Promoting human rights and achieving reconciliation at the international level (part 1)

JEREMY SARKIN

Professor of Law, University of the Western Cape

GIULIA DAL CO

Former LLM student, University of the Western Cape

1 INTRODUCTION

Reconciliation is frequently narrowly understood as taking place between individuals or groups at the national level in a specific country.[1] Yet it occurs at many levels in a nation, including the personal, the interpersonal, the community, and the national level.[2] However, reconciliation can and often needs to occur between international actors. This is because relationships between states and other actors on the international stage periodically deteriorate. Such deterioration can be due to disagreements, conflict or acts or events (real or perceived). Thus, the relationship between states and other international entities, such as the United Nations,[3] also occasionally needs repairing. Conflicts between states are normally resolved through traditional international law mechanisms such as peace treaties and arbitration. However, in the absence of a process of reconciliation between the parties, such treaties rarely bring lasting peace.[4] In

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1 See Sarkin J *Carrots and Sticks: The TRC and the South African amnesty process* (2004)

2 See Daly E and Sarkin J *Reconciliation in divided societies: Searching for common ground* (forthcoming 2006).

3 The relationship between Rwanda and the United Nations is of relevance here, since the United Nations is generally accepted as having failed to act to prevent the 1994 Rwandan genocide

4 History demonstrates that when peace is achieved through a harsh and punitive treaty, without any efforts to reconcile with the defeated enemy, it can often be fragile, uncertain and transitory. This is what happened with the punitive peace-keeping strategy of the Treaty of Versailles that ended World War I. Through this treaty, Germany was deprived of several parts of its territory, suffered the humiliating presence of military occupation forces and was bent by an astronomical obligation to pay for the damages caused. The vengeance of Versailles and the blame it assigned was the fuse that made World War II deflagrate. On the other hand, whenever a peace treaty entails or enhances a reconciliatory policy, a long-lasting peace can be achieved. The final defeat of Napoleon at Waterloo in 1815 was followed by the Congress of Vienna, whereby the victors sought to achieve peace by establishing a stable balance of powers and by heavily penalising France and limiting its territory within pre-1790 boundaries. The moderation of the peace treaty guaranteed a prolonged peace through two different mechanisms

fact, peace treaties are often limited to a cease-fire and do not achieve long-term sustainable peace. Sustainable peace requires dealing with the underlying issues and rebuilding or restoring a relationship or building a relationship in the absence of a pre-existing one. Thus, achieving reconciliation between former enemies is vital, because the process aims not only at resolving a conflict but also at promoting lasting peace.

The literature on reconciliation in the international context generally focuses on relations between rival states emerging from armed conflict. Yet situations of direct or indirect conflict between countries are not the only instances requiring reconciliatory policies at the international level. Moreover, reconciliation is needed not only to prevent war from recurring but also to promote societal healing.[5] There are many cases around the world in which healing between populations and their respective governments are necessary for their own well-being, as well as for global peace.

This article explores an under examined issue – how reconciliation can be achieved between two or more international actors. In this context reconciliation is about repairing relationships. It is about integrating the past and the future. It is about societies living together in peace and harmony alongside each other. John Paul Lederarch writes that reconciliation is about–

> [opening] up the social space that permits and encourages individuals and so-
> cieties as a collective, to acknowledge the past, mourn the losses, validate the
> pain experienced, confess the wrongs, and reach toward the next steps of re-
> storing the broken relationship [6]

With implications for international reconciliation Lee has argued the following:

> [R]econciliation is part and parcel of a peace-building process Without recon-
> ciliation, conflicting parties may come to some sort of accommodation, per-
> haps an uneasy truce, but seldom an enduring peace. In reconciliation, the
> parties involved take steps to ensure that justice be served. They then work to
> remove the residues of mistrust which, if unaddressed, would linger as latent
> sources for future conflicts.[7]

However, there is divergence on whether achieving reconciliation is 'an end or a means, an outcome or a process; whether it is politically neutral

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Firstly, the Concert of Europe, an oligarchic system of consultation and policy coordina-
tion aimed at producing multilateral decisions, was established. Secondly, a policy of
rapprochement with France, by allowing her to join the Concert of Europe, stimulated
reconciliation with the feared power. However, the peace did not last longer than three
decades, because the Congress of Vienna, by resuscitating France's monarchy, created
a static system for a world of changes which was bound to perish as soon as the liberal
wind blew strong again throughout Europe. For an interesting analysis of the options
that victors have after a war, see Kegley CW and Raymond GA *How nations make peace*
(1999).

5   Sarkin (fn 1 above) 211

6   Lederach JP 'Beyond violence: Building sustainable peace' in Weiner E (ed) *The Hand-
    book of interethnic coexistence* (1998) 236 and 245

7   Lee I 'Probing the issues of reconciliation more than fifty years after the Asia-Pacific
    war' available at http //guywong home.netcom com/html/IvyRecon.htm (access con-
    firmed. 25 April 2006).

or unavoidably ideological, and the extent to which it is conservative or transformative in orientation'."

Although it is normally understood that international reconciliation occurs between states, each with its own government, bureaucracy and people, the process is also valuable in re-shaping flawed relationships between single states and multilateral organisations (for example the United Nations), among groups of states, and between groups of states and single national entities. Because the most common case is that of two different states seeking reconciliation, the general theory will mostly deal with the concept of a national state. However, the theorisation is also valid in cases in which the main actors in the reconciliatory process are multilateral organisations or a group of states.

The patterns global politics take in shaping multi-actor (interstate) relations allow for the identification of six models of international reconciliation. Each model is constructed on the basis of a number of factors. First, the historical background that triggers reconciliation – the past relationship between those (two) actors – is taken into account. Therefore the models are designed to include situations of past warfare, national division, colonial relationships, or foreign involvement in the domestic affairs of another country However, the past is not the only key dynamic determining the type of reconciliation discussed Other defining aspects include the level of present involvement of the two actors, the source of the financial means needed to build reconciliatory structures and mechanisms, and the aim behind the wish to reconcile. Monetary issues often mould the final form that reconciliation assumes because the actors financing the reconciliation process can determine not only its form, but also its success or failure. The reunification of West and East Germany illustrates this point. Because the reunification was funded, directed, and managed by West Germany, it took the form of absorption rather than reconciliation. It therefore serves as an example of inclusion of the East in the West's values, economy, and social security system, rather than of mediation between the two systems. It is fundamental to establish which country or international organisation initiates reconciliation because this, in great measure, determines the faith of the reconciliatory policy.

The numerous forms international reconciliation assumes will be discussed in detail through practical examples of relationships between countries where a policy of reconciliation should take place or has already been implemented.

The first part of this paper provides a theoretical framework to the problem of reconciliation between former enemies, not only between governments of conflicting countries but also between their respective populations. The theory has been widely built on practical examples of foreign relations in which a reconciliation policy has been adopted after an armed

8 Lerche C 'Peace building through reconciliation' (2000) 5 *International Journal of Peace Studies* 66

conflict. Since Germany and France, whose long-lasting conflict had shat-
tered both countries and their reciprocal relations for centuries, first
effectively used and fulfilled such a policy, the theorisation on inter-
national reconciliation draws most of its concepts from this example.
However, the specific ways in which reconciliation between countries and
international actors take place depends on multiple factors, including the
historical background of the inter-state relations, the political leadership of
the moment and the global attitude towards rapprochement. Therefore,
states' policies, acts, and gestures, which entail a reconciliatory element,
will be taken into account to give a more comprehensive picture of all
facets of international reconciliation. Each model will be illustrated
through one or more practical examples, with particular regard to the four
different levels at which reconciliation takes place (governmental,
national, local and individual). The discussion of each model will conclude
with an assessment of the policy and some final recommendations.

2 WAYS OF ASSESSING RECONCILIATION

Reconciliation in the international arena is generally a political policy,
mostly a foreign policy, articulated at different levels – diplomatic, psycho-
logical, economic, cultural, and social – that aims at transforming former
enmities into trustful and long-lasting friendships. The process of recon-
ciliation is successful when conflicting relationships between states and
populations are transformed into peaceful ones. Moreover, the policy
succeeds when it is so deeply rooted in the country's social fabric that it
extends beyond any political party's choices and policies, irrelevant of the
government's colours. International reconciliation is a strategy of convert-
ing a long-standing conflictual relationship between two states into a
harmonious one. Although reconciliation entails arbitration, it expands
well beyond the margins of arbitration by introducing a new actor onto
the international relations scene: the people. Reconciliation cannot be
achieved by governments alone – the people must believe in the process
and be called to participate and invest in it. It should take place at multi-
ple levels in the states involved, particularly the individual, social, political
and economic levels. In addition, it should not be confined to the two
international actors seeking reconciliation; it should be embedded in a
broader international context and include neighbouring states and other
interested parties.

