

## Chapter 15

## THE STASI LEGACY

## OPENING THE STASI FILES

One of the most controversial issues during the East German revolution was whether or not to open the Pandora's box of microfilm, discs, tapes and documents which had survived destruction by the MfS. The question of access sometimes cut across the lines of political parties and citizens' movements, although the latter were generally in favour of opening the files. Needless to say, former MfS employees, some of whom were used by the government in the dismantling of the ministry, hoped for their closure. A cogent case could be made for both opening and restricting access. If access were strictly limited or the files destroyed, privacy would be protected, wounds in East German society perhaps healed without sensationalist disclosures and a witch hunt for agents, and a line therefore drawn under the past. It was also argued that the dubious records of a secret police were inappropriate for assessing and making judgements on the disparate reasons for an individual's collaboration with the Stasi and on complex social and political processes.<sup>1</sup> Pastor Rainer Eppelmann, who became Minister of Defence and Disarmament after the March 1990 elections to the *Volkskammer*, also had serious reservations, fearing that the new political freedoms would be jeopardised by 'denunciations, revelations, and acts of revenge'. The Minister of the Interior, Diestel, warned that the Stasi records – 'these products of evil' could not be used to determine innocence and guilt as 'there were only two [types of individuals] who were truly innocent in this system, the newborn child and the alcoholic'.<sup>2</sup> Diestel's chief, Minister President Lothar de Maizière,

<sup>1</sup> Werner Fischer, a member of Alliance '90 and a key figure in the dismantling of the AfNS, was an advocate of confronting the past through access to the files. He recognised, however, that this was a highly complex process as not all Stasi employees were criminals and that many in the SED, the bureaucracy and the neighbourhood apartments had, 'directly or indirectly, willingly or unwillingly, helped to make it possible for this repressive apparatus to function'. Cited in Sa'adah A. 1998: 93.

<sup>2</sup> The statements by Eppelmann and Diestel are both from McAdams A. J. 2001: 61.

even went so far as to predict murder and manslaughter if the files were opened.<sup>3</sup> On balance, representatives of the West German government favoured closure, partly because they wished to avoid revelations about secret service practices. Some, like the Interior Minister Wolfgang Schäuble, wondered whether it would not be better to concentrate on the reconstruction of the GDR rather than becoming embroiled in heated controversies over the millions of East Germans who had been connected with the Stasi in so many different ways.<sup>4</sup>

The case against destruction, closure or tight restrictions on access was, on balance, the more persuasive: individuals had the right to discover how they had been pursued and persecuted by the Stasi; the files were needed to determine criminal charges, to assess people's suitability for political and administrative posts and to provide evidence in connection with claims for rehabilitation and compensation; and ex-Stasi operatives should be deprived of their 'intellectual ownership' of the contents of the files. The files, it was also argued, were an essential tool in the reconstruction of the past and in avoiding the kind of delays which were symptomatic of the historical reworking of the Nazi era. Joachim Gauck, the head of the agency responsible for the Stasi records, reflected on another important aspect:

The goal is that people who were long oppressed should be able to carry forward the liberation that they dreamed about and struggled for in the streets – through a process of memory and coming to terms [with the past]. People who were previously oppressed and deprived of autonomy should take possession of their former rulers' knowledge. They should become [active participants in shaping their own understanding] and – in this way – come more to find themselves. They should become more free, for the tasks of tomorrow.<sup>5</sup>

Despite widespread opposition by numerous politicians, as well as by Western intelligence agencies concerned about the lifting of the lid on the clandestine practices of security services, the Unification Treaty between the GDR and the FRG granted rights of access for specified purposes and provided for central control of the files by an independent commissioner and for the

<sup>3</sup> De Maizière would later come under suspicion of having served as an IM. While he denied this accusation, he admitted that he had entered into contact with the Stasi but insisted that it was only in connection with his work as a solicitor. Although the files concerning IM 'Czerni' have not survived, information in the Gauck Authority indicates that de Maizière, like IM 'Czerni', lived at the same address in East Berlin, owned property in Tornow, was a member of the Federal Synod of the Evangelical Church and had access to information from the solicitors' association in East Berlin. This does not, of course, prove that IM 'Czerni' was necessarily aware that the Stasi regarded him as an IM and it fails to reveal what might have been the motivation behind his contacts with the MfS. See Süß W. 1999: 581.

