

und als Gegengewicht zur Öffnung der Verfahren für Dritte durchaus überzeugt. Auf der anderen Seite sollte aber den Streitbeilegungsorganen, den Panels und dem *Appellate Body*, doch relativ weites Ermessen zugestanden werden, eine Intervention zuzulassen, denn der Prozeßökonomie, die vor allem dem Gericht zugute kommt, steht auf der anderen Seite das Interesse der Streitparteien an einer zügigen Beilegung des Streits entgegen, das durch den Aspekt der Prozeßökonomie nicht beeinträchtigt werden darf. Ohne Vorbehalte sind jedoch die grundsätzlichen Überlegungen des Autors zu teilen, gerade in obligatorischen Streitbeilegungsverfahren auf internationaler Ebene die Beteiligung Dritter verstärkt zu befürworten, dabei aber nicht die Gefahr zu übersehen, die durch eine Vielzahl an Verfahren daraus resultieren kann. Daher wird zurecht als Gegengewicht eine Bindung an die Entscheidungen und damit fehlendes Rechtsschutzbedürfnis für die Befassung eines Panels mit der gleichen Angelegenheit vorgeschlagen. Damit ist sicher ein sinnvoller und tragfähiger Ansatz gegeben, über dessen Schwierigkeiten bei der Ausgestaltung im Detail jedoch kein Zweifel bestehen kann.

Zusammenfassend ist die Arbeit von Koepf als ein wesentlicher Beitrag zum WTO-Recht und zur internationalen Streitbeilegung insgesamt zu würdigen, da eine Reihe der Überlegungen, die für das WTO-Verfahren angestellt worden sind, sich auch für andere Gerichte als Denkanstoß eignen.

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Amnesty versus Accountability

Third Party Intervention Dealing with Gross Human Rights Violations in Internal and International Conflicts

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Written in an easy and relaxed tone that is not difficult to follow, the book wants to give guidance for third party intervention regarding the crucial question of how to respond to gross human rights' abuse of the past, intending to bridge the gap between the aspects of international law and negotiation theory.

The study is divided into three main parts. The first part describes the accountability mechanisms that were used in conflict resolution such as the "Nuremberg Tribunal" and South Africa's Truth and Reconciliation Commission. It reflects upon the goals of third party intervention and the antagonism between amnesty and accountability for brutal criminal behaviour. In this context, the notion of accountability is used in the sense of individual legal liability. The second part scrutinizes the research design for case studies on El Salva-

dor, Bosnia and South Africa. These cases explain how different mechanisms for accountability were set up in conflicts of different nature. The third part describes what lessons can be learned from those various cases and in what way third party intervention can be improved in dealing with massive human rights' abuse of the past. The authoress attempts to develop a hybrid model of strategies for promoting accountability. In her introduction Angelika Schlunck asks "What is the goal of third party intervention? What is accountability? Why is the issue important for third party intervention? Who can promote accountability? Why should a third party engage in conflict management?" and "What can the third party intervenor do to promote accountability?" She defines terms such as international conflict and third party intervention and reminds us of the philosophies about what restoring peace requires. Schlunck explains who should be held accountable and how as well as for what types of crimes individuals should be held accountable. She distinguishes three categories of accountability mechanisms: crime prevention, fact-finding and acknowledgment, and administrative procedures.

The different accountability mechanisms, their purpose and their limitations are explored in part I. The authoress follows Stephen Stedman's definition of "Spoilers" referring to the group of disruptive losers of conflicts, naming Saddam Hussein or Slobodan Milosevic as most dangerous examples. "Letting a criminal predecessor elite get away with murder and similar crimes affects the legitimacy of the successor regime, its credibility and commitment to democracy, and the trust of the citizens in the workability of its political institutions. Indemnity for horrendous crimes also violates the principle of the rule of law." (p. 18) Scrutinizing the spoiler problem she states the first issue is the identification of potential spoilers, distinguishing them like Stedman into categories of limited, greedy and total spoilers. The second task is to assess these spoiler types and their disruptive behaviour and the third step is to design the appropriate spoiler management strategy for these various groups, inducement comprising amnesty and pardon, socialization through "carrot-and-stick-tactics" (p. 22), and coercion such as criminal prosecution and punishment. To answer the question whether, as a decision-maker, one is free to decide to prosecute or not, Schlunck looks at the legal aspects of amnesty and accountability. The principle of the rule of law is described conclusively. "(...) the decision to grant amnesty has to be taken in the context of national and international law applicable." (p. 26) Is there a duty to prosecute? The authoress analyses the relevant international treaties in the context of conflict: The Statute for a Permanent International Criminal Court (ICC) 1998, the Genocide Convention (1948), the Apartheid Convention (1973), the Torture Convention (1984) and the Geneva Conventions (1949) including Additional Protocol I. Then she looks at international human rights' instruments and the right to remedy and the duty to prosecute, citing the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the European Convention of Human Rights and Fundamental Freedoms and the African Charter on Human and Peoples' Rights as well as international customary law. Schlunck distinguishes three categories of accountability mechanisms: "first criminal prosecution encompassing international tribunals such