The first phase of the reconciliation process should be boosted at the
political level through diplomatic encounters, speeches from the political
leadership, and government gestures. Since catharsis is the necessary
starting point of any reconciliatory process, cathartic rituals have to take
place in a visually recognisable way. This can include apologetic acts (i.e.
genuflections, construction of memorials and monuments), singing new
and maybe more reconciliatory anthems, designing new national flags,
and shaking hands, kissing or embracing by rival political leaders. The
political level gives the policy a formal and symbolic framework, both
fundamental for the policy to be seen, understood and eventually followed
by the people. However, even if reconciliation should start with a political

leap, it is important that the population makes it its own aim and even its own necessity. A population, which is often ravaged by the conflict and permeated with hatred against the enemy, can only start seeing reconciliation as an urgent need if the process is incorporated in the social tissue. This may be accomplished through the building of and participation in associations committed to atonement or reconstruction, educative projects, youth exchange programmes, and other forms of cultural initiatives. Projects can be initiated by the government, but their success is dependent on the acceptance of and the attitude towards them by various role players.

Reconciliation should also be implemented at a financial and economic level by facilitating or liberalising trade between the two countries; through the construction of policies supportive of the free movement of workers and their families; or simply through monetary aid and financial support to the more disadvantaged of the two countries. In some of the cases examined in this paper, reconciliation takes place almost uniquely at the economic level or is impacted on negatively by the economic situation. However limited, in some situations of particular impoverishment of one country through the systematic exploitation of its resources by another country, the importance of financial support from the latter to the former cannot be denied.

Historically reconciliatory policies between two countries have succeeded in bringing them closer when, apart from the two nations' will, a wider environment favourable to their rapprochement was present at the global level. Sometimes the actual reconciliation can only take place because of third party intervention or because of global political changes. The broader international attitude towards a certain policy of reconciliation is certainly an issue, in certain cases even a necessity. Yet, international intervention and support are not sufficient – reconciliation needs to be supported by all involved actors. This becomes clear if one looks at the international cry for national reconciliation in Rwanda after the 1994 genocide.[9] If reconciliation is not supported by the governments and the peoples needing to reconcile, even the strongest pressures and calls from other global powers will not save it from failure

3 MODELS OF INTERNATIONAL RECONCILIATION

States willing to follow the path towards reconciliation normally have a historical background of conflict, the intensity of which ranges from war to simple tension. Moreover, there are different kinds of relationships

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9 See Sarkin J 'The tension between justice and reconciliation in Rwanda Politics, human rights, due process and the role of the *Gacaca* courts in dealing with the genocide' (2001) 45 *Journal of African Law* 143. Sarkin J 'The necessity and challenges of establishing a Truth and Reconciliation Commission in Rwanda' (1999) 21 *Human Rights Quarterly* 767, Sarkin J 'Preconditions and processes for establishing a Truth and Reconciliation Commission in Rwanda: The possible interim role of *Gacaca* community courts' (1999) 3 *Law Democracy & Development* 223

between states that trigger reconciliation and call for the establishment of stable peace. These can be broadly summarised as follows:

1. post-conflict or post-warfare peace-building;
2. division within a single state and subsequent reunification;
3. dissolution of one state and the consequent birth of numerous smaller states;
4. independence and decolonisation from colonialist powers;
5. foreign involvement (financial, political, or military) in the domestic affairs of another country;
6. national civil wars that have a regional dimension.

1. The post-conflict or post-warfare model will be discussed first. In order to understand how a policy of reconciliation can work effectively and why it seems necessary to implement it in certain situations, the Franco-German reconciliation will be examined. This is one of the few historical examples in international relations in which this particular policy turned a long-standing international animosity into a peaceful relationship.

2. The second part of the paper explores the policies of East and West Germany, South and North Korea, and China and Taiwan, as examples of division within a single nation. The choice fell on these cases of international relationships because a common red line can be traced in their history: the splitting of a country with a common culture, language, traditions and territory into two conflicting political and economic systems. Here reconciliation is often seen as synonymous with reunification, or at least, reunification is understood to be the main path leading to reconciliation. Yet a significant difference distinguishes them, namely that Korea experienced a civil war, while the German population was never divided by such an internal conflict. Civil war brings about the destruction of national identity as well as the fragmentation of a people due to ethnic belonging, religious beliefs and political sympathies, thus requiring a reconciliation policy prior to the introduction of any kind of reunification policy. Without reconciliation, reunification within a population shattered by civil war cannot be successfully achieved. In such a case, reconciliation will almost certainly be confined to a political reunification, wanted and upheld by the political elites. The process will not see the birth of a people-to-people reunification, a true and long-lasting reunification accompanied and sustained by personal reconciliation, able to build a constructive and fertile cooperation between the people once at war with each other. On the other hand, when the division has not been caused or followed by a civil war, reconciliation among the people will be easier and peaceful cohabitation and collaboration will not require collective processes of forgiveness, collective expressions of grief, or apologies.

This second model of reconciliation shares some similarities with a policy of reconciliation within a single country because it is meant to take place within the population of a single nation, after a civil war or a political change of regime. Nevertheless, the fact that prior to any

attempt at unification the country is *de facto* divided into two different political and economic systems, referring to different governments, makes it fall under the label 'international reconciliation'. Therefore, it seems appropriate to include this particular model in the present analysis.

3. The third model of international reconciliation is perfectly symmetrical to the previous one. Here a single country is divided into different smaller states at the end of ethnic, religious or political conflict. The example of the former Yugoslavia will be discussed (the example of the former Soviet Union could also apply).

4. The fourth model of international reconciliation is constructed around the issue of decolonisation. The special relationship that now binds France to Algeria will be examined in the light of their common history. The choices France makes towards Algeria, in terms of economic, social, and migratory support illustrate some of the facets reconciliation assumes in the international arena. France, as a former colonial power, did much that it needs to be forgiven for by its former colonies. The proximity between the two countries and the difficulties Algeria has faced since independence make the Franco-Algerian relationship interesting to explore

5. The fifth model is that of a foreign country involved in the domestic affairs of another country. The case of a foreign state militarily and financially supporting a dictatorship in another country is also seen as a situation requiring international reconciliation. Often in these cases, only the government and the politicians know the extent of the foreign intervention, and the population is not informed about the role of the foreign country in the atrocities and human rights abuses. Since the population remains largely unaware of the role of the foreign interventionist state, they cannot be called upon to support a reconciliation policy. Therefore it might be important for the government, together with the international community, to expose the foreign intervention by giving details of its aim and degree. If they do not, reconciliation will be left to appear as a side dish of diplomatic encounters and will never reach the people who have been most victimised by the foreign-funded regime. The history of Latin America is awash with such examples, but only the case of the United States' financial support to the Nicaragua paramilitary will be examined.

6. Finally, the case of West African conflicts will be examined, including Sierra Leone and Liberia, to look at the question of domestic conflicts that continue to have a dramatic regional impact and where reconciliation between states needs to occur. The example of the African Great Lakes region could also have been chosen as an example.

In the case of a reconciliation designed to prevent a past warfare from maiming the relationship between the two previously hostile countries, the need for a diplomatic engagement is evident. Similarly, where two countries seek reunification or a single country splits itself into a number of new states, international reconciliation is required. However, as soon as the process of reunification or of division has taken place, reconciliation is

often forgotten. In the postcolonial cases, reconciliation is usually confined to the diplomatic and political levels, thus alienating the populations from the whole process. In the fifth model, which entails the notion of an unwanted and negative foreign intervention in the domestic affairs of another country, reconciliation is also often confined to the governmental and diplomatic levels. Finally, the case of a civil war that goes beyond the domestic boundaries of a single nation and becomes a regional matter seems at first glance to require only national reconciliation. Yet in these cases, like in more evident situations of international tension, a reconciliatory policy should be implemented at the regional level, taking into account the regional equilibrium and issues and involving neighbouring countries as well as the state directly affected by the civil conflict.

A fundamental feature of reconciliation is transformation, whereby new political structures and systems that make war impossible have to be developed and nourished.[10] While a reconciliatory process is normally a post-war reconstruction policy, it can also be deployed after a mere international tension or after a situation of potential conflict between two nations has been defused. For Ackermann, reconciliation allows former adversaries who have entered a post-settlement or a post-conflict phase to establish structures and procedures for developing and maintaining durable peace.[11] The choices national leaders face when wars conclude are among the most consequential they ever make because winning is not an end in itself.[12]

Though reconciliation does not preclude conflict, it does allow for the management of difficulties in interstate relations in a peaceful manner, drawing on compromise rather than on antagonism. It remains a crucial component of conflict resolution because it creates a structural and procedural basis for the peaceful settlement of diverging conflicts of interest.[13] Even if reconciliation does not fully eliminate conflict, it can remove the basis for war and achieve a structural peace. A stable peace differs from the mere absence of war because it builds a qualitatively and structurally new relationship among former combatants. For durable peace a policy of reconciliation should launch and establish the following:

1. multilateral and bilateral networks and agencies;
2. institutionalised structures aimed at building peaceful relationships;
3. mechanisms of regular consultation between governments.