<sup>4</sup> McAdams A. J. 2001: 62.

<sup>5</sup> Cited in Quint P. E. 1997: 230.

records to be kept in the East.<sup>6</sup> Although the principle of access was in line with the view of the East German parliament, the initial negotiations between the two governments ran into widespread criticism from parliamentary deputies and civil rights groups. The original *Volkskammer* law on the Stasi records of 24 August had envisaged far more generous access to the files and had assigned greater rights of control to the individual eastern *Länder*. Furthermore, fears in the GDR that the Unification Treaty negotiators intended to transfer the materials to the Federal Archive provoked a hunger strike and an occupation of the former Stasi headquarters in the Normannenstraße by prominent members of the citizens' groups. Ratification of the treaty was in jeopardy. A compromise was eventually reached in the form of a supplement to the Unification Treaty, which incorporated the basic principles of the *Volkskammer* law and provided for the storage of the files in central and regional depositories in East Germany in recognition of the fact that they were an integral part of the East German past. Bowing to pressure from the citizens' groups, the supplement also allowed broader access for those affected by the files on condition that the interests of third persons were respected.

### THE LAW ON THE RECORDS OF THE STASI

The comprehensive regulation of the Stasi records was left to the all-German Bundestag. This took the form of the Law on the Records of the Secret Service of the Former German Democratic Republic. The law, which was passed by an overwhelming majority in the Bundestag, came into force on 29 December 1991. At the same time, the former Rostock pastor and *Volkskammer* member for Alliance '90, Joachim Gauck, was confirmed as head of the Federal Authority for the Records of the State Security Service of the Former GDR (BStU) by the Bundestag. He had been in charge of the *Volkskammer* committee responsible for the dissolution of the Stasi and, since 3 October, had occupied the interim post of the Federal Government's Special Commissioner for the Stasi Records. In accordance with the Stasi Records Law, the Federal Commissioner holds office for five years, although tenure can be renewed for another period. The Commissioner serves several masters in that he or she is elected by the Bundestag, is appointed by the Federal President and is subject to the supervisory authority of the Minister of the Interior. The files are administered by the central agency, whose main offices are located in the eastern part of Berlin, near Alexanderplatz. Branch offices have been set up in the *Länder* of Berlin, Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia.

The aims of the act basically follow those of the original *Volkskammer* law, that is, to enable individuals to access information stored by the Stasi on their

person while at the same time providing protection against the violation of individual rights and privacy; to promote the historical, judicial and political appraisal of the MfS and the GDR; to provide public and private bodies with access to information in criminal prosecutions, in particular those connected with Stasi operations; to assist in the screening of individuals for jobs; and to help in the rehabilitation of victims of Stasi persecution.<sup>7</sup> However, the Bundestag went one stage further than the *Volkskammer* by allowing for individuals to acquire copies of their files. The Bundestag thus sought to strike the difficult balance between the risks to privacy and the pursuit of social justice on the basis of the records of a secret service, many of which had been gathered in an illegal manner. Several provisions were introduced to realise this goal. First, while all individuals, whether from the former GDR or elsewhere, are entitled to find out whether the files contain information about them, 'data subjects', that is, victims of Stasi operations, are provided with greater access to the information in their files than the full-time staff, agents and former 'beneficiaries' of the ministry. The term 'beneficiary' refers to those persons who benefited in various ways from the Stasi, for example, cash payments or protection from criminal prosecution. Secondly, although the data subjects have full access to information about their persons, the law provides for the protection of identities by rendering anonymous other victims and third parties identified in their files. On the other hand, if the identities of Stasi officials and informers can be proved, then their names can be communicated to the victim. The act also allows access to information for determining whether a criminal prosecution is appropriate, particularly for crimes committed in connection with an individual's employment with the MfS or other security and penal authorities.

