents an impressive example.

112 | Fischer, n. 78.

113 | Ibid.

114 | Quoted according to Chip Hauss, Director of Search for Common Ground and professor of conflict resolution, in: Cate Malek, "Reconciliation in Bosnia", 2003-2012 The Beyond Intractability Project, The Conflict Information Consortium, University of Colorado, Jul 2005, <http://beyondintractability.org/casestudy/malek-reconciliation> (accessed 13 Mar 2013).

115 | Fischer, n. 78.

Twenty years after the ICTY was set up, the Tribunal is still playing an important role for the democratic development of the societies that have emerged from the former Yugoslavia and for shaping the relationships between them. Without the ICTY and its verdicts and, more importantly, without its documentation of war crimes, hardly any of the prerequisites would be in place to allow the people in the individual countries to come to terms with their own past. The fact that the efforts in this direction are still in their infancy in most of the states, as described above, is frequently a consequence of the political and social survival of the elites from the war periods, and their lack of interest in examining their own past. Initiatives for the determination of historic facts and for regional reconciliation are therefore usually initiated by a few courageous civil society organisations with support from some Western countries. To date, activities on the part of the state have rarely gone beyond the cooperation with the ICTY required in the course of European integration. But as the example of the Franco-German and German-Polish examples have shown, bilateral historians' commissions can perform important work not just for eradicating obsolete images of the enemy, but also for preparing urgently needed materials for history lessons in schools, which are based on the facts determined by the Tribunal.

Measures such as these will allow future generations to address the events of the recent past in order to overcome images of the enemy and stereotypes. That will also be one of the positive things coming out of the war crime trials in The Hague. Even though the generation of politicians active today lack both the ability and the will to address the past – because they cannot forgive, because they were involved themselves, or because they want to exploit the hostile mood for political gain – the facts documented in The Hague will allow future generations to do what their parents have failed to do and engage with one another in a positive spirit.

Table 1
Prosecutions of the ICTY

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
29 Nov 1996	Dražen Erdemović	Pillica Farm	Bosnian Croat	Imprisonment (10 years)
7 May 1997	Duško Tadić	Prijedor	Bosnian Serb	Found guilty on 11 counts and not guilty on 9 counts, sentencing rendered later
14 Jul 1997	Duško Tadić	Prijedor	Bosnian Serb	Imprisonment (20 years)
7 Oct 1997	Dražen Erdemović	Pillica Farm	Bosnian Croat	Ruled that the guilty plea was not informed and a new plea should be entered
5 Mar 1998	Dražen Erdemović	Pillica Farm	Bosnian Croat	Imprisonment (5 years)
16 Nov 1998	<ul style="list-style-type: none"> • Zdravko Mucić • Hazim Delić • Esad Landžo • Zejnil Delalić 	Čelebići Camp	Bosnian Croats / Bosniaks	<ul style="list-style-type: none"> • Zdravko Mucić: imprisonment (7 years) • Hazim Delić: imprisonment (20 years) • Esad Landžo: imprisonment (15 years) • Zejnil Delalić: acquittal
10 Dec 1998	Anto Furundžija	Lašva Valley	Bosnian Croat	Imprisonment (10 years)
25 Jun 1999	Zlatko Aleksovski	Lašva Valley	Bosnian Croat	Imprisonment (2.5 years)
15 Jul 1999	Duško Tadić	Prijedor	Bosnian Serb	Imprisonment (20 years)
11 Nov 1999	Duško Tadić	Prijedor	Bosnian Serb	Found guilty of 9 additional counts
14 Dec 1999	Goran Jelisić	Brčko	Bosnian Serb	Imprisonment (40 years)
14 Jan 2000	<ul style="list-style-type: none"> • Drago Josipović • Vladimir Šantić • Zoran Kupreškić • Mirjan Kupreškić • Vlatko Kupreškić • Dragan Papić 	Lašva Valley	Bosnian Croats	<ul style="list-style-type: none"> • Drago Josipović: imprisonment (15 years) • Vladimir Šantić: imprisonment (25 years) • Zoran Kupreškić: imprisonment (10 years) • Mirjan Kupreškić: imprisonment (8 years) • Vlatko Kupreškić: imprisonment (6 years) • Dragan Papić: acquittal
26 Jan 2000	Duško Tadić	Prijedor	Bosnian Serb	Imprisonment (20 years)

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
3 Mar 2000	Tihomir Blaškić	Lašva Valley	Bosnian Croat	Imprisonment (45 years)
24 Mar 2000	Zlatko Aleksovski	Lašva Valley	Bosnian Croat	Imprisonment (7 years)
21 Jul 2000	Anto Furundžija	Lašva Valley	Bosnian Croat	Imprisonment (10 years)
20 Feb 2001	<ul style="list-style-type: none"> ▪ Zdravko Mucić ▪ Hazim Delić ▪ Esad Landžo ▪ Zejnil Delalić 	Čelebići Camp	Bosnian Croats / Bosniaks	<ul style="list-style-type: none"> ▪ Zdravko Mucić: sentencing remitted to Trial Chamber for possible adjustment ▪ Hazim Delić: sentencing remitted to Trial Chamber for possible adjustment ▪ Esad Landžo: sentencing remitted to Trial Chamber for possible adjustment ▪ Zejnil Delalić: acquittal
22 Feb 2001	<ul style="list-style-type: none"> ▪ Dragoljub Kunarac ▪ Radomir Kovač ▪ Zoran Vuković 	Foča	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Dragoljub Kunarac: imprisonment (28 years) ▪ Radomir Kovač: imprisonment (20 years) ▪ Zoran Vuković: imprisonment (12 years)
26 Feb 2001	<ul style="list-style-type: none"> ▪ Dario Kordić ▪ Mario Čerkez 	Lašva Valley	Bosnian Croats	<ul style="list-style-type: none"> ▪ Dario Kordić: imprisonment (25 years) ▪ Mario Čerkez: imprisonment (15 years)
5 Jul 2001	Goran Jelisić	Brčko	Bosnian Serb	Imprisonment (40 years)
31 Jul 2001	Stevan Todorović	Bosanski Šamac	Bosnian Serb	Imprisonment (10 years)
2 Aug 2001	Radislav Krstić	Srebrenica-Drina Corps	Bosnian Serb	Imprisonment (46 years)
9 Oct 2001	<ul style="list-style-type: none"> ▪ Zdravko Mucić ▪ Hazim Delić ▪ Esad Landžo ▪ Zejnil Delalić 	Čelebići Camp	Bosnian Croats / Bosniaks	<ul style="list-style-type: none"> ▪ Zdravko Mucić: imprisonment (9 years) ▪ Hazim Delić: imprisonment (18 years) ▪ Esad Landžo: imprisonment (15 years) ▪ Zejnil Delalić: acquittal

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
23 Oct 2001	<ul style="list-style-type: none"> ▪ Drago Josipović ▪ Vladimir Šantić ▪ Zoran Kupreškić ▪ Mirjan Kupreškić ▪ Vlatko Kupreškić ▪ Dragan Papić 	Lašva Valley	Bosnian Croats	<ul style="list-style-type: none"> ▪ Drago Josipović: imprisonment (12 years) ▪ Vladimir Šantić: imprisonment (18 years) ▪ Zoran Kupreškić: acquittal ▪ Mirjan Kupreškić: acquittal ▪ Vlatko Kupreškić: acquittal ▪ Dragan Papić: acquittal
2 Nov 2001	<ul style="list-style-type: none"> ▪ Miroslav Kvočka ▪ Dragoljub Prcać ▪ Milojica Kos ▪ Mlađo Radić ▪ Zoran Žigić 	Omarska, Keraterm, Trnopolje Camps	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Miroslav Kvočka: imprisonment (7 years) ▪ Dragoljub Prcać: imprisonment (5 years) ▪ Milojica Kos: imprisonment (6 years) ▪ Mlađo Radić: imprisonment (20 years) ▪ Zoran Žigić: imprisonment (25 years)
13 Nov 2001	<ul style="list-style-type: none"> ▪ Duško Sikirica ▪ Damir Došen ▪ Dragan Koundžija 	Keraterm Camp	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Duško Sikirica: imprisonment (15 years) ▪ Damir Došen: imprisonment (5 years) ▪ Dragan Koundžija: imprisonment (3 years)
15 Mar 2002	Milorad Krnojelac	Foča	Bosnian Serb	Imprisonment (7.5 years)
12 Jun 2002	<ul style="list-style-type: none"> ▪ Dragoljub Kunarac ▪ Radomir Kovač ▪ Zoran Vuković 	Foča	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Dragoljub Kunarac: imprisonment (28 years) ▪ Radomir Kovač: imprisonment (20 years) ▪ Zoran Vuković: imprisonment (12 years)
17 Oct 2002	Milan Simić	Bosanski Samac	Serb	Imprisonment (5 years)
29 Nov 2002	Mitar Vasiljević	Višegrad	Bosnian Serb	Imprisonment (20 years)
27 Feb 2003	Biljana Plavšić	Bosnia and Herzegovina	Bosnische Serb	Imprisonment (11 years)
31 Mar 2003	<ul style="list-style-type: none"> ▪ Mladen Naletilić ▪ Vinko Martinović 	Tuta and Štela	Bosnian Croats	<ul style="list-style-type: none"> ▪ Mladen Naletilić: imprisonment (20 years) ▪ Vinko Martinović: imprisonment (18 years)

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
8 Apr 2003	<ul style="list-style-type: none"> ▪ Zdravko Mucić ▪ Hazim Delić ▪ Esad Landžo ▪ Zejnil Delalić 	Čelebići Camp	Bosnian Croats / Bosniaks	<ul style="list-style-type: none"> ▪ Zdravko Mucić: imprisonment (9 years) ▪ Hazim Delić: imprisonment (18 years) ▪ Esad Landžo: imprisonment (15 years) ▪ Zejnil Delalić: acquittal
31 Jul 2003	Milomir Stakić	Prijedor	Bosnian Serb	Life imprisonment
17 Sep 2003	Milorad Krnojelac	Foča	Bosnian Serb	Imprisonment (15 years)
17 Oct 2003	<ul style="list-style-type: none"> ▪ Blagoje Simić ▪ Miroslav Tadić ▪ Simo Zarić 	Bosanski Šamac	Serbs / Bosnian Serbs	<ul style="list-style-type: none"> ▪ Blagoje Simić: imprisonment (17 years) ▪ Miroslav Tadić: imprisonment (8 years) ▪ Simo Zarić: imprisonment (6 years)
28 Oct 2003	Predrag Banović		Bosnian Serb	Imprisonment (8 years)
2 Dec 2003	Momir Nikolić	Srebrenica	Bosnian Serb	Imprisonment (27 years)
5 Dec 2003	Stanislav Galić		Bosnian Serb	Imprisonment (20 years)
10 Dec 2003	Dragan Obrenović	Srebrenica	Bosnian Serb	Imprisonment (17 years)
18 Dec 2003	Dragan Nikolić		Bosnian Serb	Imprisonment (23 years)
25 Feb 2004	Mitar Vasiljević	Višegrad	Bosnian Serb	Imprisonment (15 years)
11 Mar 2004	Ranko Češić	Brčko	Bosnian Serb	Imprisonment (18 years)
18 Mar 2004	Miodrag Jokić	Dubrovnik	Serb	Imprisonment (7 years)
30 Mar 2004	Miroslav Deronjić	Glogova	Bosnian Serb	Imprisonment (10 years)
31 Mar 2004	Darko Mrđa	Vlašić Mountain	Bosnian Serb	Imprisonment (17 years)
19 Apr 2004	Radislav Krstić	Srebrenica-Drina Corps	Bosnian Serb	Imprisonment (35 years)
29 Jun 2004	Milan Babić	RSK	Croatian Serb	Imprisonment (13 years)
29 Jul 2004	Tihomir Blaškić	Lašva Valley	Bosnian Croat	Imprisonment (9 years)
1 Sep 2004	Radoslav Brđanin	Krajina	Bosnian Serb	Imprisonment (32 years)
17 Dec 2004	<ul style="list-style-type: none"> ▪ Dario Kordić ▪ Mario Čerkez 	Lašva Valley	Bosnian Croats	<ul style="list-style-type: none"> ▪ Dario Kordić: imprisonment (25 years) ▪ Mario Čerkez: imprisonment (6 years)

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
17 Jan 2005	<ul style="list-style-type: none"> ▪ Vidoje Blagojević ▪ Dragan Jokić 		Bosnian Serbs	<ul style="list-style-type: none"> ▪ Vidoje Blagojević: imprisonment (18 years) ▪ Dragan Jokić: imprisonment (9 years)
31 Jan 2005	Pavle Strugar	Dubrovnik	Montenegrin	Imprisonment (8 years)
4 Feb 2005	Dragan Nikolić		Bosnian Serb	Imprisonment (20 years)
28 Feb 2005	<ul style="list-style-type: none"> ▪ Miroslav Kvočka ▪ Dragoljub Prcać ▪ Milojica Kos ▪ Mlađo Radić ▪ Zoran Žigić 	Omarska, Keraterm, Trnopolje Camps	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Miroslav Kvočka: imprisonment (7 years) ▪ Dragoljub Prcać: imprisonment (5 years) ▪ Milojica Kos: imprisonment (6 years) ▪ Mlađo Radić: imprisonment (20 years) ▪ Zoran Žigić: imprisonment (25 years)
18 Jul 2005	Milan Babić	RSK	Croatian Serb	Imprisonment (13 years)
20 Jul 2005	Miroslav Deronjić	Glogova	Bosnian Serb	Imprisonment (10 years)
30 Aug 2005	Miodrag Jokić	Dubrovnik	Serb	Imprisonment (7 years)
16 Nov 2005	Sefer Halilović	Grabovica-Uzdol	Bosniak	Acquittal
30 Nov 2005	<ul style="list-style-type: none"> ▪ Fatmir Limaj ▪ Isak Musliu ▪ Haradin Bala 		Kosovo Albanians	<ul style="list-style-type: none"> ▪ Fatmir Limaj: acquittal ▪ Isak Musliu: acquittal ▪ Haradin Bala: imprisonment (13 years)
7 Dec 2005	Miroslav Bralo	Lašva Valley	Bosnian Croat	Imprisonment (20 years)
8 Mar 2006	Momir Nikolić	Srebrenica	Bosnian Serb	Imprisonment (20 years)
15 Mar 2006	<ul style="list-style-type: none"> ▪ Enver Hadžihasanović ▪ Amir Kubura 	Central Bosnia	Bosniaks	<ul style="list-style-type: none"> ▪ Enver Hadžihasanović: imprisonment (5 years) ▪ Amir Kubura: imprisonment (2.5 years)
22 Mar 2006	Milimir Stakić	Prijedor	Bosnian Serb	Imprisonment (40 years)
3 May 2006	<ul style="list-style-type: none"> ▪ Mladen Naletilić ▪ Vinko Martinović 	Tuta and Štela	Bosnian Croats	<ul style="list-style-type: none"> ▪ Mladen Naletilić: imprisonment (20 years) ▪ Vinko Martinović: imprisonment (18 years)
8 May 2006	Ivica Rajić	Stupni Do	Bosnian Croat	Imprisonment (12 years)
30 Jun 2006	Naser Orić		Bosniak	Imprisonment (2 years)

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
27 Sep 2006	Momčilo Krajišnik	Bosnia and Herzegovina		Imprisonment (27 years)
28 Nov 2006	<ul style="list-style-type: none"> ▪ Blagoje Simić ▪ Miroslav Tadić ▪ Simo Zarić 	Bosanski Šamac	Serbs / Bosnian Serbs	<ul style="list-style-type: none"> ▪ Blagoje Simić: imprisonment (15 years) ▪ Miroslav Tadić: imprisonment (8 years) ▪ Simo Zarić: imprisonment (6 years)
30 Nov 2006	Stanislav Galić		Bosnian Serb	Life imprisonment
2 Apr 2007	Miroslav Bralo	Lašva Valley	Bosnian Croat	Imprisonment (20 years)
3 Apr 2007	Radoslav Brđanin	Krajina	Bosnian Serb	Imprisonment (30 years)
4 Apr 2007	Dragan Zelenović	Foča	Bosnian Serb	Imprisonment (15 years)
9 May 2007	<ul style="list-style-type: none"> ▪ Vidoje Blagojević ▪ Dragan Jokić 		Bosnian Serbs	<ul style="list-style-type: none"> ▪ Vidoje Blagojević: imprisonment (15 years) ▪ Dragan Jokić: imprisonment (9 years)
12 Jun 2007	Milan Martić	RSK	Croatian Serb	Imprisonment (35 years)
27 Sep 2007	<ul style="list-style-type: none"> ▪ Fatmir Limaj ▪ Isak Musliu ▪ Haradin Bala 		Kosovo Albanians	<ul style="list-style-type: none"> ▪ Fatmir Limaj: acquittal ▪ Isak Musliu: acquittal ▪ Haradin Bala: imprisonment (13 years)
27 Sep 2007	<ul style="list-style-type: none"> ▪ Mile Mrkšić ▪ Miroslav Radić ▪ Veselin Šljivančanin 	Vukovar Hospital	Croatian Serbs / Serbs	<ul style="list-style-type: none"> ▪ Mile Mrkšić: imprisonment (20 years) ▪ Miroslav Radić: acquittal ▪ Veselin Šljivančanin: imprisonment (5 years)
16 Oct 2007	Sefer Halilović	Grabovica-Uzdol	Bosniak	Acquittal
31 Oct 2007	Dragan Zelenović	Foča	Bosnian Serb	Imprisonment (15 years)
12 Dec 2007	Dragomir Milošević	Sarajevo	Bosnian Serb	Imprisonment (33 years)
3 Apr 2008	<ul style="list-style-type: none"> ▪ Ramush Haradinaj ▪ Idriz Balaj ▪ Lahi Brahimaj 		Kosovo Albanians	<ul style="list-style-type: none"> ▪ Ramush Haradinaj: acquittal ▪ Idriz Balaj: acquittal ▪ Lahi Brahimaj: imprisonment (6 years)
22 Apr 2008	<ul style="list-style-type: none"> ▪ Enver Hadžihasanović ▪ Amir Kubura 	Central Bosnia	Bosniaks	<ul style="list-style-type: none"> ▪ Enver Hadžihasanović: imprisonment (3.5 years) ▪ Amir Kubura: imprisonment (2 years)

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
3 Jul 2008	Naser Orić		Bosniak	Acquittal
10 Jul 2008	<ul style="list-style-type: none"> ▪ Ljube Boškosi ▪ Johan Tarčulovski 		Macedonians	<ul style="list-style-type: none"> ▪ Ljube Boškosi: acquittal ▪ Johan Tarčulovski: imprisonment (12 years)
17 Jul 2008	Pavle Strugar	Dubrovnik	Montenegrin	Imprisonment (7.5 years)
15 Sep 2008	Rasim Delić		Bosniak	Imprisonment (3 years)
8 Oct 2008	Milan Martić	RSK	Croatian Serb	Imprisonment (35 years)
26 Feb 2009	<ul style="list-style-type: none"> ▪ Milan Milutinović ▪ Nikola Šainović ▪ Dragoljub Ojdanić ▪ Nebojša Pavković ▪ Vladimir Lazarević ▪ Sreten Lukić 		Serbs	<ul style="list-style-type: none"> ▪ Milan Milutinović: acquittal ▪ Nikola Šainović: imprisonment (22 years) ▪ Dragoljub Ojdanić: imprisonment (15 years) ▪ Nebojša Pavković: imprisonment (22 years) ▪ Vladimir Lazarević: imprisonment (15 years) ▪ Sreten Lukić: imprisonment (22 years)
17 Mar 2009	Momčilo Krajisnik		Bosnian Serb	Imprisonment (20 years)
5 May 2009	<ul style="list-style-type: none"> ▪ Mile Mrkšić ▪ Veselin Šljivančanin 	Vukovar Hospital	Croatian Serb / Montenegrin	<ul style="list-style-type: none"> ▪ Mile Mrkšić: imprisonment (20 years) ▪ Veselin Šljivančanin: imprisonment (17 years)
20 Jul 2009	<ul style="list-style-type: none"> ▪ Milan Lukić ▪ Sredoje Lukić 	Višegrad	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Milan Lukić: Life imprisonment ▪ Sredoje Lukić: imprisonment (30 years)
12 Nov 2009	Dragomir Milošević	Sarajevo	Bosnian Serb	Imprisonment (29 years)
19 May 2010	<ul style="list-style-type: none"> ▪ Ljube Boškosi ▪ Johan Tarčulovski 		Macedonians	<ul style="list-style-type: none"> ▪ Ljube Boškosi: acquittal ▪ Johan Tarčulovski: imprisonment (12 years)
10 Jun 2010	<ul style="list-style-type: none"> ▪ Vujadin Popović ▪ Ljubiša Beara ▪ Drago Nikolić ▪ Ljubomir Borovčanin ▪ Radivoje Miletić ▪ Milan Gvero ▪ Vinko Pandurević 	Srebrenica	Bosnian Serbs	<ul style="list-style-type: none"> ▪ Vujadin Popović: Life imprisonment ▪ Ljubiša Beara: Life imprisonment ▪ Drago Nikolić: imprisonment (35 years) ▪ Ljubomir Borovčanin: imprisonment (17 years) ▪ Radivoje Miletić: imprisonment (19 years) ▪ Milan Gvero: imprisonment (5 years) ▪ Vinko Pandurević: imprisonment (13 years)

Date	Defendants	Case	Ethnicity	Verdict (duration of sentence)
29 Jun 2010	Rasim Delić		Bosniak	Imprisonment (3 years) (accused † 16 Apr 2010)
21 Jul 2010	<ul style="list-style-type: none"> ▪ Ramush Haradinaj ▪ Idriz Balaj ▪ Lahi Brahimaj 		Kosovo Albanians	(Partial re-trial ordered for all) <ul style="list-style-type: none"> ▪ Lahi Brahimaj: sentence of imprisonment (6 years) affirmed
8 Dec 2010	Veselin Šljivančanin		Montenegrin	Imprisonment (10 years) (review Judgement by the Appeals Chamber)
23 Feb 2011	Vlastimir Đorđević		Serb	Imprisonment (27 years)
15 Apr 2011	<ul style="list-style-type: none"> ▪ Ante Gotovina ▪ Mladen Markač ▪ Ivan Čermak 		Croats	<ul style="list-style-type: none"> ▪ Ante Gotovina: imprisonment (24 years) ▪ Mladen Markač: imprisonment (18 years) ▪ Ivan Čermak: acquittal
6 Sep 2011	Momčilo Perišić		Serb	Imprisonment (27 years)
16 Nov 2012	<ul style="list-style-type: none"> ▪ Ante Gotovina ▪ Mladen Markač 		Croats	<ul style="list-style-type: none"> ▪ Ante Gotovina: acquittal ▪ Mladen Markač: acquittal
29 Nov 2012	<ul style="list-style-type: none"> ▪ Ramush Haradinaj ▪ Idriz Balaj ▪ Lahi Brahimaj 		Kosovo Albanians	(Retrial on parts of the indictment) <ul style="list-style-type: none"> ▪ Ramush Haradinaj: acquittal ▪ Idriz Balaj: acquittal ▪ Lahi Brahimaj: acquittal
4 Dec 2012	<ul style="list-style-type: none"> • Milan Lukić • Sredoje Lukić 		Bosnian Serbs	<ul style="list-style-type: none"> • Milan Lukić: Life imprisonment • Sredoje Lukić: imprisonment (27 years)
12 Dec 2012	Zdravko Tolimir		Bosnian Serb	Life imprisonment
28 Feb 2013	Momčilo Perišić		Serb	Acquittal

Source: ICTY, <http://icty.org/sid/10095> (accessed 18 Mar 2013), compiled by the editors.