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10 The work of Feldman focuses on reconciliation arising from the cinders of armed conflict; see Feldman LG 'Reconciliation and legitimacy: Foreign relations and enlargement of the European Union' in Banchoff T and Smith MP (eds) *Legitimacy and the European Union: The contested polity* (1999) 69. For an analysis of what in the course of this paper will be defined as the 'post-conflict' model of international reconciliation, see her essay on German foreign policy in the aftermath of World War II: Feldman LG 'The principle and practice of "reconciliation" in German foreign policy: Relations with France, Israel, Poland and the Czech Republic' (1999) 75 *International Affairs* 333.

11 For a general definition of international reconciliation and a detailed analysis of the Franco-German rapprochement see Ackermann A 'Reconciliation as a peace-building process in post-war Europe' (July 1994) 19 *Peace and Change* 229 at 245.

12 Kegley and Raymond (fn 4 above) 3.

13 Ackermann (fn 11 above) 245.

Although lasting peace remains the final objective of reconciliation,[14] it is not the only collective good it can produce. Reconciliation between former enemies can bring about security, economic growth, as well as stimulating and innovative cultural and political exchanges. Furthermore, reconciliation can build mutual trust and help to put an end to the vicious circle of arms racing, insecurity, and uncertainty. Durable peace remains the final objective of reconciliation.

4 BUILDING COMMON VALUES THROUGH HISTORY, COOPERATION, INSTITUTIONS AND CONSULTATION

Reconciliation can usually only be achieved through a continuous and dynamic confrontation with the past.[15] On both the collective and the individual level a historical consciousness and an acknowledgement of the past are necessary, whether in the form of education, public memorials, collective remembrances, or written and verbal discourses about the past. Through a process of forgiving, but not forgetting, past enmity can be reviewed through a constructive and reconciliatory lens. Re-viewing and re-interpreting history (and past sins) can encourage new perspectives and allow people to reconcile with their enemies. The centrality of history in the process of shaping a new relationship between former enemies is vividly captured by Elazar Barkan.

> This universe is studded with abundant contradictions, but increasingly sub-scribes to a shared political culture, which pays greater attention to history as a formative political force. History informs identity more intimately today, and being subject to reinterpretation, it has also become a space for contesting per-spectives. The new 'we' of history are both winners and losers. History changes who we were, not only who we are. In this sense, history has become a crucial field for political struggle. Yet the politics of memory, as it is often referred to, operate according to particular rules and tempo. For a 'new' history to become more than a partisan 'extremist' story, the narrative often has to persuade not only the members of the in-group who will 'benefit' from the new interpreta-tion, but also their 'others' those whose own history will presumably be 'di-minished', or 'tainted', by the new narratives.[16]

An apology for a historical wrong is an important foundation for serious and long-lasting reconciliation.[17] Dialogue does not have to evolve uniquely

14 For a punctual and clear theorisation of the reconciliatory process see the work of Feld-man *International Affairs* (fn 10 above) focusing on the European as well as the German context. For a discussion on the German foreign policy of reconciliation towards one of its worst enemies, France, see Ackermann (fn 11 above)

15 See Feldman *International Affairs* (fn 10 above) at 335

16 See Barkan E 'Between restitution and international morality' (2001) 25 *Fordham International Law Journal* 46 and 47

17 Sarkin J 'Reparation for past wrongs. Using domestic courts around the world, especially the United States, to pursue African human rights claims' (2004) 32 *International Journal of Legal Information* 426 at 339 and Sarkin J 'Holding multinational corporations ac-countable for human rights and humanitarian law violations committed during colonial-ism and apartheid. An evaluation of the prospects of such cases in light of the Herero of Namibia's Genocide Case and South African Apartheid Cases being brought in the United States under the Alien Torts Claims Act' in Brems E and Vanden Heede P (eds)

around the concept of guilt, but it certainly has to contain recognition of past injurious behaviour, acceptance of responsibility, and a commitment to the pursuit of justice and truth.[18] In the international arena, however, forgiveness is not an easy task. In global politics, forgiveness could be seen as a sign of weakness, a futile risk. One can only forgive those who are no longer considered dangerous. Therefore former enemies should exchange visible signs of atonement and countries that caused a war or supported a dictatorship in another country are required to make apologetic gestures towards their victim-countries and their victim-citizens. Rarely has history experienced such international apologies. People harbouring an acute sense of injustice do not easily forget suffering at the hands of others, even if foreign countries are directly or indirectly regarded as the perpetrators. A highly symbolic sign of atonement was the genuflection that Willy Brandt made in front of the Warsaw ghetto memorial, which was reported on as being perceived by Poles, with its evident apologetic contents, as promoting reconciliation between Poland and Germany. Although the confrontation with the past forms the starting point for an effective reconciliation, it can only succeed when it aims at building the future.[19]

For reconciliation between states to occur reconciliation has to occur within the states concerned. In this context, for a reconciliatory policy to effectively take root in the civil society of a country, transformation should be institutionalised. The concept of transformation is a starting point for the whole theorisation of reconciliation. In fact, reconciliation is seen as the process of transforming bad relations into good ones. Its aim is to modify past enmities and torts into a new kind of relationship. This cannot happen overnight; it is a slow movement of the two parties coming closer, carefully beginning to trust each other and eventually even embracing each other. Since reconciliation rests on people's *relationships* with each other, therapeutic processes should be set up. Forms of group therapy, community hearings, and grieving should be financially supported by the state, through tax exemptions or direct funding of healing initiatives. Only with sufficient individual healing will people be able to participate actively and healthily in the reconciliation process.

Cooperative linkages should be created anew to develop new personal and public interactions and to help recalibrate power relationships between the two countries. Moreover, these linkages should become institutionalised over time to provide the essential structures for assuring durable peace. Institutions can be limited to a bilateral dimension, as in the

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18 Feldman *International Affairs* (fn 10 above) 334 337

19 See Sarkin J and Daly E 'Too many questions, too few answers: Reconciliation in transitional societies' (2004) 35 *Columbia Human Rights Law Review* 661 at 693: '[R]econciliation is a mechanism for dealing with the past that is forward-looking – constructive and transformative rather than punitive or retributive'.

case of bilateral governmental agencies and trans-national networks between the two societies. Yet, institutionalisation can also occur at different levels, within bilateral and multilateral patterns of interaction, as in the case of those integrated in the framework of a supranational institution to which the two rival countries belong.[20]

Establishing joint institutions, building cooperative linkages, and conducting joint projects that contribute to institutionalising the peaceful relationship between the countries, are not the only ways to resolve past conflicts. In a strategy of reconciliation, governance policy must create a situation that promotes the fullest participation of all citizens in the process. In order to do so, new cultural patterns must be promoted through intergenerational cumulative learning. Cultural, academic, and scientific exchanges, as well as sports events must be incorporated in the social structure. Through the promotion of people-to-people contacts and the enhancement of public opinion for peace making, a domestic environment conducive to peace can be accomplished. Because it seems essential to humanise relationships among adversarial leaders and their respective societies, an active and visionary leadership is certainly another fundamental enzyme for the process of reconciliation. Normally the political leadership has the strength and support needed to make reconciliation a collective, national goal. Often religious figures play an equally important role. Leaders committed to a policy of reconciliation are necessary to draw public attention to the issue and to guide and enthuse the whole society, providing opportunities for both individual and collective reconciliation. In order to be inspired by charismatic individuals, the population should be able to see and hear their words. Therefore, media coverage, understandable and accessible information, and widespread news diffusion of the reconciliatory policy is vital to make it adhere to the social tissue. Both the initial design and the actual unfoding of the policy should attain a high level of publicity.

