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EUROPE AFTER THE END OF TWO DICTATORSHIPS*

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Two disasters in this century have shaken and almost destroyed Europe: the Bolshevik revolution followed by the “dictatorship of the proletariat” and the National Socialist revolution and Hitler’s subsequent dictatorship. During both, millions of people were killed, many of them purposely murdered. Both dictatorships forced millions of people into political systems that disenfranchised them – making fellahs of them, as Max Weber once said. A fellah is not just oppressed, he submits apathetically or even eagerly. German societies have freely created and supported one dictatorship and recognized and justified another. Thus, we are directly bound up in Europe’s disasters and have caused and experienced exceptional suffering through them. For that reason, the present signs of anti-semitism and brutality against foreigners in Germany are all the more depressing.

The destruction of Europe began in 1914. The outbreak of the First World War showed that the use of violence to impose interests seemed promising and justified and that there was neither the institutional means nor the determination to avoid a conflict. During the war, standards of civility unravelled, leading to the brutality of the two dictatorships. When violence is accepted as a way to solve conflicts, it is just one small step to the destruction of opponents, the extermination of minorities and, in the case of National Socialism, the gassing of children. Brutality was no longer restricted to the context of an act of passion, but became one of the measures open to the State. That marked the end of European civilization.

The fact that 75 years later we again have the chance to build a “new Europe” is the work of those political systems which, throughout this period, have preserved what is often called the “European heritage”. I have in mind the Western democracies: Great Britain and the United States, but France too, and those countries whose power was minimal and which, in some cases, were overpowered from the outside, but which nevertheless represented humanity, namely the Netherlands, Belgium, Switzerland, Denmark, Norway and Sweden, a minority among the European States of 1939.

* Text of a lecture given in German during the opening meeting of the 26th Congress of the German Sociological Association (Düsseldorf, 28 September–10 October 1992). This text, unpublished in German, will be included in the Proceedings of the Congress.

What is the "European heritage" that these States have preserved and reasserted throughout this terrible century? It is the idea that conflicts can be dealt with in political institutions in a relatively non-violent fashion and with respect for the rules. But ideas alone are not enough: they become relevant in an institutional framework. The establishment of institutions for dealing with conflicts non-violently was the foundation upon which Europe was built. I will mention only several such institutions here.

After almost 50 years of bitter struggle between the emperor and the Pope, the Investiture Controversy was brought to an end through the Concordat of Worms in 1122. The result was recognition of the system of values of both the spiritual and the worldly powers, i. e. separation of Church and State, through agreement on complex procedures for the selection of bishops in the Holy Roman Empire. Two claims to the exercise of power coexisted, but they also interacted. That is why, ever since, Europe has always refused a fusion of Church and State and a political hierocracy, both of which combine the exercise of political power and a control over its legitimacy, reinforcing their power through ideological constraint.

The religious peace concluded in 1555 at the Imperial Diet of Augsburg recognized the irreconcilable nature of Catholic and Protestant dogma, setting up complex arrangements of territorial jurisdiction and introducing special rights for Imperial Cities of mixed denomination. The denominational schism in Germany thus received an institutional order that, despite the Thirty Years War, preserved the unity of the Reich and made possible cooperation between the Protestant and Catholic estates.

In 1679, the Parliament in London passed the "Habeas Corpus Act", creating the foundation for individual freedom and protection against arbitrary arrest. That marked the beginning of the principle of civil rights based on the rule of law and enforceable through a system of courts: in other words, the establishment of institutions for dealing with conflicts.

Following the long civil wars in England, the Parliament passed the "Declaration of Rights" in 1689, having already forced the King to accept the "Petition of Rights" in 1628. That was the foundation of the parliamentary system, an institution that enabled different political interests to be defended non-violently and which also averted civil wars and opened the way to a further development of the constitution in the framework of a formal system of rights. The Toleration Act protected Nonconformists from persecution and from forced religious uniformity, because political equality under the law allows for religious diversity. The Declaration of the Rights of Man and the idea of the "citoyen" of the French revolution were the cornerstone values of the "civil

society", which made social advancement possible through a system of institutions for the settlement of conflicts and through intermediary associations. Since then, the growth of democracy has been a feature of the European tradition. The preservation of democracy and its adaptation to the structural problems of a modern changing society is one of the two main dimensions of the history of the past 200 years.

