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Criminalising Nazism and Neo-fascism: East German anti-racial discrimination law, socialist legality, and human rights

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In 1986, the East German children's magazine *Bummi* called on its readers to write to Nelson Mandela. Since his arrest on 5 August 1962, Mandela had been imprisoned by the South African apartheid regime. The magazine, published by the *Freie Deutsche Jugend* (FdJ, Free German Youth) and aimed at three- to six-year olds, organised this appeal as one of many solidarity campaigns to show the East German commitment to anti-racial discrimination rights campaigns and the criminalisation of racial discrimination. By the end of 1986, 80,000 East German children had followed the call to show solidarity with Mandela and sent postcards to Pollsmoor Prison to mark his birthday.[1] After the Second World War, international solidarity campaigns such as the Stockholm Appeal of 1950 and later Eastern Bloc support for the anti-apartheid struggle propagated socialist ideals of justice and peace in the international arena.[2] Yet, children campaigns such as the *Bummi* postcard appeal were also a symptom of how socialist states such as the German Democratic Republic (GDR) attempted to link criminalisation efforts through legal reform, international solidarity campaigns, the legal education of their citizens, social mobilisation, and the firm linkage of rights and duties of citizens at home to ensure party control over the building of socialism.

Recent scholarship has challenged narratives of a "hiatus" or "legal stasis" of international law after the Nuremberg Trials until the end of the Cold War and argued for a substantive development of international law from the end of the Second World War to 1989/91.[3] This article contributes to the emerging scholarship that explores the role of socialist states in the development of international law and the idea of the law more generally during the Cold War.[4] The role of law within the socialist project remained contested within socialist ideology after the October Revolution and stirred internal conflicts until the fall of the Soviet Union in 1991. After the intense ideological struggles between legal nihilists advocating the withering away of the state and with it the law and supporters of socialist legality in the 1930s, the decades after Stalin's death saw socialist law and legality become a cornerstone of socialist governance.[5] Socialist legality also had a crucial role to play in how socialist states approached

[1] Anja Maier, "Anti-Apartheid Politik der DDR: Postkarten für Mandela", *die tageszeitung* (6 December 2013), https://taz.de/Anti-Apartheidspolitik-der-DDR/!5053298/, last accessed: 21 March 2020.
[2] Henrietta Harrison, "Popular Responses to the Atomic Bomb in China 1945-1955," *Past and Present* 218, supp. 8 (2013): 98-116; Sebastian Gehrig, James Mark, Paul Betts, Kim Christiaens and Idesbald Goddeeris, "The Eastern Bloc, Human Rights, and the Global Fight against Apartheid," *East Central Europe* 2-3 (2019): 290-317.
[3] Matthew Craven, Sundhya Pahuja, Gerry Simpson, "Reading and Unreading the Historiography of Hiatus", in *International Law and the Cold War*, ed. ibid. (Cambridge: Cambridge University Press, 2020), 1-24.
[4] John Quigley, *Soviet Legal Innovation and the Law of the Western World* (Cambridge: Cambridge University Press, 2007), 133-74. Boris N. Mamlyuk, "The Cold War in Soviet International Legal Discourse", in *International Law and the Cold War*, ed. Matthew Craven, Sundhya Pahuja, Gerry Simpson (Cambridge: Cambridge University Press, 2020), 337-75; "Special Issue: Revisiting State Socialist Approaches to International Criminal and Humanitarian Law", *Journal of the History of International Law* 21,2 (2019).
[5] For the development of socialist legal visions of sovereignty and citizenship as part of socialist legality in the GDR see: Sebastian Gehrig, *Legal Entanglements. Law, Rights and the Battle of Legitimacy in Divided Germany, 1945-1989* (New York: Berghahn Books, 2021).

international law in their logics of socialist law. Francine Hirsch has stressed the importance of the Soviet leadership and its legal experts in setting up the Nuremberg Trials. From the early days of defining wars of aggression as a crime against humanity and peace, socialist legal experts continued to contribute and sometimes drive the development of international law in the field of criminalisation of the Holocaust in the decades that followed.[6] This criminalisation of fascism would later inform give way to a broader engagement with anti-racist discrimination legislation.[7] While this international law activism of socialist governments was often limited in its effects at home and meant to bolster diplomatic or ideological alliances with the Third World, previous scholarship on the history of international law and human rights has largely neglected the role of socialist ideologues and legal scholars in the development of anti-racism international criminal law norms—and human rights and international law norms more broadly—between 1945 and 1989/91.[8]

The East German leadership felt a particular duty and pressure to criminalise racial discrimination. The Holocaust and racial persecution under the Nazi dictatorship put a special responsibility onto the *Sozialistische Deutsche Einheitspartei* (SED, Socialist Unity Party) after 1949 to pledge its support for initiatives to combat antisemitism. Studies of foreigners' experiences have shown the hypocrisy of these East German efforts to fight antisemitism and racial discrimination at home.[9] The GDR government even endorsed anti-Israeli policies and provided financial and military aid to Third World revolutionaries once the SED leadership broadened its focus from anti-fascism to an anti-imperialist foreign policy rhetoric.[10] These

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[6] Francine Hirsch, *Soviet Judgement at Nuremberg. A New History of the International Military Tribunal after World War II* (Oxford: Oxford University Press, 2020); Raluca Grosescu, "State Socialist Endeavours for the Non-Applicability of Statutory Limitations to International Crimes: Historical Roots and Current Implications", *Journal of the History of International Law* 21 (2019): 239-69,

[7] Sebastian Gehrig, "Reaching Out to the Third World: East Germany's Anti-Apartheid and Socialist Human Rights Campaign," *German History* 36, no. 4 (2018): 574-97. Within the UN, the new dominance of Third World rights rhetoric of anti-racism stretched from the anti-discrimination convention of 1965 to the anti-apartheid convention of 1973. For UN rights politics see: Roger Normand and Sarah Zaidi, *Human Rights at the UN. The Political History of Universal Justice* (Bloomington: Indiana University Press, 2008), 260-69.

[8] See the controversy between Stefan-Ludwig Hoffmann, Samuel Moyn, and Lynn Hunt in *Past & Present* 232, 2 (2016) and 233, 1 (2016) over the breakthrough of human rights internationally in a human rights revolution, in which socialist states played no role.

[9] Mike Dennis, "Asian and African Workers in the Niches of Society", in *State and Minorities in Communist East Germany*, ed. Mike Dennis and Norman LaPorte (New York: Berghahn Books, 2011), 87-123; Sara Pugach, "African Students and the Politics of Race and Gender in the German Democratic Republic," in *Comrades of Color: East Germany in the Cold War World*, ed. Quinn Slobodian (New York: Berghahn Books, 2015), 131-56; Sarah Pugach, "Eleven Nigerian Students in Cold War East Germany: Visions of Science, Modernity, and Decolonization", *Journal of Contemporary History* vol. 54, no. 3 (2019): 551-72; Sebastian Gehrig, "Informal Envoys: German Cold War Cultural Diplomacy Along the Bamboo Curtain," *Journal of Cold War Studies* (in print). For the experience of foreign workers in the GDR see: Almut Zwengel (ed.), *Die "Gastarbeiter" der DDR: politischer Kontext und Lebenswelt* (Münster: LIT-Verlag, 2011). For the ambiguities of the prosecution of Nazi perpetrators see: See: Annette Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland. Vergangenheitsbewältigung 1949-1969 oder: Eine deutsch-deutsche Beziehungsgeschichte im Kalten Krieg* (Paderborn: Schöningh, 2002).

[10] Jeffrey Herf, *Undeclared Wars against Israel. East Germany and the West German Far Left, 1967–1989* (Cambridge: Cambridge University Press, 2016); Gareth M. Winrow, *The Foreign Policy of the GDR in Africa* (Cambridge: Cambridge University Press, 2009), 206; Hans-Georg Schleicher, "The German Democratic Republic and the South African liberation struggle," in *The Road to Democracy in South Africa, vol. 3: International Solidarity*, ed. South African Democracy Education Trust (Pretoria: Unisa Press, 2008): 1069-1154; Vladimir Shubin and Marina Traikova, "'There is no threat from the Eastern Bloc,'" in *The Road to Democracy in South Africa*, *vol. 3: International Solidarity*, ed. South African Democracy Education (Pretoria:

strategic developments none withstanding, the SED leadership participated actively in the outlawing of colonialism and anti-racial discrimination campaigns in the international arena and through legal reform at home. This happened at a time, when the Federal Republic of Germany (FRG) still insisted on the primacy of German legal tradition to protect all-German frameworks of sovereignty that held West German legal experts back in their engagement with international human rights norms.[11]

Until 1989, the SED leadership moved from Stalinist mass campaigns at home and abroad as part of the Eastern bloc coalition to a more refined system of socialist legality that included law propaganda, rights campaigns, and state-mandated legal education that also included small children as the *Bummi* appeal of 1986 showcased to link international and domestic solidarity campaigns.[12] This article traces East German legal reform efforts, taking the field of anti-racial discrimination law as an example, that formed part of the SED's wider efforts to secure the transition to socialist legality and socialist law. It explores how the GDR's international law campaigns informed legal reform at home. In the 1960s, the GDR government moved from a focus on antifascism to broader frameworks of anti-racism to align itself with global anti-colonialism. As Inga Markovits has already observed in 1977, socialist legal norms are as much "policy declarations" as they had legal functions in the judicial system. This is precisely why state-sponsored international anti-racism rights activism at the UN and in other international venues had to be met with codification efforts in socialist states.[13] Until the early 1970s, new GDR legal codes incorporated UN anti-racism norms as an extension of the state's antifascist foundational ethos. Socialist international rights campaigns in the human rights field unfolded on the backdrop of a fundamentally different paradigm of rights, justice, and legality that can only be fully understood if we see domestic legal reform efforts linked to international conflicts over law. When GDR leaders became disillusioned with Eastern bloc efforts to dominate global rights paradigms in the 1980s, they returned to a nostalgic anti-fascist criminalisation paradigm.