Finally, the most contentious issue of all concerned the decision to allow for the use and publication of Stasi documentation by the media as well as for purposes of political education and historical reappraisal. Full access was granted to those records which contain no personal data, to duplicates in which the personal data have been 'depersonalised' by BStU staff, and to data regarding Stasi employees, unless they were younger than 18 years of age. The provision also applies to contemporary historical personages, political office holders or public law officials while in office but not to data subjects or third parties. A 'third party' is defined as someone who was neither a victim nor a perpetrator but about whom the Stasi collected information. However, if data subjects give their written consent, then access is also allowed to materials relating to them. Although researchers and the media were therefore given exceptional access to the records concerning so-called contemporary historical personages as well as public officials, a bar was placed on access to all records if, to quote section 32, 'publication of the records would impair the

<sup>7</sup> On the legislative details in this and the following paragraph, see the *Act Regarding the Records of the State Security Service* 1991: 4-5, 12-17, 20-21, 25.

<sup>6</sup> On the negotiations and discussions in the summer of 1990, see Quint P. E. 1997: 233-4.

overriding legitimate interests of the persons involved'.<sup>8</sup> The latter notwithstanding, historians, including the BStU's own research staff, and the media have been active in publishing important contributions about officers and IMs, the structure of the ministry and the surveillance of society.

### THE WORK OF THE BStU

A brake was temporarily applied on research and publication as a result of the appeal by former Chancellor Helmut Kohl against the BStU's plans to publish Stasi transcripts of his intercepted telephone conversations. Kohl's defence, that this would infringe his privacy and dignity and that he merited protection as the victim of illegal eavesdropping, was accepted by the Berlin Administrative Court in July 2001. Kohl's action was highly regrettable in that his own administration had pushed the original Stasi Records Act through the Bundestag in the face of many objections to the very clauses which had come to trouble Kohl so deeply. For most observers, the ex-Chancellor was misusing a not unfounded care for the dignity of the individual behind a less exalted concern that the Stasi tapes might contain further revelations of the corrupt and illegal use of party donations by himself and several CDU associates. While the BStU's appeal against the Berlin Administrative Court's decision was turned down by the Federal Administrative Court in March 2002, an amendment to the Stasi Records Act passed by the Bundestag in July 2002 restored access to the files of public figures for journalists and historians using the materials for historical purposes. This removed a fundamental threat to the use of the BStU archive. However, the whole case serves as an illustration of the tension between two basic rights in the original 1991 Act – that of the individual to privacy and that of the public to pertinent information regarding the operations and structure of the MfS.

Given the volume of work entailed, it is hardly surprising that the BStU has grown into one of the largest administrative organs in east Germany. It grew rapidly from about 600 employees to 2,777 in May 1992, of whom 95 per cent came from east Germany.<sup>9</sup> Applications to consult the files and requests for information by individuals, the media, public and private bodies and researchers have flooded in: a peak of 587,325 in 1993 and a low of 253,529 in 2000.<sup>10</sup> On average, 10,000 requests, about half of which are new, are received each month to consult the files. Although many applications concern personal files, the BStU is also involved in collating and disseminating data relating to criminal prosecutions and the vetting of officials. In

addition to these tasks, the BStU has to classify and repair documents and to conduct political education work with schools. The demand for permission to use the archive for purposes of historical research is high, 541 applications in 1993 and 651 in 2000.

Earlier chapters in this book have examined the relevance of the BStU holdings for the history of the GDR and have shown the extent of the Stasi's surveillance of individuals and institutions. Just to refer back briefly to two aspects – Stasi operations against the internal 'enemies' and the motivation and actions of both IMs and officers – serves to pinpoint some of the main difficulties in using the archival materials both for reappraising the ministry's history and for assessing the suitability of individuals for office and their liability for criminal actions. With regard to collaboration with the Stasi, it is vital to differentiate between the various levels of complicity, say between those who made their apartment available for clandestine meetings and those who reported on the intimate details of colleagues' and friends' private lives and opinions. There is also the difficult matter of persons who were, at various times, both victims and perpetrators, and it is also necessary to bear in mind the kind of motives and pressures which lay behind compliance and collaboration. Not only do the records sometimes fail to clarify motives but they may be so incomplete that an individual's actions cannot be reconstructed from them. In some cases, they are inaccurate and misleading, as in the case of those wrongly accused of being IMs. Finally, some IMs have claimed, not without justification, that they did not consciously and willingly cooperate with the Stasi; and even the registration of an IM by a controller may have been done, albeit rarely, without the consent and knowledge of an individual.