Christian Spahr is Head of the Konrad-Adenauer-Stiftung's Media Program South East Europe based in Sofia.

SILENCE OR OUTRAGE

HOW SOUTH EAST EUROPE'S MEDIA DEAL WITH THE PAST

Christian Spahr

The term "Vergangenheitsbewältigung" is not easy to translate into other languages. In English "coming to terms with the past" would probably come closest. The expression has become an accepted term that the Germans have somehow added to the international political lexicon. The English Wikipedia entry on "Vergangenheitsbewältigung" devotes five pages to attempts of coming to terms with Germany's 20th century history. Political scientist Eckhard Jesse from Chemnitz has defined three pre-conditions that are necessary if a political process of coming to terms with the past is to be successful. First, there needs to be wrongdoing, then an end to this wrongdoing and finally a process of democratisation.¹ If this definition is applied to the media, then it is clear that they have a double role to play in the process of coming to terms with the past. On the one hand, the media act as the chroniclers of political crimes, the end of dictatorships and the ensuing changes to the political system. On the other hand, many members of the media have also played their own nefarious part in these dictatorships, either by supporting criminal behaviour or even by sabotaging attempts to bring an end to dictatorships and introduce change.

Coming to terms with a country's political past and coming to terms with the past of its media is closely linked, as the mass media are the key to changing public opinion. It is only with their support that a general acceptance of new

1 | Cf. Ulrich Battis, Günther Jakobs, Eckhard Jesse and Josef Isensee, "Vergangenheitsbewältigung durch Recht. Drei Abhandlungen zu einem deutschen Problem", Wissenschaftliche Abhandlungen und Reden zur Philosophie, Politik und Geistesgeschichte, 16, Duncker und Humblot, Berlin, 1992, 716.

political systems and democratic structures, not to mention a new perception of history, can be achieved. In South East Europe, this can be seen not only in the way the media deal with the Communist era, but also in their handling of the Yugoslav Wars of the 1990s. There is a need to improve both good quality reporting and critical self-reflection on the part of the media.

BULGARIA: LIBERALISATION AND TABOOS

By the mid-1980s, there was already a tendency in Bulgaria, the second-largest country in South East Europe, for the media to adopt a more nuanced attitude to communist ideology. Taking its lead from the neighbouring Perestroika-supporting media in the Soviet Union, the party newspaper *Rabotnichesko Delo* (Workers' Deed) led the way by proffering a moderate degree of criticism. Other media soon followed suit, albeit with the appropriate amount of caution. This liberalisation of the media, which was condoned by the country's political leadership, meant that certain former taboos could now be addressed, such as the country's poor economic situation, corruption and excessive bureaucracy.²

At the same time, the state also chose to severely restrict reporting at key moments, such as in 1989, when a part of the country's Turkish population was expelled shortly before the political system broke down. Heavily infiltrated by state security personnel, the media were forced to toe a party line that envisaged an ethnically homogenous socialist state. Around 360,000 people were forced to leave the country. Earlier, the regime had already forced 800,000 Bulgarian Turks to change their first names and surnames to Slavic equivalents, such as changing "Mehmet" to "Milan". Anyone who resisted ended up in an infamous labour camp on an island in the Danube near the small town of Belene. The state media justified this Slavification with insinuations that Bulgaria's Turks wanted to form a breakaway autonomous republic, and

When part of the country's Turkish population was expelled shortly before the political system broke down, the media were forced to toe a party line that envisaged an ethnically homogenous socialist state.

2 | Alexander Andreev, "Die Medien in Bulgarien in den 80er und 90er Jahren: von moderater Staatsferne zur populistischen Staatsferne", 2004, 1-2 (via e-mail to the author, 7 Jan 2013).

that the Turkish army was already massing on the border.³ The communist propaganda machine came up with some fanciful expressions to describe the name-changing and expulsions: “the revival process” and “the big excursion”.

About 20 of the country's journalists have addressed the state repression of the country's Turkish population at that time as well as the communist labour camps so far.

The state repression of the country's Turkish population at that time as well as the communist labour camps that operated for decades still barely get a mention by today's media.

About 20 of the country's journalists have addressed these issues so far. The dearth of reporting on the fate of the Bulgarian Turks under the communists probably owes a lot to the fact that many Bulgarians still refer to the 500 years of Ottoman rule in Bulgaria from 1396 to 1878 as the “Turkish yoke”. But there is also only limited enthusiasm amongst the media to start digging into the country's communist past.

Fragmented efforts – the Stasi documents hold the key

The media are causing confusion rather than aiding in addressing the past. This is the criticism levelled by Professor Ivaylo Znepolski, Head of the Institute for Studies of the Recent Past in Sofia. However, researchers agree that it is not so much that the newspapers, radio stations and TV channels are ignoring the crimes carried out by the communists completely. But most of the attempts of the media to come to terms with the past are fragmented and somewhat arbitrary. “A newspaper might publish interviews with victims of the regime and communist political legends in the same edition. As a result, good and bad are mixed in the public's perception and this causes confusion”, is how Znepolski describes what he sees as a typical example. “Another newspaper might run a series of serious investigative articles on the past, while at the same time publishing articles extolling the virtues of Todor Zhivkov and his daughter.” Zhivkov ruled Bulgaria as a dictator from 1954 to 1989.

3 | Simone Böcker, radio broadcast “Exodus – die Vertreibung der bulgarischen Türken vor 20 Jahren”, SWR2 Wissen, 29 Dec 2009, <http://swr.de/swr2/programm/sendungen/wissen/-/id=5627266/property=download/nid=660374/16wnssw/swr2-wissen-20091229.pdf> (accessed 11 Mar 2013).

There are no clear dividing lines in Bulgaria, and so far there has been no broad consensus about the past or any generally accepted view of events in the country's recent history based on shared social values. Researchers like Znepolski also claim that the media actually give more coverage to the perpetrators than to the victims and allow the former to voice their opinion: "that was simply the way it was back then." As a result, interviews with communist politicians or their memoirs are the main source of material for the media's attempts to come to terms with the past. Znepolski claims that even former heads of the secret service are not frowned upon, and indeed the public affords many of them a legendary status. Other publications use anonymous secret service sources, so that as a result it is impossible to verify them.⁴ The tabloidization throughout South East Europe is also complicating a serious debate about the past.

The role of the media in the past has still not been properly researched, even though documents belonging to the former Bulgarian Stasi should have provided a good starting point for a public investigation into the communist era. The archive was not properly opened up until 2008 and even then not to the same extent as in other post-communist countries. In 2006, shortly before Bulgaria joined the EU, a law was passed which provided for the investigation of politicians, judges and journalists. The government body responsible for these investigations confirmed that even years after the fall of communism ten per cent of the managers at the country's state radio station were former informers of the state security apparatus.⁵ Besides that, a number of important documents were also destroyed during the collapse of the communist regime, so there are probably many crimes that go unreported. Many observers agree that the relatively late and somewhat half-hearted attempt to wheedle out former Stasi informers and other former regime functionaries in the government and media has hampered the democratic process in Bulgaria in the recent past.

4 | Cf. Alexander Andreev, "Geheimdienste, Mafia und Politik", *Südosteuropa Aktuell*, 27, Munich, 1998, 117 et seqq.

5 | "Bulgariens Stasi. Zahlreiche Journalisten belastet", *Frankfurter Allgemeine Zeitung*, 29 Dec 2008, <http://faz.net/frankfurter-allgemeine-zeitung/feuilleton/-1743381.html> (accessed 11 Mar 2013).

Critics complain that even today the media do not give sufficient coverage to the activities of former informers. This may well be down to a widespread lack of enthusiasm amongst the public to dig up the country's past more than 20 years after the fall of communism. Mishandling of the Stasi documents in previous years may well have contributed to this feeling. During the country's period of transition, the secret documents were repeatedly misused during election campaigns and, according to a report by Deutsche Welle, "people got tired of hearing about them and stopped paying much attention to new publications by the Stasi Commission". The writer Vladimir Zarev made the following observation: "The public are no longer interested in the Stasi past as they think it's pointless to keep going over the events of that terrible time. They have a superficial under-

There have been a number of instances of journalists reporting on suspected informers on the basis of information contained in secret service documents, only to find themselves being sued for slander or libel.

standing of what went on, but the details of these processes have deliberately been kept hidden. This is why the people have been in a trance-like state for the past 20 years."⁶ There have been a number of instances of journalists reporting on suspected informers

on the basis of information contained in secret service documents, only to find themselves being sued for slander or libel, and this had also had the effect of dampening reporters' enthusiasm for the subject. There is a lack of appropriate legislation or sufficient self-regulation within the print media to provide serious investigative journalists with adequate protection.

Print media too close to powerful interests

The past reluctance within the media themselves to make efforts to come to terms with the past is probably also due to the fact that a considerable number of media owners used to belong to the former elite. According to Znepolski, those opposed to the regime had neither the opportunity nor the financial resources to take over the former state media during the collapse of communism. The various media companies were divided up amongst a "reconstituted, ex-communist elite" as the democrats only looked on helplessly.⁷

6 | Vessela Vladkova, "Bulgarien: Der lange Arm der Stasi", Deutsche Welle, 17 Apr 2009, <http://dw.de/bulgarien-der-lange-arm-der-stasi/a-4179075> [11.03.2013].

7 | Conversation with KAS staff member Denica Zheleva, 15 Jan 2013.

Similar patterns were also seen in other East European countries such as Romania, where former heads of communist media companies were registered as the new owners of the former state and party newspapers during the first few years after the collapse of the old regime, and basically took over the old media infrastructure.⁸

Although new independent media companies soon also started up in Bulgaria, the newspaper sector in particular was still subject to significant political influence from the old power elite in the 1990s.⁹ The relationship between journalists and politicians remained very close compared to other post-communist states and the fact that many new newspapers were started up by political parties in the early days after the collapse of the communist regime may have also contributed to this situation.

The newspaper sector was still subject to significant political influence from the old power elite. The relationship between journalists and politicians was still very close compared to other post-communist states.

A gradual change in values, but also new uncertainties for journalists

Generally speaking, the totalitarian view of the press as a pillar of state power has only slowly given way to the modern idea of the press as a supervising body with a responsibility to the public and democratic values. The journalism courses offered by state universities have also had to go through a slow process of change, but as yet there seems to be no real consensus amongst Bulgarian media experts as to whether this change has actually been fully achieved. According to Professor Znepolski's institute, the media are officially free from political influence, but the professor believes there are clear indications that politicians and the media "still work closely together and maintain links that they hide from the public at large".

8 | Simone Schindwein, "Zwischen Propaganda und Kommerz – Medien(un)freiheit in Südost-, Mittelost- und Osteuropa", Netzwerk Recherche, 2007, 67, <http://netzwerkrecherche.de/files/nr-studie-pressefreiheit.pdf> (accessed 11 Mar 2013).

9 | Pavlina Krasteva, "Journalismus in Bulgarien siebzehn Jahre nach dem Systemwechsel. Eine qualitative Studie zum Selbstverständnis von bulgarischen Pressejournalisten", MA Thesis, Ludwig Maximilian University, Munich, Apr 2007, 17, http://epub.ub.uni-muenchen.de/1986/1/MA_Krasteva_Pavlina.pdf (accessed 11 Mar 2013).

Today, several generations of journalists work together in Bulgaria: those that lived under communism and are influenced by its ideology; others that started in journalism immediately after the changes in 1989 and who were actively involved in reporting the dramatic changes at the time; and finally a generation of much younger journalists with no first-hand experience of the turmoil of transformation.¹⁰ These committed, politically untainted and often much lower-paid younger media staff have so far been very welcomed by many publishers and broadcasters. They are often the ones who seized the initiative when it comes to transparent, critical reporting, although they have not always been able to assert themselves. On top of this, their jobs are increasingly at risk in a shrinking job market.

Since the second half of 2012 experts see a new trend towards consolidation of ownership in the print media. This is likely to make independent reporting more difficult and could even undermine some of the progress made over the last 23 years. A potential newspaper monopoly brought about by the merger of two large media groups could further strengthen the ties between politics and the media. In reporting on a media survey conducted with the support of the Konrad-Adenauer-Stiftung, the researcher Orlin Spassov expressed the conclusion that the media plurality achieved after the fall of communism is already in the process of being reversed: "There is currently a trend towards standardising of reporting."¹¹ Most print media until the resignation of the Brissow government in February 2012 tended to be almost exclusively positive in their reports on leading politicians in government, and while there are some cases of radical criticism, balanced points of view are rare. In the *Press Freedom Index 2013*, produced by Reporters Without Borders, which takes into account factors such as the legal independence and political autonomy of journalists, Bulgaria – already the lowest-ranked of the EU countries – dropped to 87th place worldwide.¹²

10 | Krasteva, n. 9, 1.

11 | "Bulgarische Printmedien: Polarisierung und Wettbewerb mit dem Web – Jahresreport 2012 der Konrad-Adenauer-Stiftung und der Stiftung Mediendemokratie", KAS Veranstaltungsbeiträge, 17 Jan 2013, <http://kas.de/medien-europa/de/publications/33299> (accessed 11 Mar 2013).

12 | Reporters Without Borders, *Press Freedom Index 2013*, <http://en.rsf.org/press-freedom-index-2013,1054.html> (accessed 11 Mar 2013).

Most media sector experts agree that many Bulgarian media outlets are currently not making any profit. There are a very large number of media outlets in a relatively small market, which makes further consolidation even more likely. However, further concentration of ownership may not be enough to solve the industry's financial problems. If there is a lack of any corresponding investment in the quality of the journalistic product, especially as they are in direct competition with free sites on the internet. Newspapers and magazines in particular would benefit if they could find a way of presenting complex issues in a clear way and thus provide their readers with a certain degree of orientation. Dealing with the country's communist past would be a good example of this. The media could also shed some light on their own history and so gain the public's trust.

Former Yugoslavia – the media as a catalyst for nation states

Communism is not the only reason why the media in South East Europe has lost some of its credibility. The wars in former Yugoslavia provided many examples of media complicity in political crimes and the difficulty of dealing with these issues. What had taken place over decades in the communist system, namely the development of political power with criminal characteristics, occurred in an accelerated fashion during the Balkan conflict.

The wars in former Yugoslavia provided many examples of media complicity in political crimes and the difficulty of dealing with these issues.

As Yugoslavia collapsed, the media found themselves facing an additional dilemma in dealing with the legacy of communism, as they not only had to adopt a position on political change, but also found themselves in the middle of an ethnic conflict. They were put under pressure by the political elite to reinterpret the past and the present in ways that favoured their own ethnic group and to actively help to create a new collective identity. Their job was to help people feel they belonged to a particular national group. The media basically interpreted what was happening in the conflict between the peoples of the Western Balkans solely from the perspective of "their" country, integrated this view into their rewriting of history and effectively created a new historical continuum.

Irrespective of what was actually happening on the front line, in the end it came down to one simple interpretation – one innocent nation suffering at the hands of another. A report by the journalist association Netzwerk Recherche (Research Network) put it like this: “Them and us – these are the two basic concepts that social identities and associated demarcations are based on. As a general principle [...] reports, articles and headlines are aimed at the ‘us’ group. The Milošević regime used this as a means of mobilising support during the conflicts of the 1990s.”¹³ In Serbia, Croatia and Bosnia alike, the media quickly became a party to the war. They ignored the crimes committed by their own side and focused entirely on alleged atrocities carried out by the enemy. This way of dealing with issues was still in evidence many years after the wars had ended¹⁴ and can still be seen today, albeit to a lesser extent.



Slobodan Milošević was the first head of state to be charged with genocide at a war crimes tribunal in 1999. | Source: a-birdie / flickr (CC BY-NC).

13 | Schlindwein, n. 8, 54.

14 | Cf. Radenko Udovičić, Ozren Kebo, Tanja Topić and Benjamin Butković, “Vergangenheitsbewältigung und die Rolle der Medien”, Media Plan Institut and Konrad-Adenauer-Stiftung, Sarajevo, 20 Nov 2005, 75, http://kas.de/wf/doc/kas_7668-544-1-30.pdf (accessed 11 Mar 2013).

Slobodan Milošević had made some concessions to press freedom in the 1990s, in the belief that the media would then support him in his nationalist campaigns. The media landscape in Serbia had also been privatised in an “uncontrolled and almost random way”, and once again the new owners came from the existing power elite.¹⁵ As a result, most of the media not only showed no opposition to the conflict being waged by the warlords, but actually served as part of their propaganda machine. For American war reporter and Pulitzer Prize-winning journalist Roy Gutman, one of the most unsettling aspects of the regional media was “how easily members of the press moved from journalists to propagandists”.¹⁶ The media proved to be an important tool in the destruction of the multi-ethnic society.

Reporters in uniform

Today, journalists have to take responsibility for more than just verbally supporting war propaganda. In some cases, particular military operations were actually encouraged by media reports, or at least intensified by them. During the Serbian advances on Vukovar in Croatia in 1991 and Zvornik in Bosnia in 1992, some reporters apparently marched into the occupied areas wearing military uniforms. Meanwhile, some of those who took part in the fighting and were later convicted of war crimes stated they did what they did because of the reports they had seen on television.

During the Serbian advances on Vukovar in Croatia in 1991 and Zvornik in Bosnia in 1992 some reporters apparently marched into the occupied areas wearing military uniforms.

In the case of Zvornik, Serbian state television aired images of the Serbian national flag being hoisted on top of a mosque while martial music played in the background.¹⁷ Prior to the Vukovar massacre, in which more than 200 Croatian civilians were killed, the media had spread false reports of Croatian soldiers killing 41 Serbian children in a primary school. The reports were traced by to a Reuters

15 | Schlindwein, n. 8, 57.

16 | United States Institute of Peace, “Prime Time Crime: The Media and the Balkan Wars”, Apr 2013, <http://usip.org/publications/prime-time-crime-media-and-balkan-wars> (accessed 11 Mar 2013).

17 | Želimir Bojović, “Milosevic Media Face War Crimes Spotlight”, Balkan Transitional Justice, 24 Jun 2009, <http://balkaninsight.com/en/article/milosevic-media-face-war-crimes-spotlight> (accessed 11 Mar 2013).

correspondent in the region, who was later fired. There is no doubt they contributed to the support gained by the paramilitary groups.¹⁸ “When lies start to arrive from the front, they stimulate people in the field to kill”, claimed a spokesman for the Serbian public prosecutor’s office, which launched investigations into journalists in 2009 for alleged involvement in war crimes.¹⁹ Kemal Kurspahić, former editor-in-chief of the Bosnian anti-nationalist newspaper *Oslobođenje*, referred to “prime-time crime”, a term normally applied to describe detective shows on television. In reality, it is very difficult to prove a link between TV reporting and attacks on the ground.



The main building of the state broadcaster RTS in Belgrad was target of a NATO airstrike in April 1999. Today it is nothing but ruins. | Source: Paradastos / flickr (CC BY-NC).

Serbian state media also played a key role in the Kosovo conflict with NATO. Serbian footage was often broadcast on American and European TV, while NATO itself only had a limited amount of its own material available. This threatened to change the political perception of the conflict in the West, one of the main reasons why NATO chose to attack media installations in Serbia. On 23 April 1999 eleven people were killed when the headquarters of RTS, the Serbian state broadcaster, was bombed in Belgrade. The NATO spokesman at the time, Jamie Shea, justified the attack by

18 | Anes Alić, “Balkans: Media and war Crimes”, ISN, ETH Zurich, 24 Jun 2009, <http://isn.ethz.ch/isn/Digital-Library/Articles/Detail/?id=102376> (accessed 11 Mar 2013).

19 | Bojović, n. 17.

saying: "RTS is not media. It is full of government employees who are paid to produce propaganda and lies. [...] And therefore, we see that as a military target."²⁰ Freedom of expression in Serbia was already officially restricted and had been for some time. Following a government decree, radio and TV stations had to follow instructions given to them by political leaders. However, a few independent stations still tried to produce their own programmes.²¹

Warmongers under pressure from their own colleagues

Warmongers amongst journalists found themselves under growing pressure when peace finally arrived. The worst of the agitators were thrown out of the Journalists' Association of Serbia shortly after the fall of Milošević in 2000.²²

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In 2006 journalist organisations criticised the election of a candidate in the Serbian province of Vojvodina, because at the beginning of the 1990s she had been a manager of a radio station that had broadcast hate messages.²³ The investigations into journalists in connection with war crimes carried out by the Serbian public prosecutor's office were welcomed by at least some members of the media, although there was no real consensus amongst Serbian journalist associations as to whether this process would really serve the cause of justice. If nothing else, the influence of the former agitators within their own professional community appears to have been significantly reduced.

However, this does not mean that the nationalist point of view has been marginalised within media in former Yugoslavia. As a result of their traumatic experiences during the wars, each ethnic group in the region has its own version of the truth that is represented in history books and education systems, just as it is in the media. Minimal sentences or pardons for war criminals by the other side are a regular source of outrage and are portrayed by the media as signs of contempt for the victims and an attack on their own

20 | "Targeting Serb TV", Public Broadcasting Service (PBS), 23 Apr 1999, http://pbs.org/newshour/bb/europe/jan-june99/serb_tv_4-23.html (accessed 11 Mar 2013).

21 | Schlindwein, n. 8, 54.

22 | Bojović, n. 17.

23 | Dinko Gruhonjić, "Rundfunk in Serbien: Ohne neues Personal keine Vergangenheitsbewältigung", Deutsche Welle, 29 Jul 2006, <http://dw.de/p/8tqS> (accessed 11 Mar 2013).

nation, while at the same time making little or no mention of the excesses of violence shown by their own forces. But it can also be more subtle. Journalists sometimes give “the impression of being neutral, but this is often belied by a choice of details that serve to reduce ‘our guilt’, while highlighting ‘their guilt’”.²⁴ Ethnic rhetoric continues to play a recognisable role in debates on the region’s future. While the often criticised “hate speech” found in the regular media may now tend to be tempered with more reasonable forms of debate and is no longer a mass phenomenon, it is still widespread on the internet, for example, as has been shown in a study carried out in Bosnia.²⁵

While the “hate speech” found in the regular media may now tend to be tempered with more reasonable forms of debate and is no longer a mass phenomenon, it is still widespread on the internet.

The Serbian mass media still has little enthusiasm for actually dealing with its recent past, although there are some exceptions, such as the radio station *B92*, the news magazine *Vreme* (time), the daily newspaper *Danas* (today) and even the news agency *Beta*, which also addresses sensitive issues from the country’s past. In Croatia exposés by the daily paper *Jutarnji list* (morning paper) and occasional articles in weekly publications are also worth a mention. Besides that, there is a real dearth of well-researched articles in both countries, according to a recent expert assessment provided by the German Institute for International and Security Affairs.²⁶ Interest in the wars of the 1990s is declining, while much more attention is being given to the Second World War due to disputes over the way that conflict has been portrayed in the history books. Online media are filling the gap to some extent, for instance through their reporting on the war crimes tribunals in The Hague.²⁷

24 | Udovičić, Kebo, Topić and Butković, n. 14, 75.