Exploring the GDR's international rights activism in the context of legal reform efforts at home thus provides a novel perspective on East German attempts to establish an alternative

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Unisa Press, 2008), 985-1067; Peter Costea, "Easter Europe's Relations with the Insurgencies of South Africa (SWAPO and the ANC) 1972-1988." *Eastern European Quarterly* 24, no. 3 (1990): 393-406. For the experience of foreigners in the GDR and neo-Nazi groups see: Simon Stevens, "Bloke Modisane in East Germany," in *Comrades of Color: East Germany in the Cold War World*, ed. Quinn Slobodan (New York: Berghahn Books, 2015), 121-30; Quinn Slobodian, "Socialist Chromatism: Race, Racism and the Racial Rainbow in East Germany," in *Comrades of Color: East Germany in the Cold War World*, ed. Quinn Slobodian (New York: Berghahn Books), 23-40. Norman LaPorte, "Skinheads and Right Extremism in an Anti-fascist State", in *State and Minorities in Communist East Germany*, ed. Mike Dennis and Norman LaPorte (New York: Berghahn Books, 2011), 170-94. For a local history of right-wing groups in the town of Hoyerswerda that became notorious for attacks on foreigners in 1991 during the 1980s see: Christoph Wowtscherk, *Was wird, wenn die Zeitbombe hochgeht?: Eine sozialgeschichtliche Analyse der fremdenfeindlichen Ausschreitungen in Hoyerswerda im September 1991* (Göttingen: V&R unipress, 2014), 119-60.

[11] Gehrig, *Legal Entanglements*, 105-41.

[12] Jennifer Altehenger has explored the function of socialist law propaganda and legal education in detail for the case of the People's Republic of China. See: Altehenger, *Legal Lessons. Popularizing Laws in the People's Republic of China, 1949-1989* (Cambridge/MA: Harvard East Asian Monographs, 2018).

[13] For a discussion of the fundamentally different logic that governed socialist law in East Germany and its policy function in contrast to West German law see: Inga Markovits, "Socialist vs. Bourgeois Rights—An East-West German comparison", *University of Chicago Law Review* vol. 45, Iss. 3 (1977): 612-36, 615. See also: Gehrig, *Legal Entanglements.*

socialist rights universe in which international law drives and domestic reform met during the 1960s and 70s. Recent scholarship has posed the question why Soviet legal experts "embraced forms of liberal legalism at the height of the Cold War".[14] Such perspectives obscure the intense legal work carried out by legal scholars to develop socialist law as a tool for social transformation both at home and in the international sphere. Rather than adopting liberal notions of law, socialist legal scholars and ministerial bureaucrats hoped to lead their ideological vision of what the law was to victory over "bourgeois" law. In doing so, they actively engaged in discussions over anti-racial discrimination codification of legal norms at the international level alongside Third World countries in the 1960s and 70s and promised the implementation of international law norms at home.

Intertwined international and domestic legal politics

The experience of Nazi rule drove the first wave of anti-discrimination legislation in the GDR. The codification of human rights at the United Nations (UN) had a limited effect when the SED leadership and its legal experts drafted a constitution in preparation of the foundation of the GDR on 7 October 1949.[15] Article 6 of the constitution mirrored the communist experience of fighting the Nazis during the last years of the Weimar Republic and in the underground after 1933. The law guaranteed the equality of all citizens. It also enumerated and penalised the main tactics that SED leaders associated with the rise of the Nazi party to power. Boycotting and agitating against democratic institutions (*Boykotthetze*), calling for the murder of politicians (*Mordhetze*), military propaganda and advocating war (*Kriegshetze*) were listed in the same paragraph of the law that outlawed inciting hatred against religious believers, other races, and peoples (*Glaubens-, Rassen-, Völkerhaß*).[16] In outlawing the advocacy of war, GDR lawmakers followed the Soviet agenda at Nuremberg to prosecute a war of aggression. The fear of a resurgence of Nazism showed in the penalties threatened against such offences and the frequent usage of Article 6 after 1949.[17] Persons found guilty lost their right to work in public service or any leading position within the economic or cultural life of the GDR. They also forfeited their right to vote and to hold public office.[18] These constitutional principles guided the

[14] Anna Isaeva, "The Cold War and Its Impact on Soviet Legal Doctrine", in *International Law and the Cold War*, ed. Matthew Craven, Sundhya Pahuja, Gerry Simpson (Cambridge: Cambridge University Press, 2020), 256-70, 256.

[15] GDR constitution, 1949 Article 6, (1) All citizens are equal before the law. (2) Inciting boycotts against democratic institutions and organisation, agitation for the murder of democratic politicians (*Mordhetze*), advocating religious hatred, racial hatred, or hatred against other peoples, militaristic propaganda as well as agitation for war and all other actions that are directed against equal treatment are crimes penalised by the criminal code. Exercising democratic rights following the constitution is no agitation for boycott. (3) A person convicted for any of these crimes can neither work within the civil service nor in the economic or cultural sector. He [sic!] loses the right to vote and be elected to office. For the drafting process oft he constitution see: Heike Amos, *Die Entstehung der Verfassung in der Sowjetischen Besatzungszone/DDR 1946-1949. Darstellung und Dokumentation* (Münster: LIT-Verlag, 2005).

[16] GDR constitution, 1949, Article 6 (2), see fn14.

[17] This fear manifested in the use of Article 6 for the protection of the state (*Staatsschutz*). It was used as basis to criminalise and prosecute espionage as well as racial hatred and discrimination. See: Erich Buchholz, "Strafrecht", in *Die Rechtsordnung der DDR. Anspruch und* Wirklichkeit, ed. Uwe-Jens Heuer (Baden-Baden: Nomos, 1995), 273-339, 291.

[18] GDR constitution, 1949, Article 6 (3), see fn14.

prosecution of Nazi perpetrators in the early GDR that culminated in the so-called Waldheim Trials of 1952. Almost 3,500 Nazi perpetrators and perceived opponents of the SED stood trial and harsh verdicts including thirty-three death sentences were handed down.[19]

Next to the consolidation of party rule at home, the SED soon adopted the Soviet line concerning the politics of international law. With the foundation of the UN, the Soviet Union redoubled its efforts to chastise the US government for condoning race segregation in southern states. The Soviet leadership felt sidelined in UN politics due to the overwhelming political influence of Western countries within the new institution immediately after 1945.[20] The Soviet UN delegation thus used the racial segregation issue as a potent propaganda tool to make up for its diminished ability to shape the UN in this period. In response, the State Department quickly determined that ongoing racial segregation within the US was a major threat to the moral legitimacy of the American Cold War case to the world's public. This early Soviet international rights propaganda had two important outcomes: first, it led to the creation of a Sub-commission on Prevention of Discrimination and Protection of Minorities within the UN's Commission on Human Rights in 1947 that championed anti-discrimination rights in the future. Second, this sub-commission eventually established a petition process for individuals in 1967 once the growing number of decolonised states gained influence within the UN. Individuals could now appeal directly to the UN and circumvent their own country's UN delegation—much to the unease of both the US and Soviet governments and many other Western and socialist states. Beyond these short- and long-term institutional shifts at the UN, the early clashes over human rights and racial discrimination alerted Western legal experts to a key element of socialist law's purpose. The belief that law could serve an active function in social transformation through legal education and law propaganda.[21]