Such considerations are crucial for the historical record and for an individual's moral and personal reckoning with his or her past but they are also integral to the screening for jobs and criminal investigations. In the latter cases, the BStU, as an administrative organ, has a responsibility to provide private corporations and public bodies with the pertinent data. It is not, however, an investigative and prosecuting body and nor does it make recommendations on dismissals. By February 1997, according to estimates by the BStU, 42,066 people had been dismissed from the civil service and around 12,800 non-civil servants removed from their jobs on account of their Stasi connections.<sup>11</sup> Few former full-time officers have become civil servants. In the absence of clear criteria for past culpability and present suitability, the screening process has been flawed and inconsistent. Much has depended on local circumstances. The conservative government of the *Land* Saxony tended to take a harder line towards ex-Stasi employees and IMs than that of the *Land* Brandenburg, where Manfred Stolpe's SPD held sway. And as regards other public authorities and private firms, much depended on the availability

<sup>8</sup> *Act Regarding the Records of the State Security Service* 1991: 31.

<sup>9</sup> *Vierter Tätigkeitsbericht* 1999: 89.

<sup>10</sup> For the details, see the BStU webpages <http://www.bstu.de/taetigkeit/seiten/2-1-2-2-1-2-1.htm> and <http://www.bstu.de/taetigkeit/seiten1-4.htm>

<sup>11</sup> McAdams A. J. 2001: 73.

of suitable alternative employees.<sup>12</sup> On the other hand, as McAdams has shown, the courts have adopted a differentiated approach to Stasi activities and taken into account mitigating circumstances in cases of appeals against dismissals. Indeed, a frequent criticism of the official reckoning with the past is that personnel changes have been insufficient in many areas of society. Siegfried Suckut of the BStU has estimated that 75 per cent of those teachers who worked for the Stasi remain in the profession.<sup>13</sup> And as for the Stasi's own officers, of the preliminary judicial inquiries, 2,255 (97.9 per cent) had been abandoned by January 1998, and only 12 officers sentenced.<sup>14</sup>

While SED Politbüro members such as Krenz and Schabowski have been jailed for indirect participation in manslaughter relating to the border regime, the difficulties in a judicial reckoning with the past are well exemplified by the failure to convict Mielke on a charge other than the offence which he committed in 1931. The BStU is a crucial source of information for agencies investigating criminal offences committed by public bodies and individuals during GDR times. Among the main offences are manslaughter at the German-German border, perversion of justice, wrongful detention and trespass. Although sentences have been imposed on some GDR leaders, many critics contend that the punishment does not fit the crime and that too few cases are pursued. Thus while most border guards who have been brought to trial have been sentenced, only a small number have been jailed. In addition to securing appropriate evidence from Stasi and other official sources, the problems of a judicial reckoning with state crime are compounded by the question of whether legislation can be applied retrospectively to crimes and abuses committed by the leaders and functionaries of the SED regime. Even the modification of the prohibition against retroactivity by the Basic Law of the FRG and the Unification Treaty by means of convictions based primarily within the framework of a reinterpretation of GDR law still leaves many loopholes and underscores the dilemma of judging offences committed under a dictatorship by means of the instruments of a *Rechtsstaat*.

### COERCIVE POWER, COGNITIVE WEAKNESS: A FINAL ANALYSIS

In her assessment of the failure of the Stasi to prevent the collapse of the SED and GDR, Christiane Lemke has highlighted the Stasi's lack of any cognitive power in contrast to its well-equipped coercive power.<sup>15</sup> Although she exaggerates the latter and underestimates the former, her observations provide a helpful starting point to an evaluation of the overall role and influence of

<sup>12</sup> McAdams A. J. 2001: 73-85.

<sup>13</sup> Raue P.-J. 1998: 137.

<sup>14</sup> Müller-Enbergs H. 1998: 281.