The other dimension, which did not take shape until the beginning of the twentieth century, was the birth of institutions governing industrial relations, or what today might more appropriately be called the rights of employees in enterprises and organizations. These institutions seek to settle the social conflicts that have emerged with the development of capitalism, i. e. the dissociation of calculation of economic cost and profit from social ties and obligations of assistance. Highly complex and multi-stage institutions, such as shop rules, wage agreements, labour law and socio-economic organizations, have constantly brought these conflicts to the fore, but the history of negotiations has provided such disputes with a standardized and flexible framework. Thus, economic efficiency can be maintained, and social interests can assert themselves. The Western "civil society" is based upon the interdependence between political democracy, flexible industrial relations and the intermediate organizations that they both require.

Securing religious, legal, political and social peace has been the aim and mainly the result of this development in those European countries in which such a tradition has emerged. The United States became their non-European guarantor. This should not be taken to mean that the goal of this structure has always been realized: there can be no question of that. Nor should it be taken to mean that the institutional system of today is the culmination of such a development. This structure was and is still in danger. It is cracked in many places, and in Germany, where it once stood, it was totally destroyed. Again and again, it must prove its effectiveness and its legitimacy. This structure did not impose itself throughout Western Europe until after the Second World War. Its components – democracy, the rule of law, the social welfare State and human rights – reinforce one another. The "new Europe" can only emerge if it builds on such a structure. The two dictatorships that shaped Europe for 75 years in this century were fundamental departures from this Western European heritage.

In National Socialism the charismatic leader was emperor and pope at the same time, and in Communism theory and practice of domination became identified. Once again, the exercise of power and the control of its legitimacy were merged. That means that there was no basis for criticizing the exercise of power, and anyone who did was persecuted. Public opinion consequently did

not exist. Nowhere was Marxism so ritualistically sterile as under communist regimes, and National Socialism did not even have a conceptually structured ideology.

Cultural and social groups, classes and communities could not define and defend their own interests. A policy of forced uniformity on behalf of class or race was an expression not only of the respective ideology but also of the destruction of institutions for dealing with conflicts. The State's potential for oppression was to be used to depoliticize differing interests. That applied to cultural and religious, ethnic and regional, and social and economic disparities. Of course, social disparities continued in occupation and stratification, educational level and style of life, form of work and degree of autonomy in the exercise of functions, and religion and ethnic group. What was decisive, however, was the withdrawal of the right to organize and to have representation for self-defined interests (autocephalous structure and autonomy). Thus, the internal adaptability was reduced to the point where societies could no longer adequately grow, and they crumbled.

Civil rights were collectivized, which took them out of the hands of the individual. Any behaviour that departed from the norm of the system of domination was regarded as "hostile" and subject to sanctions. Thus, forms of behaviour were rewarded in which – to use Merton's categories – the choice was between ritual, apathy and retreatism. Those who wished to behave otherwise had to be courageous. But the only ones who behaved courageously were those who could and were prepared to bear the consequences of their behaviour alone and without social protection. Such behavior cannot be expected, it is a personal decision. And even if in retrospect it seems that the latitude was greater than actually was made use of, in other words, that a more "courageous" behaviour was possible, which is currently assumed both for National Socialism and for the German Democratic Republic, the fact remains that social behaviour is determined by imagined perceptions of reality. The very vagueness of the behavioural context requires great individual perspicacity in order to overcome such uncertainty and to make it possible to assess, at least for oneself, the risks of non-conformist behaviour. Even opposition to the regime eventually leads to an acceptance of the regime's cognitive self-definition. That causes a subtle collapse of the individual's cognitive points of reference. This is what makes so difficult the ex post facto condemnation of the behaviour of "sympathizers" and "informal" collaborators.

The experiences with the two dictatorships have shown that individual behavioural options and even individual civil rights presuppose the contextual protection of the rule of law and access to a legal system of sanctions, the existence of interest groups and public opinion. Only a system of institutions

that represents differing values but also mediates the conflicts between them allows for a choice of interests and, so far, guarantees freedom. The interdependence between institutions is apparently so great that even modest reform efforts have no chance of success. There can be no free trade union movement without an independent party system, as shown by Poland's Solidarity, and there can be no civil rights without the rule of law, as shown by the introduction of human rights into the CSCE negotiations. In that respect, communist regimes could not be reformed, the form of rule itself had to be eliminated.