The international context plays a fundamental role in stimulating or deterring reconciliation. A multilateral system can support the process by guaranteeing that the parties do not avoid each other or by building a peaceful arena for the development of common interests.[22] A final ingredient required to bring former enemies to a common ground fertile for reconciliation is the affirmation of shared values in the area of basic freedoms and human rights.[23]

Ultimately, lasting reconciliation requires the interplay of various levels of interaction. Within a single nation, reconciliation should be multilayered and take place at the national level (through political and diplomatic

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20 See Ackermann (fn 11 above) 244

21 Leadership is one of the four variables Feldman utilises to describe and assess international reconciliation, the other three being history, institutions and international context. See Feldman *International Affairs* (fn 10 above) 333-356

22 See Feldman *International Affairs* (fn 10 above) 334-337

23 See generally on South Africa, Sarkin J 'The development of a human rights culture in South Africa' (1998) 20 *Human Rights Quarterly* 628

gestures and policies), at the local community level (through the participation of the people in exchange programmes and educational initiatives), and at the individual level. The individual who takes part in the reconciliatory process is an important cog in the wheel. Nobody can decide on behalf of a victim to forgive or to take hands with his/her perpetrator; neither can a political majority impose reconciliation on an individual. Such difficult decisions are personal matters and should be left to the personal psychological realm of the individual.

Historical confrontation, apology, collective mourning, mutual recognition, mediation through diplomacy, and strong commitment of leaders to reconciliation, justice, remembrance, cooperative linkages, institutionalised structures for the creation of a peace-building culture, networks of exchange, people-to-people integration, regular consultations, and the broader international environment are all elements which contribute to a policy of international reconciliation.

In the following paragraphs some empirical cases of international reconciliation will be examined in the light of the abovementioned features.

5 POST-CONFLICT RECONCILIATION

The first model to be discussed assumes an armed conflict between two actors and draws on the example of the reconciliation achieved between France and Germany. History plays an important part in assessing which reconciliatory mechanisms should be deployed to ease the residual tension following the war between the two adversarial parties.

> The emergence of amicable relations among formerly hostile powers may be conceptualised as occurring in two distinct stages. In the first, the states . . . come to a decision that armed conflict is not an acceptable mechanism for settling their differences and that some reconciliation must be achieved. In the second, this *determination* is acted upon, outstanding disputes are liquidated, and an *expectation* of non-violence develops.[24]

For Rock, expectations of non-violence can be measured along three dimensions: popular attitudes, elite opinion, and military planning.[25] These particular expectations of non-violence should be deepened in the social tissue and widened in their scope by embracing reconciliatory aims, and this process should take place immediately after the end of the conflict. The timing does depend on the realities on the ground. However, reconciliation is a process which takes time. It is a continual process that ebbs and flows with the events and circumstances in the various nations.

After the world understood that the policy of vindictiveness had failed to bring peace to the desolated post-World War I landscape, in 1945, the Allies decided not to impose reparations upon Germany. A novel factor was then introduced into international relations: the victors undertook

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24 Rock SR *Why peace breaks out: Great power rapprochement in historical perspective* (1989) 5.
25 *Ibid* at 22.

future reconciliation by assisting their defeated enemies to re-establish themselves, rather than holding to the traditional moral right to exploit enemy resources. Germany sought to repent for its sins under Nazism by reaching an agreement with its victims. Therefore, as Barkan puts it, 'The Germans paid compensation not to the winners but to those they had victimised the worst: primarily the Jews.'[26] A new foreign policy was formulated in the newly born Federal Republic of Germany (hereafter 'West Germany') whereby reconciliation *had* to be achieved. Immediately after World War II, West Germany implemented a foreign strategy directed at establishing friendly relations with the United States and with the countries of Western Europe. The aim of such a policy, *Westpolitik*, was to rehabilitate Germany, restore its sovereignty, achieve political and economic recovery, and obtain equality and security. Integration into the West through the establishment of multilateral as well as bilateral frameworks was an economic and political necessity. Germany was not allowed to obtain security by military means but had to rely only on political and diplomatic instruments. The aim was to redress the psychological and political barriers that hampered the integration of Germany into the community of nations.'[27]

Even if post-war reconciliation was first accomplished between Germany and the United States, it has always been associated with the Franco-German relationship because of their previous long term conflictual relationship and because of the incredible steps made to ease past animosities and prevent any further tension from arising. Reconciliation between these two countries, whose extended history of conflict and ethnic hatred had been so entrenched as to be described as 'hereditary enmity,' did not develop spontaneously, but materialised gradually and painfully. The process of reconciliation between France and Germany is the most successful example in practice; it turned a centuries-long rivalry into one of the best interstate relationships.[28]

Initially the French claimed the right to place some parts of the German territory under their control to secure themselves against Germany. Such foreign policy, aimed at constructing a French zone within Germany, delayed the process of a Franco-German rapprochement. Nevertheless, by 1947 France changed its attitude towards Germany, mainly because of the lack of support from the United States and the United Kingdom to French claims to German territory.[29]

A clear moral imperative to confront the past emerged from religious and political leaders and was affected through a number of informal contacts between French and German politicians and private citizens from both sides. For example, the evangelical movement 'The Sign of the

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26   See Barkan (fn 16 above) 48, 50

27   See Ackermann (fn 11 above) 233 236

28   In the light of the Cold War, a reconciliatory policy with France was necessary for West Germany, as it helped the latter to regain its sovereignty in the wider world and allowed it to play a central role in the common fight against communism

29   See Ackermann (fn 11 above).

Atonement', which encouraged members to volunteer in countries that had suffered under Nazism, boosted a new spiritual basis for relations between the two countries.[30] The awareness among people of the need to put an end to conflicts and the pivotal role played by eminent personalities such as Jean Monnet, Robert Schuman, Charles de Gaulle, and Konrad Adenauer contributed greatly to the success of the Franco-German reconciliation. Leaders and public figures can therefore play critical roles.

In 1949, Konrad Adenauer became the first chancellor of West Germany. His idea of reconciliation with France[31] entailed four essential and interdependent processes aimed at –

1. the rebuilding of trust;
2. the linking of political, economic, and societal interests on a bilateral level;
3. the creation of a political community;
4. the recognition of France's legitimate security needs.

For Adenauer the most important task of German foreign policy was the creation of long-lasting, good-neighbourly relations with France and he took advantage of every chance to impress his conviction on the German public. He believed that peace-building had to be set up through the construction of friendship relations between the two populations, between men, women and children and all social classes, positions and professions. The expansion of societal and cultural ties between the two countries through a concerted and institutionalised people-to-people interaction was actively supported by other politicians, as well as private citizens. A varied network of programmes was built, which ranged from youth and academic exchanges to partnerships between German and French cities; from scientific, technological, and ecological exchange programmes to historical meetings for the revision of textbooks on common history. Among the institutions that implemented and stimulated reconciliation, national parliaments played an important role. The coming together of parliaments extended to the joint organisation of meetings of committees within the National Assembly and the *Bundestag* and close cooperation between the German and French Houses of Parliament, including exchange of officers. Furthermore, non-governmental organisations in both countries provided ways for victims and victimisers to address their collective grief through collective mourning.[32]

In 1963, one of the most important steps for the promotion of reconciliation was taken: the signing of the Franco-German Treaty.[33] The Elysée

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30 See Feldman *International Affairs* (fn 10 above) 338, 339.

31 For Joffe J 'The foreign policy of the Federal Republic of Germany' in Macridis R (ed) *Foreign policy in world politics* (1989) 79, 'the unique quality of Adenauer's style rested in his persistent attempt to transcend the normal diplomatic process . Instead, his most elementary diplomatic technique was forever dedicated to "upgrading the common interest" and, hence, to dwarfing a particular clash of interest by enlarging the framework for its solution '

32 For a detailed account on such partnerships see Ackermann (fn 11 above) 237–242.

33 *Ibid* at 241.

Treaty promoted youth participation in the reconciliatory process through the creation of a Franco-German youth office This bilateral organisation was the first governmentally sponsored youth exchange institution. The Elysée Treaty marked the beginning of the institutionalisation of the reconciliation policy between the two countries. On the basis of the Treaty foreign and defence ministers were to meet regularly, and education ministers were to meet every three months to oversee the implementation of cultural cooperation between the two countries [34]

Such a bilateral pattern of interaction was well-articulated and ranged from the provision for semestral meetings of heads of state, who could even substitute each other at certain European reunions, to the creation of joint councils of ministers and consultations between the foreign and technical ministers. Through such bilateral interaction, the Elysée Treaty created a permanent structure for constant dialogue at the governmental level. The two governments were not, however, the only ones involved in the process of reconciliation. The civil societies of both countries took part in a constant flux of exchange, such as twinning towns, student exchanges and the creation of a jointly operated TV network, ARTE, [35] to name just a few key initiatives.