The debate on the nature of law within the East German ruling party and judicial circles in many ways only began after the proclamation of the first GDR constitution in 1949. Amid social upheaval culminating in the uprising of 17 June 1953 and scores of East Germans leaving their new country for the West, the SED pursued its agenda of building socialism. In this quest, state planning and the rebuilding of the economy took centre stage.[22] The major battlefield within East German controversies over the law, and discrimination law with it, became the control of the party over law in this planned development of society. In the years between the announcement of the building of socialism in 1952 and the building of the Berlin Wall in 1961, the party leadership under Walter Ulbricht repeatedly reprimanded leading legal scholars and experts for their reluctance to confirm the party's primacy over law. The most well known attack on the legal sphere came at the Babelsberg Conference in April 1958.[23] Ulbricht and other party leaders singled out several legal scholars such as Uwe-Jens Heuer, Bernhard Graefrath, Hermann Klenner, and Karl Bönninger and accused them of legal revisionism and sympathising with those Hungarian reform efforts, led by Imre Nagy, that had been repressed

[19] Falco Werkentin, *Politische Strafjustiz in der Ära Ulbricht* (Berlin: Ch. Links 1995), 193.
[20] For the ideological conflicts surrounding the UN's foundation see: Mark Mazower, *Governing the World. The History of an Idea* (London: Allan Lane, 2012), 214-43; Normand and Zaidi, *Human Rights at the UN*, 139-242.
[21] Quigley, *Soviet Legal Innovation and the Law of the Western* World, 115-24.
[22] Caldwell, *Dictatorship, State Planning, and Social Theory in the German Democratic*, 14-56.
[23] Stefan Güpping, *Die Bedeutung der "Babelsberger Konferenz" von 1958 für die Verfassungs- und Wissenschaftsgeschichte der DDR* (Berlin: A. Spitz, 1997); Peter C. Caldwell, *Dictatorship, State Planning, and Social Theory in the German Democratic Republic* (Cambridge: Cambridge University Press, 2003), 57-96.

by Soviet troops in 1956.[24] What was actually at stake, however, was the relationship of legal theory and practice. Against "empty legal formalism", Ulbricht advocated that state action should determine social development and facilitate the transition to socialism.[25] In taking control over law, Ulbricht laid the groundwork for an activist vision of socialist governance through law that should transform society in the decades to come.

Vibrant reform debates on the nature of socialist legality marked the deliberations of legal scholars and party officials across the Eastern bloc after Stalin's death.[26] The GDR legal sphere entered into these debates with some delay. German division and the rivalry over German law with the Bonn government had resulted in a prolonged focus on German legal codes after 1949. Once the SED abandoned the rivalry over the representation of German legal sovereignty, the roadblocks to new socialist legal frameworks vanished within the East German legal sphere.[27] In the early 1960s, the SED leadership was thus able to direct its legal experts to begin work on new legal codes, a GDR citizenship law, and a new constitution draft. Taken together, the new constitutional law and legal codes enshrined socialist visions of society into law and abandoned the previously still used German legal codes that had their roots in the codification drive within the German Empire around 1900.[28] After a new citizenship law was proclaimed in 1967, that redefined the role of the individual in socialist society, the new Criminal Code of 1968 (*Strafgesetzbuch*) revised legal frameworks of discrimination.

The large-scale legal transformation of East Germany that took place from the late 1960s into the mid-1970s brought together the SED's international rights campaign efforts and visions of a new socialist law framework at home. East German attacks on the FRG's failure to prosecute and convict Nazi perpetrators since 1949 accompanied the drafting of a new socialist criminal code. In this context, GDR legal scholars also contributed to the start of international negotiations that eventually led to the UN Convention of Non-applicability Statutory Limitations to War Crimes and Crimes Against Humanity that the General Assembly adopted on 16 November 1968.[29] Raluca Grosescu has shown how socialist bloc states took the lead in the effort to allow the indefinite prosecution of war crimes. In 1964, supporters of an abolition of statutory limits for war crimes and crimes against humanity met in Warsaw. Legal experts from sixteen Western and Eastern European countries laid the groundwork for what would become the UN convention of 1968. Before the UN passed the convention, the

[24] On the impact of Hungarian legal scholars such as Szabó and Kovács on socialist concepts of human rights and international law see: Michal Kopeček, "The Socialist Conception of Human rights and Its Dissident Critique. Hungary and Czechoslovakia, 1960s-1980s", *East Central Europe* Vol. 46, No. 2-3 (2019): 261-89.
[25] Walter Ulbricht, *Die Staatslehre des Marxismus-Leninismus und ihre Anwendung in Deutschland* (Berlin: VEB-Verlag, 1958), 22-26.
[26] For the human rights field, socialist rights talk, and its connection to legality and court action in domestic legal contexts see: Kopeček, "The Socialist Conception of Human Rights and Its Dissident Critique"; Benjamin Nathans, "Soviet Rights-Talk in the Post-Stalin Era", in *Human Rights in the Twentieth-Century*, ed. Stefan-Ludwig Hoffmann (Cambridge: Cambridge University Press, 2010), 166-90; Dina Moyal, "Did Law Matter? Law, State, and the Individual in the USSR 1953-1982", (PhD-diss., Stanford University, 2011).
[27] For the transition from a competition over German legal sovereignty to a two-state theory see: Gehrig, *Legal Entanglements*, 68-103.
[28] See: Margaret Barber Crosby, *The Making of a German Constitution. A Slow Revolution* (Oxford: A&C Black, 2008).
[29] Despite this aggressive propaganda against the Bonn government, the GDR government ended its domestic prosecution of Nazi perpetrators soon after the Waldheim Trials. See: Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland*, 333-56.

principles articulated at Warsaw entered the French and Czechoslovakian criminal codes. These developments exerted considerable pressure on the Bonn government during the Frankfurt Auschwitz Trials from 1963 to 1965 as the GDR had lifted statutory limitation on Nazi crimes committed between 1933 and 1945 already on 1 September 1964.[30]

These new international legal norms now began to have bearing on GDR legal reform. Following the attacks on West German inaction to prosecute Nazi perpetrators, the GDR government included the criminalization of war crimes and crimes against humanity in the draft discussion of the new criminal code. For neighboring bloc states such as Poland, the struggle for justice for Nazi war crimes brought their UN delegates into contact with wider debates on anti-racism. Soon, such socialist bloc rights activism extended to attacks on the US and war crimes committed in Vietnam and Israel's treatment of Palestinians. These attacks on Zionism led countries such as Poland to attack Jewish communities at home and work against the inclusion of antisemitism into UN rights declarations. At the same time, Third World countries with the help of socialist states hoped to transform the continued prosecution of Nazi crimes into a wider anti-racial discrimination perspective that could be mobilized against Western countries and South Africa.[31] This convergence of interests gave rise to a socialist bloc-Third World alliance at the UN and in international law campaigns that centred on the condemnation of apartheid to attack the Western states' colonial past and "neo-colonial" present through opposition to the South African government. As this campaign could be used to discredit West German failures to prosecute Nazi crimes further, the SED leadership enthusiastically joined this anti-apartheid and anti-racial discrimination activism against "neo-fascist" forces.[32]

Socialist states and Third World actors now managed to push UN and international law debates beyond the crimes defined at Nuremberg. Following from the International Convention on the Elimination of All Forms of Racial Discrimination from 1965, African and Asian states successfully advocated the inclusion of apartheid and racist colonial crimes into the 1968 convention.[33] Socialist states also used the renewed attention for the need of a proper prosecution of Nazi war crimes to advocate for the GDR's accession to the UN as the only legitimate German state due to its anti-fascist foundational ethos. The GDR exploited this boost in legitimacy to push into UN politics. The East German League of Human Rights was officially admitted into the international association of human rights leagues in 1967. Though a minor victory, the GDR government saw its new international rights strategy of supporting a wider anti-imperialist anti-racial discrimination strategy working.[34]

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[30] See: Grosescu, "State Socialist Endeavours for the Non-Applicability of Statutory Limitations to International Crimes", 242-57. For the GDR's campaign to discredit the FRG at the Frankfurt Auschwitz Trials see: Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland*, 236-57.

[31] Grosescu, "State Socialist Endeavours for the Non-Applicability of Statutory Limitations to International Crimes", 255-7.

[32] Gehrig, et al., "The Eastern Bloc, Human Rights, and the Global Fight against Apartheid", 293-303.

[33] General Assembly Resolution 2391 (XXIII), Convention of Non-applicability Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968. See also: James Mark, "Race", in *Socialism Goes Global. The Soviet Union and Eastern Europe in the Age of Decolonisation* (Oxford: Oxford University Press, forthcoming 2021).

[34] Sebastian Gehrig, "Cold War Identities: Citizenship, Constitutional Reform, and International Law between East and West Germany, 1967-75", *Journal of Contemporary History* 49,4 (2014): 794-814, 801-2.