25 | Radenko Udovičić, “The Internet – Freedom Without Boundaries? Analysis of comments on portals and recommendations on better communication”, Media Plan Institut and Konrad-Adenauer-Stiftung, Sarajevo, 2010, 6, http://kas.de/wf/doc/kas_20598-1522-2-30.pdf (accessed 11 Mar 2013).

26 | E-mail to the author, 8 Jan 2013.

27 | Cf. Henri Bohnet, Anja Czymmeck, Michael A. Lange and Sabina Wölkner, “Das Haager Kriegsverbrechertribunal und die Vergangenheitsaufarbeitung in den Ländern des ehemaligen Jugoslawien”, in this edition of the KAS International Reports.

In contrast, a study supported by the Konrad-Adenauer-Stiftung showed that already in 2005 Bosnian media were much more interested in the war crimes carried out in the former Yugoslavia. This may partly be due to the fact that Bosnia-Herzegovina is more often perceived as a victim of the conflict. However, an analysis of the Bosnian media led to the conclusion that their reporting also displayed a distinct lack of real balance and quality. A good example would be the fact that, during ten years, the Bosnian media failed to explain to the public how the International Criminal Court works or what the prosecutors are saying.²⁸

There remains a lack of objective journalistic analysis in the region, as the arrest of the alleged Serbian war criminal Ratko Mladić two years ago showed. The Serbian media were not particularly interested in the serious charges brought by the International Criminal Tribunal for the Former Yugoslavia, which accused the former general of the Bosnian Serb Republic of being responsible for genocide, ethnic cleansing and terror against the civilian population. Most newspapers and broadcasters did not even question how Mladić had been able to hide out in Serbia for so many years and who had helped him. Those reports that did look at the issue with some degree of objectivity were mainly interested in the fact that an important obstacle to EU membership had now been removed. A lot of the media actually treated Mladić like a pop star and came out with sensationalist headlines such as “He survived three heart attacks!” or “Bury me next to my daughter!”. Only the weekly paper *Vreme* asked how Mladić had been able to get medical treatment for so many years without being discovered at a time when there was an international warrant out for his arrest.²⁹ Many critical observers see this kind of superficial reporting as a sign that the country is still not ready to come to terms with its past. Another reason is the fact that the media is dominated by tabloid journalism, which is not ideally suited to dealing with complex issues in a balanced way.

A lot of the media treated Mladić like a pop star and came out with sensationalist headlines such as “He survived three heart attacks!”.

28 | Udovičić, Kebo, Topić and Butković, n. 14, 2.

29 | Marija Ristić, “Serbian Media About Mladic – Turning Horror into Showbiz”, *Balkan Transitional Justice*, 31 Dec 2012, <http://balkaninsight.com/en/article/serbia-turning-horror-into-showbiz> (accessed 11 Mar 2013).

OUTLOOK: MOVING AWAY FROM STEREOTYPES

Those in the media who are genuinely interested in addressing issues of justice and reconciliation often still find themselves in the minority. This raises the question: to what extent can media development cooperation provide positive impulses? From a professional perspective, training in investigative journalism is a good idea, especially in legal matters. There is also still work to be done to fill the gaps in journalists' knowledge about how international institutions operate and about established methods of coming to terms with the past. At the same time, people working in the media are an important group of professionals that can help society move away from stereotypical thinking. Thus, ideally, non-governmental organisations that work with the media in the region should support the questioning and scrutiny of biased or partisan reporting. One way to do this is to promote the exchange of ideas between journalists from former enemy nations at media conferences and workshops. This gives media professionals the opportunity to put what might seem like unassailable truths into some kind of perspective and to recognise how similar the challenges are that they and their colleagues face while carrying out their day-to-day work. International programmes can also support the development of new independent media, especially on the internet. This will help promote new perspectives when dealing with the past. The media were formerly seen as important instruments to be used by dictators and warlords for their own benefit, and today they have an equally important role to play in helping to build modern democracies and consolidate peace in the Balkans.

Research by Denica Zheleva and Irina Kharuk

THE CONTRIBUTION OF THE KHMER ROUGE TRIBUNAL TO RECONCILIATION, REMEMBRANCE AND MEMORIALISATION IN CAMBODIA

Denis Schrey / Simon M. Meisenberg

The Extraordinary Chambers in the Courts of Cambodia (ECCC), better known as the Khmer Rouge Tribunal, has been at the forefront of international and national scientific and political debates about how much it is contributing to reconciliation, remembrance and memorisation in Cambodia.¹ The ECCC's attempt to deliver justice for victimised Cambodians and the society at large between 1975 and 1979 continues. The recent death of the 87-year-old Ieng Sary, the former Minister for Foreign Affairs during the Khmer Rouge regime, must be seen as another setback on the long and rocky road of the ECCC's contribution to reconciliation in Cambodia.

Starting its operations in 2006 and assisted by the United Nations, the ECCC has been accused of being expensive, falling short of applying international standards and prac-



Denis Schrey is Resident Representative of the Konrad-Adenauer-Stiftung in Cambodia.



Simon M. Meisenberg is an expert in international criminal law and a Legal Advisor at the Extraordinary Chambers in the Courts of Cambodia. The views expressed are those of the author alone and do not necessarily reflect the views of any organization the author is affiliated with.

1 | Cf. i.e. Tom Fawthrop and Helen Jarvis, *Getting Away with Genocide? Elusive Justice and the Khmer Rouge Tribunal*, London, Pluto Press, 2004; Suzannah Linton, *Reconciliation in Cambodia*, Documentation Center of Cambodia, Phnom Penh, 2004; Alex Bates, "Cambodia's Extraordinary Chambers: Is it the Most Effective and Appropriate Means of Addressing the Crimes of the Khmer Rouge?", in: Ralph Henham and Paul Behrens (eds.), *The Criminal Law of Genocide: International, Comparative and Contextual Aspects*, Burlington, Ashgate, 2007, 195 et seq.; Hanna Bertelman, "International Standards and National Ownership? Judicial Independence in Hybrid Courts: The Extraordinary Chambers in the Courts of Cambodia", *Nordic Journal of International Law*, 79, 2010, 341; John Coughlan, Sana Ghouse and Richard Smith, "The Legacy of the Khmer Rouge Tribunal: Maintaining the Status Quo of Cambodia's Legal and Judicial System", *Amsterdam Law Forum*, 4, 2012, 16; Jörg Menzel, "Kambodscha und der Kampf ums Recht. Eine Fallstudie zu 'Recht und Entwicklung'", *Verfassung und Recht in Übersee*, 41, 2008, 387.

The simple fact that former senior leaders of the Khmer Rouge Regime stand accused of the most unimaginable atrocities is a miracle and an achievement in the fight against impunity.

tices, and conducting investigative processes far from being complete and impartial.

Despite the court's endemic weaknesses, the simple fact that former senior leaders of the

Khmer Rouge Regime stand accused of the most unimaginable atrocities is a miracle and an achievement in the fight against impunity for mass human rights violations. Furthermore, the ECCC may achieve some broader goals, such as creating a common history, fighting impunity for mass crimes, legal and institutional capacity building for the Cambodian judiciary, establishing faith in legal institutions, involving the public through outreach and allowing victims to participate directly as civil parties in the proceedings. Hereby the ECCC contributes to the development of the rule of law in Cambodia.

HISTORICAL BACKGROUND

Following independence in 1953 and the initial attempt of being a neutral state, during a period when the cold war super powers fought for their ideology and influence in the region, Cambodia was nevertheless dragged into this battle and in particular the battles of the Vietnam war.² It is largely argued that the neighbouring war in Vietnam and the associated U.S. bombing campaign to weaken Vietnamese logistical lines, attempting to evade attacks on Vietnamese territory, nourished the success of communist ambitions in Cambodia and eventually the success of the Khmer Rouge Regime in April 1975, when Pol Pot and his movement overthrew the American puppet government of Lon Nol.³ The Khmer Rouge movement had a radical Maoist ideology and intended to establish a self-sufficient rural Khmer society based on a system of repression and forcing the civilian population into agriculture.⁴ To that end anyone who stood in the way of such an

2 | James Cable, *The Geneva Conference of 1954 on Indochina*, Macmillan Press, 2000, 83, 146 et seq.

3 | Ben Kiernan, *How Pol Pot came to Power*, Yale University Press, New Haven, 2004, 297 et seq., 349. It is estimated that 400.000 people died through the U.S. bombing campaign. Cf. Angela Rapp and Christiane E. Philipp, "Conflicts Cambodia/Kampuchea", in: Rüdiger Wolfrum and Christiane E. Philipp (eds.), *United Nations: Law, Policies and Practice*, Vol. I, 1995, 201.

4 | Ben Kiernan, *The Pol Pot Regime*, Yale University Press, New Haven, 2008, 159 et seq., 251 et seq.

ideology was eliminated. Consequently all social, economic and legal institutions were abolished.⁵ Former government officials, so-called intellectuals and certain minorities were targeted as enemies of the regime. Following the takeover in April 1975, the Khmer Rouge moved the population of Phnom Penh and other major cities to the countryside, coercing them to agricultural work and other forms of forced labour.⁶ Such policies led to food shortages, lack of sanitation, medical care and medication. Torture and execution centres which were tasked to eradicate “enemies” of the revolution tortured and killed several thousand people.⁷

Following the takeover in April 1975, the Khmer Rouge moved the population of Phnom Penh and other major towns to the countryside, coercing them to agricultural work and other forms of forced labour.

It is estimated that as a result, one to two million people died through killings, torture, starvation and disease during the Khmer Rouge period from April 1975 to January 1979, when the authoritarian regime was eventually ousted by Vietnamese troops.⁸ In September 1989, the Vietnamese withdrew their troops.⁹ However, only in October 1991 all warring factions (government and resistance, including the Khmer Rouge) eventually signed the so-called Paris Peace Agreement (Agreement on a Comprehensive Political Settlement of the Cambodia Conflict), which delegated all necessary powers to the United Nations for the implementation of the peace agreement.¹⁰ Therefore, this accord marked the beginning of the operations of the United Nations Transitional Authority in Cambodia (UNTAC) which was aiming to ensure such an implementation and organised elections in 1993.¹¹ This resulted in the appointment of two Co-Prime Ministers, Norodom Ranariddh (National United Front for an Independent, Neutral, Peaceful, and Cooperative Cam-

5 | David P. Chandler, *A History of Cambodia*, Westview Press, Colorado, 1996, 209.

6 | David P. Chandler, *The Tragedy of Cambodian History*, Silk-worm Books, Bangkok, 1993, 246.

7 | Judgement against Kaing Guek Eav on 26 Jul 2010, Case No. 001/18-7-2007/ECCC/TC, §§ 111, 119, 597.

8 | Exact numbers are impossible to establish and remain debated.

9 | Raoul M. Jennar, *The Cambodian Constitutions (1953-1993)*, White Lotus, Bangkok, 1995, 111.

10 | Steven Ratner, “The Cambodian Settlement Agreements”, *American Journal of International Law*, 87, 1993, 1; Lucy Keller, “UNTAC in Cambodia – from Occupation, Civil War and Genocide to Peace”, in: *Max Planck Yearbook of United Nations Law*, 9, 2005, 149 et seq.

11 | UN resolution 745 (1992).

bodia, FUNCINPEC) and Hun Sen (Cambodian People Party, CPP).¹² More than 350,000 Cambodians from Thai refugee camps returned to their home country. However, the new government did not immediately succeed in disarming the warring factions and the Khmer Rouge continued to destabilise certain areas until 1998, when the revolutionary movement finally collapsed.

That it took almost three decades to meaningfully address the atrocities through a judicial process may be largely explained with the politics and power struggles during the cold war.

Given the magnitude of human suffering and human rights violations during the Khmer Rouge regime, it is astonishing that it took almost three decades to meaningfully address the atrocities through a judicial process.

This may be largely explained with the politics and power struggles during the cold war and the fact that communist ideologies would have been on trial. Apart from the Vietnamese mock prosecution and trial against a handful of Khmer Rouge cadres for genocide,¹³ redress for the victims was not forthcoming. In 1997, the United Nations Commission on Human Rights called for the investigation of crimes against humanity and genocide during the Khmer Rouge regime.¹⁴ It took another seven years to establish an atrocity tribunal for the prosecution of the most responsible persons for genocide, crimes against humanity and war crimes, as will be described in more detail below. As so-called intellectual people were among those targeted and eliminated by the Khmer Rouge regime, Cambodia lost the majority of persons working in legal professions.¹⁵ For this reason and due to the long civil strife until the late 1990s, the country's legal institutions are still in a process of transition and improvement today. This is one of the reasons why a fair and independent prosecution by Cambodian judicial authorities of those responsible for the crimes was

12 | John D. Ciorciari, "History and Politics behind the Khmer Rouge Khmer Rouge trials", in: John D. Ciorciari and Anne Heindel (eds.), *On Trial: The Khmer Rouge Khmer Rouge Accountability Process, Document Series no 14*, Documentation Center of Cambodia, Phnom Penh, 2009, 43.

13 | On the Vietnamese Genocide trial cf. Frank Selbmann and Dorette Wesemann, "Der Pol Pot-Ieng Sary-Prozess revisited – Anmerkung zum Prozess gegen führende Rote Khmer im Jahr 1979", *Zeitschrift für Internationale Strafrechtsdogmatik*, 2, 2010, 116-125.

14 | CHR Resolution 49/1997 (Situation of human rights in Cambodia).

15 | Judgement against Kaing Guek Eav on 26 Jul 2010, Case No. 001/18-7-2007/ECCC/TC, § 94.

not feasible. With the international assistance of the United Nations, the ECCC is expected to help bring some closure to the dark chapter of Cambodia's history and to contribute to strengthen the rule of law in Cambodia.

ESTABLISHMENT AND STRUCTURE OF THE ECCC

Following the fall of the iron curtain in the beginning of the 1990s, a paradigm change in international politics led to the establishment of international criminal courts to address accountability for mass atrocities.¹⁶ During the cold war, massive human rights violations such as those in Cambodia were considered a matter of internal affairs and remained unpunished. This changed with the establishment of criminal tribunals by the United Nations Security Council following atrocities in former Yugoslavia¹⁷ and Rwanda.¹⁸ Their establishment triggered an awakening of a dormant idea of establishing a permanent international criminal court (ICC), which was finally agreed on in July 1998.¹⁹ Its statute opened for signature and ratification in summer 1998²⁰ and, as stipulated in its Statute, only became operational after at least 60 States ratified the treaty, which was achieved on 1 July 2002.²¹ The ICC can only prosecute crimes from that date onwards and may not look into past rights violations, such as in Cambodia.²² Owing to the renaissance of international criminal justice after its true birth in Nuremberg in 1945, news spread in 1997 that Pol Pot was overthrown and incarcerated in an

The ICC can only prosecute crimes from 1 July 2002 onwards and may not look into past rights violations, such as in Cambodia.

16 | For a general overview on the evolution of modern international criminal courts: Antonio Cassese, *International Criminal Law*, Oxford University Press, Oxford, 2008, 317 et seq.; Gerhard Werle, *Völkerstrafrecht*, Mohr Siebeck, Tübingen, 2007, 1 et seq.

17 | Established pursuant to UN Security Council resolution 827, 1993.

18 | Established pursuant to UN Security Council resolution 955, 1994.

19 | William Schabas, *Unimaginable atrocities*, Oxford University Press, Oxford, 2011.

20 | For the text see: United Nations (UN), "Rome Statute of the International Criminal Court", <http://untreaty.un.org/cod/icc/statute/finalfra.htm> (accessed 14 Mar 2013).

21 | 122 States have so far ratified the ICC Statute (as of 4 April 2013). Cambodia ratified the ICC statute on 11 April 2002.

22 | See Art. 11(1) ICC Statute: "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute."

internal coup by what appeared to be the last remnants of the Khmer Rouge who were hiding in the forest near the Thai border and continued to destabilise Cambodia.²³ This led to serious negotiations to hold Pol Pot and his henchmen accountable before an international criminal tribunal for the crimes during his reign in Cambodia. Discussions ranged from the establishment of a special chamber at the Yugoslav tribunal to a full-fledged international tribunal.²⁴ These discussions were encouraged when the Royal Government of Cambodia sought assistance in the prosecution of the Khmer Rouge.²⁵ The initial excitement stalled, however, due to the ongoing power struggles in Cambodia and because of intricate positions of the government on how such a court could, and maybe should, operate. In the end, the creation of a court was a tardy and complex affair.²⁶ The negotiations for the creation of a tribunal were complicated by two factors. First, the UN Security Council was not prepared to establish an international tribunal under Chapter VII of the UN Charter, as in the cases of the former Yugoslavia and Rwanda.²⁷ China argued that there no longer existed a threat to international peace and security, a prerequisite to a Chapter VII resolution to create such a criminal tribunal.²⁸ Second, the negotiations to establish a court with the consent of the Cambodian government were complicated and extended nearly over decades, as it was relentlessly insisted that such a court would remain under Cambodian authority and that the UN would only play an advisory role. This was a position difficult to accept for the UN who insisted on an impartial and independent court that adhered to international standards.²⁹

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23 | David Scheffer, *All the missing Souls*, Princeton University Press, Princeton, 2012, 346 et seq.

24 | *Ibid.*, 348 et seq.

25 | David Scheffer, "The Extraordinary Chambers in the Courts of Cambodia", in: M. Cherif Bassiouni, *International Criminal Law*, Martinus Nijhoff Publishers, Leiden, 2008, 221.

26 | For a detailed analysis: *ibid.*, 220-239.

27 | A draft resolution was circulated by the U.S. in June 1998. Cf. Scheffer, n. 25, 222 et seq.

28 | *Ibid.*

29 | UN, "Negotiations between the UN and Cambodia regarding the establishment of the court to try Khmer Rouge leaders", <http://un.org/news/dh/infocus/cambodia/corell-brief.htm> (accessed 15 Mar 2013); see also Hans Corell, "Forward", in: Luc Reydamas et al., *International Prosecutors*, Oxford University Press, Oxford, 2012, viii.



The Court Building of the Khmer Rouge Tribunal, officially known as "Extraordinary Chambers in the Courts of Cambodia" (ECCC), in Phnom Penh. | Source: © Roger Phillips.

The eventual outcome is an unorthodox set of *sui generis* specialised and hybrid chambers within the existing Cambodian court system as is signified by its name Extraordinary Chambers *in* the Courts of Cambodia. Unlike other tribunals backed by the United Nations, the ECCC is created by domestic statute.³⁰ The agreement between the United Nations and the Royal Government of Cambodia only regulates the assistance of the former, but does not legally establish the court.³¹ The character of these special chambers has been described by the court's judges in the following terms: "[A] court of special and independent character within the Cambodian legal system [...] designed to stand apart from existing Cambodian courts and rule exclusively on a narrowly-defined group of defendants for specific crimes committed within a limited period."³² The agreement between the United Nations and the Royal Government of Cambodia simply defines the assistance role of the United Nations in those chambers.³³ In principle it follows other

30 | Law on the Establishment of the Extraordinary Chambers, with inclusions of amendments as promulgated on 27 Oct 2004 (NS/RKM/1004/006): Extraordinary Chambers in the Courts of Cambodia (ECCC), <http://www.eccc.gov.kh/en> (accessed 15 Mar 2013).

31 | See Art. 1 "Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea", ECCC, *ibid*.

32 | Decision on request for release of Kaing Guek Eav on 15 Jun 2009, Case No. 001/18-7-2007-ECCC-TC, § 10.

33 | Art. 1 Agreement.

hybrid criminal courts that have been established with UN assistance, such as the Special Court for Sierra Leone, the Special Panels for Serious Crimes in East Timor, a court in Kosovo, the Special Tribunal for Lebanon and others.³⁴ However, the main difference with all those courts is that the ECCC is established within the national judiciary and the judicial officers appointed by the UN cannot determine issues unilaterally. The constitutive statutes which delineate ECCC jurisdiction and operations are the ECCC Law and the Agreement. In addition, the plenary of judges adopted so-called “Internal Rules” that complement the above two instruments and serve as a procedural and evidentiary code.³⁵ The temporal jurisdiction of the ECCC extends from 17 April 1975 to 6 January 1979,³⁶ thereby excluding a full-fledged inquiry into the Cambodian conflict and crimes that continued well beyond the Khmer Rouge period.

The temporal jurisdiction of the ECCC extends from 17 April 1975 to 6 January 1979, thereby excluding a full-fledged inquiry into the Cambodian conflict and crimes that continued well beyond the Khmer Rouge period.

The personal jurisdiction is limited to the “senior leaders of Democratic Kampuchea” and those “most responsible” for the crimes under its jurisdiction, which are genocide,³⁷ crimes against humanity³⁸ and grave breaches of the Geneva Conventions of 12 August 1949.³⁹ In addition, but not playing any pivotal role in the past and current trials, the jurisdiction also extends to acts of destructing cultural property during armed conflict pursuant to the 1954 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict,⁴⁰ crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations⁴¹ and specifically identified crimes under the Cambodian 1956 Penal Code.⁴²

34 | Generally on hybrid or mixed courts: Sarah Williams, *Hybrid and Internationalised Criminal Tribunals*, Hart Publishing, Oxford, 2012.

35 | ECCC, <http://www.eccc.gov.kh/en/internal-rules> (accessed 15 Mar 2013) (in the following called “Internal Rules”).

36 | Art. 1 ECCC Law.

37 | Art. 4 ECCC Law.

38 | Art. 5 ECCC Law.

39 | Art. 6 ECCC Law.

40 | Art. 7 ECCC Law.

41 | Art. 8 ECCC Law.

42 | Art. 3 ECCC Law (new).

The court is structurally organised by an administrative office that services the judicial authorities. It is headed by a Cambodian appointed Director of Administration and a UN appointed deputy, who is also in charge of the United Nations Assistance Mission to the Khmer Rouge Tribunals.⁴³ The court has a prosecution section, which is equally headed by two Co-Prosecutors and nominated by the Government of Cambodia and the UN respectively.⁴⁴ The official appointment is enacted by the Supreme Council of Magistracy, which, according to the ECCC Law and the Agreement, does not possess any oversight authority with regard to the UN elected officials, but rather has to rubber-stamp the nomination according to the selection made.⁴⁵ Procedurally, following the French inquisitorial criminal procedure, any investigative act commences with the Co-Prosecutors. They conduct a preliminary investigation and then submit a final report to the Co-Investigation Judges.⁴⁶ The two Co-Prosecutors have to make unanimous decisions. If they cannot find an agreement, the matter will be referred to the Pre-Trial Chamber.⁴⁷ Upon receipt of the final report from the Co-Prosecutors, the two investigating judges, again one domestic and one foreign, will pursue an independent and impartial inquiry and prepare a closing order if they conclude that there is sufficient evidence and reasonable belief that crimes were committed by a suspect.⁴⁸ Once again any dispute between them will be settled by the Pre-Trial Chamber.⁴⁹ The Pre-Trial Chamber however does not merely settle disputes between the Co-Prosecutors and the Co-Investigating Judges, but in addition has jurisdiction to decide matters raised by the suspects, such as bail applications or challenges to the jurisdiction of the ECCC.⁵⁰ It is composed of three Cambodian judges and two judges nominated by the UN, the Cambodian side therefore being in the majority. This majority was one of the most fiercely debated issues during the negotiations. The UN in particular wanted to ensure that a final verdict

The court has a prosecution section, which is headed by two Co-Prosecutors and nominated by the Government of Cambodia and the UN respectively.