Franco-German reconciliation was not only conducted through the bilateral interactions cited before but also through multilateral action. Indeed, a fundamental step towards a sound reconciliation was taken thanks to a multilateral pattern of interaction: the construction of the European community. In 1950, the common efforts of Konrad Adenauer and the French foreign minister, Robert Schuman, to build a European political union with Germany and France at its base, came to reality. This project strengthened the cause for reconciliation between the two, apart from and beyond relationships to other European countries. The Schuman Plan emphasized the significance of Franco-German reconciliation for peace in Europe and proposed the pooling of coal and steel, the two weapons of modern warfare at the time [36] The envisaged creation of a European Coal and Steel Community was a very poignant symbolic gesture. Fear of communism and the threat posed by the Cold War also helped bring the two countries together. In addition, the reconstruction of a free, liberal, and peaceful Europe was a compelling political objective

Without disregarding economic factors, the construction of Europe was the joint project that enabled Franco-German reconciliation to be realised. Conversely, the Franco-German rapprochement constituted a fundamental block in the bigger European building. The European Community has been described as 'the greatest confidence building measure in the history

34 *Ibid* at 241-243
35 Feldman *International Affairs* (in 10 above) 343-344
36 The Franco-German rapprochement through the bigger initiative of a European Community can also be seen as one of the starting points of German rearmament. In fact, already in 1949 Adenauer expressed his wish to build a European army to defend Europe and to which Germany should contribute. For such a view see Jofle (fn 31 above) 79, 80

of Europe."[37] The two processes – Franco-German rapprochement through reconciliation and European Community building – are intimately connected and mutually subordinated.

Even the economic, financial, and commercial priorities of the European Union are vehicles for reconciliation. Common European issues are used as instruments of exchange between societies, stimulating the creation and development of organised networks and becoming central to the interaction of the political elites. Therefore, both dimensions of the German terms for reconciliation, *Versöhnung* (the philosophical/emotional dimension) and *Aussöhnung* (the practical/material dimension), are visible in the rapprochement of France and Germany, as well as in the creative process which led to the construction of the European Union and which is now leading the reality of the European enlargement.[38]

The present analysis shows clearly that the two above-mentioned bilateral linkage mechanisms and a multilateral project of European dimensions have made the Franco-German rapprochement durable and extensive. First, the requirement for regular consultation at the governmental level helped overcome political antipathies and enhanced the involvement of less committed political factions by rendering reconciliation a diplomatic duty which had to be exercised constantly. Second, the promotion of interaction on a people-to-people level embodied reconciliation in the social structure, making it a civic necessity and a social claim. Due to the high level of formal institutionalisation created through the process of reconciliation, the Franco-German relationship reached an unmatched level of intensity. A third source of cohesion was the role of the European Union. It helped reconciliation take root by developing a greater sense of European community and by making it a formalised foreign policy, thus making it emerge in a more visible and institutionalised way.

The institutionalisation of the process of reconciliation linked the two societies so tightly at so many levels that it became more prohibitive, in terms of political and human costs, for conflict to emerge. To be that effective, a policy of reconciliation should be woven into the social fabric and be executed and adhered to by governments. In addition to a bilateral process, reconciliation should be sustained by a multilateral framework.

6 RECONCILIATION AND REUNIFICATION: GERMAN ACHIEVEMENTS, KOREAN ATTEMPTS AND CHINESE THREATS

The second model of international reconciliation pertaining to situations of national division will be examined through the examples of the German reunification, the Korean attempts at reunification and the relationship between China and Taiwan. Both Germany and Korea have suffered a territorial division, with the construction of two conflicting economic and

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37 The words are those of EU Commissioner van den Broek and are quoted after Feldman (fn 10 above) 68.

38 *Ibid* at 69

political systems, communist ones in North Korea and East Germany, and capitalist ones in South Korea and West Germany. The structural similarities between these two cases and the profound differences in outcome call for a comparative analysis of the two processes. Following a short historical roundup of the division of the two countries, their policies of reconciliation will be reviewed through parallels and comparisons. The tension between China and Taiwan also prompts comparison because the same political polarity existed: on one side the communist Mainland and, on the other side of the Strait, the capitalist Taiwan. Here, however, the distinction between reconciliation and reunification becomes more evident, as the present international tension between the two calls for reconciliation without investing in reunification.

6.1 German reunification

A decade after the above-mentioned *Westpolitik* was initiated, reconciliation became a necessary foreign policy towards the East as well and *Ostpolitik* was born. Reconciliation with the Eastern block slowly and gradually developed a narrower purpose: German reunification. West Germany's policy of reconciliation was thus not confined to the West, but even reached, slightly modified, the East and was pursued on the official, as well as the informal, societal level. The contradiction between the two policies, one of integration into the West and the other seeking reunification with the East, posed the dominant dilemma of West German foreign policy.[39]

The West German foreign policy, so tightly interwoven with reconciliatory aims, was articulated along dual lines of international reconciliation: a post-war policy especially developed towards France through the broader *Westpolitik*, and that of a divided country seeking reunification in the frame of *Ostpolitik*. An important differentiating factor between the two polices is the different time frames in which they took off – the former in the early 1950s and the latter in the mid 1960s. Yet, the major contrast between them was their purposes: one was aimed directly at integration and rehabilitation with the Western countries, while the other was aimed indirectly at German reunification.

During the Cold War, bipolarity in Europe was a 'zero-sum' game: whichever superpower succeeded in incorporating all of Germany on its side would have scored an enormous, unacceptable gain over the other. For Konrad Adenauer integration into the West through *Westpolitik* remained the only way of assuring security, freedom and restoration of sovereignty.[40] Reunification was identified with the *Anschluss* or 'incorporation of the

39 For an astute analysis of West German foreign policy, see Joffe (fn 31 above) 72–124.
40 The Federal Republic of Germany was founded in 1949, but continued to lack sovereignty until 1955. The absence of such a fundamental attribute of a state was not the only maiming imposed on the German nation. Apart from the amputation of its eastern territories, the nation was split into two political units. Dependence imposed itself in many guises. Joffe (fn 31 above) at 76 writes that the 'overriding problem' of West Germany 'was to acquire the very *right* to conduct a foreign policy in the first place.'

Soviet zone of occupation'. In fact, the Federal Republic was regarded as a fully-fledged state and it was West Germany's belief that its land had merely been robbed of a few provinces, those *Länder* constituting the German Democratic Republic (GDR). The fiction was that Germany as a whole had already joined the West. Only one last thing was needed to complete the picture: reintegrating the lost provinces, those east of the Oder river. Furthermore, it was a common belief that the Federal Republic of Germany could achieve reunification only through the aid of the West.[41] Therefore, in the first post-war years German foreign policy looked West and did not take a notably reconciliatory form towards its Eastern neighbours, least of all towards 'its own eastern provinces'. Adenauer's policy towards the East (*Ostpolitik*) was mainly moulded onto the *Hallstein* doctrine, whereby the isolation of the GDR was sought, not directly, but rather by building relationships with its allies.[42] Until that terrible August 1961 when the Berlin Wall was erected, West German policymakers really believed that integration into the West and rearmament were the only means to achieve the unification of the divided German people. The reality of German division, concretised by the Berlin Wall, brought a swift change in the evolution of West German foreign policy.

In the 1960s, a truly reconciliatory policy with the East emerged, with the formulation of a more articulated and constructive *Ostpolitik*. The first to take some steps in that direction was Gerhard Schröder, at the time Bonn's foreign minister.[43] Nevertheless, Willy Brandt[44] was the political leader more devoted to reconciliation with the East. The late Chancellor of the Federal Republic of Germany was the real supporter and active theoretician of the new *Ostpolitik* and the one to emphasise the importance of reconciliation in the achievement of permanent peace, tolerance and equality towards other cultures, other states and their people. The most revolutionary element of the revised *Ostpolitik* was the acceptance of the GDR as an equal. To concretise such policy of détente, Brandt proposed that the GDR and West Germany conclude a treaty on the mutual relations for the purpose of 'arriving through regulated coexistence at togetherness'. Although the Hallstein doctrine was definitely abandoned, the Chancellor had neither the intention to recognise the GDR under international

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41 Krell G 'West German Ostpolitik and the German question' (1991) 28 *Journal of Peace Research* 311 at 315

42 In 1955 diplomatic relations between West Germany and the Soviet Union were established and the *Hallstein* doctrine formulated. The intent of the *Hallstein* doctrine was to block the international recognition of the GDR through the threat of severing diplomatic relations with Bonn. Moreover, the diplomatic ties with those Eastern European states which already recognised the GDR were foreclosed; see Joffe (fn 31 above) 95.

43 He orchestrated the so-called 'policy of small steps', which aimed at the normalisation of relations with Eastern Europe. In 1966 a peace note was delivered to the Soviet Union and other Eastern European countries, proposing a declaration exchange on the renunciation of force and on matters of arms control; see Ackermann (fn 11 above) 235, 236.