To make its enthusiasm for international law credible, the SED leadership needed to show its impact on domestic legal reform efforts. Since 1966, the opening of the UN human rights covenants for signature by member states directly reflected on East German domestic reform preparations. When legal scholars at the Babelsberg Academy for State and Legal Sciences, the GDR's pre-eminent legal research centre, debated the new criminal code, a committee of scholars made sure that the convention against racial discrimination was fully reflected in the new code. While early drafts had focused on offences committed and their prosecution, the expert group emphasised that intent—the spreading of racist ideas—was to be penalised as well. The legal provisions of the new law should make absolutely sure that racist organisations were outlawed and (verbal) racist attacks on individuals were also included to satisfy the UN convention's stipulations. Some scholars, such as the international law expert Alfons Steiniger, even stressed that the GDR's goal had to be "to create international law and develop it further" in this legal field.[35] This was a quite ambitious agenda given the fact that the GDR was still not a fully recognised member of the international community in 1968 and had to wait for UN membership until 1973.

In the last stages of work on the new criminal code, GDR legal experts added a preface that referenced new international norms. The preface outlined "Core Principles of the Socialist Criminal Law of the GDR" that referenced crime prevention ideas, constitutional law considerations, an emphasis on legal security, the protection of human rights, and equality before the law.[36] This was in step with UN legal debates and rhetoric, but for many people within the GDR out of step with legal realities.[37] The new criminal code introduced for the first time formally into German law the idea of re-inclusion (*Wiedereingliederung*) of prisoners into society. This shift was to some extent a departure from Stalinist policies of re-education through labour. While being a modern idea, it nonetheless meant that re-education of prisoners through work remained part of the East German penal system. While West German parliamentarians would attack forced prison labour in their debates on the human rights situation in the GDR from the late 1970s, these East German reform efforts decidedly shifted attention to legal education drives to prevent criminal offenses and re-introduce offenders into society after their punishment.[38]

Despite this opening to the international sphere, the new GDR criminal code remained tied to the criminalisation of fascism in the prosecution of racial discrimination at home. Next

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[35] Archive Academy of State and Legal Sciences, Babelsberg (hereafter: ASR), 4557, "Protokoll ber die Beratung zu völkerrechtlichen Fragen des StGB-Entwurfs", 9 June 1967, 9.

[36] Erich Buchholz, "Strafrecht", in *Die Rechtsordnung der DDR. Anspruch und* Wirklichkeit, ed. Uwe-Jens Heuer (Baden-Baden: Nomos, 1995), 273-340, 319. Erich Buchholz was a scholar of criminal law in the GDR and lost his chair at the Humboldt University Berlin in 1991. He went on to defend East German border guards in the trials against guards who shot people at the German-German border to stop them escaping the country.

[37] For a local history of legal realities within the GDR see: Inga Markovits, *Justice in Lüritz. Experiencing Socialist Law in East Germany* (Princeton: Princeton University Press, 2010); Paul Betts, "Property, Peace and Honour: Neighbourhood Justice in Communist Berlin", *Past & Present* 201 (2008): 215-54.

[38] For the political justice and penal system see: Falco Werkentin, *Politische Strafjustiz in der Ära Ulbricht. Vom bekennenden Terror zur verdeckten Repression* (Berlin: C.H.Links, 1997); Jörg Müller, *Strafvollzugspolitik und Haftregime in der SBZ und in der DDR: Sachsen in der Ära Ulbricht* (Göttingen: Vandenhoeck & Ruprecht, 2012); Tobias Wunschik, *Honeckers Zuchthaus: Brandenburg-Görden und der politische Strafvollzug 1949-1989* (Göttingen: Vandenhoeck & Ruprecht, 2018); Tobias Wunschik, *Knastware für den Klassenfeind: Häftlingsarbeit in der DDR, der Ost-West-Handel und die Staatsicherheit (1970-1989)* (Göttingen: Vandenhoeck & Ruprecht, 2014).

to Article 5, further provisions targeted former Nazi party members and sympathisers within East German society. Article 92 saw fascist propaganda and racial hatred intrinsically linked. East German legislators now drew on the new language of human rights that had developed since the Nuremberg Trials. The Soviet legal experts at Nuremberg had pushed for new norms that outlawed any kind of war of aggression and socialist UN delegations pursued this agenda until the UN resolution against aggression was passed in 1974.[39] In this tradition, the new criminal code penalised "fascist propaganda, inciting hatred against other peoples or races (*faschistische Propaganda, Völker- und Rassenhetze*) with two to ten years imprisonment and the formation of groups preparing such actions with no less than three years prison.[40] Further provisions targeted subversive activities and agitation (*staatsfeindliche Hetze*) and linked discrimination to ideological attacks on the new socialist government.[41] As the preface of the new criminal code had pointed out, criminal law and criminalisation served above all to prevent any intrusion of imperialist forces into socialist society.

Yet, the new legal code also widened the prosecution of racial discrimination beyond the focus on Nazi legacies. The GDR government's support for Third World calls to fight "neo-fascism" expanded the previous narrow focus on German fascism. Article 92 outlawed fascist propaganda and racial hatred to combat "neo-fascism" in the years after 1968. "Neo-fascism" became an umbrella term that included such diverse phenomena as the alleged West German governmental support for fascist groups within the FRG and GDR, "race terror in the US", and the apartheid regime in South Africa. All these "revanchist and neo-Nazi" forces were part of one more general ideological force emanating from Western countries and their allies in the global south: "neo-fascism". Such rhetoric reinvigorated the party's emphasis on the GDR as bulwark against fascism, including the "anti-fascist protection wall" (the Berlin Wall) and went against PRC attacks of a "white" Soviet-led "social imperialist" camp. In the legal expert literature that explained the new criminal code's meaning in the current political context, legal scholars explicitly linked Article 92 to UN resolutions to show the GDR's compliance with international rights politics.[42] While resolution 2332 from 18 December 1967, for example, indeed called for measures being taken against Nazism and racial intolerance in context of apartheid by mentioning human rights violations in South Africa, the "rebellious colony of Southern Rhodesia and in the Territory of South West Africa" , the GDR legal experts freely added their old West German and American foes to make the new international focus on racial discrimination and apartheid fit German-German Cold War politics.[43]

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[39] This had the uncomfortable effect for Soviet prosecutors that German defence attorneys accused the Soviet Union of war crimes during the trials making use of these new norms. See: Francine Hirsch, "The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order," *American Historical Journal* 113, no. 3 (2008): 701-30. In the GDR narrative of the development of human rights championed by the Eastern bloc, the success in codifying crimes of aggression played a central role, see: Gehrig, *Legal Entanglements*, 117, 214.

[40] GDR Criminal Code (*DDR-Strafgesetzbuch*), 1968, § 92: *Faschistische Propaganda, Völker- und Rassenhetze* (Fascist propaganda, Hatred against People and Races).

[41] GDR Criminal Code (*DDR-Strafgesetzbuch*), 1968, § 106: *Staatsfeindliche Hetze* (Inciting hate against the State).

[42] See commentary in: Ministry of Justice (ed.), *Strafrecht der Deutschen Demokratischen Republik. Lehrkommentar zum Strafgesetzbuch, Band 1 und 2* (Berlin: Staatsverlag, 1970), 31.

[43] UN General Assembly, Resolution 2331 (XXII), Measures to be taken against Nazism and Racial Intolerance, 18 December 1967.

East German domestic and international rights campaigns thus met in the legal reform drive of the late 1960s. Since the early 1960s, the SED leadership had directed their diplomats, international rights activists organised in groups such as the GDR Committee for Human Rights and the League for Human Rights, and legal experts and scholars at home to promote new connections between revolutionary Third World liberation movements and the East German struggle to have the GDR's sovereignty accepted by the international community. This campaign first centred on the human right of self-determination of peoples.[44] But what drove the appeal of this East German support for independence of people in Africa and Asia was the claim of a shared experience of combatting and criminalising "neo-fascism". This twist allowed SED propagandists to link their rights campaigns against the "prevailing fascism" in West Germany, which they saw supported in crucial ways by an equally racist and fascist US government, with Third World rights campaigns that were on the rise in the 1960s.[45] GDR human committees propagated the implementation of international law norms at home as well as international action because "Nazism, neo-Nazism and racial intolerance are not an intra-state affair".[46]

The GDR press hailed the proclamation of the new criminal code in 1968 not only as a domestic departure from the "bourgeois" criminal code, that had first originated in the German Empire in 1871, to a socialist criminal law, but included a whole special section on "Crimes against the Sovereignty of the German Democratic Republic, Peace, Humanity and Human Rights."[47] The imprint of the Soviet influence on the Nuremberg Trial and the legal norms emanating from the International Military Tribunal (IMT) were most visible in this section.[48] The articles of this special section outlawed wars of aggression, aiding the suppression of another people (*Teilnahme an Unterdrückungsakten*), crimes against humanity, and fascist propaganda as well as inciting hatred against other peoples or races.[49] Taken together, they reflected the Soviet-led international rights activism of the socialist bloc states since 1945. This section was in many ways a culmination of the SED's agenda of instrumentalising its support for international law to gain international recognition as a sovereign state through the adoption of Soviet principles of international law and human rights as well as the link between the experience of East German leaders with Nazism and the Third World struggle against neo-fascism and colonial violence.