<sup>15</sup> Lemke C. 1992: 44.

the Stasi. In terms of coercive power and intelligence gathering capability, the MfS was undoubtedly well endowed. As was seen in earlier chapters, it had at its disposal a Guard Regiment several thousand strong, a well-stocked arsenal, a network of prisons and internment camps as well as close links with the GDR military, police and the workers' militia. In the background stood some 400,000 Soviet troops stationed in the GDR as well as regular contacts with its Soviet equivalent, the KGB. There could thus be no doubt that the MfS – along with the other coercive forces – was fully capable of a Chinese solution to the problem represented by GDR's small opposition groups and civil rights activists. Its highly disciplined, well-paid and ideologically sound officers constituted an efficient steering mechanism and a bulwark of SED rule. The 176,000 IMs, the ministry's most effective weapon in the struggle against 'hostile, negative and decadent forces', provided Mielke and his officers with the eyes to penetrate the nooks and crannies of GDR society and to answer the crucial intelligence question of 'Who is who?'. Although blackmail and other forms of coercion were deployed to recruit IMs and other contact persons, many East Germans were by no means unwilling collaborators. In the Federal Republic, HV A's dense network of spies, which included several thousand West German citizens, enabled Markus Wolf to penetrate the highest echelons of West German politics and society. Even the Chancellor's office was not immune to IMs and telephone tapping. In other words, both at home and abroad, the MfS enjoyed the semblance of an omnipresent and semi-omniscient agent of post-totalitarian rule in the Honecker era. In a relatively small and closed society like the GDR, it was able to turn these attributes into a series of highly successful operations against the burgeoning alternative political culture and it infiltrated and weakened the literary, artistic and education spheres. It protected the state's doping programme in sport, safeguarded the economy, provided enterprises with scientific and technical know-how from the West, and stamped down hard on skinheads, football hooligans and punks.

Yet, despite its intellectual property amounting to tens of thousands of kilometres of documentation and tapes and despite its elaborate checks on the accuracy of its data, the ministry was plagued by the cognitive problems typical of all intelligence agencies as well as being caught up in the contradictions of SED policy and in the frail legitimacy of the GDR as the weaker of the two German states. The latter was particularly pertinent at a time when the MfS was extending its scope from classical secret police and security activities during the 1950s to the all-embracing societal mission of the later decades. But, first, a few comments on the commonality of intelligence service problems.<sup>16</sup> While a powerful case can certainly be made for the need for secret internal and external intelligence operations both in war and peace, care must be taken not to overestimate the intelligence services' efficiency

<sup>16</sup> See Rusbridger J. 1989: 2-15; Knightley P. 1987; Herman M. 1996.

and prowess. Although precise figures are usually lacking, secret services are often well supported. The Czarist secret services, including the *Okhrana*, were by far the richest among their contemporaries, and one spy, Colonel Alfred Redl, head of Austrian counterespionage, is reputed to have earned about \$500,000 over ten years.<sup>17</sup> It is, after all, in the interest of the secret services to justify escalating but often hidden budgets and the mystique surrounding the services in order to ensure their success against the threats posed by enemies at home and abroad. As James Rusbridger has pointed out, 'just as turkeys do not vote for Christmas the intelligence fraternity are not going to admit that there is less for them to do in peacetime'.<sup>18</sup> Thus opponents of government policy may be branded as subversives and vast resources are devoted to tracking them down and to the collection of a mountain of trivia. In the field of scientific-technical espionage, much effort is expended on collecting data which soon becomes obsolescent and freely available. The intelligence services' lack of transparency makes it difficult to assess whether governments and other budget-holders are getting value for money. Honecker claimed, after his fall from power, that he had perfectly good alternative sources in the Western media to the information supplied by the MfS.<sup>19</sup> He may, however, have had a better idea of the scope of the MfS budget than he was prepared to admit. If he had more straightforward ways of acquiring information – and there is no real reason to dispute this assertion as untypical of the situation in other countries – then, it should be asked, why did he condone the expansion of the Stasi?

The MfS, like the KGB, was an intelligence squirrel. Intelligence was based primarily on human sources like the IMs, although other forms of intelligence such as signals intelligence and photographic intelligence were not ignored. While all three sources have advantages and drawbacks, human intelligence was the bread and butter of the service and was fully utilised by the supreme controller, Mielke, in the tireless pursuit of omniscience. But while ZAIG was adept at producing succinct reports on security issues and the mood of the population, Mielke lamented in his rambling speech before the *Volkskammer* on 13 November 1990 that this kind of information was not always taken seriously by his comrades in party and state.<sup>20</sup> The sheer mass of material not only threatened to overwhelm the ministry's operatives – inundation being the price to pay for very long cars – but also compounded the problems inherent in cognitive analysis and operationalisation. This is not primarily an issue concerning the accuracy of data – the MfS, it is generally recognised, was diligent in checking for accuracy – but the obstacles to

<sup>17</sup> Laqueur W. 1985: 224.