43 | Art. 8 Agreement, n. 31.

44 | Art. 16 ECCC Law.

45 | Art. 11 ECCC Law (new); Art. 3(1) Agreement.

46 | Art. 53 Internal Rules.

47 | Art. 20 ECCC Law (new).

48 | Art. 67 Internal Rules.

49 | Art. 23 ECCC Law (new).

50 | Section D Internal Rules.

and conviction would not be possible without an agreement of the UN judges. In order to alleviate those fears it was finally decided that the judges could only make a decision by a so-called supermajority vote, i.e. a two-third majority, and therefore at least one international judge has to assent with the Cambodian judges.⁵¹

Civil parties, i.e. recognised victims of crimes during the Khmer Rouge period, may participate and be legally represented in the jurisdiction as well.

Following the investigations, the Co-Investigating judges file a closing order, which serves as the indictment if there is "sufficient evidence" to proceed with charges.⁵² This procedural step triggers the jurisdiction of the Trial Chamber which will then hear the evidence in an open and public hearing with participation of the accused and his defense counsel. In addition the civil parties may also participate and be legally represented.⁵³ The participation of civil parties, i.e. recognised victims of crimes during the Khmer Rouge period, is one of the praised and positive legacies of the ECCC, even though the procedural and structural handling of their participation is controversially and critically being discussed.⁵⁴ As the Pre-Trial Chamber, the Trial Chamber is composed of three national and two international judges. Again any decision has to be reached with the so-called supermajority. Following the evidentiary hearing it hands down a verdict and may only convict if the crimes and the accused's participation is proven beyond reasonable doubt.⁵⁵ The defense and the prosecution may appeal the trial verdict. This appeal is handled by the Supreme Court Chamber, which consists of four Cambodian and three foreign judges.⁵⁶

51 | Scheffer, n. 25, 246; for a critical appraisal of the supermajority see Corell, n. 29; Silvia de Bertodano, "Problems arising from the Mixed Composition and Structure of the Cambodian Extraordinary Chambers", *Journal of International Criminal Justice*, 4, 2006, 285-293.

52 | Art. 67(1), Internal Rules; Closing Order Indicting Kaing Guek Eav, Case No.001/14-08-2006, 8 Aug 2008, § 130.

53 | Art. 23, Internal Rules.

54 | David Boyle, "Rights of Victims", *Journal of International Criminal Justice*, 4, 2006, 307-313; Mahdev Mohan, "The Paradox of Victim-Centrism: Victim Participation at the Khmer Rouge Tribunal", *International Criminal Law Review*, 9, 2009, 733-755.

55 | Art. 87(1) Internal Rules.

56 | Art. 9 ECCC Law (new).

This three-tier structure (i.e. Pre-Trial, Trial and Supreme Court Chamber) in addition to two investigative bodies (i.e. Prosecution and Co-Investigating Judges) is far more complex than any other sister atrocity tribunals, such as the Sierra Leone tribunal which only has one investigative authority (i.e. the Prosecution) and a two-tier system. The inflated structure contributes significantly to the expenses of the court, which are drawn from voluntary contributions. In the first five years of the court's existence it had an average budget of about 30 million U.S. dollars per year.⁵⁷ The fact that it needs to translate and interpret submissions not only into English and Khmer, but also into French, additionally contributes to the costs of a constantly financially strapped court.

In the first five years of the court's existence it had an average budget of about 30 million U.S. dollars per year.

PAST, CURRENT AND FUTURE TRIALS

Since the start of the ECCC operations in 2007, five people have been charged by the ECCC to date in two separate proceedings, and there are two ongoing investigations currently being conducted by the Co-Investigation Judges. In the first case, so-called Case 001, the Trial Chamber convicted the notorious commanding torturer of the infamous torture prison Toul Sleng, which had formerly been a school and is better known as S-21, Kaing Guek Eav (alias "Duch") to 30 years detention for crimes against humanity and war crimes.⁵⁸ The trial proceedings started on 30 March 2009, and the judgement was delivered in Juli 2010. The accused Kaing Guek Eav, in his late 60s during the trial, was cooperative and confessed his crimes, even though he dismissed responsibility at the final hearing.⁵⁹ Given this largely cooperative attitude, the hearings were conducted without any major interruption. The appeals judgement increased the sentencing to lifelong imprisonment, arguing that the Trial Chamber did not sufficiently take into account the gravity of

57 | ECCC, "ECCC Financial Information", <http://www.eccc.gov.kh/en/about-eccc/finances> (accessed 15 Mar 2013).

58 | Judgement against Kaing Guek Eav on 26 Jul 2010, Case No. 001/18-7-2007/ECCC/TC; "Press Release: Kaing Guek Eav Convicted of Crimes Against Humanity and Grave Breaches of the Geneva Conventions of 1949", press release, 26 Jul 2010, <http://www.eccc.gov.kh/en/media-center/press-releases> (accessed 16 Mar 2013).

59 | Judgement against Kaing Guek Eav on 26 Jul 2010, Case No. 001/18-7-2007/ECCC/TC, § 609.

the crimes and Kaing Guek Eav's conduct.⁶⁰ His case is now final and Kaing Guek Eav is waiting to be transferred from the ECCC detention facility to a domestic prison. Case 002, the second and most important case before the ECCC,⁶¹ charges the remaining senior leaders of the former Democratic Kampuchea Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith with genocide, crimes against humanity and war crimes. The closing order was issued in September 2010⁶² and the evidentiary hearing started in November 2011.⁶³ The Trial Chamber however severed the case into segments or so called "mini-trials". The first of such segments only covers the forced movement of the population in April 1975 and associated crimes.⁶⁴ Later on the Trial Chamber added charges of a mass execution of former Lon Nol soldiers in Toul Pro Chrey to that trial.⁶⁵ All accused denied the charges. The case is mainly complicated by the health of the octogenarian accused. Ieng Thirith, the former minister for social and family affairs, was declared unfit for trial due to a severe form of Alzheimer. Her case was severed, stayed and she was released from pre-trial detention in October 2012.⁶⁶ Her husband Ieng Sary, former Minister for Foreign Affairs, died before a final verdict on 14

- 60 | Judgement of the Supreme Court Chamber against, Kaing Guek Eav on 3 Feb 2012, Case No. 001/18-7-2007-ECCC-TC; ECCC, "Kaing Guek Eav alias Duch Sentenced to Life Imprisonment by the Supreme Court Chamber", press release, 3 Feb 2012, <http://www.eccc.gov.kh/en/media-center/press-releases> (accessed 16 Mar 2013).
- 61 | Peter Maguire, "ECCC's Tarnished Legacy and the UN", Cambodia Tribunal Monitor, 27 Mar 2012, <http://cambodia-tribunal.org/blog/2012/03/eccc-s-tarnished-legacy-and-un> (accessed 16 Mar 2013).
- 62 | Closing order of the case Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith, 15 Sept 2010, Case No. 002/19-09-2007-ECCC-OCIJ.
- 63 | ECCC, "Trial Chamber Announces Date for Opening of the Substantive Hearing in Case 002", press release, 18 Feb 2011, <http://www.eccc.gov.kh/en/media-center/press-releases> (accessed 16 Mar 2013).
- 64 | Severance order pursuant to internal rule Art. 89, 22 Sept 2011, in case Nuon Chea, Ieng Sary, Ieng Thirith, Khieu Samphan, Case No. 002/19-09-2007-ECCC/TC.
- 65 | Memorandum, "Notification of Decision on Co-Prosecutions' request to include additional crime sites within the scope of Trial in Case 002/01 (E163) and deadline for submission of applicable law portion of Closing Briefs", 8 Oct 2012, case Nuon Chea, Ieng Sary, Khieu Samphan, Case No. 002/19-09-2007-ECCC/TC.
- 66 | "Decision on immediate appeal against the Trial Chamber's order to unconditionally release the Accused Ieng Thirith", 14 Dec 2012, Case No. 002/19-09-2007-ECCC/SCC, §§ 1-3.

March 2013 and the proceedings were consequently terminated against him.⁶⁷ Nuon Chea, deputy to Pol Pot and so called "Brother No. 2", usually excuses himself during the afternoons and follows the proceedings from a holding cell where in theory he is able to follow the proceedings via live video coverage. Khieu Samphan, former head of state of the Democratic Kampuchea, is the only accused who manages to follow the day long proceedings in spite of his age. The age of the accused and the potential risk of not completing the trial was one of the main reasons for the severance order and the mini-trials. The evidentiary phase is expected to be finalised by mid or end 2013 and a final verdict to be issued a couple of months thereafter. Should the accused still be alive after this first mini-trial and should the court have sufficient funding, it will continue with another segment of charges of the closing order. However, given the advanced age of the accused and the current pace of the trial proceedings, an orderly closure to the first segment remains uncertain.



Single cells in the torture prison S-21. Some 14,000 to 20,000 Cambodians were incarcerated in the former school complex between 1975 and 1979. | Source: © Maximilian Jürgens.

67 | ECCC, "Accused Person Ieng Sary Dies", Press Release, 14 Mar 2013, <http://www.eccc.gov.kh/en/articles/accused-person-ieng-sary-dies> (accessed 4 Apr 2013); "Prosecutor v. Nuon Chea, Ieng Sary, Khieu Samphan, Case No. 002/19-09-2007-ECCC/TC, Termination of the proceedings against the accused Ieng Sary", 14 Mar 2013.

Case 003 and 004 are the most contentious cases before the ECCC due to the alleged interference of senior officials of the Cambodian Government. The handling of those two cases will be the ultimate test for the integrity and independence of the ECCC. The suspects in these two cases have not been officially named by the court. It is speculated that the suspects are former mid-level to senior commanders of the navy in Case 003 and mid-level cadres in Case 004. Both cases are overshadowed by statements of senior government officials that reportedly oppose any further investigations by the tribunal.⁶⁸ These statements were perceived by the International Co-Investigating Judge as attempted interference by Government officials into the ongoing investigations.⁶⁹ In a judicial environment with a historically strong and independent judiciary, such statements would easily be dismissed as unwise

The statements of high ranking government officials were aggravated by the conduct of the national Co-Investigating Judge who refused any meaningful and serious investigation into the case.

or ill-advised and surely as inappropriate.⁷⁰ Unfortunately, the Cambodian judiciary is not known for such a strong and independent judicial culture – on the contrary.⁷¹ These statements of high ranking government officials were aggravated by allegations of the international Co-Investigating Judge that his national counterpart refused any meaningful and serious investigation into the case.⁷² The national judges of the Pre-Trial Chamber, who had to decide disputes over the initiation and conduct of the investigations into Cases 003 and 004 between the two Co-Investigation Judges, appeared to also demonstrate a vivid opposition to any meaningful investigation,

68 | For a detailed discussion see Open Society Justice Initiative, “The Future of Cases 003 and 004 at the Extraordinary Chambers in the Courts of Cambodia”, Open Society Foundations, Oct 2012, http://opensocietyfoundations.org/sites/default/files/eccc-report-cases3and4-100112_0.pdf (accessed 16 Mar 2013).

69 | ECCC, “Statement by the International Co-Investigating Judge”, press release, 10 Oct 2011, <http://www.eccc.gov.kh/en/articles/statement-international-co-investigating-judge> (accessed 16 Mar 2013).

70 | See decision on Rule 35 Application in the case against Nuon Chea, Ieng Sary, Ieng Thirith, Khieu Samphan on 11 May 2012, Case No. 002/19-09-2007-ECCC/TC.

71 | N. 68.

72 | “Note of the International Reserve Co-Investigation Judge to the Parties on the Egregious Dysfunctions within the ECCC Impeding the proper Conduct of Investigations in Case 003 and 004”, 21 Mar 2012, Case No. 003/07-09-2009-ECCC-OCIJ and 004/07-09-2009-ECCC-OCIJ.

claiming formal errors in the appointment process of the internationally nominated Co-Investigating Judge.⁷³ Two internationally nominated investigating judges resigned over the alleged interference.⁷⁴ The appointment of a new international Co-Investigating Judge, Judge Mark Harmon, and his success in any investigations will be the ultimate quest for the ECCC to regain credibility and demonstrate its independence and sovereignty.

PERCEPTION OF THE ECCC IN CAMBODIAN SOCIETY

For the majority of Cambodians, justice for the unimaginable crimes committed more than three decades ago is not the first priority. Unsurprisingly, Cambodians individually see a higher importance in the daily challenges of their lives, such as job security, decent wages, health care, as well as improvements to the country's infrastructure that was either destroyed or not developed during the war. In a 2011 population-based survey by the University of Berkeley "Knowledge and Perceptions of Justice and the ECCC of Cambodia", 83 per cent compared to 76 per cent in 2008 of the interviewees would rather prefer spending money on something other than the ECCC.⁷⁵

Although justice is not prioritised, a 2011 population based survey indicates that since 2008, both awareness of and knowledge of the ECCC has increased.

Nevertheless, although justice is not prioritised, the survey also indicates that since 2008, both awareness and knowledge of the ECCC has increased. In 2010, the percentage of the population claiming limited knowledge of the ECCC decreased among those who lived under the Khmer Rouge regime (22 per cent in 2010 compared to 34 per cent in

73 | Cf. n. 72.

74 | Cf. n. 69; ECCC, "Press Release by the Reserve International Co-Investigating Judge", press release, 4 May 2012, <http://www.eccc.gov.kh/en/articles/press-release-reserve-international-co-investigating-judge> (accessed 16 Mar 2013).

75 | Phuong Pham, Patrick Vinck, Mychele Balthazard and Sokhom Hean, *After the First Trial: A Population-Based Survey on Knowledge and Perceptions of Justice and the Extraordinary Chambers in the Courts of Cambodia*, Human Rights Center, University of California, Berkeley, 2011, 3, http://peacebuildingdata.org/sites/m/pdf/Cambodia_2011_After_the_first_Trial.pdf (accessed 22 Mar 2013). The study was conducted among a sample of 1,000 individuals representative of the adult population of Cambodia. The interviews took place in December 2010, over a 20-day period. In the remainder of the report, results from the 2010 survey are compared with the results of a comparable survey of 1,000 individuals conducted by the same team in 2008.

2008) and those who did not live under the Khmer Rouge regime (33 per cent in 2010 compared to 50 per cent in 2008).⁷⁶



PR poster of the ECCC: “Everyone can be involved in the process.” | Source: © ECCC.

Over the past two years, attitudes toward the ECCC have been largely positive and have become increasingly favourable on certain indicators. A vast majority of respondents believed the Court would respond to the crimes committed by the Khmer Rouge (84 per cent), help rebuild trust in Cambodia (82 per cent), help to promote national reconciliation (81 per cent) and bring justice to the victims of the Khmer Rouge regime (76 per cent). 75 per cent believed

76 | Ibid.

the Court to be impartial. Those who doubted the Courts impartiality associated their skepticism with alleged interferences from the Cambodian government (31 per cent) and the fact that the judges are working for “the government” (23 per cent),⁷⁷ which may also signify a general mistrust into state institutions in Cambodia.

It is significant that the questions of the survey concern individualised perceptions of the citizens. An individual will understandably focus on personal demands, such as job security, family welfare and health care, just to name a few. The survey unfortunately does not address broader questions of governance, such as the rule of law, accountability, national reconciliation and rehabilitation, deterrence and creating a common historical record. Besides these general figures suggesting a slight improvement in the overall knowledge about and confidence in the legitimacy and the work of the ECCC, these statistics are highly influenced by individual socialisation, personal experiences, age, political alliances and by the variety of Buddhist beliefs. Youk Chhang appropriately categorises the supporters and the opponents of the tribunal into the following four categories:

The statistics are highly influenced by individual socialisation, personal experiences, age, political alliances and by the variety of Buddhist beliefs.

1. Survivors;⁷⁸
2. Thai Boarder Refugees;⁷⁹
3. Cambodian Expatriates;⁸⁰
4. the next generation.⁸¹

Even 33 years after the tragic events, Cambodians stay divided over the trials. The majority of today's citizens have not experienced the Khmer Rouge Regime, and most of those who have experienced the pain may no longer seek retribution. The perceptions of the trials are therefore

77 | Ibid. It should be noted here however that the judges are not working for the government per se, but rather for the Cambodian judiciary.

78 | Youk Chhang, “Why the Khmer Rouge Tribunal Matters to the Cambodian Community: Justice for the Future, Not the Victims”, Cambodia Tribunal Monitor, <http://cambodiatribunal.org/why-khmer-rouge-tribunal-matters-to-cambodian-community> (accessed 22 Mar 2013).

79 | Ibid.

80 | Ibid.

81 | Ibid.

mainly influenced by the inherent need of accountability, truth seeking, establishing a collective memory and by the question of how the trials may affect the Cambodian justice system and the rule of law.

THE LEGACY OF THE ECCC

The effect of the ECCC on the Cambodian judiciary is not an intrinsic task of the ECCC. It is however one of the expectations and legacies it could leave behind.

Apart from the specific prosecution of alleged individual perpetrators, the effect of the ECCC on the Cambodian judiciary is not an intrinsic task of the ECCC. It is however one of the expectations and legacies it could leave behind, and this specific idea is in line with UN policies regarding hybrid tribunals, such as the ECCC. The United Nations Office of the High Commissioner for Human Rights defines legacy as “a hybrid court’s lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, *while also strengthening domestic judicial capacity*. The aim of this is for its impact to continue even after the work of the hybrid court is complete”.⁸² The ECCC itself has recently adopted this definition and appears to be actively promoting this perspective.⁸³ At the same time the OHCHR generally cautions that “it takes many years to complete even basic legal training and that reforming a malfunctioning judicial system and developing a culture based on the rule of law and respect for human rights are long-term goals.”⁸⁴ Such a quasi-legacy jurisdiction could also be identified as an additional justice dividend.⁸⁵

82 | Emphasis by the author. United Nations High Commissioner for Human Rights (UNHCHR), *Rule-Of-Law Tools for Post-Conflict States. Maximizing the legacy of hybrid courts*, 2008, 4-5, <http://ohchr.org/Documents/Publications/HybridCourts.pdf> (accessed 16 Mar 2013).

83 | The Extraordinary Chambers in the Courts of Cambodia and the Cambodian Human Rights Action Committee, *Hybrid Perspectives on Legacies of the Extraordinary Chambers in the Courts of Cambodia (ECCC), Conference Report and Recommendations*, 1, 2, 47, http://www.chrac.org/eng/CHRAAC%20Statement%20in%202012/Report%20on%20Hybrid%20Perspectives%20on%20ECCC%20Legacies_2012_English.pdf (accessed 16 Mar 2013).

84 | *Ibid.*, 4.

85 | Cf. also Carla del Ponte, “The Dividends of International Justice, Carla del Ponte Address at Goldman Sachs”, London, 6 Oct 2005, http://icty.org/x/file/Press/PR_attachments/cdp-goldmansachs-050610-e.htm (accessed 16 Mar 2013).

Such a legacy mission is a challenging endeavor for the ECCC, given its systemic deficiencies and alleged outside exertion of influence, such as its dual set-up of national and international components within one organisation (the so-called hybrid structure), budgetary constraints, allegations of political interference and corruption. This is aggravated by the fact that most Cambodian officials are still part and parcel of a judiciary that is in need of improvement. But it is a reasonable and realistic chance, in which the Court should be encouraged, even though results may not be as forthcoming given the current dysfunctional status of the national legal system.

Despite these challenges the hybrid structure is also one of the ECCC's greatest assets in order to leave positive legacies behind.

Through the international assistance the tribunal exemplifies a standard desired at domestic level.

Through the international assistance the tribunal exemplifies a standard desired at domestic level. Through its outreach programmes and programmes organising visits for ordinary Cambodians to the tribunal, the exemplified criminal proceedings are disseminated to the wider public.⁸⁶ It demonstrates how a court should operate and that evidence from a state prosecutor may be questioned and challenged. In this regard, ideals of justice, the supremacy of the law and the message that such atrocious crimes may not go unpunished are echoed to a wider public. Through the national staff and lawyers working at the ECCC, knowledge will be transferred to the domestic courts. Capacity building is one of the legacies of the court. A more detailed set of legacy recommendations which the court could achieve fairly easily and without additional funding have been identified by practitioners and experts following a conference that discussed the impact and legacies of the court domestically and internationally.⁸⁷ The identified real or potential legacies may be summarised as follows:

- jurisprudential legacies in substantive and procedural criminal and human rights law;
- jurisprudential legacies regarding the participation of civil parties;

86 | ECCC, "ECCC Surpasses 100,000 Visitors Milestone", press release, 4 Jan 2012, <http://www.eccc.gov.kh/en/articles/eccc-surpasses-100000-visitors-milestone> (accessed 16 Mar 2013).

87 | N. 83, 47.

- knowledge transfer to domestic proceedings of trial monitoring;
- outreach activities;
- knowledge transfer of witness support and forensic psychological assessments;
- access to justice, in particular for women.⁸⁸

However, it is important to point out that such a legacy jurisdiction or mission should merely be seen as a derivative affect, not as an institutional imperative, which is simply to render expeditious and fair justice. If that task is achieved, the derivative affects of positive legacies will follow automatically.

PRESENCE AND FUTURE OF THE PAST

CHINA BETWEEN REMEMBERING AND FORGETTING

Regina Edelbauer

When the process of coming to terms with the past (*Vergangenheitsbewältigung* in German) can be defined as “a nation addressing a problematic period in its recent history”,¹ there are numerous cataclysmic phases in contemporary Chinese history that are in need of a critical reappraisal. “The Great Leap Forward” (1958-1961) and the “Great Proletarian Cultural Revolution” (1966-1976) are just two examples of political campaigns that have left deep scars on the collective Chinese psyche.² In 1981, the Chinese Communist Party (CCP) detailed the framework for a party-politically approved interpretation of the past, which is still cemented in history books today, with its “Resolution on certain questions in the history of our party since the founding of the People’s Republic of China”. Beijing is also striving for the monopoly on the accepted historiography in international exchanges, which is evident in the current conflicts in the Sino-Japanese discourse for instance. Paul Cohen exposed the official, state-enforced selection of which historic episodes should be remembered



Regina Edelbauer is a Project Assistant of the Konrad-Adenauer-Stiftung in Beijing.

- 1 | Definition according to the Duden (translated), <http://duden.de/rechtschreibung/Vergangenheitsbewaeltigung> (accessed 15 Jan 2013).
- 2 | In this report derived from Jan Assmann’s concept of the “cultural memory”: “The term ‘cultural memory’ relates to one of the external dimensions of human memory. [...] But what this memory records in terms of content, how it organises various content, how long it can retain something, these things are to a very large extent determined not by internal capacity and control but by external, i.e. social and cultural determining factors.” Translated from: Jan Assmann, *Das kulturelle Gedächtnis. Schrift, Erinnerung und politische Identität in frühen Hochkulturen*, München, Verlag C. H. Beck, 6th edition, 2007, 19.

and which forgotten as a “myth of remembrance”.³ This selection is undergoing continuous adaptation in response to current circumstances in domestic and external politics.