44 Willy Brandt was secretary general of the Social Democratic Party, which won the 1966 elections and formed a coalition government with the Christian Democrats. Brandt was Chancellor of the Federal Republic of Germany from 1968 till 1974. For an analysis of the politics of the time see Joffe (fn 31 above) 94, 95.

law, nor to accept the idea that the two states constituted foreign countries in relation to each other.[45] The new Ostpolitik resulted in the 'Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic'. The Treaty, also known as the Basic Treaty, bound the two states to develop good relations to desist from representing each other internationally or exerting jurisdiction in the other's territory, and to recognise that they constituted separate entities. The new Ostpolitik embodied in the Basic Treaty played a crucial role in the process of German rapprochement that culminated in reunification.

The Basic Treaty committed West Germany and the GDR to 'develop normal neighbourly relations with each other on the basis of equality of rights'. In addition, the Basic Treaty pledged the promotion of peaceful relations and disarmament and announced the exchange of permanent representations.[46]

One of the fundamental preconditions of *Ostpolitik* was war prevention, an imperative that was reinforced and extended by the political and moral imperative of reconciliation. The majority of Germans readily understood from their own history that there could be no chance of revising German division by military means. All disputes with other countries were to be resolved by peaceful means and that was also true with regard to East Germany.[47] The tension was further eased by West Germany and the GDR exchanging permanent missions after their admission into the United Nations.

In 1987, Erich Honecker, at the time president of the GDR, made a trip to West Germany and was accorded full honorary protocol by the conservative government in Bonn, including flying the national flag of the GDR and playing its national anthem. However, he failed to use this visit as an opportunity to reform his country and open it towards West Germany, returning triumphantly only to suppress public dissent more thoroughly than ever. It was the beginning of the end, achieved by East Germans through a peaceful revolution.[48] Moreover, the very presence of West Germany in the households of many East Germans through television, helped undermine the legitimacy of the communist regime by providing the standards to measure the performance of the GDR's system.[49] While most East Germans were eager for reunification, the West Germans were more ambivalent, giving precedence to the maintenance of the West

45 Puder MG 'The grass will not be trampled because the tigers need not fight – New thoughts and old paradigms for detente across the Taiwan Strait' (2001) 34 *Vanderbilt Journal of Transnational Law* 481 at 484, 485

46 For a more specific analysis of the provisions of the Basic Treaty see Puder (fn 45 above) 489

47 See Krell (fn 41 above) 312, 314

48 For a complete evaluation of the events preceding the fall of the Berlin Wall, see Pond E 'A wall destroyed. The dynamics of German unification in the GDR' (1990) 15 *International Security* 35

49 Minkenberg M 'The wall after the wall. On the continuing division of Germany and the remaking of political culture' (1993) 26 *Comparative Politics* 53 at 62

German political system and Western integration over such a constitutional task.[50]

On that night of personal unification – November 9, 1989 – when the Berlin Wall was torn down and deliriously happy East and West Berliners cried, laughed, and sang in each other's arms for the first time after 28 years, it became clear that political unification was inevitable. Willy Brandt captured it with the words: 'What belongs together is now growing together'.[51] German reunification was completed when the GDR acceded to the Federal Republic of Germany on October 3, 1990. The form German unification assumed, that of a peaceful accession of one independent state to another, is quite unique, because the complete incorporation of one independent state by another country is typically preceded by military colonisation and annexation,[52] except where two countries were once one country. German reunification meant self-dissolution of the GDR and the wholesale adoption of the western political system, way of life and values.

The Cold War was the reason why reunification was bound to remain an illusion as long as the antagonism between East and West endured.[53] Yet, while the Cold War was one of the preconditions of German division, it also provided the solution. Clearly the international context played a pivotal role in this case of reconciliation and reunification. There would have been no fall of the Berlin Wall without the fall of communist rule, without the fall of the iron curtain. A reconciliation policy was adopted at the political level long before reunification was made feasible by the broader international context. However, at the grassroots level, reconciliation could only really start after the German people were given the opportunity to come together, to live together, to cross the wall, and to embrace each other without being shot by the border guards. Still, reconciliation between *Ossies* and *Wessies*[54] has not been fully accomplished. Many Germans admitted that unification had disrupted the political structures of the GDR in a single strike but that the differences between East and West Germans only then began to surface. National unity had been achieved only in political terms, but real social, personal unity still had a long way to go. The extensive period of German political and economic separation deeply entrenched the individual divide within one single people. Four decades of differing systems and policies of keeping East and West Germans apart caused sharp psychic divisions and divergent social structures, hard to reconcile despite the wave of enthusiastic reunification. From the

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50 *Ibid* at 58.
51 See Pond (fn 49 above) 49 -50 However, on October 3, 1990, the day of unification, Willy Brandt modified his early statement: 'Today I would say that what politically belongs together from this 3rd of October onward still has to grow together.' See Minkenberg (fn 49 above) 53.
52 Lee J 'A Millennium hope for Korea. Lessons from German unification' (2000) 9 *Michigan State University-DCL Journal of International Law* 453 at 463, 464
53 See Krell (fn 41 above) 313.
54 *Ossies* and *Wessies* are the nicknames still used today to refer to people coming, respectively, from the former GDR or East Germany, and the former FRG or West Germany.

beginning it was clear that it would take a lot more time to tear down the mental walls in the psyche of the German people than for a wrecking company to tear down the Berlin Wall."

In Germany, reconciliation has not been limited to the pre-unification era, as the recent German efforts towards the enlargement of Europe and the integration of the Eastern European countries have shown. European enlargement towards Central and Eastern Europe can be seen as a further feature in the German policy of reconciliation. The history of Eastern Europe runs parallel to the German history of division and separation. The communist regimes in the East followed the fate of the Berlin Wall, collapsing one after the other in the subsequent years. During the communist hegemony, Eastern Europeans were certainly closer in their way of life to East Germans than the other Germans were. Reconciliation between East and West Germans can present itself as a model for a wider policy aiming at European integration, through the enhancement of mutual trust and feelings of belonging. At the same time European enlargement can serve as a platform for a discussion on opposing values, ideas, and social structures.

During the reunification process, East Germans were simply incorporated into the Western way of life. For many East Germans it was the realisation of a life-long dream. However, nowadays, even some of those most supportive of Western values, feel abandoned by the state. Many social structures that were normal to socialist systems are now lacking, such as public *Kindergartens* or health care facilities. This upsets former East Germans. East Germany's social system was simply dismantled and no mediation took place to mitigate the bewildering passage from communism to capitalism. In a way, the long-desired *Anschluss* had taken place in its stark form and little space, if any, was left for a 'reconciliation' of opposing values. The present European enlargement can therefore become a pretext for attempting new ways of reconciling the odds. Given that reconciliation at the governmental level is not sufficient to make the process work, particular attention should be dedicated to the other types of reconciliation – those that occur at different layers in a state. This is a historic opportunity for the West and the East to incrementally increase integration and continue the process of reconciliation.

6.2 The shattered peninsula: North and South Korea

More than half a century ago Korea was a single nation. After being liberated from Japanese occupation in 1945, Korea was divided into two zones. The northern region was controlled by the Soviet Union, while the southern part was controlled by the United States. The separation was supposed to be temporary, but two antagonistic political units steadily developed. To prevent Soviet troops from occupying the entire peninsula, the United States ordered a territorial division at the 38th parallel. Relations among Koreans living above and below the line rapidly deteriorated after

55 See Minkenberg (fn 49 above) 53

the division. The Soviet Union and the United States could not agree upon a program for unification, and, in 1948, two separate and independent states were formally created. The area south of the 38th parallel became the People's Republic of Korea (hereafter 'South Korea'), while the northern region formed a communist state, the Democratic People's Republic of Korea (hereafter 'North Korea'). The political divisions fostered by the two rivals of the Cold War developed a deep ideological rift which solidified hostility.[56]

Border hostilities heightened after Soviet-backed North Korean troops crossed the 38th parallel and invaded South Korea in June 1950. The invasion marked the beginning of a bitter civil war that lasted three years, killing and wounding about three million people. The end of the war was sealed by an armistice establishing a military demarcation line nearly identical to the pre-war border, buffered by a four-kilometre-wide demilitarised zone. However paradisiacal for wildlife,[57] this no-man's land remains the most heavily fortified frontier in the world and stands as the last fragment of the Cold War's wall. Although the war ended, no peace treaty was ever signed, technically leaving the Korean peninsula in a state of war.[58]

In the years following the civil war the development of the two Koreas took divergent paths. South Korea experienced economic success, while North Korea struggled to keep its economy functioning.[59] Since the division, the topic of reunification has surfaced on several occasions, because the two governments have been in fierce competition to win over the hearts of all Koreans with contending unification formulae and measures. Predictably, each state has persistently claimed to be the only legitimate representative of the Korean nation, pledging to pursue unification without delay, provided that it occurs according to its particular political philosophy.[60]

South Korean leaders have emulated German politicians in formulating policies towards their communist compatriots in the North. The 'Northern

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56 Vanderwood Derek J 'The Korean reconciliation treaty and the German basic treaty. Comparable foundations for unification?' (1993) 2 *Pacific Rim Law and Policy Journal* 412

57 The demilitarised zone, 93 km long and 1.6 km wide, is becoming a sanctuary for a wide variety of exotic flora and fauna, with its colourful birds flying freely and finding a peaceful place to build their nests without human interference. A further rapprochement between North and South Korea and a common policy for sustainable development would benefit the environment, which is currently exploited from both sides in different ways · through an extensive urbanisation in the South and in the North from 'a population so starved that they have ravaged the countryside looking for things to eat'. For a colourful description of the environmental side of the demilitarised zone, see Demick B 'Birds thrive in no-man's-land. The demilitarised zone between North and South Korea has become a paradise for wildlife' (14 March 2004) *Sunday Independent.*

58 Oh, CY 'The effect of reunification of North and South Korea on treaty status' (2002) 16 *Emory International Law Review* 311, 312.