Propagating Criminalisation at Home and Abroad

[44] Gehrig, "Reaching Out to the Third World".
[45] See: Roland Burke, *Decolonisation and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010.); Steven L.B. Jensen, *The Making of International Human Rights. The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge: Cambridge University Press, 2016).
[46] BArch, DZ7/73, 'Statement of the GDR Committee for Human Rights to the 25th Session of the General Assembly', 17 November 1970.
[47] E.g.: "DDR- Strafgesetz entspricht Völkerrecht", *Neues Deutschland*, 23,5 (6 January 1968): 1; "Völkerrechtlich fundiert: Ausschüsse der Volkskammer berieten neues Strafrecht", *Neue Zeit* 24,5 (6 January 1968): 1.
[48] Especially the emphasis on the outlawing of wars of aggression that the Soviet Union had championed as a crime against humanity at Nuremberg showed this Soviet influence. See: Hirsch, "The Soviets at Nuremberg".
[49] GDR Criminal Code (*DDR-Strafgesetzbuch*), 1968, Special Section, Chapter 1: Crimes against the Sovereignty of the German Democratic Republic, Peace, Humanity and Human Rights, §85-§95.

Socialist legality demanded more from the East German party-state than just criminalising racial discrimination. Investigating the GDR's efforts to outlaw racial discrimination opens up a window into socialist rights frameworks beyond international human rights campaigns and draws attention to the party's obligation to educate citizens in the law to ensure their "correct" class consciousness—an enterprise some within the party apparatus even believed might prevent such crimes altogether.[50] The duty of the state to educate citizens in the law and lead them to the "correct" understanding of the law were firmly implemented into East German constitutional law in the legal reform era from the late 1960s into the early 70s when the SED leadership pushed for the transition to socialist law and the abandoning of German legal tradition and codes. In turn, GDR citizens assumed the duty to follow the law that the state had explained to them. This development occurred after the Stalinist mantra weakened that all criminal offences were rooted in wrong class consciousness and class struggle.[51]

This general approach also reflected on the criminalisation of discrimination. The implementation of legal education as a firm part of the legal system led to a wider definition of criminality. Not just criminal offences committed, but the intent to inflict racial discrimination was now criminalised, reflecting a demand growing out of UN debates. With the duty of the state to educate people in the law came also the responsibility to re-educate offenders and understand how their personal circumstances had led them astray from being a good socialist citizen. Article 5 stated that no person should be discriminated or prosecuted under criminal law based on their nationality, race, faith, ideological beliefs (*Weltanschauung*) or class background. While the political justice trials in the GDR of the early 1950s had made a mockery of these constitutional rights and the party continued to supress political opposition, the second half of the article mirrored the new ideological aspirations in state-led domestic and international criminalisation attempts once the period of Stalinist purges of East German society had come to an end.[52] Article 5 outlined what socialist justice now demanded:

> "Justice in criminal prosecution (*Strafrechtspflege*) demands that the objective and subjective circumstances of an action as well as the way in which the action is committed, its consequences, reasons and circumstances, the guilt of the offender as well as the possibility of the offender's education to become an equal member

[50] For the ideological function of law propaganda and legal education see: Altehenger, *Legal Lessons*, 1-23. See also: Nathans, "Soviet Rights-Talk in the Post-Stalin Era".

[51] Despite being coloured by the controversies over the GDR representing a "unlawful state" (Unrechtsstaat) immediately after unification, a concise summary of the general development of the legal sphere in the GDR can be found in: Uwe-Jens Heuer and Ekkehard Lieberam, "Rechtsverständnis in der DDR", in *Die Rechtsordnung der DDR. Anspruch und* Wirklichkeit, ed. Uwe-Jens Heuer (Baden-Baden: Nomos, 1995), 25-74. This volume resembles that attempt of former GDR legal scholars to justify the East German legal systems legitimacy beyond its political justice sector. For a recent legal history of the GDR penal code see: Mortiz Vormbaum, *Das Strafrecht der Deutschen Demokratischen Republik* (Tübingen: Mohr Siebeck, 2015).

[52] Norbert Haase and Bert Pampe (eds), *Die Waldheimer "Prozesse"—fünfzig Jahre danach. Dokumentation der Tagung der Sächsischen Gedenkstätten am 28. Und 29. September 2000 in Waldheim* (Baden-Baden: Nomos, 2001); Roger Engelmann and Clemens Vollnhals (eds), *Justiz im Dienste der Parteiherrschaft. Rechtspraxis und Staatssicherheit in der DDR* (Berlin: Ch. Links, 1999); Karl Wilhelm Fricke and Roger Engelmann, *"Konzentrierte Schläge": Staatsicherheitsaktionen und politische Prozesse in der DDR 1953-1956* (Berlin: Ch. Links, 1998).

(*gleichberechtigten und gleichverpflichteten Mitglied*) of socialist society are taken into account, while considering the offender's personality and applying all valid laws."[53]

The new GDR criminal code thus promised that the motive of an offender and the chances for a successful re-education had to be considered as an integral part of criminalising discrimination.

Citizens assumed a new place in criminalisation and crime prevention. After years of party-led attempts to establish new social and cultural images of citizenship, legal duties of East Germans were now also framed in the socialist paradigm of "active citizenship".[54] The preface of the new legal code ended with an appeal to East Germans to participate in the implementation of the new law.

> "It [the criminal code] addresses all citizens, state and social organs and all collectives to be vigilant and intolerant towards the hostile scheming against the socialist order and the peaceful life of citizens as well as all signs of unlawful and irresponsible behaviour. It calls on everyone to help actively in preventing offences, to solve all crimes and minor delicts, to eliminate their causes and circumstances leading to them so that the offenders can be brought to justice."[55]

To involve citizens into the legal process and protect socialist society, the SED leadership stepped up efforts to educate the population in the new legal codes, citizenship law, and constitution enacted between 1968 and 1974.[56] In these efforts, the criminalisation of racial discrimination and competition with the ongoing criminal law reform in the FRG remained a focal point to underpin the GDR's foundational ethos of the "only" legitimate anti-fascist German state.

The reform of criminal law offered a renewed chance to mark out legitimacy against the FRG. While the GDR had drafted a completely new criminal code, the West German parliament only debated amendments to the existing criminal code in the late 1960s. To the

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[53] DDR Strafgesetzbuch, Article 5, Guarantee of Equality before the Law. Criminal law and criminal prosecution (*Strafrechtspflege*) guarantee quality before the law as a core principle of socialist legality. No-one is allowed to be criminally prosecuted or discriminated against because of their nationality, race, religious belief, ideological belief (*Weltanschauung*) or belonging to a class or tier of society. Justice in criminal prosecution (*Strafrechtspflege*) demands that the objective and subjective circumstances of an action as well as the way in which the action is committed, its consequences, and reasons and circumstances, the guilt of the offender as well as the possibility of the offender's education to become an equal member (*gleichberechtigten und gleichverpflichteten Mitglied*) of socialist society taking into account the offender's personality and under application of all valid laws are taken into account.

[54] For party-led initiatives to frame citizenship see: Jan Palmowski, "Citizenship, Identity, and Community in the German Democratic Republic", in *Citizenship and National Identity in Twentieth-Century Germany*, ed. Geoff Eley and Jan Palmowski (Stanford: Stanford University Press, 2008), 73-91. These debates on citizenship took place in a larger context of constructing a GDR national identity. See: Jan Palmowski, *Inventing a Socialist Nation. Heimat and the Politics of Everyday Life in the GDR 1945-1990* (Cambridge: Cambridge University Press, 2009).

[55] "Es wendet sich an alle Bürger, staatlichen und gesellschaftlichen Organe und an alle Kollektive, wachsam und unduldsam gegenüber den feindlichen Machenschaften gegen die sozialistische Ordnung und das friedliche Leben der Bürger und gegenüber allen Erscheinungen von Ungesetzlichkeit und Verantwortungslosigkeit zu sein. Es fordert alle auf, aktiv mitzuwirken, damit Straftaten verhütet, alle Verbrechen und Vergehen aufgedeckt, ihre Ursachen und Bedingungen beseitigt und die Schuldigen zur Verantwortung gezogen werden."

[56] Altehenger, *Legal Lessons*, 245-6.