The countries that left the Eastern Bloc in 1989 are back where they were in 1918–20 from the point of view of their democratic institutions. Between the two World Wars, authoritarian regimes prevailed and, afterwards, basically the Soviet model. Old borders and conflicts have again become visible: the Leitha boundary between the Austrian and the Hungarian halves of the Double Monarchy, which separated the Slovenes from the Croats and the Czechs from the Slovaks, the ethnic and religious conflicts in the mixed settlement areas of Slovakia, Romania, Bulgaria and the former Yugoslavia, the problem of the Baltic countries, the Caucasus and Turkey, not to forget the fate of Armenia. Old spectres are returning: the Balkan Wars of 1912–13, the genocide committed against the Armenians in 1915 and the forced expulsion of Greeks from Asia Minor in 1923. Only one thing has changed in Eastern Central Europe: virtually all the Jews have been murdered and virtually all the Germans expelled. The remaining ethnic groups, with the exception of the Sinti and the Roma, are demanding national independence. After long periods of political and imperial suppression, ethno-cultural conflicts have broken out and will continue to rage until appropriate institutions have been found for them. The model of the Western European nation state as an ethnically and culturally uniform people in an confined territory, when transposed to an area that historically has been settled by a mixture of ethnic groups and cultures, will result again and again in the creation of new minorities and their oppression or expulsion.

Societies with strongly differing cultures tend to be separated spatially, delimiting themselves from the outside and exhibiting uniformity within. That leads both to the development of ghettos and to the separation of nationalities. But where territorial segregation, as in the case of the Peace of Augsburg, is not possible, there is only one other strategy left: rules must be found for those areas of life for which major and irreconcilable differences exist. That is the lesson of the tolerance edicts, which in a way privatized religious worship, superimposing a religiously indifferent political and economic system. Western European history offers a successful example of that: Switzerland. The mixing together of the linguistically, culturally and religiously diverse Swiss population within a State confederation was permanently and peacefully achieved through

the autonomous jurisdiction of the relatively small cantons. But the smaller the autonomous territories, the less they differ functionally and thus the less they are able to fulfil State tasks completely and therefore the greater the dependence upon networks that substitute for inadequate inner differentiation and interconnect economic interests at a higher multicultural level. Even when the universalist legal framework broadens and economic integration grows, the autonomous jurisdiction of small territories must not be abandoned, and a distinct division of competence between the various political bodies can be maintained. Only recently did the canton of Bern split and was the new French-speaking canton of Jura created. Following a long language dispute, Belgium, in the past centrally ruled but since 1970 in a process of devolution, is now about to become a federation. Flanders, Walloon and Brussels are receiving far-reaching rights, while Belgium as a whole is increasing its commitment to the European integration process. Spain has found domestic peace through regionalization, although terrorism in the Basque region continues. For Eastern Central Europe as well, devolution processes offer solutions to long-standing ethnic, linguistic and cultural conflicts. The desired statehood for Slovenia, Slovakia and the Baltic States is no romantic anachronism in that respect. States with large territories have also long been unable to carry out on their own what used to be regarded as the tasks of central governments: defence, environmental protection, the running of the economy, investments into major technological projects, feeding the population and ensuring the energy supply. Thus, geographic size is not of primary importance for the autonomy of any European country.

For Eastern Europe, the biggest problems concern the creation of institutions. New institutions are the prerequisite for rebuilding the economy, increasing productivity, raising the national income and generating investments so as to modernize and improve living conditions. At the same time, the economic structure, the social and legal order and the constitution must receive a new form. The successful democratization of Spain and Portugal after 1975, both countries having been under authoritarian political regimes for decades, was relatively simple in comparison, although difficult enough. In both countries, a market economy already existed and a system of intermediate institutions and interest groups was at least partially functioning. Just how difficult it is to change the type of society can be seen in the problems facing East Germany; despite the fact that the Western system of institutions has been completely superimposed, many of the experts needed to do so have been provided and the costs of reconstruction have been largely borne from outside.

The task of building political institutions is a complex one, especially as the interdependence, consequences and contingencies that characterize a system of institutions have hardly been explored. Normative principles can be drawn up

for each set of institutions, but first there must be groups responsible for carrying them out. The criteria of efficiency that each institution is expected to meet enter into conflict and contradiction with each other, and they need a procedure and rules for interacting and counterbalancing. Each individual set of institutions has an effect on other social units, which the latter must offset and process adequately. In the beginning, every institution must be granted the benefit of the doubt until it has demonstrated its efficiency in every day experience.