<sup>18</sup> Rusbridger J. 1989: 2.

<sup>19</sup> The MfS, it should be noted, drew heavily on West Germany's printed media such as the daily press and weekly magazines like *Stern* and *Der Spiegel*.

<sup>20</sup> Herles H. and Rose E. 1990: 194.

analysis and the attendant flaws and errors. During the Cold War, the failure of Western analysts, the present writer not excepted, to predict the sudden collapse of communism in the GDR and Eastern Europe in 1989 was mirrored by the same forecasting failure of GDR intelligence and the East's long-term misperception that the future belonged to communism.

A typology of the shortcomings and failures of intelligence should take into account defects in the collection and analysis of data as well as in the 'consumer's' perception and utilisation of reports submitted by the 'producers'. In the case of the GDR, the chief producer of data assessments was ZAIG and while the ultimate consumer was Honecker and members of the Politbüro, the MfS was both producer and consumer. The flaws inherent in the intelligence process whether in an open or closed society are manifold: consumers' avoidance of information which conflict with preconceptions and from a desire for 'good news'; the difficulties in identifying and prioritising data at the collection stage; perceiving the 'enemy' in one's own image; striving for cognitive consistency; perseverance with initial conceptions and existing policies; and the bureaucratic tendencies of a security service towards routine and conservatism. In addition, the overproduction of data makes it difficult for hard-pressed policymakers to digest and use intelligence unless it is supplied in a succinct and intelligible manner.<sup>21</sup> The list could be extended. Although the East German policymaking process was less dependent on the kind of professionalisation of intelligence analysis than was practised in the USA, many of the kind of problems mentioned above are applicable. One thread running through this book is relevant in this context: Marxist-Leninist ideology, even if much of its pioneering élan had been eroded, created a world in which peace activists, ecologists, punks, skinheads, rock enthusiasts and critical Marxist intellectuals were perceived as subversives of various hues who had to be identified by an army of spies in their midst and then suppressed by means appropriate to the level of the perceived threat and to the latitude allowed by the political situation. Thus in the era of détente, decomposition rather than physical force was the preferred method. While the Stasi could congratulate itself on keeping the lid on the opposition groups, it was suppressing a critical potential which might have rejuvenated the GDR, and left it better prepared to face the challenges of unification and transformation. A plethora of instructions, regulations and training courses ensured that the ministry's staff operated according to the rigid friend-foe image of the world of the Cold War. This dichotomy was certainly not peculiar to the MfS, one has only to think of J. Edgar Hoover of the FBI, but was propelled by the older guard on the SED Politbüro, as represented by Honecker, Mielke himself and Hager, and constituted an insuperable impediment to reform.

However, intelligence gathering, collation and analysis have to be linked to the political system in which they are set. And here the fundamental weaknesses

<sup>21</sup> Herman M. 1996: 228, 231; Laqueur W. 1985: 91–103, 269–92, 342.

and dilemmas of the Stasi become palpable. The Stasi was embedded in a regime which demanded conformity over creativity and was inherently insecure because of its position on the front line in the Cold War and the systemic rivalry with the more powerful FRG. As far as the MfS is concerned, the frailty of the GDR's polity turned it into a pessimistic Cassandra in its perception of a threat from an omnipresent internal and external enemy, but, on the other hand, the strength of its mission and a belief in the ultimate demise of imperialism encouraged the spread of an optimistic Pollyanna syndrome.<sup>22</sup> In the end, the reputedly ultra-efficient Stasi, which was called upon to prop up an ultra-inefficient system of socialism, was overwhelmed by its plethora of tasks and was caught up in the general crisis of communism in the 1980s. Its economic functions illustrate this well, as does its abject failure to stem the emigration movement. Thus even though the communist world possessed in the MfS and the KGB more ruthless and efficient services than did the West, these bodies both exemplified and perpetuated communism's inherent defects.

<sup>22</sup> On the relevance of the Cassandra and Pollyanna syndromes to the world of intelligence, see Laqueur W. 1985: 280–81.

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