59 Already in 1995 the economy of South Korea, with only twice the population of North Korea, was estimated to be eighteen times the size of the economy of its northern neighbour. See Snyder S 'A framework for achieving reconciliation on the Korean peninsula: Beyond the Geneva agreement' (1995) 35 *Asian Survey* 699 at 702.

60 See Vanderwood (fn 56 above) 413.

Policy' is often referred to as *Nordpolitik*, because it is modelled after West Germany's *Ostpolitik* Initially, the policy resembled the German *Hallstein doctrine* followed by Adenauer." Hoping to coax North Korea into a more conciliatory position, South Korea tried to build relationships with North Korea's allies." Just one year before the Berlin Wall came down Seoul initiated a policy of establishing economic, social and political ties with former communist states and simultaneously adopted a more conciliatory approach toward North Korea. The effects of this much more reconciliatory policy seemed similar to those produced by the *Ostpolitik* of Willy Brandt. Leaders of both North and South Korea began negotiating matters of trade, tourism, family reunions, opening of common television channels, and cultural, academic and mailing exchanges."

However, it was the collapse of the Berlin Wall and the Soviet Union that brought new winds of hope to the Peninsula. North Korea's foreign policy seemed to become more reconciliatory, putting an end to the refusal to recognise and negotiate with the government in Seoul." North Korea foresaw a national confederation through the construction of a central government and two regional ones, having economic, cultural, diplomatic, and military authority." Over the next years further attempts were made, instilling a glimmer of hope that Korea would once again thrive as a single nation. In 1991, a 'Basic Agreement on Reconciliation, Non-Aggression, Exchange and Cooperation' was signed. Although it is more of a gentleman's agreement than a binding treaty, the Basic Agreement contains some important features of a policy of reconciliation." The provisions of the Basic Agreement describe reconciliation as encompassing –

- respect for the other's political and social system;
- prohibition to slander, sabotage or interfere in the other party's internal affairs;
- transformation of the 1953 Armistice into a permanent state of peace;
- establishing a North-South liaison office and high-level political sub-committee."

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61 Johnson HJ 'The troubled reunification of Korea' (March 1993) 26 *PS: Political Science and Politics* 59
62 In the late 1980s the success of South Korea's attempt to isolate North Korea diplomatically by adopting a harsh *Nordpolitik*, triggered symmetrical countermeasures by North Korea, who improved its relations with the United States and Japan, while avoiding contact with the government of South Korea. The main worry of the Pyongyang regime is that improving relations with its southern neighbour can endanger its own survival. For further details regarding the American role in the Korean reconciliation process, see Snyder (fn 59 above).
63 Rhee K 'Korea's unification. The applicability of the German experience' (1993) 33 *Asian Survey* 360, 361
64 See Johnson (fn 61 above) 59
65 For a complete account of the Korean unification policies see Lee (fn 52 above) 462
66 See Rhee (fn 63 above) 363, 364.
67 See Johnson (fn 61 above) 59.

The contemporaneous 'Joint Declaration on the Denuclearisation of the Korean Peninsula' was never signed due to North Korea's opposition to any inspection and South Korea's growing concern that its northern neighbour was actually manufacturing nuclear arms. Once again, the possibility of reunification looked dismal.

In 1993, North Korea reconfirmed its confederate intentions with the announcement of the 'Ten Guidelines to Greater Solidarity of the Entire Nation for National Unification.' A precondition for reunification was the maintenance of the two different governments, and therefore of the two political systems. Meanwhile, South Korean plans for unification looked quite different. Their policy for reunification was aimed at a unified Korea as a liberal democracy, consequently threatening North Korea's status quo and political system. [68]

Despite the tumultuous history on the peninsula, true progress was made with the coming of the new millennium. In June of 2000, the President of South Korea, Kim Dae Jung, and the President of North Korea, Kim Jong Il, attended a summit meeting aimed at mending relations between the two nations once and for all. The two leaders demonstrated their strong commitment to set the much-anticipated reunification of the two nations in motion. [69] Four issues were discussed and agreed upon: social and economic cooperation, reducing of the tension between the two Koreas, reunification of families, and eventual reunification of the peninsula. The June summit gave many Koreans hope that the nation's division would finally see an end to the conflict. Besides, North Korea appeared to be pursuing major changes, not only in the development of further inter-Korean relationships, but also in terms of economic and political reforms and openness in foreign relations. This trend helped reduce the mistrust of South Koreans and the tension between the two countries. [70] However, at present reconciliation and reunification do not seem likely, especially given North Korea's recent stance on its nuclear capability. Nevertheless, in the diplomatic field, unpredictability is North Korea's most powerful weapon. The dilemma is how to establish trust with other states, including the United States, but particularly with South Korea. Thus, it is highly improbable that reunification will be realized in the near future. [71] Yet, several factors favourably predispose the two Koreas towards integration and unification in the future. Koreans share the same ethnicity and language, histories and traditions. Economically, reunification is seen as the only way of sustaining their competitiveness with other expanding Southeast Asian economies. Politically, reunification would contribute to alleviating tension in the area, as well as tension with other countries such as the United States, Russia, China, and Japan. [72] Reconciliation would be relatively easy to achieve if the lessons of East and West Germany are taken into account.

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68 See Lee (fn 52 above) 462.
69 See Oh (fn 58 above) 312, 313, 314.
70 See Lee (fn 52 above) 453.
71 See Rhee (fn 63 above) 373.
72 See Lee (n 52 above) 455, 456.

The most difficult problem facing Korean reunification is how to harmonise the two antagonistic and competing ideologies – capitalism and communism. North Korean leadership abhors liberalism and pluralism, while most South Koreans reject collectivism and socialism. A policy of reconciliation should be implemented in order to build a new culture of trust and understanding between the two sides, to reduce the level of hostilities, and to begin effective cooperation, all of which must precede unification, rendering it possible. Unless both Koreas reduce ideological polemics which exacerbate tensions and hostilities, and work toward reconciliation, the goal of peaceful reunification will remain unattainable for a long time.[71] Reconciliatory mechanisms (such as dialogue, sporting and other types of visits and exchanges, as well as allowing citizens of each Korea to visit the other Korea) are the best means to achieve social and political unity, as long as they do not remain solely anchored in the political sphere. Unfortunately, in the Korean case the 1950–1953 civil war broadened hostilities between the people of the peninsula, making the endeavour more challenging. The biggest concern of North Korea is that by opening its doors to South Korea and to the world in general, its very survival will be at stake. The North Korean populace has been relatively isolated from the outside world and they are unable to compare living standards with the rest of the peninsula. This and the high level of political control and penetration into North Korean society make the North Korean situation somewhat different from the one that led to German reunification. At present a full collapse and absorption of the North Korean state by its southern neighbour is unlikely. In short, a gradual reconciliatory policy is needed to avoid the sudden social, economical and political instability that would occur in the (hypothetical) event of reunification.[72]

The two Korean governments could learn valuable lessons from the German experience. To minimise economic, legal, social, and psychological consequences, a more reconciliatory policy, producing a series of gradual stages towards unification is necessary. The Korean reunification will be far more difficult than that of East and West Germany because West Germany had the financial and political power to absorb East Germany at the time of the fall of Communism, making reunification more likely

6.3 The tension across the Formosa Strait: China and Taiwan

After the Communist victory and the establishment of the People's Republic of China (PRC) in 1949, interaction between the people of Taiwan and the people of Mainland China came to a virtual standstill. The defeated Kuomintang party retained control only over Taiwan and nearby smaller islands and asserted the existence of the Republic of China (ROC), whose purported territories comprised all the provinces and regions of Mainland

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73 *Ibid* at 463, 493, 494.
74 See Snyder (fn 59 above) 699 710

China. Likewise, the PRC claimed that its territories included all areas of China, Taiwan too. Thus, the persistent position of both regimes has been that there is only one China, and that the sole legitimate government of the whole of China is either Taipei or Beijing. The initial intransigence of both regimes resulted in an almost complete breakdown of private and commercial relations between Taiwan and the PRC. While both developed extensive private and commercial contacts with the rest of the world, with or without diplomatic recognition, they remained isolated from each other.