as the International Military Tribunal (IMT), better known as the Nuremberg Tribunal, and the ad hoc Tribunals for the Former Yugoslavia (ICTY) and to Rwanda (ICTR).” (p. 50). The second category is fact-finding and acknowledgement of the harm and suffering of the victims, in most cases without any criminal sanctions for the offenders. here she includes the various types of truth and reconciliation commissions, commissions of inquiry and human rights commissions. The third category highlights administrative procedures. Three case studies make up the major bulk of part II of this book. After an explanation on the methodological frame work which she intends to use to compare the findings for the case studies on El Salvador, Bosnia/Herzegovina and South Africa she delves into the core of matters.

In order to be able to grasp the essential nature of the conflict in El Salvador, there is a detailed description of its history from 1979/80 to 1989-91. Schlunck teaches us about the political goals and fundamental values of the parties involved, tells of the beginnings of UN-assisted negotiations, especially the involvement of their Secretary General and the prospects of the parties for the eventual realization of their goals and values. She identifies the potential spoilers, their type and positions, searches for the best approach to deal with the past, looking at policy options. In the 1990 Geneva agreement four primary objectives were formulated: "To end the armed conflict by political means as speedily as possible, To promote the democratisation of the country, To guarantee unrestricted respect for human rights, To re-unify the Salvadoran society" (p. 111/112). Discussing the accountability for the gross human rights' violations and protection of human rights the San José Agreement is scrutinized, followed by the Agreement of April 27, 1991, in which the parties establishes the commission on the Truth for El Salvador and the ad hoc Commission for Purging the Armed Forces. In the Text of the final peace agreement the parties acknowledge the need for criminal prosecution of those members of the armed forces who were responsible for crimes and serious human rights' abuse. The wording demonstrates a commitment to fighting impunity, but stresses that the Truth Commission was not designed to replace justice but to be seen as a supplementary tool. Still, the implementation proved problematic because one week after the signature/conclusion "the Salvadoran Legislative Assembly enacted a general amnesty for political crimes committed during the 12-year civil war." (p. 116). The authoress deals with the barriers of accountability – the country's culture of impunity, the role of the security forces, the failing judicial system – and the opportunities for accountability, stating that international pressure from the U.S. and the neighbouring countries in Central America contributed considerably to the government's shift in policy. One of the main questions is if the UN mediators could have done more to promote accountability in El Salvador. In Schlunck's opinion this is unlikely. Her view becomes evident when she lists the limits of any third party intervention. Before she draws her conclusions regarding the lessons learned from El Salvador there is a quick reminder about which factors account for success or failure in a peace process. For a country that suffered 12 years of brutal war the outcome was a major accomplishment.

