The GLJ Editorial Board Recognizes Co-Editor Peer Zumbansen's Recent "Habilitation" (Johann Wolfgang Goethe University, Frankfurt am Main) and His Receipt of a Canada Research Chair at Osgoode Hall Law School of York University, Toronto, Canada

Book Review - Peer Zumbansen (edt.), *Zwangsarbeit im Dritten Reich : Erinnerung und Verantwortung ; juristische und zeithistorische Betrachtungen* (NS-forced labor in The Third Reich: Remembrance and Resposibility; Legal and Historical Observations) Nomos (2002)

By Christoph Safferling

I remember quite vividly my first contact with Peer Zumbansen in the autumn of the year 2000. I was at the time working together with Professor Christian Wolf as legal adviser to a group of US and German lawyers that were representing the Jewish claimants in several class action suits in the US. We had drafted affidavits in the case *Watman* et al. v. *Deutsche und Dresdner Bank* et al.[1] and *Burger-Fischer* et al v. *Degussa* and *Lichtmann* et al v. *Siemens AG*[2]. Peer was just about to organize a seminar on the topic with several of his students and legal representatives of the German industry in Frankfurt. I was amazed at the enthusiasm he showed towards the issue as my main experience thus far was that German legal scholars seemed to simply neglect this historically difficult topic altogether. We started to exchange our thoughts on the legal issues concerned, which led to a publication on statutory limitations in German law as concerns the forced labor claims.[3] The seminar he had instigated turned out to be a great success and finally was made into the book, *NS-*

[1] It was this first case filed against German banks (and it turned out to be the last to be settled as Judge Kram of the US District Court for the Southern District of New York) that almost brought the Agreement between German industry and the German and US governments to falter. The case was finally terminated on 17 May 2001, see: http://laws.findlaw.com/2nd/013017.html (visited 25 June 2004).

[2] 57 F.Supp.2d 248, 1999 U.S. Dist. Lexis 13864; compare Safferling, NEUE JURISTISCHE WOCHENSCHRIFT 1922 (2000) and Reinisch, IPRAX 32 (2000).

[3] Juristische Rundschau 6 (2002), reprinted in the reviewed book on p. 233.

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Forced Labor: Remembrance and Responsibility, which is being reviewed here. The book is a real international enterprise. It encompasses contributions of German and US-American academics and it is bilingual. Some of the articles are written in German, mostly followed by an English summary. The main part of the book however is in English (interestingly, the English language texts are not followed by a summary in German). The message that is being provoked clearly is that language is no barrier – a typical "Peer-response" to a classical "problem.".

At the time we made first contact it was not clear what was to become of the class actions before several US courts. The German industry organized itself, pressing for support amongst politicians to achieve some sort of agreement to settle the claims. The threat of compensation and punitive damages was immense, whilst the legal issues at stake were heavily disputed. The combination of civil law claims and public international law, in particular pertaining to war, was entirely new. The uncertainty shows in the judgments of US courts that denied the claims mainly referring to the political question doctrine.[4] Law suits in Germany proved to be unsuccessful mostly because of a stern application of statutory limitations and an interpretation of the London Debt Agreement[5] that was hostile towards the claimants.[6] The settlement that was finally agreed upon denied all legal claims, whilst pointing at a rather vague moral responsibility on the part of German enterprises and banking facilities. At the end, German industry together with US and German government officials settled at a sum of 5 billion €, 75% of which would be carried by the German tax payer. A foundation was established through which claimants, in particular from Eastern Europe, would be compensated to a maximum of 7.500 € each.[7] The name of the Foundation: Remembrance, Responsibility and the Future.

The book edited by Peer, *NS-Forced Labor: Remembrance and Responsibility*, takes up the history of the claims. The title resembles the name of the compensation fund, interestingly leaving aside the future. It addresses the history and the legal claims, leaving aside what was also part of the agreement, a fund for cultural and personal exchange between the victims and the perpetrators, which should establish a better understanding for the future. This omission makes sense, mainly because it is not a lawyer's job to promote student exchanges and the like. Nevertheless there are lessons to learn from the German history of NS compensation claims for the future.

[4] 57 F.Supp.2d 248, 1999 U.S. Dist. Lexis 13864; see in the book at p. 208-209 and p. 237.

[5] BGBl. II 1953, 338.

[6] *See*, in the reviewed book p. 238-244.

[7] Foundation Law of 2 August 2000, BGBl. I 2000, 1263.

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This is exactly why the book is so precious: it faces the legal issues and points at the failures in the process.

The book brakes down into four main parts. The first part deals with the history of forced labor during the Second World War, the reality of forced labor, rules and practice of recruitment and employment. This chapter starts with an analysis of the legal and economic profile of the Third Reich. What follows is a description of the reality of forced labor in several case studies (Daimler-Benz, Volkswagen and I.G. Farben). Finally the often-neglected forced laborers in private households, agriculture, monasteries and the like are addressed.

The second part deals with public international treaties and payments after 1945. International treaties after World War II were of particular importance during the legal struggle about compensation. The London Debt Agreement[8] as well as several so called "Verzichtserklärungen" (waiver of claims) of former communist states raised the question of whether or not a state can legally waive individual compensation claims stemming from civil law by an act of public international law.

In the third part, the law suits in the US and in Germany are addressed. As said before, statutes of limitation proved to be one of the main issues in these proceedings. German courts have consistently rejected claims, always referring to the shortest time bar possible. In this section one also finds a comparative analysis of class action suits. This type of legal action is rather popular and well accepted in the US. It is however unknown to the German civil procedural system. The entire concept of pre-trial discovery is foreign to the German litigation. It is however a powerful tool and a fairly frightening prospect for German lawyers and companies. Not surprisingly the execution of US court orders is difficult inside Germany. Two legal systems are at odds with each other still awaiting harmonization.
The final part of the book takes up the Agreement between German industry and government on the one hand and US government and victim groups on the other. It describes the history of the settlement and analyses the final foundation law, which after several years of law suits, heavy campaigning and distressing talks terminated the fight for compensation.

What must also be praised is the scrupulously exact and exhaustive bibliographic list at the end of the book. It is certainly the most comprehensive list of publications on the NS-forced labor issue available. As such it is of incredible value to everybody who is interested in the subject.

[8] *Supra*, note 5.

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The legal claims where rejected altogether. This is certainly the great failure of the history of compensation of NS-Forced Labor. It did not establish a legal answer to the question whether or not an individual has a right to compensation for human rights violations during war. This is mirrored in the final article reprinted in this book: "The legal practices leading to and constituting the Foundation enabled the culprits to evade accepting any real responsibility for the enslavement of millions, while cloaking this evasion in reverence for the slaves. Through careful institutional maneuvering and shrewd justificatory rhetoric, the successors to the legacy of slave and forced labor managed to create an impression of honor and nobles, while undermining what they trumpeted as the one legitimate objective of the process."[9]
It is that bitter taste that remains, when reflecting on the history of the forced labor compensation.

I can only hope that the law develops in a different direction and starts to grow a concise and strict empire of compensation claims for the individual. There are signs that lawyers are starting to take human rights violations seriously as regards personal reparations.[10] Peer Zumbansen's work will certainly help to get the law into this "right track."

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[9] Adler and Zumbansen, in the reviewed book at p. 392.

[10] *Compare, e.g.*, the book by Peer's future colleague at Osgoode Hall Law School, C. SCOTT, TORTURE AS TORT. COMPARATIVE PERSPECTIVES ON THE DEVELOPMENT OF TRANSNATIONAL HUMAN RIGHTS LITIGATION (2001).

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