In the early 1950s, Mao Zedong's plan was to 'liberate Taiwan' by force. Considering the presence of United States forces in the Taiwan Strait, he realised that a full-scale military invasion would be unfeasible without the strong backing of the Soviet Union.[75] After Mao's death China's official stance toward Taiwan started to soften.

In 1983, Deng Xiaoping, supreme leader of the PRC, proposed a plan for the peaceful reunification of Taiwan and Mainland China with the formula 'One Country, Two Systems'. Under the principle of 'One Country' the PRC adjusted its strategy from 'forceful liberation' of Taiwan to 'peaceful reunification' with Taiwan. Taiwan countered Deng's proposal with the 'One Country, Two Governments' concept. This formula proposed considering the governments in Taipei and Beijing as equals, each with extensive authority over their respective present areas of control and with joint international status. Both China and Taiwan agreed that there is only 'One Country', but that was the only resemblance between the two views. While Mainland China sees separation as a temporary phenomenon and claims to represent the entire China, Taiwan emphasises that it neither falls within the scope of the 'One China' principle (seen as the People's Republic of China), nor within the jurisdiction of the PRC government. Their view, of an independent Taiwan, clearly demonstrates a vastly different approach to the problem.[76] Furthermore, the PRC does not want Taiwan to declare independency, while Taiwan does not want to submit to the Chinese conditions for reunification. The PRC has continuously claimed its sovereignty over Taiwan, while the ROC has never denied that Taiwan is part of China.[77]

Notwithstanding these conflicting approaches, the following years saw the rapid development of personal and commercial relationships across the Formosa Strait. In 1987, ROC President Chiang Chin-kuo lifted martial law, allowing Taiwanese residents to travel to the mainland through Hong Kong and relaxing restrictions on imports from the mainland. Since then, contacts between the people of Taiwan and China have become common. Postal and telecommunication services between Taiwan and Mainland

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75   Fu Z 'China's perception of the Taiwan issue' (1996) 1 *UCLA Journal of International Law and Foreign Affairs* 321 at 325.

76   Zhou HJ 'The Legal Order on Both Sides of the Taiwan Strait and the Current Sino-Vietnam Relation (Our Changing Sense of Community: The International Legal System Following the Bipolar World' (1993) 87 *American Society of International Law Proceedings* 61, 62

77   Huang ET 'The modern concept of sovereignty, statehood and recognition: A case study of Taiwan' (2003) *New York International Law Review* 145.

China have also been established, fostering trade enterprises and business partnerships However, Taiwan has always insisted that all contacts be indirect. Trade, travellers and mail, cannot pass directly between Taiwan and Mainland China but must first pass through an intermediary, most often Hong Kong, Japan, or Singapore. Only through their Hong Kong and other foreign subsidiaries do Taiwanese businesses own and control enterprises on the Mainland.

In 1993, the PRC reaffirmed and underlined the main points of its 'One Country, Two Systems' policy for reunification. According to the State Council's White Paper, enacted that year, the PRC would recognise Taiwan as a special administrative region with its own government, domestic laws, independent judicial system, and independent armed forces. In return, the Government of Taiwan would be required to abandon its claim to authority over the Mainland and to recognise the PRC as its sole international representative. While for some, such an offer seems 'even more favourable than those devised for China's takeover of Hong Kong in 1997',[78] others consider the terms of the autonomy inappropriate and too disadvantageous for Taiwan.[79] What is of particular interest for the scope of the present discussion is the Chinese claim that the coexistence of socialist and capitalist societies would be a feasible and welcome possibility. According to the PRC's political leaders Taiwan's 'current socio-economic system, its way of life, as well as its economic and cultural ties with foreign countries would remain unchanged'[80] after reunification.

The differences in perspective sharpened during the 1995 Taiwanese presidential election. In reaction to Taiwan's democratisation and diplomatic offensives, China conducted a series of military exercises near Taiwanese waters. Such political tension firmly entrenched both sides of the Taiwan Strait in their refusal to recognise the other as a legitimate government.[81] In order to oppose Taiwan's formal existence, the PRC has employed a harsh version of the *Hallstein doctrine*, whereby it refused or severed diplomatic relations with any state that had diplomatic relationships with Taiwan The PRC also challenged Taiwan's participation in regional and international governmental organisations. However, most countries have maintained political, cultural, and trade ties with Taiwan all along, despite Chinese attempts to isolate Taiwan In addition, by the mid-1990s, Taiwan was coming out of its diplomatic isolation by strengthening its relationships with the US and Japan and by exerting pressure to become a member of the United Nations.[82]

78 Chen Tung-Pi 'Bridge across the Formosa Strait Private law relations between Taiwan and Mainland China' (1990) 4 *The Journal of Asian Law* available at http://www. columbia edu/cu/asiaweb/v4n1chen htm (access confirmed 25 April 2006)
79 See for example, Cooney S 'Why Taiwan is not Hong Kong A review of the PRC's "One country two systems" Model for reunification with Taiwan' (1997) 6 *Pacific Rim Law & Policy Journal* 497
80 See Huang (fn 77 above) 154, 155.
81 See Huang (fn 77 above) 107.
82 Taiwan lost its representation at the United Nations in 1971 when the PRC took China's seat and expelled the ROC's representative from the United Nations.

Before any reconciliatory policy can be implemented, it must be acknowledged that the need to release the tension stems from opposite agendas. The Taiwanese policy seems to revolve around two main axes: one of transition from an authoritarian to a democratic political system and the other of opening travel and trade between Taiwan and the Mainland. However, the two processes seem to work in opposite directions. Democratisation is producing a growing demand for an independent 'Republic of Taiwan', while travel and trade are linking Taiwan more firmly to the Mainland, possibly setting the stage for future reunification. Taiwan's transition to democracy has nourished the growth of separatist sentiments because it created the possibility to express the need for independence freely and without fear.[83] What is more, Taiwan requires the full democratisation of the Mainland prior to any talk of reunification.

In contrast, the PRC government still regards Taiwan as an inalienable part of its territory.[84] Former US Secretary of State, Henry Kissinger, conveyed the mood prevalent in China when he said: 'Whatever the cost, China will fight rather that give up what it considers Chinese territory'.[85] Seeing that the reunification of Taiwan with Mainland China has been a strategic goal since 1949, the PRC would doubtlessly consider any Taiwanese efforts towards self-determination aimed at de jure independence as an illegal secession. Notwithstanding the Chinese efforts to deny the existence of Taiwan as a separate state, the ROC has functioned in the international community as an independent state since 1949 and since 1971 as a *de facto* independent state.[86] The PRC tolerates the status quo of Taiwan's *de facto* independence, as long as Taiwan continues to acknowledge the 'One Country' policy and does not move toward *de jure* independence.

In the Taiwan-China case, reconciliation between them is needed before a war erupts. The global international community would certainly support any such efforts because a conflict between these two states would threaten global peace and the balance of power in the area. At present, reunification is not feasible. Reconciliation, on the other hand, is essential. Pacification through political and economic liberalisation has been often used on the assumption that a market democracy is the surest foundation for peace. However, this paradigm has not always been effective for establishing a stable peace.[87] In the case of the Formosa Strait, reconciliation *per se* can be a better option than political reunification and subsequent economic absorption of one political and economical system into

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83   Yu T 'Taiwanese democracy under threat: Impact and limit of Chinese military coercion' (1997) 70 *Pacific Affairs* 10 at 10.

84   Fu KC 'The legal aspect of the new relations between Taiwan (ROC) and its former communist rival neighbours' (1993) 87 *American Society of International Law Proceedings* 66, 67.

85   Fu (fn 75 above) 338

86   Clough RN 'The status of Taiwan in the new international legal order in the Western Pacific' (1993) 87 *American Society of International Law Proceedings* 73.

87   Paris R 'Peacebuilding and the limits of liberal internationalism' (1997) 22 *International Security* 54 at 56

the other. The recent tension in the Taiwan-China relationship reflects the historical and diplomatic difficulty of aiming at reunification. In the literature on peace-building partition is often advocated as the most sensitive solution to civil war and ethnic or religious conflicts.

(To be continued)

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