There are no official channels in the People’s Republic of China for a critical examination of its own past. There is a lack of distance that this would require, as the present-day party leadership elites are direct successors to the government representatives who were instrumental in determining the course of contemporary Chinese history. This is the reason why numerous questions in the historic

There is a social contract of silence running like a thread through modern Chinese historiography. To break open “a collective repressive resistance”, is not likely to happen any time soon in China.

debate not only remain unanswered, but are not even asked. Tabooed, repressed and forgotten, alternative interpretations are being lost over time due to the contemporary witnesses dying off. The public partly colludes in this decision. There is a social contract

of silence running like a thread through modern Chinese historiography. What Margarete and Alexander Mitscherlich succeeded in doing in Germany in the 1960s in their joint work “The inability to mourn”, namely to break open “a collective repressive resistance”,⁴ is not likely to happen anytime soon in China.

The British-Chinese Author Xue Xinran comments that China’s “map of history” lacks generally accepted, explanatory symbols: “In the search for their roots and for their self-respect as a nation, Chinese people have lost their way. The result is a map of history which lacks an agreed system of explanatory symbols and is forever reprinted.”⁵ There is no question that the CCP lays claim to the monopoly on the accepted interpretations of the past, but party historiography is only one of many variable, compartmentalised and selective partial truths that are currently depicted in contemporary Chinese history. Unofficial actors within

3 | “It is a myth that memory has to do only with the past. It stands to reason, therefore, that as the political, social, intellectual, and international environments of China changed in the course of the twentieth century, the meanings of ‘remembering’ and ‘forgetting’ – as well as the nature of tension between the two – also underwent significant change.” In: Paul A. Cohen, *Evolving perspectives on the Chinese past*, RoutledgeCurzon, London, 2003, 172.

4 | Horst-Eberhard Richter, *Moral in Zeiten der Krise*, Suhrkamp Verlag, Berlin, 2010, 31.

5 | Xue Xinran, *China Witness. Voices from a silent generation*, Random House, London, 2008, 397.

society are posing a challenge to the state's interpretation of history. Consequently, work of remembrance represents an area of conflict in China. A few coordinates of the (unresolved) past periods in China's map of history illustrate the limits of Chinese efforts to come to terms with the past in politics and in society in the area of tension between remembering and forgetting.

OFFICIAL NARRATIVE OF THE PAST

Interpreting the past is a highly political enterprise, particularly in an authoritarian system such as the People's Republic of China, or as Kent Erwing said: "In China all history is political."⁶ The instrumentalisation

The instrumentalisation of history to further political agendas started long before the Communist Party took power. This allowed the ruling imperial dynasty to paint itself in a better light compared to the previous ruler.

of history to further political agendas in China started long before the Communist Party took power. This is illustrated by one of the most significant Chinese historic records penned by Sima Qian (145 to 86 BC). Francoise Hauser defines the purpose of historiography at that time as "imperial marketing", which enabled dynasties to set down their interpretation of events as the "official history" (*zhengshi*). This allowed the ruling imperial dynasty to establish a cultural link to the tradition of the preceding dynasty, to paint itself in a better light compared to the previous ruler and to legitimise its own sole claim to power. "Unofficial, ultimately even deviating depictions were denigrated as 'wild history' (*yeshi*)."⁷

Against this background, the myth of continuity of a 5,000-year-old cultural history of China has been retained until today to provide a common national identity although the foundations for a joint culture were not laid until around 2,200 years ago by the Qin dynasty according to Hauser; and not many people question the external cultural influences by foreign ruling powers (Mongol Yuan Dynasty, 1279-1368; Manchu rule during the Qing Dynasty, 1644-1911) as part of the national cultural history either.⁸ Once the People's Republic of China had been proclaimed, the

6 | Kent Erwing, "In China all history is political", Asia Times Online, 26 Jan 2007, <http://atimes.com/atimes/China/IA26Ad01.html> (accessed 15 Jan 2013).

7 | Francoise Hauser, *Alles Mythos! 20 populäre Irrtümer über China*, Konrad Theiss Verlag, Stuttgart, 2011, 59.

8 | *Ibid.*, 54-57.

political exploitation of historiography was continued by the Chairman of the CCP Mao Zedong (1949). "He [Mao] wanted to define the communist revolution as a logical stage of historical development in China and find it a proper place in history."⁹ This seemed particularly important for the collective acceptance of the imported communist set of values, which did not sit particularly well with the traditions of Chinese society, traditions strongly influenced by Confucian principles. In 1953, the Chinese government gave the newly founded Central Committee of Historical Study, which was made up of historians that were either party members or pro-communist, authority to control all of China's history studies.¹⁰

In 1981, the Chinese Communist Party used the "Resolution on certain questions in the history of our party since the founding of the People's Republic of China" to set down the accepted assessment of a number of periods of contemporary history.

The "Resolution on certain questions in the history of our party since the founding of the People's Republic of China"¹¹ is a manifest of Beijing's official historiography. In 1981, the Chinese Communist Party used this document to establish the accepted assessment of a number of periods of contemporary history. Amongst other things, the authors dealt with the historic role of Mao Zedong and they closed with an appeal for everybody to contribute to building a modern socialist China under the leadership of the CCP. The obvious agenda of that Party resolution was to ensure the legitimisation of the continuing CCP authority after the tumultuous years of the

9 | Qiu Jin, "History and State: Searching the Past in the Light of the Present in the People's Republic of China", in: *Historiography East and West*, Vol. 2, No. 1, 2004, 15.

10 | *Ibid.*, 19.

11 | The 38 items of the resolution deal with the following key topics: "1-5: Review of the History of the Twenty-Eight Years Before the Founding of the People's Republic 6-8: Basic Appraisal of the History of the Thirty-Two Years Since the Founding of the People's Republic, 9-15: The Seven Years of Basic Completion of the Socialist Transformation; 16-24: Ten Years of Initially Building Socialism in All Spheres 19-24: The Decade of the 'Cultural Revolution'; 25-26: Great Turning Point in History 27-31: Comrade Mao Zedong's Historical Role and Mao Zedong Thought; 32-38: Unite and Strive to Build a Powerful, Modern Socialist China." In: "Resolution on certain questions in the history of our party since the founding of the People's Republic of China. Adopted by the Sixth Plenary Session of the Eleventh Central Committee of the Communist Party of China on June 27, 1981", Chinese Communism Subject Archive, <http://marxists.org/subject/china/documents/cpc/history/01.htm> (accessed 31 Jan 2013).

Cultural Revolution. The resolution provides the contextual framework for the official interpretation of history, to which politicians as well as historians, scientists and journalists in mainland China must adhere

when they comment on modern Chinese history. This includes not only mandatory use of the terms approved by the Party, but also the time frames of the respective historic periods as defined by the Party. The Party

resolution depicts 32 years of history on just 30 pages and in 23,000 words,¹² less than one page per year on average. This vanishingly small proportion of official pronouncements on such far-reaching coordinates of contemporary history reflects the focus of Chinese history books, which predominantly describe the events before the founding of the People's Republic of China (1949).¹³

The Party resolution depicts 32 years of history on just 30 pages. This reflects the focus of Chinese history books, which predominantly describe the events before the founding of the People's Republic.

There has not been a new edition of the 30-year-old resolution to date. No doubt, one of the main reasons is the quashing of the protests on Tiananmen Square (4 June 1989).¹⁴ Making an issue of the violent termination of the democracy movement in 1989 on Party orders is still taboo in present-day China. Public events of commemoration in Hong Kong, which have attracted increasing numbers of people from the mainland in recent years, demonstrate the need within society to engage in the work of remembrance.¹⁵ The party knows that addressing and assessing this "incident", as it is referred to officially, might represent an endeavour that could pose a threat to the system. This is the reason why it purposely ignores this part of history.

12 | Ibid. The rounded figures correspond to the English translation.

13 | "[...] for the last few years I have bought all the new editions of Chinese history books, and I have discovered that pre-1949 history accounts for 80 per cent of the material, and only 20 per cent is devoted to the period after 1949. The ten years of the Cultural Revolution receive scarcely any space at all, and are covered in just a few vaguely worded lines." Xinran, n. 5, 266.

14 | An analysis of the events from the point of view of Zhao Ziyang, former General Secretary of the CCP, who was denounced subsequent to the "incident" and died in 2005 can be found in his posthumous publication: Zhao Ziyang, *Prisoner of the State. The secret Journal of Premier Zhao Ziyang*, Simon& Schuster, New York, 2009.

15 | Sophie Beach, "Tiananmen Square: 23 years later", China Digital Times, 4 Jun 2012, <http://chinadigitaltimes.net/2012/06/tiananmen-square-23-years-later> (accessed 11 Feb 2013).

Due to different interpretations of historic events, there are also conflicts arising regularly in the area of international relations, which are producing significant tensions.

The fragmentation of memory landscapes is not only visible with respect to the way the authorities deal with domestic turning points, which influential Chinese personalities have drawn public attention to over the last few months, sometimes intentionally, sometimes unintentionally. Due to different interpretations of historic events, there are also conflicts arising regularly in the area of international relations, which are producing significant tensions. The culture of selective memory of the state historiography is reflected particularly strongly in the relationship between China and Japan. In 2012, the territorial dispute about the uninhabited Diaoyu Islands (Japanese: Senkaku Islands) evoked anti-Japanese resentment in Chinese society, and not for the first time; back in 2005, there were country-wide anti-Japanese protests.¹⁶ The new edition of a history book for Japanese schools, which was accused of glossing over Japanese war crimes during the Second Sino-Japanese War (1937-1945), created a great deal of anger at the time. In both cases, 2005 and 2012, disagreement about history was at the centre of the conflict. Beijing considers the dispute with Tokyo in the context of the historic narrative of “national humiliation”, which is not limited to China’s degradation by Japanese acts of war but includes earlier humiliations by Western aggressors.¹⁷

Besides the party-political “master narratives”, there are unofficial histories (*yeshi*) in existence within Chinese society, which break out of the confines of the official Chinese historiography (*zhengshi*). This poses an increasing challenge to the historic “master narrative” of the Party

16 | Joseh Kahn, “China is pushing and scripting anti-japanese Protests”, *The New York Times*, 15 Apr 2005, <http://nytimes.com/2005/04/15/international/asia/15china.html> (accessed 11 Feb 2013).

17 | “[...] so called ‘century of national humiliation’ that began with the First Opium War (1839-1842) and lasted through the end of the Sino-Japanese War in 1945. China’s memory of this period as a time when it was attacked, bullied, and torn asunder by imperialists serves as the foundation for its modern identity and purpose.” Zheng Wang, “Not rising, but Rejuvenating: The Chinese Dream”, *The Diplomat*, 5 Feb 2013, <http://thediplomat.com/2013/02/05/chinese-dream-draft> (accessed 8 Feb 2013).

resolution.¹⁸ The catastrophic historic turning points in the Chinese past, such as the Great Leap Forward and the Cultural Revolution, are – in spite of the silence decreed by the party – ever-present in China’s everyday domestic political life.

MEMORIES OF THE GREAT LEAP FORWARD

In the 1950s, Mao Zedong pursued the political campaign of the Great Leap Forward to push ahead with the transformation of agricultural and industrial production with the objective of narrowing the gap between China and Western industrialised countries. The intention was

to ensure a faster transition to communism and to drive forward speedy industrialisation. The revolutionary mass mobilisation involved the combining of all social life into collective

At least 45 million people lost their lives between 1958 and 1962 due to malnourishment and physical abuse by party cadres.

units. The campaign resulted in one of the worst, possibly even the most severe famine in the world. At least 45 million people lost their lives between 1958 and 1962 due to malnourishment and physical abuse by party cadres.¹⁹ In spite of this virtually incredible number of victims, the party-political historiography writes this suffering caused by human hand off as “three years of natural disasters”. According to the Party resolution, the errors of the Great Leap Forward only constituted one of several reasons for economic difficulties that caused great losses for the people between 1959 and 1961.²⁰ This brief official assessment laid the foundation for the marginalisation of public

18 | “However, this claim to monopoly [on the part of the CCP] has been progressively eroded during the reform period of the last 30 years and is increasingly difficult to sustain in spite of the party state strategies to uphold historiographical simplification (translated).” Heike Holbig, “Erinnerungskultur und Geschichtspolitik in China”, The Federal Agency for Civic Education (Bundeszentrale für politische Bildung, bpb), 5 Oct 2009, <http://bpb.de/internationales/asien/china/44265> (accessed 7 Feb 2013).

19 | Frank Dikötter, *Mao's Great Famine: The History of China's most devastating catastrophe 1958-62*, Bloomsbury Publishing, London, 2010, x.

20 | “It was mainly due to the errors of the Great Leap Forward and of the struggle against ‘Right opportunism’ together with a succession of natural calamities and the perfidious scrapping of contracts by the Soviet Government that our economy encountered serious difficulties between 1959 and 1961, which caused serious losses to our country and people.” Chinese Communism Subject Archive, n. 11.

discourse about the suffering of that time, which could be observed in subsequent years.²¹

Yang's blunt record of the horrific consequences of the Great Leap Forward is the courageous attempt by a contemporary witness to rejuvenate a period of history that had been covered up.

In 2008, the Chinese journalist Yang Jisheng set a memorial to the famine victims, which included his father, with a 1,800-page publication, which is banned on the mainland.

The abbreviated German edition came out in 2012.²² Yang's blunt record of the horrific consequences of the Great Leap Forward is the courageous attempt by a contemporary witness to rejuvenate a period of history that had been covered up. Although the work could only be published in China in the special administrative zone of Hong Kong, it has had an impact on the debate on the mainland. In September 2012, the state-controlled *Global Times*, a mouthpiece of the CCP, not only picked up on Yang's publication, but also reported about a memorial set-up on the basis of a private initiative – the only one of its kind – for the famine victims of the town of Xinyang in Henan Province, which was particularly badly affected.²³

The censorship makes it difficult for society to address its own past. A lack of public memorials has contributed to the collective amnesia. However, this is only one side of the coin. Quite apart from the state-decreed silence, many contemporary witnesses have no desire to think back to this period in their lives: "To romanticise what were often utterly desperate ways of surviving is to see the world in black and white, when in reality collectivisation forced everyone, at one point or another, to make grim moral compromises."²⁴ It was not only neighbours stealing from each other, even parents withheld food from their own

21 | Felix Wemheuer's research about the oral history within the Chinese rural population testifies to the fact that this influential period is rarely a subject of discussion in society. Cf. Felix Wemheuer, "Oral History auf Chinesischen Dörfern", *BIOS. Zeitschrift für Biographieforschung, Oral History und Lebensverlaufsanalysen*, No. 1, 2007, http://ssoar.info/ssoar/bitstream/handle/document/27048/ssoar-bioszeit-2007-1-wemheuer-oral_history_auf_chinesischen_dorfern.pdf (accessed 8 Jan 2013).

22 | Yang Jisheng, *Grabstein – Mübei: Die große chinesische Hungerkatastrophe 1958-1962*, Fischer, Frankfurt am Main, 2012.

23 | Zhang Zhilong, "Starved of memories", *Global Times*, 6 Sep 2012, <http://www.globaltimes.cn/content/731589.shtml> (accessed 13 Feb 2013).

24 | Dikötter, n. 19, xv.

children in order to keep themselves alive.²⁵ Yang Jisheng also recorded cases of cannibalism in his publication. The moral depths that resulted from the survival strategies generate shame and cause a great deal of pain when people attempt to come to terms with them.

Yang also recorded cases of cannibalism in his publication. The moral depths that resulted from the survival strategies generate shame and cause a great deal of pain when people try to come to terms with them.

Despite or perhaps precisely because of this, some Chinese artists are taking on the task of dealing with these dark years. The documentaries of the China Folk Memory Image Archives (CFMIA)²⁶ can be ordered online; the website is accessible to users on the mainland. Although these eyewitness accounts cannot be broadcast on public television, their screening in the Ullens Center for Contemporary Art in Beijing (April 2012) facilitated a debate about “forgotten memories”²⁷ according to the Chinese initiator and documentary maker Wu Wenguang.

The Internet offers new opportunities to air different interpretations of historic narratives, such as illustrated by the case of Lin Zhibo, editor of the People’s Daily in Gansu Province. In May 2012, thousands of Chinese internet users voiced their anger at his doubts about the millions of deaths caused by the Great Leap Forward, which he had published on the twitter-style online platform Sina Weibo. They subsequently exchanged information on experiences endured by their own families during the famine.²⁸ Lin withdrew his comment soon afterwards and his statement – unintentionally – provided an impulse for a discussion of

25 | Lecture by Frank Dikötter, “Frank Dikötter – Mao’s Great Famine: The History of China’s most Devastating Catastrophe”, YouTube, <http://youtu.be/DqFBa9ePWpo> (accessed 13 Feb 2013).

26 | Self-portrait of China Folk Memory Image Archives (CFMIA): “An ongoing, long term archive powered by the community. It collects, organizes and preserves images from China’s folk history. It’s goal is to create a collection that can be used for research and study purposes, while at the same time engaging the community to document and preserve it’s own history and memories.” CFMIA, http://cidfa.com/video/about_us (accessed 21 Jan 2013).

27 | “Folk Memory project records forgotten memory of Great Leap Forward”, WantChinaTimes.com, 22 Apr 2012, <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20120422000005&cid=1104> (accessed 21 Jan 2013).

28 | “Denial from People’s Daily Branch Head Ignited Fury and Discussions of the Great Famine”, Offbeat China, 3 May 2012, <http://offbeatchina.com/denial-from-peoples-daily-branch-head-ignited-furious-discussion-of-the-great-famine> (accessed 21 Jan 2013).

this otherwise repressed phase of Chinese history, which reached across wide swathes of the online community.

Yu Hua thinks that prestigious major local projects such as airports and motorways now represent a popular way by which local politicians try to enhance the image they present to the central government.

In his publication “China in ten words”, which is banned in the People’s Republic of China, Yu Hua draws a parallel with contemporary politics. Comparable to the time of the Great Leap Forward, when local politicians tried to impress Party headquarters with embellished figures about the production output of their provinces and thus made the famine in many parts of the country even worse, Yu Hua thinks that prestigious major local projects such as airports and motorways now represent a popular way by which local politicians seek to enhance the image they present to the central government.²⁹ Yu Hua’s publication can therefore be read as an exhortation against history repeating itself. One hint as to why the history of the Great Leap Forward aroused a comparatively high level of public interest particularly last year is provided by an article in the *Global Times*: “Cao Siyuan, a constitutional and economic scholar and director of Siyuan Think Tank, told the *Global Times* that the major reason for many scholars to highlight this part of history is to stress the importance of political reform at the Party’s upcoming 18th National Congress, as many of them see that poor governance contributed to the famine.”³⁰ This is a first, hesitant, but very important step towards a potentially more differentiated public debate of the horrors of that time.

STORIES ABOUT THE CULTURAL REVOLUTION

Coming to terms with the “Great Proletarian Cultural Revolution”, which plunged the country into ten years of chaos from 1966 to 1979 according to the official view, probably represents the most important example of a skewed, party-political, agenda-driven culture of remembrance, which is still hindering efforts to address and come to terms with the events people lived through as individuals as well as collectively. The aim of the Cultural Revolution was to rebuild Chinese society from scratch by turning away from

29 | Yu Hua, *China in Ten Words*, Duckworth Overlook, London, 2012, 118.

30 | Zhao Qian, “Counting the dead”, *Global Times*, 4 May 2012, <http://www.globaltimes.cn/NEWS/tabid/99/ID/707768/Counting-the-dead.aspx> (accessed 15 Jan 2013).

the “Four Old Things” (Old Ideas, Old Cultures, Old Habits, Old Customs). Due to the partly contradictory political mass campaigns, which followed in close succession, persecutors could very quickly become victims themselves – and vice versa. All social interaction had to be viewed in the context of the current political line. Against this backdrop, the experiences people suffered during the Cultural Revolution were particularly traumatic as they “undermined the fundamental trust in the reliability of social relationships”.³¹



Reminiscence about the cultural revolution: reprints of propaganda posters from the 1970s are a popular souvenir. Accounting for the events of this decades continues to be instrumentalised by party politics. | Source: racken (CC BY).

31 | Tomas Plänkner, “Das psychische Trauma im Spannungsfeld zwischen Individuum und Gesellschaft in China”, in: ders. (ed.), *Chinesische Seelenlandschaften. Die Gegenwart der Kulturrevolution (1966-1976)*, Vandenhoeck & Ruprecht, Göttingen, 2010, 170.

The Party resolution of 1981 assigned Mao Zedong chief responsibility and the Party partial responsibility for the "the grave 'Left' error of the 'cultural revolution'",³² The party document does not say anything that would amount to a more probing analysis to determine which social actors of the time carried blame. As regards complicity, the resolution granted society victim status in principle, but did not absolve it from its shared responsibility.

The 1981 Party resolution tried to convince the public that not to remember sufferings of the past would help everybody to live in the present.

Shortly after the end of the Cultural Revolution, the Party leadership succeeded in restoring social cohesion by means of a "unity of victims"³³ and by making the forgetting of the suffering on Party orders a prerequisite to the normalisation of social co-existence on the basis of the collusion of society as a whole. The 1981 Party resolution "tried to convince the public that not to remember sufferings of the past would help everybody to live in the present. The nation united by collective memory was to be turned into a nation united by collective amnesia."³⁴ The enormous contradictions in the assessments of the events between 1966 and 1976 in both official and unofficial narratives show that there are great obstacles hindering people from coming to terms with this part of their past. The greatest difficulty within society, namely finding a generally valid and accepted assessment of this decade, is currently reflected, amongst other things, in the controversy about a memoir published in 2013 by the entrepreneur Ping Fu, who now lives in the United States. The critical reactions from the Chinese online community regarding the authenticity

32 | "Chief responsibility for the grave 'Left' error of the 'cultural revolution', an error comprehensive in magnitude and protracted in duration, does indeed lie with Comrade Mao Zedong. But after all it was the error of a great proletarian revolutionary. [...] the Central Committee of the Party should be held partly responsible. [...] Blaming this on only one person or on only a handful of people will not provide a deep lesson for the whole Party or enable it to find practical ways to change the situation." N. 11.

33 | Susanne Weigelin-Schwiedrzik, "Coping with the cultural revolution: Contesting Interpretations", in: Annette Schuhmann and Alexandra Pfeiff (eds.), *Die Welt der Anderen – Zeithistorische Debatten in Asien*, Zeitgeschichte-online, Jun 2009, <http://zeitgeschichte-online.de/thema/die-welt-der-anderen-zeithistorische-debatten-in-asien> (accessed 9 Feb 2013).

34 | "The unity of a society the social fabric of which had been torn by the Cultural Revolution was re-established as the unity of victims, and thus a memory frame was established that people used and had to use." In: *ibid.*

of Ping's reminiscences about her negative childhood experiences during the Cultural Revolution demonstrate the high level of emotion that pervades the discussions of this issue away from the party line.³⁵ While the culture or non-culture of the Cultural Revolution is addressed through special exhibitions in other countries,³⁶ for instance, there are no official memorials or events in the People's Republic itself to commemorate this cataclysmic period; apart from some low-brow, romanticised "themed restaurants with sparse interiors and menus [...], revivals of the 'revolutionary operas' created under Jiang Qing [and] reproductions of Maoist emblems",³⁷ which were not only popular with foreign tourists.