SED leadership, this signalled that the Bonn government intended to remain in the footsteps of imperial, Weimar, and Third Reich legislation.[57] To East Germans, their new criminal code should thus emphasise that the only "national perspective" for the future was developed "in the socialist GDR". East Germans should understand that only through building socialism a modernisation of criminal law was possible. "To the democratic forces in West Germany", the new law should signal that only a "change in power relations" (*Veränderung der Machtverhältnisse*) and firm ties to the GDR could ensure their political victory. The ongoing West German debate on criminal law reform and the introduction of emergency laws in 1968 had to be contrasted with the "fundamental historical alternative" of law and rights in the GDR. To make these points to East Germans, the GDR government eagerly collected positive Western responses outlining the GDR's abiding by international law standards for further propaganda at home.[58]

To emphasise the involvement of the people in the drafting of the new criminal law, the SED commanded a popular discussion drive of the draft version of the new code. The same practice was enacted for the constitution draft proclaimed in the same year.[59] The Council of Ministers recorded that East Germans had sent in 8,000 suggestions for additions and changes to the criminal law draft after 35,000 copies of the draft version had circulated around the country. Following the socialist ideal, "legal experts, workers, peasants, doctors, union members, and members of conflict and arbitration committees" had pooled their experiences and knowledge to improve the new law before its enactment.[60] This, party propaganda maintained, went to show that the people created their own laws.

In turn, the state assumed new responsibilities. To involve citizens more into the legal process and crime prevention, the population had to be educated through law propaganda about the new laws proclaimed since 1967. At best, this education was meant to stop criminal offences before they occurred with the help of the citizenry. This meant also that offenders had to be treated in new ways by the state. Ideally, offenders had to be discovered before their intent translated into action. As part of this, the new criminal code therefore introduced new penalties for verbal discrimination of people of a different race or nation. Article 140 threatened East Germans with up to two years in prison next to suspended prison sentences and fines.[61] The East German youth received special protection in Article 146 that targeted the circulation of "filthy literature" (*Schund- und Schmutzerzeugnisse*). This provision targeted anything from pornography to Western youth magazines and literature. It also included a special mention of literature that could incite racial hatred, cruelty, inhumanity or violence. Such offences carried the same maximum penalty of two years in prison.[62] The GDR, as many other states including the FRG, introduced such new laws inspired by UN legal norms, but remained careful not to

[57] Gehrig, *Legal Entanglements*, 223.
[58] BArch, DP2/2963, Council of Ministers, "Zur Reaktion westdeutscher, westberliner und ausländischer Publikationsorgane auf das neue sozialistische Strafrecht der Deutschen Demokratischen Republik", 9 February 1968, 3-4.
[59] BArch, DY30/IVA2/13/47, documentation for party internal use on the constitution and drafting process, 1968.
[60] Ibid., 11.
[61] GDR Criminal Code (*DDR-Strafgesetzbuch*), 1968, § 140: Insults based on Membership to a Different Nation or Race (*Beleidigung wegen Zugehörigkeit zu einer anderen Nation, oder Rasse*).
[62] GDR Criminal Code (*DDR-Strafgesetzbuch*), 1968, § 146: Distribution of Filthy Literature (*Verbreitung von Schund- und Schmutzerzeugnissen*).

join any protocols that would have allowed the UN Human Rights Commission or UN member states to file human rights complaints against the GDR government.[63] Yet, the inclusion of the UN convention's demand to criminalise the intent of inciting racial hatred or commit racially motivated offences nonetheless became part of a wider problem in the application of the new criminal law. Intent was difficult to prove and easy to exploit by the security services for unjust accusations. Even former East German legal scholars who lost their academic positions after 1990 acknowledged with hindsight this problematic nature of the GDR criminal code's wide-ranging attempt to criminalise and penalise intent as a means of crime prevention.[64]

Propaganda pitted this image of socialist legality against the situation in the FRG. The GDR government saw the West German failure to criminalise Nazi crimes and racial discrimination proven in the surge of the *Nationaldemokratische Partei Deutschlands* (NPD, National Democratic Party of Germany) in local and state-level elections in the late 1960s.[65] The Bonn parliament's refusal to lift statuary limitations on Nazi civil servants and judicial personnel who aided the Holocaust in 1969 provided another scandal that reflected badly on the Bonn government internationally and was met with opposition by the left-wing student movement. Already in 1965, the statuary limitations on murder charges were only prolonged for another four years after a prolonged debate. Opinion polls showed an ambivalent picture as half of West Germans supported the limitation on crimes.[66] In 1969, the Bonn parliament lifted all statuary limitations on crimes against humanity after years of pressure from the GDR and socialist bloc, but the wording of the legislation amounted to a planned amnesty of perpetrators who could not be directly implicated by having carried out mass killings.[67] The planned trial against members of the Reich Main Security Office, Heinrich Himmler's organisation that controlled the police and SS, had to be abandoned as such "indirect" acts could no longer be prosecuted in the FRG.[68] The SED took this reluctance in large parts of the West German judiciary and society as proof that neo-fascism was indeed rearing its head in the FRG. Against these fascist legacies in the Bonn republic, the party now claimed that its legal reform drive had resolved the issue of racial discrimination once and for all.[69]

From the 1970s onwards, the continuous recourse to the anti-fascist foundational ethos of the East German state and successful socialist legal reform of criminal law prompted the leadership to turn a blind eye to ongoing racial discrimination within society. Already in 1967, the party claimed that "on the territory of today's GDR racial discrimination has been outlawed since 1945". This was a nod to the Soviet Union's leadership in fighting fascism. In the new narrative, the Law for the Protection of the Peace proclaimed on 15 December 1950 and the

[63] Gehrig, *Legal Entanglements*, 229f.
[64] Buchholz, "Strafrecht", 317f.
[65] Harald Schmid, "Aufstieg und Fall der NPD 1964-69", *Deutschland Archiv* 40 (2007): 122-30.
[66] Caroline Sharples, „In Pursuit of Justice: Debating the Statute of Limitations for Nazi War Crimes in Britain and West Germany during the 1960s", *Holocaust Studies* 20,3 (2014): 81-108, 88f.
[67] Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland*, 141-208.
[68] Norbert Frei, *Karrieren im Zwielicht. Hitlers Eliten nach 1945* (Frankfurt/M.: Campus, 2001), 227-9. In the FRG, statutory limitations on Nazi crimes were only lifted in 1979. See: Marc von Miquel, *Ahnden oder amnestieren? Westdeutsche Justiz und Vergangenheitsbewältigung in den sechziger Jahren* (Göttingen: wallstein, 2004), 363-70.
[69] Bundesarchiv (hereafter BArch), DP3/102, "Stellungnahme zu den von der UN-Vollversammlung beschlossenen Konventionen über Bürgerrechte und politische Rechte, über ökonomische, soziale und kulturelle Rechte sowie über die restlose Beseitigung aller Formen der Rassendiskriminierung", 1967.

addition of Article 19 to the old criminal code on 11 December 1957 had tightened criminalisation efforts of racial discrimination. By 1968, the SED claimed that the new criminal code had solved this problem entirely. All in all, "the liquidation of the social roots of fascism and the stringent penalisation of those who had been responsible for the fascist racial policies on the territory of the GDR" had led to a situation, the party claimed, in which the anti-discrimination laws were hardly ever used anymore.[70] The prosecution and penalisation of Nazi perpetrators had cleansed socialist society from racial discrimination, the party-line went from the late 1960s onwards. The party maintained that such crime was now foreign to socialist society due to its egalitarian nature. For example, a local court ruled in the matter of a racially motivated attack in Heiligendamm in 1968 that the offender's opposition to the government's declared aim of friendship with all people was at stake in the case, not racial discrimination.[71] Instead of fighting such offences at home, Erich Honecker staged solidarity with Angela Davis and African Americans during Davis's famous visit to the GDR in 1972; a year after the UN International Year to Combat Racism and Racial Discrimination "on initiative if the USSR" .[72] Publication aimed at foreign audiences such as "Free from Racism: How does the GDR realise equal human rights and outlaws any discrimination?", distributed in three languages should document that the GDR had overcome the problem of racial discrimination at home.[73]

The focus on legal education now created problems for the party at home. The continuous propagation of new legal codes and the amendments to the constitution after 1968 in preparation for the proclamation of the first fully socialist constitution in 1974 led to much popular interest in law and rights. In response to this surge in public interest and demand for rights to be guaranteed in everyday legal reality, domestic legal education drives firmly returned to the nexus of rights and duties again.[74] With growing concerns about the political stability of the GDR within SED leadership circles, anti-discrimination work no longer featured prominently. In 1977, anti-racial discrimination and human rights were no longer included in new guidelines for the education of legal professionals at universities for their future careers in the legal sector.[75] The party attempted to reign in the population and promote a new focus on discipline in the workplace when the GDR began to face more and more economic problems.[76]