In the section on Bosnia/Herzegovina Schlunck first explains the essential nature of the conflict, tells us about the history, Tito's era and the dissolution of Yugoslavia after the dictator's death. She starts with the referenda in Slovenia and Croatia, Serbian nationalism, the European reactions to the fighting especially since the Germans had gone ahead and officially recognized both Croatia and Slovenia as independent states in 1991. She deals with the UN mission UNPROFOR, the peace keeping forces in 1992, when nationalism had transformed Bosnia into a battleground of ruthless contenders, secession becoming a controversial issue. "On April 6, 1992, Bosnia/Herzegovina declared its independence from the Federal Republic of Yugoslavia. In reaction to the Bosnian move, on April 27, 1992, Serbia and Montenegro formed the Federal Republic of Yugoslavia" (p. 139), the former SFRY ceasing to exist. Following a description of the civil war she deals with European Union and United Nations Third Party Intervention, listing the Lisbon Agreement, the Vance-Owen Plan, the "Invincible Acquis" and the EU Action Plan, none of them having any really significant impact, showing that Clausewitz's dictum still applies that "war is the continuation of policy by other means". Summing up the war against civilians she elaborates on the battle of Sarajevo, the flight ban over Bosnia, safe areas and NATO air strikes. In 1994 both the United States and Russia became more actively involved in the conflict settlement process. Schlunck describes the involvement of both parties, especially the U.S. peace talks in 1994 and the forming of the "contact group" and its plan welcomed by the Security Council but not by the Bosnian Serbs. Still, the Dayton Framework Agreement was signed late in 1995 and finalized in Paris. In order to be able to understand the political goals and fundamental values of the parties there is a fine background history on the Serbs, Croats and Bosnian Muslims as well as of the relevant stakeholders Slovenia, Macedonia, Kosovo Albanians, The EU, United Kingdom, Germany, NATO, UN and – a particularly interesting player pursuing her own interests – the United States. "The Dayton peace negotiations are particularly interesting, because they are the first peace negotiations that could refer to a pre-existing accountability mechanism to take care of the heinous crimes committed during the war. The UN Security Council had established the International Criminal Tribunal for the Former Yugoslavia (ICTY). The parties did not have to negotiate about how to cope with the past. By the same token, the disputants did not have the flexibility to make arrangements for amnesties or pardons for crimes over which the ICTY had jurisdiction." (p. 169). The Dayton Agreement is the first negotiated peace agreement that requires the parties to bring their war criminals to trial. Therefore, for this type of study, it is the most rewarding episode in the negotiations. Schlunck examines the barriers to and the opportunities of the policy-options and shows how the third party intervenors got their impact. Certainly the U.S. intervention is a contrast to the U.N. mission in El Salvador because the U.S. acted as a partisan negotiator, wanting to establish U.S. leadership in Europe as much as to terminate hostilities in Bosnia and start a sustainable process of conflict management. As a superpower able to impose sanctions and use military force, leadership was an easy task. Looking at the factors that account for the success or failure of the peace process in Bosnia special attention is paid to the perceptions of the Dayton

Agreement and the possible consequences. Most of this has been taken care of in the past four years so that in May 2002, at the time of this review, peacekeeping troops are being withdrawn. A list of lessons learned sum up this chapter.

The third case discussed is South Africa. The authoress describes it as an indigenous-driven conflict, shows parallels to El Salvador and then tells how South Africa was able to direct the conflict from violence to negotiations. To make events ore accessible she gives a brief history, divided into the apartheid era, de Klerck's presidency, the National Peace Accords, the Boipatong Massacre, the Multi-Party Negotiating Council and the election of the Government of National Unity. She introduces the partners (the national party with its Afrikaner philosophy and subsequent shift, the African National Congress and ANC's move from pan-tribalism to the alignment with the Communist Party, and Buthelezi's Inkatha Party) and the stakeholders (SACP, COSATU, PAC, Homelands, DP, CP, right wing extremists, the Churches) as well as the countries involved plus the United Nations, who was to enhance the effectiveness of the peace process. Following a list of potential spoilers, their goals and interests, the interim constitution and the Promotion of National Unity and Reconciliation Bill, the Truth and Reconciliation Commission, comprising of committees on human rights, amnesty and reparation and rehabilitation are all analysed. South Africa chose amnesty instead of sanctioned for crimes. The alleged perpetrator went through the ordeal of a public hearing but walked away free, an extremely frustrating feeling for the victims. Still, while it may be too early for a final assessment, this appears to be a win-win situation and South Africa is on the way to a full transition to a democratic system.

Finally part III highlights how accountability can be achieved by practically implementable steps, if indeed it can be achieved at all. There are tables and a hybrid model that simplifies the lessons learned from the cases discussed before. While the conclusions are quite clear, various examples the authoress chooses show quite the contrary, facts and attitudes she considered to be on the brink of change in 1997/98 remain the same in 2002.

Criticism: A few statements are now outdated unfortunately, others appear naïve with hindsight esp. when looking at the work of the court at The Hague, the trial of Milosevic in the spring of 2002 and the fact that most criminals are still at large at the time of this publication. Occasionally there are literal translations from the German and a number of grammatical errors, weaknesses in syntax and the occasional confusion of tenses take away from an otherwise quite well-presented volume, the result of industrious research on an important topic based on a sound bibliography.

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