Occasionally, nostalgic memories of the Mao era re-emerge among the disadvantaged groups of the Chinese population. These people are obviously harking back to the seemingly fairer revolutionary times. One frequently repeated assessment is that in those days at least everybody was as poor as each other. However, there are also some voices being heard in Chinese society today demanding a critical appraisal. Exiled historians living in the United States are addressing the past of their country of origin and providing impulses to their colleagues in mainland China through their articles in the magazine *Chinese Historical Review*.³⁸ In addition, pluralist voices on the Internet are engendering liberalisation tendencies in public discourse. Bloggers are increasingly using Sina Weibo to initiate a debate about the historiography that has been shaped by party policy. In a single day, over 2,000 users commented

Bloggers are increasingly using Sina Weibo to initiate a debate about the historiography that has been shaped by party policy.

35 | Josh Rudolph, "Ping Fu defends Memoir after Chinese Netizens Attack", *China Digital Times*, 7 Feb 2013, <http://chinadigitaltimes.net/2013/02/ping-fu-defends-memoir-after-chinese-netizens-attack> (accessed 8 Feb 2013).

36 | Exhibition "The Culture of the Cultural Revolution. Personality Cult and Political Design in Mao's China", 18 Feb-21 Nov 2011, Museum of Ethnology, Vienna, <http://ethnomuseum.ac.at/de/ausstellungen/rueckblick/2011/die-kultur-der-kulturrevolution> (accessed 19 Mar 2013).

37 | Holbig, n. 18.

38 | *The Chinese Historical Review*, <http://www.chss.iup.edu/chr> (accessed 19 Mar 2013).

on a touched-up picture of Mao Zedong, in which a cadre who had been denounced in the Cultural Revolution had been removed.³⁹



Peng Zhen was barred from the leadership ranks of the CCP in 1966. He lost all his positions, got arrested and was even re-touched out of pictures, as shown above. | Source: GlobalVoices (CC BY), n. 39.

In spite of new ways of sharing opinions about history in the digital space, there are some party-political boundaries applying to a differentiated culture of remembrance that are proving impossible to overcome. The Chinese author Ba Jin, who died in 2005, had demanded the construction of a Museum of the Cultural Revolution for decades, to no avail. The online Chinese language magazine Hua Xia Wen Zhai (HXWZ), which is run from the USA and published by the non-profit organisation China News Digest, set up a digital Cultural Revolution memorial in 1996.⁴⁰ Access to the website is blocked in China. This is where the efforts to confront the past within society continue to clash with the state-approved historic landscape of remembrance.

39 | Josh Rudolph, "Two Versions of Mao's China", China Digital Times, 31 Jan 2013, <http://chinadigitaltimes.net/2013/01/two-versions-of-maos-china> (accessed 9 Feb 2013); Oiwan Lam, "Two Versions of Mao's China: History Retouched as Propaganda", GlobalVoices, 30 Jan 2013, <http://globalvoicesonline.org/2013/01/30/two-versions-of-maos-china-history-retouched-as-propaganda> (accessed 20 Mar 2013).

40 | Virtual Museum of the "Cultural Revolution", <http://museums.cnd.org/CR/english/firsthand.htm> (accessed 13 Feb 2013).

Against this background, the warning words that former Premier Wen Jiabao uttered about the period of the Cultural Revolution as part of his highly symbolic closing speech at the National People's Congress in March 2012 were all the more surprising. Wen warned that without political reforms the possibility that the tragedy of the Cultural Revolution would be repeated could not be excluded.⁴¹ He thereby made a point of attracting the attention of the Chinese audience to this dark decade. Many observers think that Wen's motivation for pointing out the negative example of the Cultural Revolution at that particular point in time came from the case involving Bo Xilai, who went on to reveal one of the greatest scandals in Party history over the subsequent few weeks.⁴² This would once again be proof of the exploitation of history for a political agenda – in this case Wen's intention of preventing Bo's advancement. But this cannot detract from the fact that the 5th leadership generation (including President Xi Jinping and Premier Li Keqiang), who took all political key positions after the 18th Party Congress in November 2012, is the last one that has its own, personal experiences of this cataclysmic period.

The career paths of the new government representatives are linked closely to this phase: 15 members of the Politburo joined the CCP during the Cultural Revolution.⁴³ In spite of the comments Wen Jiabao made last year, it is unlikely that the new leadership will find the courage to embark on a new interpretation of the Cultural Revolution and other contentious issues of its own historiography any time soon. As the government is blocking any active

It is unlikely that the new leadership will find the courage to embark on a new interpretation of the Cultural Revolution and other contentious issues of its own historiography any time soon.

41 | "Tragedies like the Cultural Revolution may happen to China again if the country failed to push political reform to uproot problems occurring in the society, Premier Wen Jiabao told a press conference here on Wednesday after the conclusion of the annual parliamentary session. Premier Wen warns of another Cultural Revolution to happen without pushing political reform." Lu Hui, "Premier Wen warns of another Cultural Revolution to happen without pushing political reform", *Xinhua*, 14 Mar 2012, http://news.xinhuanet.com/english/china/2012-03/14/c_131466558.htm (accessed 24 Jan 2013).

42 | Andrew Jones, "Bo Xilai, Wen Jiabao and the Cultural Revolution", *gbtimes*, 15 May 2012, <http://gbtimes.com/focus/politics/bo-xilai-wen-jiabao-and-cultural-revolution> (accessed 11 Feb 2013).

43 | Alice L. Miller, "The Party Politburo Leadership", in: *China Leadership Monitor*, 40, 2013, <http://media.hoover.org/sites/default/files/documents/CLM40AM.pdf> (accessed 15 Jan 2013).

and critical work of remembrance, the accounts handed down by eyewitnesses are slowly fading away. The Cultural Revolution therefore remains one of the most long lived, unresolved phenomena of the People's Republic of China.⁴⁴

WORK OF REMEMBRANCE THEN AND NOW

China's map of history is showing totally different boundaries in 2013 than it did in the 1980s. In one of the country's most liberal political magazines, *Yanhuang Chunqiu* ("China through the Ages"),⁴⁵ (retired) party cadres were and are expressing differentiated opinions about the party-political view of historic events. The magazine's website was briefly blocked at the beginning of 2013.⁴⁶ This demonstrates that the boundaries for critical work of remembrance are constantly changing. Alternative, unofficial interpretations of the past tend to develop a dynamic of their own in China particularly when unresolved power issues within the CCP encourage efforts to address sensitive issues relating to the past. Immediately after the end of the Cultural Revolution, people addressed the experiences from this decade in public without having to fear any rebukes by the Party. Chinese authors, such as Feng Jikai, dealt with their personal experiences from the time of the Cultural Revolution by working them into the so-called "scar literature" they produced.

44 | "The impact of the Cultural Revolution on the development of the Chinese nation is enduring. The subsequent reform policies of the eighties are unthinkable without the experiences from the Cultural Revolution. The rejection of democracy by the Communist Party is also frequently justified with the experiences from the Cultural Revolution." Liying Wang, "Die Große Proletarische Kulturrevolution (1966-1976) als Kontingenz Erfahrung", in: Plänkers (ed.), n. 31, 64.

45 | The first part of the Chinese name of the magazine consists of the abbreviations of the names of two legendary rulers of ancient China (Yan Di and Huang Di). The second part describes an important epoch in Chinese history (Chunqiu denotes China's Spring and Autumn Period, 722-481 BC). In terms of content, the magazine title can also be translated as "China through the Ages".

46 | "Yanhuang Chunqiu which often carries articles by retired officials that contest party versions of contemporary history, has come under pressure to tone down its relatively liberal content." Chan Kai Yee, "China: Yanhuang Chunqiu website closed down for advocating constitutionalism", China Daily Mail, 7 Jan 2013, <http://chinadailymail.com/2013/01/07/china-yanhuang-chunqiu-website-closed-down-for-advocating-constitutionalism> (accessed 9 Jan 2013).

The politically relatively liberal Zeitgeist of the 1980s produced the six-part mini-series “River Elegy”⁴⁷ in China. It was actually broadcasted twice on state television (*China Central Television, CCTV*) and was very well received by the public. The film makers examined Chinese culture in a historical context. The producers provided a very critical analysis of the country’s traditions, which in their eyes prevented China from competing with the modernisation taking place in the West. The series also dealt with Mao Zedong’s role during the Great Leap Forward and the Cultural Revolution as a historic tragedy, as one excerpt from the documentary illustrates: “From economic utopia to political crises, and finally to social chaos [...]

wasn’t this great historical tragedy the inevitable conclusion to this agricultural civilisation?” went the commentary accompanying the River Elegy.⁴⁸ Such a critical and public

The “incident” on Tiananmen Square represents a turning point as a taboo key moment of contemporary Chinese history.

way of addressing the country’s past has not been possible on the mainland for quite some time. The “incident” on Tiananmen Square represents a turning point as a taboo key moment of contemporary Chinese history.

However, briefly before the National Congress in March 2013, at which the new Chinese government was officially installed, a message about a court case triggered a heated debate. A man from Zhejiang was accused of having murdered a doctor in 1967 in the course of the Cultural Revolution and he was called to account in a court of law. “What about those big names who started the Cultural Revolution? [...] How come they never took responsibility?”⁴⁹ commented a blogger. The remarkable thing here is that the message found its way into public discourse via a state-controlled news agency (*Chinanews.com.cn*).⁵⁰ On the same day, a critical appraisal by the political scientist Zhang Ming was published in the state-owned *China Youth*

47 | “River Elegy”, 1988, accessible under <http://youtu.be/39j4ViRxcS8> (accessed 21 Jan 2013).

48 | David Moser, “Thoughts on River Elegy, June 1988-June 2011”, *The China Beat*, 14 Jul 2011, <http://thechinabeat.org/?p=3607> (accessed 9 Feb 2013).

49 | Amy Li, “Trial over 1967 killing of doctor sparks netizen debate on Cultural Revolution”, *South China Morning Post*, 21 Feb 2013, <http://scmp.com/news/china/article/1154954/trial-over-1967-killing-doctor-sparks-netizen-debate-cultural-revolution> (accessed 12 Mar 2013).

50 | The article was published on 20 Feb 2013 on <http://china.news.com.cn> and removed again shortly afterwards.

Daily. The author argued that “China must reflect back openly on the Cultural Revolution if the Chinese hope to regain a sense of humanity and dignity.”⁵¹ While the generational and governmental changeover is taking place, some scope for a critical debate of historic events has recently opened up. However, the CCP continues to keep a strong hold on its monopoly on interpreting the past and this is having an impact on Beijing’s international relations, including the Sino-Japanese discourse.



A re-post of a critical article by Zhang Ming on *Phoenix Online* (history.ifeng.co) was accessed by 300,000 visitors in four days. The teaser shows a victim of the cultural revolution. | Source: cmp (CC BY), n. 51, screenshot by the editors.

SELECTIVE MEMORIES IN THE AREA OF TENSION OF INTERNATIONAL RELATIONS

The recurring quarrels in Sino-Japanese relations also illustrate the complex influencing potential that the national historic narrative has on current politics. In September

51 | David Bandurski, “China, den of cannibals?”, *China Media Project* (cmp), Journalism and Media Studies Centre, Universität Hongkong, 25 Feb 2013, <http://cmp.hku.hk/2013/02/25/31460> (accessed 12 Mar 2013).

2012, the dispute over the Diaoyu/Senkaku Islands sparked numerous anti-Japanese protests in China's large cities. The rich raw material deposits that are rumoured to be present in this area are, however, only one aspect fuelling the public anger, which is encouraged by the CCP and has been reported on extensively by the state media machine. The roots of the dispute go much deeper. One decisive moment in the problematic bilateral relations was the Nanjing Massacre (1937) during the Second Sino-Japanese War, which resulted in hundreds of thousands of deaths on the Chinese side within a few weeks. Figures about the precise numbers of victims of the crimes perpetrated by Japanese soldiers vary. Chinese scientists assume that there were over 300,000 deaths. Tokyo presents different figures: "The Japanese capped their estimate at 200,000, while continuing to insist there are also other estimates that put the number killed at 20,000 or 40,000."⁵² A research project about this difficult period of shared history⁵³ started in 2006 by the Chinese Academy for Social Sciences in Beijing and Tokyo University has not been able to change the different views, although it did represent a significant sign of the willingness to work together to produce a historiography that would be acceptable to both sides.

One decisive moment in the problematic bilateral relations was the Nanjing Massacre during the Second Sino-Japanese War, which resulted in hundreds of thousands of deaths on the Chinese side within a few weeks.

A remarkable parallel to this can be seen in the approach towards the national trauma of the Great Leap Forward and towards the Cultural Revolution: the silence of the contemporary witnesses. Iris Chang had this to say about the collective amnesia of the victims: "The Rape of Nanking did not permeate the world consciousness in the same manner as the Holocaust or Hiroshima because the victims themselves had remained silent."⁵⁴ Efforts to come to terms with this national trauma took a long time to start. It was not until 1985 that the Memorial Hall was opened in

52 | Peter J. Brown, "China, Japan still fighting over history", *Asia Times Online*, 11 Feb 2010, <http://atimes.com/atimes/China/LB11Ad01.html> (accessed 31 Jan 2013).

53 | Foreign Ministry of Japan, "The first meeting of the Japan-China Joint History Research Committee (Summary)", Dec 2006, <http://www.mofa.go.jp/region/asia-paci/china/meet0612.html> (accessed 15 Jan 2013).

54 | Iris Chang, *The Rape of Nanking. The Forgotten Holocaust of World War II*, Penguin Group, London, 1998, 11.

Nanjing.⁵⁵ Consequently, the memories of this cataclysmic historic event faded for a while.

At the beginning of the 1990s, the suffering of the Chinese people during the Second Sino-Japanese War was made into a central aspect of the official work of remembrance. The focus was on the humiliation that China suffered at the hands of Japan. What was it about the early 1990s that made it the appropriate time for this new interpretation? William Callahan has the following explanation: "Actually,

The Chinese Communist Party picks up on selected historic events that tie in with current political reality to refresh the nation's cultural memory.

'national humiliation' only became a key education and propaganda theme in the 1990s as a way to make rebellious students feel more patriotic after the June 4th massacre. Unfortunately, this tactical method of dealing with the communist party's legitimacy crisis has become China's most successful propaganda campaign."⁵⁶ The Chinese Communist Party picks up on selected historic events that tie in with current political reality to refresh the nation's cultural memory. The Nanjing Massacre is an excellent example of this. There is no doubt about the atrocities perpetrated against the Chinese population by the Japanese invaders in the winter weeks of 1937, which are to be condemned. The rage felt by the Chinese is fuelled by the fact that people in authority in Japan are sending out very unfortunate public history signals, for instance by recurring visits to the Yasukuni Shrine by Japanese government representatives and through the fact that no official apology for the war crimes has yet been forthcoming. The problematic thing here is that China's "national humiliation" is now being used as a tool of patriotic education; a highly explosive undertaking.

Aggressive anti-Japanese rhetoric, which dominated numerous front pages in the Chinese press in September 2012, fuelled nationalist resentment. Some people worked off their fury by attacking Japanese restaurants and cars, disregarding the fact that the owners were actually Chinese. This material damage is only a small manifestation

55 | "The memorial hall of the victims in Nanjing massacre by Japanese invaders", NanJing 1937, <http://nj1937.org/english/default.asp> (accessed 19 Mar 2013).

56 | William Callahan, "China: The Pessimist Nation", The China Beat, 15 Aug 2008, <http://thechinabeat.org/?p=210> (accessed 9 Jan 2013).

of a very deep-rooted anger about China's humiliation by Japan.⁵⁷ Such public expression of the anti-Japanese resentment, which is condoned and even encouraged, keeps confirming it and means that it is handed down to the younger generations without due reflection. After the anti-Japanese demonstrations of September 2012 ended on orders from the central government, the anger moved from the streets onto the Internet. It does not look like the country has put this part of its past behind it by any means, quite the contrary.

In party-political terms, the Sino-Japanese conflict is being exploited as a way for the angry and frustrated young generation (angry youth: *fenqing*) to vent its annoyance. Julia Lovell provided a historic perspective in 2009: "Twenty years ago, today's *fenqing* would have been protesting against rats in their dorms and lack of democracy [Tiananmen 1989]; go back another 20 years, and they would have been Red Guards [Cultural Revolution 1969]."⁵⁸ A nationalism fuelled by public history seems to occupy a far higher position than communism in the catalogue of identifying values in China these days. All the more reason why active and critical work of remembrance on all sides (in this case China and Japan) would be required to encourage a differentiated approach to each country's own history.

A nationalism fuelled by public history seems to occupy a far higher position than communism in the catalogue of identifying values in China these days.

THE FUTURE OF THE PAST

After considering the above-described examples, the obvious question is how the traumas of modern Chinese history can be come to terms with in Chinese society in view of the CCP's continued claim on the monopoly on the past. What is the future of China's past? In trying to answer this question it is helpful to start by understanding what attitude

57 | "If you listen to our generation talk about the Anti-Japanese War, all of us, not to mention the wretchedly poor, have personal experience of the horror of it. When I see the Japanese flag now, it still makes me feel bad; my head is full of blood-soaked images, and I simply can't forget them, because they are so deeply imprinted on my consciousness." Xinran, *n.* 5, 274.

58 | Julia Lovell, "It's just history: Patriotic Education in the PRC", China Digital Times, 23 Apr 2009, <http://chinadigitaltimes.net/2009/04/its-just-history-patriotic-education-in-the-prc> (accessed 12 Feb 2013).

parts of Chinese society have towards their difficult past. Tomas Plänkens offers an anthropological, fatalistic analysis, according to which there is a traditional tendency towards accepting fateful turns of events that cause suffering, which goes back to the traditions of Buddhism, Taoism and Confucianism. "To suffer in silence, not get worked up about the suffering, make a fuss or actually rail against it, is considered a sign of psychic maturity in China. One accepts life's blows like natural disasters, which means that the Cultural Revolution can also be understood as 'fate' resembling a natural event."⁵⁹ A totally different view is put forward by the editors of an anthology, which offers insights into the Chinese soul. Interviews apparently showed "that beneath the surface calm, the Chinese do remember the pain and suffering of what they experienced during the years of radical Maoism and in earlier historical brutality and danger. How these emotions of hurt and resentment affect their current lives is not so clear."⁶⁰ The British-Chinese journalist Xue Xinran describes similar multifaceted emotions of the eyewitness generation, whose unofficial reminiscences provide alternative versions of the state-approved historiography. Her interviewees describe difficulties in cross-generation communication about historic events, including a lack of interest on the part of the children as well as the worry whether the people from the younger generation actually can and want to make an effort to understand the suffering of the previous generations.⁶¹ This then brings up the following question, which indicates a currently insurmountable barrier to Chinese efforts to come to terms with the past: "How can they convince their uncomprehending or doubting children that stories and events that have left no physical historical trace really took place?"⁶²

Xinran's interviewees describe difficulties in cross-generation communication about historic events, including a lack of interest on the part of the children.

The difficulties affecting the future of Chinese efforts to come to terms with the past lie not only in the voluntary or occasionally decreed tendency among the population to forget and stay silent, partly caused by shame, as exempli-

The difficulties affecting the future of Chinese efforts to come to terms with the past lie not only in the voluntary or occasionally decreed tendency among the population to forget and stay silent, partly caused by shame, as exempli-

59 | Plänkens (ed.), n. 31, 164.

60 | "Introduction", in: Arthur Kleinman, Yunxiang Yan, Jing Jun, Sing Lee, Everett Zhang, Pan Tianshu, Wu Fei and Guo Jinhua (eds.), *Deep China. The Moral Life of the Person*, University of California Press, Berkeley and Los Angeles, 2011, 7.

61 | Xinran, n. 5, 248.

62 | *Ibid.*, 15.

fied by the memories of the Great Leap Forward and the Cultural Revolution, but also in the consequences: namely the ignorance about cataclysmic events of contemporary history amongst subsequent generations. It is difficult to remember something that was kept hidden for decades and is only mentioned by the way in history books, if at all. It is not possible in such circumstances to engage in the work of remembrance because there are no reference points available, neither through days of remembrance nor records in textbooks or reminiscences passed down from parents and grandparents. And in China, these efforts are all the more difficult because of the party-political constraints that set the ground rules. Party historiography determines which events are to be remembered and which forgotten. The flexible adaptability of the decreed remembrance, how cleverly the party exploits history to benefit the current political agenda. The state-imposed work of remembrance thus does prove adaptable in response to the variable agenda of the official actors, but without society being allowed to play an active part in this process. The independent attempts to make efforts to come to terms with the past in the 1980s represented a temporary exception.

Although the CCP does all it can through its selective culture of remembrance to let critical moments in its own past fade away without working through the grief it is coming under increasing pressure from unofficial actors disclosing alternative interpretations of the past. Current online debates prove that the boundaries of the map of history for unofficial versions of Chinese historiography will keep shifting under the influence of the Internet. However, as long as the Chinese government prohibits a differentiated examination of the country's own history, the official and unofficial views of the past will continue to differ drastically. This impedes the work of remembrance as understood by Mitscherlich,⁶³ which allows the individual to grieve about past events.

It is clear that there is not a great deal of scope for such work of remembrance diverging from the party line – apart from a few digital exceptions. The CCP will be intent on

63 | Margarete Mitscherlich, *Erinnerungsarbeit. Zur Psychoanalyse der Unfähigkeit zu trauern*, S. Fischer Verlag, Frankfurt am Main, 2006, 113-120.

continuing its existing history policy in order to determine the presence and future of the country through control over the past. 2016 will see the 50th anniversary of the beginning of the Cultural Revolution. Critical work of remembrance will be required to break up the boundaries of forgetting on China's map of history for good. China's past is still to come.

The article was completed on 12 March 2013.

CORPORATE SOCIAL RESPONSIBILITY AND CLIMATE PROTECTION IN CHINA

THE CONTRIBUTION OF CHINESE ENTERPRISES TO SUSTAINABLE DEVELOPMENT

Andreas Dittrich

As the world's biggest producer of gases harmful to the climate, China bears a high level of responsibility in combating global climate change. The Chinese government is aware of the enormous challenges facing the country's climate and environmental policies. International media often present China as dragging its feet when it comes to efforts to reduce global CO₂ emissions. Indeed, China certainly avoids entering into international commitments aimed at climate protection. Nevertheless, the government has actually recognised environmental pollution and climate change as serious threats to its affluence and has already undertaken a variety of related measures. The aim is to uncouple economic growth from energy consumption. A "Green Economy" is intended to develop into a key driving force for Chinese growth.

However, the government is increasingly reliant upon the support of society in general and enterprises in particular in order to achieve significant reductions in emissions. In recent years, ever more multinational corporations engaged in China and Chinese enterprises have realised that they, too, share responsibility for sustainable development of the country, and are stepping up commitments in the fields of sustainable utilisation and climate protection. However, the partly considerable distance between Beijing and locations in Western and Southern China impede functional supervision measures, resulting in a strong discrepancy between compulsory duties and their actual realisation in the different regions.



Andreas Dittrich was a Research Assistant at the Konrad-Adenauer-Stiftung in Shanghai until February 2013. Since March 2013, he has been working as a Project Manager at the German Chamber of Commerce in Shanghai.