Critics of the attempt to link international law and domestic legal reform regained influence. By the late 1970s, the East German judiciary and interior ministry flagged up more and more issues with the implementation of international norms. Once the UN human rights conventions had taken effect for all signatory states in 1976, the SED faced pressure to follow through with the implementation of new international anti-racial discrimination norms into everyday legal realities as they had featured so prominently in international rights propaganda

[70] Ibid.
[71] See: https://www.stasi-unterlagen-archiv.de/informationen-zur-stasi/themen/beitrag/rassismus-im-ddr-alltag/#c14239.
[72] BArch, DZ7/73, report GDR-Committee for Human Rights, 31 January 1972; Sophie Lorenz, *Schwarze Schwester Angela—Die DDR und Angela Davis. Kalter Krieg, Rassismus und Black Power 1965-1975* (Bielefeld: transcript-Verlag, 2020), 224-35.
[73] BArch, DZ7/73, report GDR-Committee for Human Rights, 31 January 1972.
[74] Gehrig, *Legal Entanglements*, 222-33.
[75] BArch, DP2/720, „Empfehlungen der Konferenz zur weiteren Entwicklung des sozialistischen Rechtsbewußtseins der Hochschulangehörigen", 1977.
[76] BArch, DP1/9250, „Einschätzung der Wirksamkeit der populärwissenschaftlichen Literatur auf dem Gebiet der Rechtspropaganda. Erfahrungen, Probleme, Schlußfolgerungen", 21 March 1980.

and debates surrounding East German criminal law reform. The enthusiasm of international law and human rights scholars for UN legal norms during the 1960s and early 1970s now came under pressure from within the judicial system. By 1977, the experience of grappling with the UN convention of political and civil rights fed into the preparations to deal with the new UN convention of the human rights of foreign citizens within host countries. Given the GDR's closed militarised border regime, the GDR High Court pointed out to the Ministry of the Interior that "the number of GDR citizens living abroad is not so high", and thus that joining the new convention seemed unnecessary. Following this input from the high court, the interior experts double-checked with the Ministry of Foreign Affairs if the GDR had already signed up to additional obligations beyond the UN human rights conventions. The stipulations in these covenants already posed "a number of problems" in everyday implementation of these norms within the socialist legal system.[77]

Yet, the GDR ministries could not disregard the new convention entirely. The connection, the SED had made itself in its international law propaganda between international law and domestic legality, forced the party to engage with all the treatment of foreigners within the GDR. The new convention was drafted by the same Sub-commission for the Prevention of Discrimination and Protection of Minorities within the UN Human Rights Commission that had been instrumental in anti-discrimination rights work during the last two decades. As the GDR government had concentrated its international rights campaigning on the right of self-determination, anti-discrimination, and anti-apartheid since the mid-1960s and only joined the UN in 1973, there was a danger that ignoring the convention would undermine the coalition building efforts with African and Asian UN delegations if the GDR just abstained from the drafting process altogether.

The judiciary nonetheless forced a step away from international anti-discrimination norms. The GDR High Court lobbied for a GDR push against treating foreigners as minorities to avoid any more problems. Foreigners either came to the GDR to work or study, but the party saw such arrangements as temporary not permanent. It seemed important that "there was not a trend developing that foreigners were minorities in the common sense" of the sub-commission's previous work.[78] In other words, the rights guaranteed under UN conventions to minorities would not extend to persons labelled "foreigners" and allowed to disregard their different national or racial background—and with it their potential racial discrimination in the GDR. In its recommendation to the interior ministry, the high court stressed that rights of foreigners should always be directly tied to the purpose of their visit to the GDR and the duration of their visiting permit. The high court insisted on the need to retain sovereign rights to limit and shape the terms of the new convention to the needs of the GDR government in domestic law. In the current draft convention, the guarantees to foreigners to assemble freely and exercise freedom of speech seemed especially troubling and in need of revision. The SED had made enough unpleasant experiences with students from the global south protesting during their exchange visits to the GDR.[79] The high court feared that West Germans might use these provisions to insist on forming protests within the GDR. Whether or not this was a realistic

[77] BArch, DP1/21451, appendix letter Kern (GDR High Court) to Riss (Ministry of the Interior, 23 December 1977, 1.
[78] Ibid.
[79] See: Gehrig, "Informal Envoys".

prospect, the transition from abstract anti-discrimination work to the actual implementation of international law brought UN norms too close to home for many GDR judicial experts.

The frustration of legal practitioners with the international and domestic law propaganda drives of the last years now came to the fore. The legal experts tasked with implementing new international norms often felt ignored and disregarded in the past. "We have time and again made the experience in connection with the human rights convention that basic rights, once they had been adopted, were hyped by the propaganda to such a degree that the limitations [to these rights] built into other passages of the same document have been pushed into the background entirely."[80] From the late 1970s onwards, parts of the government tasked with internal security and crime prevention began to push back against the foreign ministry and international law scholars who had promoted UN norms as part of the GDR's international campaign to have its sovereignty recognised.[81] When many of the measures intended to curb the number of crimes committed did not lead to a further decrease in the criminality statistics, the state returned to harsher penalties and a focus on domestic law.[82]

As part of this process, the promotion of new anti-discrimination norms reverted in an almost nostalgic tone to hailing the GDR government's achievements in prosecuting Nazi war criminals in the 1980s.[83] The SED's prospective planning for the development of legal theory, cadre training, and the implementation of socialist legality as a tool to predict social development and crime prevention no longer had a special emphasis on racial discrimination. When the Babelsberg academy had determined the main areas of legal development in a long-term plan stretching from 1967 to 1975 and beyond, the linkage of law and economic planning and the propagation of new citizenship duties under socialist constitution dominated both the internal cadre training programmes and the plans for engaging the public into the new legal frameworks set up by the party.[84] However, the SED continued to cite routinely the new criminal code and the revised regulations for conducting criminal court cases since 1968 as evidence for the "realisation of human rights" in the GDR. When the GDR government finally moved to abolish the death penalty on 18 December 1987, the recurs to the prosecution of racially motivated crimes was once more made. In retrospect, the SED leadership legitimised the death penalty with the now "historical need" to prosecute and punish Nazi war criminals. When the presidents of socialist bloc high courts met in East Berlin in 1988, the East German delegation explained to their guests that "there was no necessity any longer to retain the death penalty" after Nazi war criminals had been punished.[85]

In some respects, the GDR government's criminalisation attempts came full circle in the 1980s. The prosecution of Nazi perpetrators remained the main proof of the East German judiciary's domestic anti-discrimination work. When the government demanded another

[80] Ibid., 2.
[81] For this campaign see: Gehrig, "Reaching Out to the Third World".
[82] Buchholz, "Strafrecht", 323-7. Richard Millington, "State Power and 'Everyday Criminality' in the German Democratic Republic, 1961–1989", *German History* 38,3 (2020), 440-60.
[83] This was a somewhat problematic claim as the GDR government had also abandoned the prosecution of Nazi party members for the sake of social stability in the 1950s and 60s. Yet, the number of war criminals remaining and the willing ness to prosecute was nonetheless higher in the GDR than the FRG between 1949 and 1989. See: Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland*, 236-57.
[84] ASR/3775, "Perspektivplan der DASR Walter Ulbricht bis 1975", 20 June 1967.
[85] BArch, DP2/594, "Entwurf: DDR-Beitrag Treffen der Präsidenten der Obersten Gerichte", 1988, 6.

summary of the GDR's adherence to the UN convention of civil and political rights in 1987, the first section that dealt with the implementation of these norms into criminal law still focused on trials of Nazi perpetrators. The report highlighted the case of Heinz Barth. On 7 June 1983, the city court of Berlin had convicted Barth for his role in the murder of 92 Czech civilians and the destruction of the French village Oradour-sur-Glane on 10 June 1944. Members of the Waffen-SS division *Das Reich* killed 642 inhabitants and looted and burnt down the village. Barth was sentenced to life-long imprisonment for commanding his platoon to kill twenty French men as part of the massacre. The GDR High Court confirmed the verdict on 10 August 1983 after weighing the profile of the defendant against state-organised mass crimes. The same procedure was applied in verdicts handed down between 1983 and 1987 that dealt with German soldiers who took part in the destruction of the Warsaw Ghetto in 1944 and members of police battalions in German occupied areas.[86]

In the 1960s and early 70s, socialist legal experts had been confident in their growing influence on international law politics and believed that the socialist bloc would be eventually able to frame the legal meaning and logics of international anti-discrimination law in the international arena in the spirit of socialist legality. This optimism had vanished by the 1980s. After the GDR had adopted many anti-racial discrimination norms in the domestic reform of criminal law, the Western counter-offensive in the human rights field rendered UN norms and socialist legality ever more incompatible in practice.[87] The project of a separate socialist human rights convention, guided by the logics of socialist law and legality, and its failure showed last attempts to reduce the debate on international law to the Eastern bloc. This retreat from international law arenas to the bloc mirrored the defeat of socialist bloc states in shaping the internal logics of international law. It also showed that legal experts across the bloc could no longer agree on a shared agenda of rights politics by the 1980s.[88] Instead, ideological solidarity with racially abused people in the global South, such as the *Bummi* appeal in 1986, dominated East German anti-racism politics again. By the 1980s, the party's return to a focus on the particular German context of prosecuting Nazi crimes showed the ultimate failure to connect UN anti-discrimination and human rights norms with domestic legal realities in the logics of socialist law. Within the UN, the GDR delegation returned to the East German anti-fascist credentials. When the UN marked the fortieth anniversary of the end of the Second World War in 1985, the party mouthpiece *Neues Deutschland* informed East German readers that the GDR delegation head Harry Ott had initiated together with other nations that the organisation marked 8 and 9 May as "days of victory" and "days of struggle against neo-fascist phenomena". In its reporting, *Neues Deutschland* concentrated on the anti-fascist narrative of the GDR's history since 1949. Apartheid only figured as a side note in the denunciation of the "fascist character" of the South African government that African states such as Nigeria had raised as part of the commemoration. The message to East Germans was thus much more one of party nostalgia for

[86] BArch, DP2/714, "Information über die Erfüllung der Internationalen Konvention über zivile und politische Rechte durch die Rechtsprechung der Gerichte", 10 December 1987, 5-10.
[87] For this return of western dominance see: Joseph R. Slaughter, "Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World", *Human Rights Quarterly* 40,4 (2018): 735–75.
[88] For this socialist bloc attempt to codify human rights outside of the UN see: Ned Richardson-Little, "The Failure of the Socialist Declaration of Human Rights: Ideology, Legitimacy, and Elite Defection at the End of State Socialism", *East Central Europe* 46, 2-3 (2019): 318-41.

the overcoming of Nazism than a call for specific measures to combat racial discrimination in the present and future.[89]

Conclusion

East German legal experts ultimately failed to implement international criminal law and human rights norms at home. The pressure to follow through on the party's endorsement of these international norms in the 1960s made East German legal experts vulnerable to attacks from the ministry of the interior and the GDR High Court in the 1970s. Their enthusiasm for international law now undermined domestic stability and the grip of the party on society. As international criminal law norms always remained influenced by various ideologies of law, and Western states reasserted their authority in the international law and human rights field in the late 1970s and 80s, such norms posed serious problems once GDR legal experts tried to turn them into domestic law and legal reality. When a socialist counter-offensive and a separate codification of socialist human rights failed in the 1980s, the GDR leadership turned away from international law as well. With the growing economic crisis at home, East German policy makers and legal experts withdrew from the international anti-discrimination law sphere in the 1980s and concentrated on domestic legal politics. In this process, they returned to their anti-fascist roots facing resurgent neo-Nazism within the GDR. This return to the German historical context even marked the aftermath of the SED's rule. In the transition from the opening of the Berlin Wall to the demise of the GDR, the newly elected East German government replaced the term "fascist" with "national socialist" in §92 of the revised constitution from 29 June 1990. Only months before the unification of Germany on 3 October, the reform forces that had brought down the SED emphasised the domestic German heritage with this amendment. Racial discrimination was now again more narrowly defined in specific reference to the German experience, possibly guided by the flaring up of right-wing activism within the GDR in the 1980s.[90] In 1991, attacks on asylum seekers cheered on by open support from the local population laid bare right-wing radicalism in the East.[91] Soon, attacks in the West showed that right-wing violence are troubling shared legacies of the divided for the unified Germany.

Between 1949 and 1989, the criminalisation of racial discrimination in the GDR remained driven by party ideology. Utopian assumptions about the nature of socialist society and legality prevented the SED to acknowledge publicly that racial discrimination remained part of life in the GDR after the official prosecution of Nazi war criminals was called a success in the late 1960s. Yet, the turn to the Third World and the fight against "neo-fascism" in the 1960s had nonetheless introduced new legal norms and language to East German legal codes and jurisprudence. In the 1960s and early 70s, the GDR took part in global debates on the criminalisation of colonialism and racism. The East German government tried to implement the rights norms resulting from UN anti-discrimination and human rights conventions into domestic law at a time when the FRG insisted on a sovereign domestic legal system shaped by

[89] "UNO ruft zu verstärktem Kampf gegen Faschismus: Weltorganisation erklärt 8. Und 9, Mai zu Tagen des Sieges", *Neues Deutschland* 40, 8 (10 January 1985): 6.
[90] LaPorte, "Skinheads and Right Extremism in an Anti-fascist State".
[91] Wowtscherk, *Was wird, wenn die Zeitbombe hochgeht?*,161-216.

a German national heritage of legal norms. GDR attacks on West German shortcomings in the anti-racial discrimination law field shaped German-German politics of law in crucial ways in this period.[92] The GDR government's turn to "neo-fascism" also facilitated new alliances with Third World liberation movements in Africa. When East German children wrote to Mandela in 1986, however, this support for Third World rights campaigns and a willingness to have it shape domestic legal codification had reverted back to declarations of ideological solidarity and military aid for the armed struggle against the South African government.[93]

The East German attempted linkage of international and domestic norms in the drafting of new legal codes in the 1960s and 70s stand representative for the wider failure of the socialist bloc to dominate international law politics in the 1980s. In the 1960s, the SED leadership had linked its international policy declarations on international law, which should be implemented through law, with the ongoing social transformation at home at a time when leading Soviet legal scholar assumed a direct link between international and domestic law.[94] The GDR government thus actively engaged in the *Verrechtlichung von Politik* as part of Cold War conflicts, a process in which law—both international and domestic—simultaneously became the object of ideological confrontations and the means by which these ideological clashes were conducted.[95] After 1989, these Cold War politics of law were often associated with the stalling in the development of international law and human rights until 1989.[96] Yet, the ideological clashes until 1989/91 over what international (criminal) law and human rights norms should be shaped the agenda of international law makers in crucial ways as it promoted distinct areas of international law for further development. The UN's focus in anti-racial discrimination norms that culminated in Third World rights campaigns for the 1973 anti-Apartheid convention can only be fully understood through the support of socialist bloc countries such as the GDR. While often strategic, socialist states participated actively in setting the agenda of international law making in this period.

Despite looking for inspiration for new forms of anti-racial discrimination law, GDR criminalisation ultimately also remained stuck in the logics of race and racial difference. *Rasse* (race) and *Rassendiskriminierung* (racial discrimination) were the conceptual categories that drove German-German conflicts over criminal law during the Cold War. In 2010, the German Institute for Human Rights—the official governmentally-funded institution to watch human rights adherence in Germany grounded in the UN's Paris Principles—called for the abandoning of "race" as a category in German constitutional law. Fighting racism grounded in an intellectual framework based on the category of race, the institute argued, perpetuated the problem as it blocked the overcoming of societal thinking in racial categories. Instead, the basis of anti-racial discrimination law had to be shifted away from an assumed racial background of

[92] Gehrig, *Legal Entanglements*, 187-201.
[93] Gehrig, "Reaching Out for the Third World", 592-3.
[94] Gehrig, *Legal Entanglements*, 205-6.
[95] For a discussion of such a perspective on legal politics as part of the Cold War see: Gehrig, *Legal Entanglements*, 1-18.
[96] For the controversy over the decade when a "human rights revolution" occurred and an argument for the 1990s see the debate between Stefan-Ludwig Hoffmann, Samuel Moyn, and Lynn Hunt in *Past & Present* 232, 2 (2016) and 233, 1 (2016).

the victim to the racist motivation of the perpetrator.[97] In March 2021, the ruling CDU and SPD coalition in parliament expressed support for this agenda and their willingness to change Article 3 of the Basic Law. The continued focus on *Rasse*, a category the Nazis had used to frame their extermination policies, should vanish from German constitutional law. Yet, the election campaign of summer 2021 torpedoed the proposed legislation. Conservative politicians cited international law concerns in preventing a change of the constitution. While the GDR government ultimately failed to implement UN racial discrimination norms into the framework of socialist legality, but focused on the issue of intent already, politicians in the unified German state continue to argue over the very basis for anti-racial discrimination legislation.[98]

[97] Hendrik Cremer, *Ein Grundgesetz ohne "Rasse": Vorschlag für eine Änderung von Artikel 3 Grundgesetz* (Berlin: Deutsches Institut für Menschenrechte, 2010).
[98] "Doch keine Verfassungsänderung: Warum es vorerst bei 'Rasse' im Grundgesetz bleibt", *Der Tagesspiegel* (online), https://www.tagesspiegel.de/politik/doch-keine-verfassungsaenderung-warum-es-vorerst-bei-rasse-im-grundgesetz-bleibt/27269802.html.