CORPORATE SOCIAL RESPONSIBILITY

The topic of Corporate Social Responsibility (企业社会责任 / *qiye shehui zeren*, CSR) has also advanced to the

The debate on corporate social responsibility and its perception has long been under way. The English term originated in the USA and first appeared in 1953 in the publication *Social Responsibilities of the Businessman*, penned by Howard Bowen.

position of a key element in the debate on the principles of corporate management. In this respect, enterprises have always also embodied a social function and the debate on corporate social responsibility and its perception has long been under way. The English term "Corporate Social Responsibility" originated in the USA and first appeared in 1953 in the publication *Social Responsibilities of the Businessman*, penned by Howard Bowen. Bowen wrote in his book that enterprises have a responsibility to gear their activities to the goals, expectations and values of society. These reflections have also become anchored in the German concept of a social market economy as Corporate Responsibility. The term CSR initially focuses strongly on the social components of corporate responsibility. Over recent decades, however, this concept has been supplemented with the dimensions "Environmental Protection" and "Sustainability".¹

Numerous CSR definitions and CSR standards now exist. The most important and internationally most frequently applied figures are those of the UN Global Compact from 2000 and the standard of the International Organisation for Standardisation (ISO). The Global Compact covers ten basic principles and calls on enterprises to align themselves with fundamental values in the fields of human rights, working conditions, environmental protection and combating corruption.² The ISO 26000 standard defines CSR as "the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour", which contributes to a sustainable development that takes into account the expectations of all "stakeholders" and is aligned with international standards.³ In 2001, the European Union

1 | Cf. Alexander Bassen et al., *Corporate Social Responsibility – Eine Begriffsklärung*, 2005, 231 et seq.

2 | Cf. United Nations Global Compact, "The Ten Principles", <http://unglobalcompact.org/AboutTheGC/TheTenPrinciples> (accessed 16 Jan 2013).

3 | Cf. ISO, "ISO 26000:2010(en). Guidance on social responsibility", <https://iso.org/obp/ui/#iso:std:iso:26000:ed-1:v1:en> (accessed 16 Jan 2013). The term "stakeholder" is used to •

published its *Green Paper on Promoting a European Framework for Corporate Social Responsibility*. In this, the EU defines CSR in accordance with other definitions as “a concept that serves enterprises as a basis to voluntarily integrate social and environmental concerns in their business activities and in their interactions with stakeholders”.⁴ Furthermore, trade associations and individual enterprises have also developed their own policies.

The emphasis of the European Commission on the voluntary nature makes it clear that socially responsible action not only involves compliance with legislation, but rather that an enterprise should also commit to taking the interests of its stakeholders into account. Enterprises profit from increasing their competitive ability and being able to avoid risks to their business activities. CSR can assist in this respect in enhancing the relationship with state actors, other businesses and the media and in improving customer loyalty. Employees can be motivated and the image of the enterprise elevated. Consequently, CSR is regarded as an integral element of every modern corporate strategy.

Socially responsible action not only involves compliance with legislation. An enterprise should also commit to taking the interests of its stakeholders into account.

Corporate responsibility manifests as a network of numerous factors and stakeholders: the state defines the legal boundary conditions within which enterprises may operate. Consumers have the countervailing buying power to punish producers for unethical conduct, and the media has the task of reporting on unethical working and production conditions. NGOs can exert additional pressure on enterprises, or support these in the implementation of CSR policies, while investors increasingly base their investment decisions on compliance with environmental and social standards. Other important stakeholders of enterprises are their own employees, the local communities at their production sites, business partners and suppliers, as well as industry associations.

designate persons or groups who have a justified interest in the progression or results of a process or project (“stakeholder groups”).

4 | Cf. EUR-Lex, *Grünbuch – Europäische Rahmenbedingungen für die soziale Verantwortung der Unternehmen*, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=de&type_doc=COMfinal&an_doc=2001&nu_doc=366 (accessed 16 Jan 2013).

As one of the most imperative global challenges, climate change also increasingly dominates the international debate on corporate responsibility. It is now standard international practice to also integrate climate protection in CSR strategies, and for enterprises to present their efforts to reduce greenhouse gas emissions in their own CSR reports. Enterprises strive to boost the efficiency of production and the goods produced in order to enable⁵ unavoidable CO₂ emissions to be offset and to increase the utilisation of renewable energies and recycling. They also endeavour to achieve greater transparency by measuring their emissions and publishing the data.

CORPORATE RESPONSIBILITY IN CHINA

There is no doubt that the rapid economic development in China over the past 30 years has had an enormous social and ecological impact. Consequently, the question of how enterprises can be brought to render a greater contribution to society is being increasingly discussed. China is not exactly renowned for particularly good working and produc-

tion conditions. Quite the contrary, one hears time and again of scandals in China, such as the exploitation of workers, some of whom even take their own lives out of desperation, as in the case of Foxconn, toys contaminated with dioxins, powdered milk contaminated with melamine, or civil protests in response

The view has become prevalent in the West that production in China blatantly disregards all environmental and social standards. China therefore has a serious image problem, which it must overcome through compliance with CSR principles.

to massive environmental degradation, to name but a few examples. Consequently, the view has become prevalent in the West that, while production in China may be cheap, it also blatantly disregards all environmental and social standards. China therefore has a serious image problem, which it must overcome through compliance with CSR principles.

The concept of CSR was largely unheard of in the People's Republic prior to the year 2000. It initially reached China – especially after the country's accession to the WTO in 2001 – via international enterprises, who required their suppliers to comply with certain minimum standards.

5 | This is understood to mean compensating for emissions resulting from production, e.g. through participation in reforestation projects or investments in renewable energies.

Multinational corporations frequently use their own standards in such cases, such as the Nike Code of Conduct.

Chinese enterprises at first regarded CSR as

a manner of non-tariff trade barrier intended to exclude them from exporting to industrial nations.⁶ This perception has only changed since 2005. Since the Chinese government established a framework for supporting the implementation of CSR in China, Chinese

politicians have frequently referred to this concept and increasingly link it to the development of a "Harmonious Society" (和谐社会 / *hexie shehui*).

Since 2005 the Chinese government has established a framework for supporting the implementation of CSR in China. Chinese politicians have frequently referred to this concept and link it to the development of a "Harmonious Society".

Chinese company law was amended to this end. Article 5 of the version from October 2005 stipulates that corporations "observe their social responsibility" (承担社会责任 / *chengdan shehui zeren*).⁷ The State Assets Supervision and Administration Commission (SASAC)⁸ responsible for the regulation of state-owned enterprises likewise published CSR guidelines in January 2008. These call on the 118 most important state-owned enterprises of China, which together account for more than 100 million employees, to set examples in CSR and submit CSR reports by the end of 2012. The guidelines also call for the intensification of environmental and climate protection. Paragraph 11 calls on state-owned enterprises to reduce their energy consumption, develop energy saving products and cut their emissions.⁹ At local level, CSR guidelines have been passed since 2007 in provinces, cities and Special Economic Zones, and CSR evaluation systems have been established for enterprises who operate in these.¹⁰ Several Chinese industry and trade associations have also published their own CSR standards, which can in part be attributed to their opinion that international standards should be adapted to

6 | Cf. Rolf Dietmar, "CSR in China – Recent Developments and Trends", in: *Oekom CR Review*, 2012, 51.

7 | Cf. "中华人民共和国公司法" (Companies Act of the People's Republic of China), http://www.gov.cn/flfg/2005-10/28/content_85478.htm (accessed 16 Jan 2013).

8 | SASAC is also the majority shareholder of the Chinese state-owned enterprise at national level.

9 | Cf. SASAC, "关于印发 关于中央企业履行社会责任的指导意见 的通知" (Notification of the Publication of the "Opinions on Implementation of the Social Responsibility of Central State-Owned Enterprises"), 2008, <http://www.sasac.gov.cn/n1180/n1566/n259760/n264851/3621925.html> (accessed 16 Jan 2013).

10 | Cf. Dietmar, n. 6, 52.

match local conditions. However, these standards are generally less restrictive than their international counterparts.¹¹

In 2006, the Shenzhen Stock Exchange published CSR guidelines for its listed companies. Two years later, the Shanghai Stock Exchange (SSE) followed suit, as well as publishing guidelines on the disclosure of environmental data that are even mandatory for some corporations listed on the stock exchange.¹² 2011 already saw 351 companies listed on the Shanghai Stock Exchange's published CSR reports. What's more, in 2009 the SSE also published for the first time a Social Responsibility Index of the 100 stock corporations listed in Shanghai with the best CSR performance.¹³

Awareness for corporate responsibility in Chinese enterprises has increased significantly in recent years. This is evident from the growing number of CSR reports published in China. While just 32 reports were publicly disclosed in 2006, the number had already reached 898 in 2011.¹⁴ A growing number of Chinese enterprises have also adopted international standards, signed international agreements, such as the UN Global Compact,¹⁵ or aligned the preparation of their CSR reports with the Global Reporting Initiative (GRI).¹⁶ While the role of pioneer was initially assumed by enterprises with foreign participation, other enterprises – especially state-owned enterprises – are now also highly active.

Small and medium-sized enterprises (SMEs) are not legally required to submit CSR reports. These usually only implement CSR when they operate on an export-based footing,

11 | Cf. *ibid.* The German Textile and Clothing Association (Verband der Textil- und Bekleidungsindustrie) published for instance the CSC9000T Standard, which is intended to be implemented by its approx. 1,300 member enterprises.

12 | Cf. Lin Liwen, "Corporate Social Responsibility in China: Window Dressing or Structural Change", in: *Berkeley Journal of International Law*, Vol. 28, No. 1, 2010, 76 et seq.

13 | Cf. Adam Lane, "How Private Equity is Investing Responsibly in China", BSR, 1 Oct 2012, <https://bsr.org/en/our-insights/blog-view/how-private-equity-is-investing-responsibly-in-china-part-one> (accessed 20 Feb 2013).

14 | Cf. Dietmar, n. 6, 51.

15 | Some 260 Chinese enterprises had already signed the UN Global Compact in 2012. Cf. Dietmar, n. 6, 53.

16 | Siehe Global Reporting Initiative, <https://globalreporting.org> (accessed 20 Mar 2013).

or as suppliers of international enterprises who place CSR requirements on them.¹⁷ Privately-owned Chinese enterprises are increasingly establishing foundations, or supporting projects in underdeveloped regions of the country. One well-known example is the Alashan SEE Ecological Foundation (阿拉善SEE生态协会), in which numerous familiar Chinese entrepreneurs have been involved since 2001, organising and financing reforestation projects to combat desertification, as well as other environmental protection projects.¹⁸ The concept of “pro bono” service, i.e. releasing employees for volunteer work in non-profit projects, has also gradually reached China in recent years. Indeed, the first professional service providers have already become established, connecting parties interested in “pro bono” activities with the right contacts. For instance, the Beijing Huizeren Volunteering Development Center (北京惠泽人咨询服务中心 / *Beijing huizeren zixun fuwu zhongxin*) has been established in Beijing. The Center determines the requirements of NGOs, searches for suitable experts in enterprises and then puts these in contact with the matching NGOs.¹⁹

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CSR PRACTICES OF CHINESE CORPORATIONS WITH FOREIGN DIRECT INVESTMENTS

According to the CSR guidelines of SASAC, responsible business practices on the part of Chinese enterprises contribute to China being acknowledged as a “responsible developing nation” and to an increase in its international “soft power”.²⁰ Consequently, state-owned enterprises are required to align their activities with international environmental and social standards when realising projects abroad. The China Africa Business Council (CABC) organised by the Chinese State Council together with the United Nations Development Programme (UNDP) has also published CSR guidelines for Chinese enterprises operating in Africa. Major state-owned enterprises, such as the national

17 | Personal interview with Wang Fengyuan, climate and environment expert at BSR sustainability consultancy.

18 | Cf. SEE foundation, <http://www.see.org.cn/see> (accessed 25 Jan 2013).

19 | Cf. Amanda Brown-Inz, “Bringing ‘pro bono’ to Beijing”, China Development Brief, 26 Nov 2012, <http://chinadevelopmentbrief.cn/?p=1322> (accessed 20 Feb 2013).

20 | Cf. n. 9.

oil corporations, mining enterprises, steel corporations and shipping companies have responded to these requirements and begun to also account for their CSR activities abroad. Sinosteel, for example, already published a *Sustainable Development Report Africa* in 2008, in which the enterprise emphasises that it endeavours to implement environmental and resource protection in its activities in Africa, and to comply with safety and health standards.²¹

In their CSR reports, Chinese enterprises make frequent reference to the requirements of the Chinese government, but in doing so also react to criticism of Chinese investments abroad. Time and again, Chinese enterprises are accused of failing to take the interests of local populations into adequate consideration when it comes to their investments, and of accepting environmental pollution as an unavoidable downside. These corporations have begun to invest in CSR projects to counteract negative reports on their commitment. However, elaborations on foreign activities so far account for an exceptionally small part of their CSR reports. Also, specialised CSR departments in general only exist at the headquarters of Chinese enterprises. On the whole, the CSR activities of Chinese corporations abroad are still at best low-key.²²

CLIMATE POLICY CHALLENGES OF THE PEOPLES' REPUBLIC OF CHINA

China is the world's biggest producer of gases harmful to the climate and also ranks amongst those countries most severely affected by climate change worldwide. On account of its high level of industrially based economic growth, the People's Republic also contributes increasingly to climate change. The country has been the largest emitter of CO₂ since 2007. Some 48.5 per cent of the worldwide increase in CO₂ emissions between 1990 and 2007 can be attributed to the People's Republic. China's share of global CO₂ emissions is expected to reach 27 per

48.5 per cent of the worldwide increase in CO₂ emissions between 1990 and 2007 can be attributed to the People's Republic.

21 | Cf. "Sinosteel Corporation Releases Sustainability Report On Africa", China CSR, 27 Oct 2008, <http://chinacsr.com/en/2008/10/27/3453-sinosteel-corporation-releases-sustainability-report-on-africa> (accessed 19 Jan 2013).

22 | Cf. Dylan Southerland and Glen Whelan, *Corporate Social Responsibility in China's largest TNCs*, Jul 2009, 12 et sqq.

cent in 2030. At the same time, climate change is today already causing droughts and reduced rainfall in Northern China, while Southern China suffers more flooding due to increased rainfall, which has a direct negative impact on food production. Consequently, it is crucial that Beijing plays an active role if the global temperature rise is to be limited to less than two degrees by 2100 compared to the pre-industrial era, and the impact of climate change be maintained at tolerable levels.²³

The Chinese government has recognised that a reduction in energy consumption, and thus also the associated industrial CO₂ levels, is crucial to achieving important development goals in the areas of environmental protection and energy security. Consequently, China has already set itself targets for reducing CO₂ emissions. In 2009, China's government announced that it would reduce CO₂ levels by 40 to 45 per cent by 2020 compared to 1990.²⁴ The ongoing twelfth Five Year Plan (2011-2015) envisages reducing energy consumption by 16 per cent and CO₂ emissions by 17 per cent per unit of GDP through the use of more efficient technologies. This is primarily to be achieved through the increased use of renewable energies, which should produce 15 per cent of China's primary energy by the year 2020.²⁵

Attaining these targets will require the vigorous participation of Chinese enterprises. The primary responsibility of the government is to establish the corresponding legal framework and to offer incentives to induce enterprises to embrace resource-efficient production. Among other measures, this will be realised by a gradual increase in energy prices, as well as tax incentives for the production of renewable energies and energy efficiency technology. Furthermore, enterprises should voluntarily realise their responsibility for making production processes climate friendly.

The primary responsibility of the government is to establish the corresponding legal framework and to offer incentives to induce enterprises to embrace resource-efficient production.

23 | Cf. Andreas Dittrich, "Climate Policy in the Chinese People's Republic – Groundwork for Sustainable Growth?", *KAS International Reports*, 4/2011, 77 et sqq., <http://kas.de/wf/en/33.22524> (accessed 21 Mar 2013).

24 | Cf. *ibid.*

25 | Cf. Peter Hefele and Eileen Lemke, "Zwischen Kontinuität und Wandel – Das 12. Fünfjahresprogramm der Volksrepublik China 2011-2015", *Länderbericht China*, May 2011, 6.

THE CONTRIBUTION OF CSR TO CLIMATE PROTECTION IN CHINA

Despite the enormous challenges, the efforts of Chinese enterprises in the area of climate protection as part of their CSR programmes have not developed strongly. A study has revealed that the majority of listed Chinese corporations have yet to take any action to measure their greenhouse gas emissions, yet alone to limit them. The situation is somewhat better when it comes to efforts to increase energy efficiency, which major Chinese corporations have recognised as being strategically important.²⁶ However, there are both state-owned and private Chinese enterprises that have integrated the reduction of CO₂ emissions in their CSR programmes. The number of Chinese corporations that develop emissions reductions strategies is growing continuously.

The nation's largest grid-based provider was one of the first state-owned enterprises to publish CSR reports. Since then, the enterprise has used these as a platform to call for commitment to the reduction of greenhouse gases.

The State Grid Corporation of China (SGCC), the nation's largest grid-based provider, was one of the first state-owned enterprises to publish CSR reports. Since then, the enterprise has used these as a platform to call for commitment to the reduction of greenhouse

gases. In a *White Paper on Green Development* from April 2010, SGCC describes how the expansion of an "intelligent grid" has enabled energy savings and the supply of electricity from renewable energies without high losses.²⁷ SGCC gives an account of how much additional electricity from renewable energies is fed into the electricity grid, and how many wind farms and other renewable energy sources are also connected to the grid.²⁸ The paper also explains how losses when distributing these resources via the grid

26 | Cf. Shen Xin, "中国上市公司环境责任调查报告发布" (Publication of the "Report on the Investigation into the Environmental Responsibility of Listed Chinese Enterprises"), 6 Jan 2013, http://syntao.com/CSRNews/CSRNews_Print_CN.asp?ID=15815 (accessed 28 Jan 2013); Carbon Disclosure Project (CDP), *Corporate Clean Energy Investment Trends in Brazil, China, India and South Africa, 2010*, 20.

27 | Cf. SGCC, "SGCC Releases the White Paper on Green Development, the First Among Chinese Corps", 12 Dec 2010, <http://www.sgcc.com.cn/ywlm/socialresponsibility/whitepaper/index.shtml> (accessed 8 Feb 2013).

28 | SGCC, "国家电网2011年社会责任报告" (SGCC CSR Report 2011), 60 et sqq., http://www.sgcc.com.cn/images/sgcc_csr/reports/2012/2011report.pdf (accessed 8 Feb 2013).

are being gradually reduced, how coal consumption per kilowatt hour of generated electricity is decreasing and how the enterprise is investing in a network of charging stations for electric cars.²⁹ While distributing these resources via the Chinese electricity grid is still fraught with problems and transmission losses are still high, the fact that SGCC even publishes corresponding data at all is a good start. However, the extent to which these disclosures can be independently verified remains to be seen. Such a step would be necessary for the public to understand the realisation of these self-appointed targets.

One example of a private Chinese enterprise that has embraced climate protection is IT enterprise Lenovo. According to the company, it already successfully avoided or offset all direct greenhouse gas emissions in 2010 and 2011 within the scope of its internal Climate Change Strategy. At the same time, Lenovo is working towards the incremental reduction of its suppliers' emissions as part of a supply chain program. Through these efforts, the enterprise wishes – in its own words – to primarily increase energy efficiency, but also to utilise electricity from renewable energy sources. The corporation only invests in carbon offsets when such efforts do not suffice. Additionally, those means of transport that produce the lowest CO₂ emissions should always be used, and the enterprise endeavours to reduce the transportation of goods via air mail. Packing materials and end products are also recycled to an ever greater extent. Lenovo has also installed photovoltaic installations at some of its production sites in China for local electricity generation, as well as solar lamps and hot water solar systems.³⁰ Other privately owned Chinese enterprises that have integrated CO₂ reduction in their CSR strategies include electronics producers Haier and Suning. Together with other electronics enterprises, they have established a “green” value adding chain. They also expect their suppliers to comply with energy efficiency standards.³¹

29 | Cf. *ibid.*, 63 et sqq.

30 | Cf. Lenovo, “Think Green – Combating Climate Change”, http://lenovo.com/social_responsibility/us/en/climate.html (accessed 8 Feb 2013).

31 | N. 17; cf. also SynTao, “Suning Corporation released 2010 CSR report”, 28 Mar 2011, http://syntao.com/CSRNews/CSRNews_Show_EN.asp?ID=13703 (accessed 22 Feb 2013); Suning, “阳光使命-苏宁电器企业2011年社会责任报告” (Mission Sunshine Project – Suning 2011 CSR Report), 50.

There are numerous other examples of Chinese enterprises that have integrated aspects of climate protection into their CSR strategies to a certain degree. These include oil corporations, energy enterprises and steel corporations, whose activities are associated with particularly high CO₂ levels.³² As energy consumption in buildings is extremely high on account of a lack of insulation, the poor quality of building materials and only meagre use of energy saving technologies, it is pleasing to see that Chinese real estate enterprises have also begun including climate protection measures in their CSR reports. For instance, the largest real estate enterprise in the People's Republic of China, Vanke, details in its current CSR report how it is increasing the number of energy efficient buildings, investing in the rehabilitation of existing building fabric,³³ and how that can prevent greenhouse gas emissions. The

Even if the total number of energy efficient properties in China is still virtually negligible, CSR reports foster a certain degree of competition between real estate enterprises as to who is most committed to building.

enterprise asserts that more than half of the private residential houses certified to date in accordance with the Chinese Three Star Standard (绿色三星级别 / *lvse sanxing jibie*) were built by Vanke.³⁴ Even if the total number of energy efficient properties in China is still virtually negligible, such reports foster a certain degree of competition between real estate enterprises as to who is most committed to building in an energy efficient manner.³⁵

Smaller private enterprises that are not yet obliged to submit CSR reports and also lack their own global brands mainly participate in efforts to produce in a more climate-friendly manner when they operate as suppliers for international enterprises or major Chinese corporations, which like Lenovo attempt to integrate this factor in their endeavours. A further example is Walmart. The retail chain

32 | Cf. KPMG, "China's 12th Five-Year Plan: Sustainability", Apr 2011.

33 | The average lifetime of a Chinese building is just 37 years, equating to only a quarter of the comparative value for German buildings. Enormous quantities of concrete and steel are required for the frequent demolition and new construction of buildings, the production of which is particularly energy-intensive and harmful to the climate.

34 | Cf. China Vanke, "2011年度企业社会责任报告" (CSR Report 2011), 47 et sqq.

35 | Large-scale change can only be realised through a combination of effective, implemented legal/administrative requirements and price incentives, especially as regards the (hitherto) low energy prices.

set itself the target of increasing the energy efficiency of its 200 key suppliers in China by 20 per cent from 2008 to 2012. To achieve this, baseline energy consumption and possibilities for saving energy were initially ascertained with the assistance of sustainability consultancy BSR and regular training sessions subsequently held, in which the supplier company managers were trained in matters of energy saving.³⁶ Amongst the Chinese enterprises in the iron and steel industry, Shanghai-based enterprise Baosteel – China's second-largest iron and steel manufacturer – leads the field in this sector. In order to reduce emissions of greenhouse gases and environmental pollutants along the entire value chain, the enterprise already published its Green Purchasing Action Plan³⁷ in 2008, on the basis of which additional plans have been published in recent years with which the enterprise commits itself and its suppliers to sustainable production and economic management. It has consequently become a role model for other enterprises in the steel industry.

SMEs that operate as suppliers in the automotive industry are usually certified in accordance with international environmental standard ISO 14000. As these suppliers in turn procure components from other SMEs, the requirements are passed on to a larger group of enterprises. However, those SMEs that do not produce goods for the international market are still relatively weak when it comes to implementing environmental standards. For reasons of cost, virtually no investments are made in technology to boost energy efficiency and reduce emissions. They frequently have difficulty even fulfilling the existing legal requirements. If they conduct CSR measures at all, these are generally limited to their own workforce, e.g. through safety standards and non-profit projects at the production sites.

SMEs that do not produce goods for the international market are still relatively weak when it comes to implementing environmental standards. For reasons of cost, virtually no investments are made to boost energy efficiency and reduce emissions.

36 | Cf. BSR, "Walmart: Improving Supplier Energy Efficiency", Jun 2010, <https://bsr.org/en/our-insights/case-study-view/walmart-improving-supplier-energy-efficiency> (accessed 18 Feb 2013).

37 | Cf. Carbon Disclosure Project, "CDP China 100 Executive Summary", 2011.

RESPONSIBLE INVESTMENTS AND CHINA'S "GREEN CREDIT POLICY"

A key aspect of CSR involves the responsibility of investors for the enterprises and projects they finance. A growing number of institutional and individual investors are interested in investing their money in sustainable projects. In 2005, the United Nations formulated the basic principles of sustainable investment in the Principles for Responsible Investment (PRI). The signatories to the PRI undertake to refrain from investing in enterprises or projects whose activities have a negative impact on humans or the environment. The first sustainability funds are

Stock exchanges offer investors indices of enterprises that distinguish themselves through compliance with high environmental and social standards. Several Chinese investment funds have already signed the PRI.

also becoming established in China. To aid orientation, stock exchanges offer investors indices of enterprises that distinguish themselves through compliance with high environmental and social standards. Several Chinese investment funds have already signed the PRI. The signatories can essentially be divided into two groups: those like Tsing Capital, who deliberately invest in projects that have a positive impact on climate protection, such as in the area of renewable energies or energy efficiency, and those like Orchid Capital, who purchase shares in all manner of enterprises as long as these avoid social and ecological risks.³⁸ Within the scope of the "Green Securities Policy" of China, enterprises with high levels of environmental pollution cannot be listed on any Chinese stock exchange as long as the Chinese Ministry of Environmental Protection (MEP) refuses to give its approval. This policy has already prevented, or at least delayed, the stock exchange listing of at least 100 enterprises.³⁹

Banks also bear responsibility for the effects of their lending policies on humans, the environment and the climate. If they participate in financing projects that cause high levels of CO₂ emissions, they at least indirectly share responsibility for climate change. If, however, they increase lending to enterprises that pursue renewable energies, energy efficiency and environmental protection, they can render an important contribution to sustainable development. The Equator Principles passed in 2003 and most recently

38 | Cf. Lane, n. 13.

39 | Cf. Adam Lane, "The State of Sustainable Business in China", GC Ticker, Jan 2013, 13.

revised in 2011 formulate rules for risk management for banks when granting loans. This voluntary set of rules is intended to ensure compliance with environmental and social standards in projects financed by the participating banks. Of the 78 banks to have adopted the Equator Principles to date, only one is a Chinese bank, Industrial Bank.⁴⁰

China's government has likewise realised the importance of the financial sector for environmental and climate protection. Together with the People's Bank of China (PBoC) and the China Banking Regulatory Commission (CBRC), MEP published guidelines for a Green Credit Policy (绿色信贷政策 / *lvse xindai zhengce*) in July 2007.⁴¹ These guidelines call on Chinese banks to analyse environmental and climate risks prior to the granting of loans, and to refuse credit to those enterprises with poor environmental performance. Additionally, guidelines on expanding credit for the development of climate-friendly and energy-efficient technologies are being developed. According to experts, these recently revised green credit guidelines are amongst the most progressive in the world and make China a pioneering force in Asia.⁴² In the wake of these new guidelines, Chinese commercial banks have begun to submit CSR reports in which they document their implementation of the guidelines. The Industrial Bank has reacted most quickly and comprehensively to these new guidelines. It became the first Chinese bank to establish a department dedicated to environmental and climate issues, the Sustainable Finance Office, and restricted the granting of loans to enterprises responsible for high levels of energy consumption and environmental degradation (两高 / *liang gao*).⁴³ Other major Chinese banks have adjusted their lending policies and established working groups for "green finance". When granting loans for energy-saving and environmental protection projects, the Industrial and Commercial Bank of China (ICBC) led the field in 2008. In the same year, the China Merchants Bank sent eleven warnings to customers within the scope of the

The guidelines of the Green Credit Policy call on Chinese banks to analyse environmental and climate risks prior to the granting of loans, and to refuse credit to those enterprises with poor environmental performance.

40 | Cf. Equator Principles Association, <http://equator-principles.com> (accessed 22 Jan 2013).

41 | Cf. Lin, n. 12, 80.

42 | Cf. Lane, n. 13.

43 | Cf. "Chinese Banking Industry Environmental Record (NGO Analysis) Executive Summary", 2010, 8 et sqq.

“Green Credit Policy” and placed 144 customers on a warning list. Since 2008, the Minsheng Bank has successively reduced its lending to small coal-fired power stations that display poor energy efficiency. Nevertheless, the efforts of most Chinese state-owned banks in this area still need to be significantly improved.⁴⁴

CHINESE MEDIA AS “WATCHDOGS”

China’s media sector has become greatly differentiated in recent years. Numerous newspapers and periodicals have arisen that specialise in climate and environmental topics. There are also hundreds of Chinese websites dedicated exclusively to covering climate and environmental protection.

The topic of high levels of fine particulate pollution in China was first made known via reports on the Internet and in China’s print media, forcing the Chinese government to take action.

These media assume the task of raising the Chinese public’s awareness of climate protection and of exerting pressure on the government and enterprises. For instance, the topic of high levels of fine particulate pollution in China (PM_{2.5}) was first made known via reports on the Internet and in China’s print media, forcing the Chinese government to take action. This pressure resulted in several Chinese cities commencing measurements of levels of fine particulates in 2012 and publishing the values. Specialised media review this data and compare it with independent sources.⁴⁵

The Chinese-English periodical *Eco-nomy* (碳商 / *tanshang*) published in Shanghai specialises in reporting on environmentally and climate friendly innovations, providing enterprises that have embraced climate protection with an advertising platform. A current issue reports on the efforts of retail chains to reduce their CO₂ emissions. One particular focus of the periodical in addition to CSR is “social entrepreneurship”, i.e. projects that have a positive impact on the environment and society, while generating profits. The periodical also regularly organises workshops in which entrepreneurs, NGO activists and media representatives can present their ideas for low-CO₂ development. *Eco-nomy* is also holding a major CSR conference in China in

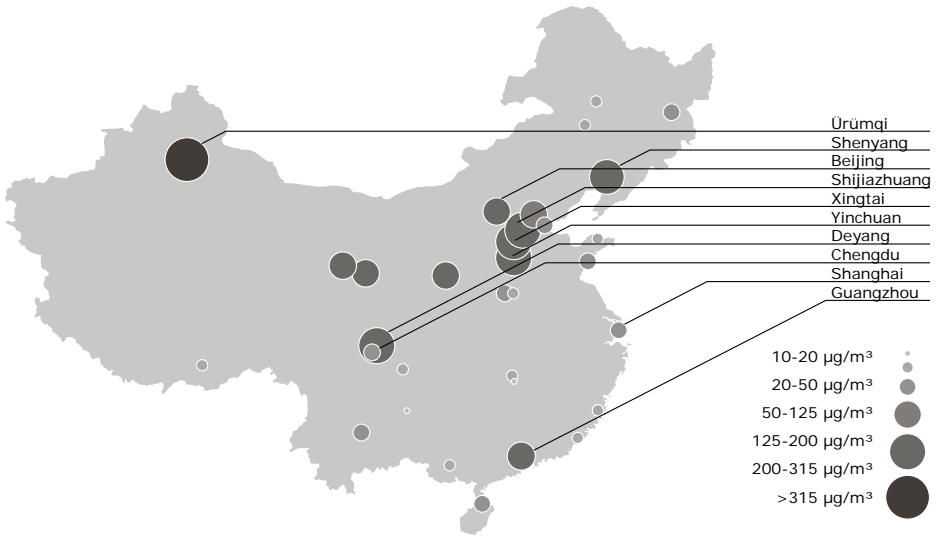
44 | Cf. *ibid.*, 9 et seq.

45 | Cf. Peter Hefele and Andreas Dittrich, “Climate Change and Public Interest – New ways of participation”, Conference Report, 2012, 3 et sqq., <http://kas.de/china/en/publications/30800> (accessed 8 Feb 2013).

2013.⁴⁶ Traditional media are also increasingly reporting on CSR and climate protection, such as *Southern Weekend*, which is well known for its critical reporting.⁴⁷

Fig. 1

Fine dust pollution (PM_{2,5}) of chinese cities



The high fine dust pollution in chinese cities was only publicized via the internet. The pollution measured for Beijing in January 2013 exceeded the WHO-limit of 10 µg/m³ thirteenfold. | Source: TeaLeafNation, own illustration.

Those web portals specialised in environmental and climate protection include bilingual website Chinadialogue. This has become a key platform for international exchange on environmental and climate protection and the work of Chinese NGOs in this area.⁴⁸ The three largest Chinese web portals (Sina, Sohu and Tencent) have likewise developed thematic websites that are highly dedicated to reporting on climate protection. The Website green.sina⁴⁹ reports on the best practices of enterprises that have adopted more

46 | Cf. *Eco-nomy*, <http://tanshangmedia.com> (accessed 20 Feb 2013).

47 | Cf. Lin, n. 12, 84.

48 | Cf. Chinadialogue, <http://chinadialogue.net> (accessed 29 Jan 2013). The non-profit organisation gets supported by numerous foundations

49 | Cf. green.sina (新浪环保 / xinlang huanbao), <http://green.sina.com.cn> (accessed 8 Feb 2013).

environmentally friendly production processes, publicises participation in projects such as Earth Hour⁵⁰ and provides the opportunity to make donations to climate protection projects.

Social media also play an increasingly important role in the monitoring of corporate conduct. Microblogs like Sina Weibo rapidly disseminate information on environmental pollution and social dumping by enterprises. This elevates the risk for corporations of becoming pilloried by the “virtual” public.⁵¹ At the same time, enterprises use their own microblogs to provide information on their CSR projects. However, Chinese journalists expose themselves to risks when they report on environmental pollution caused by state-owned enterprises. Time and again, critical reports are censored.

THE ROLE OF NGOS IN CSR

Chinese civil society actors still have far less influence than their western counterparts, but are gradually developing into important lobby organisations for climate protection vis-à-vis the government and enterprises.⁵² In recent years, the number of environmental and climate NGOs in the People's Republic has risen greatly, and these have become more professional. Including international NGOs active in China and those organised by the government (GONGOS), it is estimated there have been more than 3,000 institutions specialised in climate and environmental protection in 2008. More than 60 per cent of these involved non-governmental NGOs.⁵³ For a number of years, Chinese NGOs have also taken part in international climate negotiations and the Chinese climate protection movement has received

50 | During the Earth Hour (地球一小时“活动 / diqiu yi xiaoshi huodong), all public and private institutes around the world are called on to symbolically switch off their lights for one hour, in order to increase the awareness of climate change. Many Chinese cities and households also participated in the last Earth Hour on 31 March 2012. For instance, the lights of the Olympic Stadium in Beijing known as the “bird's nest” were switched off, as were those in all buildings in Shanghai's busy People's Square.

51 | N. 17.

52 | Cf. Patrick Schröder, *Civil Climate Change Activism in China – More than meets the eye*, 2011, 4.

53 | Cf. Hefele and Dittrich, n. 45, 5.

an enormous boost, especially from the first China-hosted conference of the United Nations Framework Convention on Climate Change (UNFCCC) in Tianjin in 2010.⁵⁴ In this context, their influence on enterprises has also increased. They act both as partners in the implementation of climate protection strategies, and as “watchdogs” who inform on the irresponsible conduct of enterprises, as well as organise protest actions.

A number of NGOs assist enterprises in measuring their greenhouse gas emissions and in independently reviewing and publishing the corresponding data. This simultaneously enhances the transparency of the participating enterprises and establishes the groundwork for reducing these emissions. The British NGO Carbon Disclosure Project (CDP), the world’s most important institution for emissions disclosure, has also been active in China since 2008, and a growing number of Chinese enterprises provide CDP with information that is subsequently reviewed by independent analysts. However, of the 100 largest listed companies in China, only eleven responded to the annual CDP questionnaire in 2011, and just 35 made relevant data available.⁵⁵

The British NGO Carbon Disclosure Project has also been active in China since 2008. A growing number of Chinese enterprises provide CDP with information that is subsequently reviewed by independent analysts.

Local NGOs also participate in the calculation and disclosure of emissions data. Beijing-based NGO Institute for Environment and Development (IED), for instance, assists SMEs in particular in efforts to measure their energy consumption and emissions.⁵⁶ Another NGO, the Institute of Public and Environmental Affairs (IPE), developed the Pollution Map platform that reports on the environmental performance of enterprises in China. This lists in detail the violations of individual enterprises and names those companies that have not yet provided any adequate information for measuring their emissions data and have thus failed to comply with the requirement of state environmental authorities to transparently disclose their emissions values. The website thus enables enterprises to inform on suppliers who fail to

54 | Cf. Schröder, n. 52, 12.

55 | Cf. CDP, “CDP China”, <https://www.cdproject.net/en-US/WhatWeDo/Pages/China.aspx> (accessed 29 Jan 2013).

56 | Cf. Schröder, n. 52, 8.

meet environmental standards.⁵⁷ The effect is also apparent in the growing number of reviews of environmental standards, which are predominantly carried out by third parties commissioned by multinational corporations in China to review their suppliers.⁵⁸ At the same time, pressure is applied at the local administrative level to establish control mechanisms, as the requirement of government authorities for greater transparency primarily involves state-owned enterprises. The results of the nationwide Pollution Information Transparency Index (PITI) of 2011, however, show that progress in the announcement of environmental data by state authorities is only discernible in some regions. However, regions with a high incidence of stronger environmental pollution caused by enterprises fail to display any greater transparency.⁵⁹

The Green Choice Alliance, which has the environmental performance of enterprises reviewed independently and reports on the endeavours of enterprises to improve their performance.

Together with other NGOs, IPE also established the Green Choice Alliance, which has the environmental performance of enterprises reviewed independently and reports on the endeavours of enterprises to improve

their performance.⁶⁰ NGOs are also involved in “green finance advocacy”⁶¹ in China and review the extent to which banks actually implement China’s “Green Credit Policy”. Furthermore, nine NGOs (Green Watershed, Friends of Nature, Institute of Public & Environmental Affairs, Green Earth Volunteer, Global Environmental Institute, Civil Society Watch, China Development Brief, Green Volunteer League Chongqing and Hengduan Mountains Research Society) have formed an alliance. Within the framework of the Chinese Bank Awards of the *Economic Observer*

57 | Cf. Institute of Public & Environmental Affairs (IPE), <http://ipe.org.cn> (accessed 22 Jan 2013).

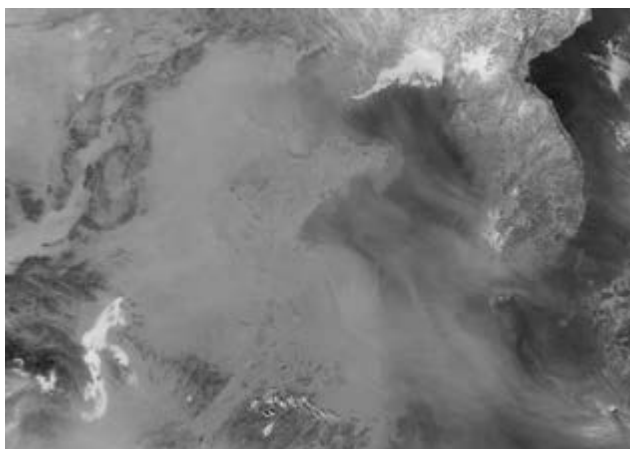
58 | Cf. Rockefeller Brothers Fund, “Institute of Public and Environmental Affairs”, <http://rbf.org/close-up/institute-public-and-environmental-affairs> (accessed 20 Mar 2013).

59 | IPE and Natural Resources Defense Council (NRDC), *Open Environmental Information: Taking Stock. The 2011 Pollution Information Transparency Index (PITI). Third Annual Assessment of Environmental Transparency in 113 Chinese Cities*, <http://ipe.org.cn/Upload/Report-PITI-2011-EN.pdf> (accessed 20 Mar 2013).

60 | N. 17; cf. also IPE, “The Green Choice Alliance”, <http://ipe.org.cn/en/alliance/gca.aspx> (accessed 22 Feb 2013).

61 | This means that pressure is exerted on banks to base their lending practices on principles of sustainability, e.g. by informing the public of which banks are responsible for financing environmentally harmful projects.

periodical, these NGOs have presented the Green Banking Innovation Award (绿色银行创新奖 / Lvse yinhang chuanxin jiang) since 2007 to banks that have shown particular commitment to environmental and climate protection.⁶² In 2010, the group also published for the first time a detailed report on the environmental performance of the Chinese banking sector (中国银行业环境记录 / *Zhongguo yinhangye huanjing jilu*). This positively highlights “best practices” and simultaneously calls for improvements in the realisation of ecological responsibility.⁶³



Fine dust particles moving east over the Bohai Bay, about 150 km west of the capital region. | Source: SeaWiFS Project, NASA/Goddard Space Flight Center, ORBIMAGE (Jan 2002).

PROSPECTS: CSR AS THE INSTRUMENT OF CHOICE FOR EFFECTIVE CLIMATE PROTECTION IN CHINA?

Chinese enterprises have greatly expanded their CSR activities in recent years. The number of CSR reports published in China has risen rapidly. The realisation is gradually being asserted that the interests of all stakeholders must be taken into consideration and that assuming social responsibility also strengthens the competitive ability of Chinese enterprises at home and abroad. A growing number of these corporations have already developed strategies to

62 | Cf. BankTrack, “Chinese NGOs announce third Green Banking Innovation Award”, 22 Oct 2010, http://banktrack.org/show/news/chinese_ngos_announce_third_green_banking_innovation_award (accessed 22 Jan 2013).

63 | Cf. n. 43.

reduce CO₂ emissions and express an awareness of their joint responsibility in combating climate change in their CSR reports.

Stimuli for this change in strategy were provided primarily by the Chinese government, which has set itself the goal of establishing a "Green Economy". Its strong focus on developing renewable energies and increasing energy efficiency has had a positive impact on the efforts of state-owned enterprises, in particular, but also on those of privately-owned enterprises in the area of climate protection. Today, China already leads the field in the utilisation of renewable energies. Thanks to legislation and the publication of guidelines, it has also had a decisive influence on the development of CSR reporting. Those corporations that invest in the reduction of greenhouse gases at an early stage will benefit from doing so, as the pressure to publish emissions values and reduce emissions levels will increase further. China can also use these experiences for the introduction of a nationwide emissions trading system, which reports indicate is being aimed for. This plan is based on the previous practices of pilot programmes in the cities of Beijing, Tianjin, Shanghai, Chongqing and Shenzhen and, with its expansion in 2014 to the provinces of Guangdong and Hubei, is intended to culminate long-term in a nationwide system that would represent geographically the most comprehensive CO₂ trading system in the world.⁶⁴

The quality of CSR reports published in China is in need of significant improvement. In the area of climate protection, enterprises must prioritise improvement of their measurement methods and have their data reviewed by independent experts.

The established CSR guidelines of SASAC are expected to be intensified and also become mandatory for regional and private enterprises. The quality of CSR reports published in China is also in need of significant improvement. In the area of climate protection, enterprises must prioritise improvement of their measurement methods and have their data reviewed by independent experts.⁶⁵

64 | Julian Drape, "China serious about Carbon trading report", *The Australian*, 11 Oct 2012, <http://theaustralian.com.au/news/breaking-news/story-fn3dxiwe-1226493518917> (accessed 19 Mar 2013).

65 | Cf. CDP, "中国报告2010" (Report China 2010), 27.



In August 2011, a demonstration took place against the construction of the Fujia chemical plant close to Dalian in the Liaoning province. The authorities gave in under the pressure of the protests, but didn't name any alternative location. | Source: GlobalVoices (CC BY).

The requirements of international cooperation partners and the government will become increasingly stringent as a result of pressure from Chinese civil society. China's citizens are increasingly aware of the threat posed by environmental pollution and climate change and demand responsible action in these areas. This was again evident from a series of protests in 2012. In July 2012, demonstrators protested against the construction of a copper plant in Shifang in the province of Sichuan,⁶⁶ and in October 2012 against the expansion of a refinery by Sinopec in the coastal city of Ningbo in the Zhejiang province.⁶⁷

The increasing professionalisation of Chinese NGOs and the growing involvement of citizens in their actions will further intensify the pressure on corporations to improve their CSR practices and environmental and climate performance. If civil societies in African and South-East Asian countries in which Chinese investments repeatedly attract criticism on account of poor social and environmental standards become stronger, those enterprises operating there will have no

66 | Cf. Tang Hao, "Shifang: a crisis of local rule", *Chinadialogue*, 18 Jul 2012, <http://chinadialogue.net/article/show/single/en/5049> (accessed 20 Feb 2013).

67 | Cf. Andrew Jacobs, "Protest Over Chemical Plant Force Chinese Officials to Back Down", *The New York Times*, 28 Oct 2012, <http://nytimes.com/2012/10/29/world/asia/protests-against-sinopec-plant-in-china-reach-third-day.html> (accessed 20 Feb 2013).

choice than to expand their CSR activities. Reporting by traditional and non-traditional media on environmental and climate offences by Chinese enterprises is on the rise. Cooperation between NGOs and the media should be further developed in order to step up the pressure.

Although the role of civil society actors, including enterprises, is gaining in importance, China's national climate policy will largely continue to be determined by the government. The fact that it has elevated the topic of environmental protection to one of the top issues on the agenda of the Chinese National People's Congress and, above all, made possible the parallel Chinese Political Consultative Conference in March 2013, illustrates that the communist state leadership continues to see itself forced to take action. A new plan envisages the establishment of a monitoring network by 2020 to review the groundwater quality throughout Northern China under the management of four ministries.⁶⁸ CSR represents an important supplement to this policy, but cannot replace it. The actual effect that CSR measures can achieve with the continuous establishment of mechanisms for monitoring and measuring emissions values would, however, doubtless reinforce the contribution of civil society actors in the long term.

Efforts to combat climate change through the promotion of renewable energies, the tightening of energy efficiency standards and price incentives, etc. must be continued. It is also crucial to better establish climate and environmental protection at local levels. Furthermore, social commitment should be more strongly supported and enterprises with outstanding CSR practices recognised accordingly.

68 | Wu Wencong, "Advisory Body sets sights on pollution", *China Daily*, 12 Mar 2013, 5, http://europe.chinadaily.com.cn/china/2013-03/12/content_16300612.htm (accessed 22 Mar 2013).