Institutions must be efficient and they must prove themselves. The less the interests are organized and the less they have a clear purpose or can build upon legally sanctionable rules, the less likely it is that distinct arenas will develop, which will regulate each clash of interests. In such a situation controversies on distribution easily become constitutional conflicts and lead to value disputes. Even relatively limited conflicts suddenly become unsolvable, taking on increased importance. Disputes stalemate, and it is no longer possible to reach a compromise on the various points at issue. When there seem to be no prospects of satisfying specific interests, extreme forms of nationalism become relevant as options for action. Every failure of intermediary institutions and conflict settlement thus tends to promote nationalist movements, render conflicts intractable and encourage ideas of national uniformity within and autonomy towards the outside as the supposed preconditions for conflict-solving.

In Western Europe, we are witnessing a unique process of institution-building. At the beginning of the coming year, the European Community will attain, with the creation of the Single Market, a level of development that points the way to an economic and currency union and to an as yet undetermined political system. The Treaty of Maastricht has made the dynamics and basic problems visible for all and opened the long overdue debate on the institutional order of a united Europe. With the help of referendums, a public awareness has emerged that was absent during the earlier institutional development of the EEC. A public opinion has begun to take shape, and the views of individual citizens are also in a state of flux, as seen in numerous professions of belief and in the venting of emotions and resentment. The reaction to the result of the referendum in Denmark, which voted by a narrow majority against Maastricht, was very discouraging. It was said that the Danes did not understand what they had done, their country was so small that they did not have the right to hold up the "European train" and that they could stay out if being "in Europe" did not suit them. All those statements, which were even uttered by high-ranking representatives of the European political system, illustrated a mentality that was inappropriate, given the nature of the issue. Such statements were the expression of a policy of institution-building that is aimed at the purely instrumental implementation of directives but which disregards functioning

and acceptability. The narrow approval in the referendum in France has changed that situation. The attempt to confine the debate on the creation of the European Union to a circle of experts has failed, and that is a good thing. Now the debate will take place in earnest, notwithstanding the tactically plausible claim that ratification is essential. The "train to Europe" will not be stopped by casting doubt on the path it must take to reach its destination.

The European Community is about to take a qualitative leap, but it does not have the appropriate institutional structure. The innovation in the EEC consisted in the construction of a new and independent decision-making and implementation structure of a dual character. On the one hand, there is a system of regulations agreed upon by the member States for the establishment of universally binding norms on the creation of a customs union and, later, a unified single market. On the other hand, the EEC has special political tasks that extend into the jurisdiction of supranational institutions and have grown autonomous *vis-à-vis* the member States. In past decades, this duality meant that the EEC as an independent structure had increasingly lost its importance in the eyes of the member States. It was viewed as an "interest group" of sorts that hardly encroached upon the competence of the member States. From this beginning, a momentum has developed in the institutions of the EEC, giving rise to enlarged fields of competence and a growing network of regulations. The European Court has supported these aspirations. Increasingly, areas of decision-making were removed from national jurisdiction and placed under the competence of the Commission. Thus, through a process of an accumulation of legal acts and an expansion of competence, a "new public power was born that was autonomous and independent from the individual member States; its acts do not need to be approved by the member States and they cannot be overruled by them either" (Dieter Hesselberger). The EEC's actions are directly applicable for German citizens, and the decisions of the European Court are binding in German courts. This transfer of sovereign rights is anchored in article 24 of the German Constitution, which states that: "The Federation may by legislation transfer sovereign powers to inter-governmental institutions". A new situation has begun with the Treaty of Maastricht. The planned economic and currency union and the construction of a European central bank entail a further restriction on the jurisdiction of national governments in the areas of monetary, credit and currency policy and, owing to the resulting limitations on decisions concerning the national budget, in their economic policy as a whole, which has a direct impact on social policy. Moreover, steps towards a political union have been proposed under which the national constitutions would be limited considerably. The balance between the EEC and the member States is shifting, and with it the relative importance of national and supranational institutional systems.

The following tensions and areas of conflict are clearly visible, and the shape of the “new Europe” will be determined by the form that its institutions take.

1. A “Union citizenship” is gradually emerging alongside national citizenship. The individual right to freedom of movement in the Common Market had already created the foundation for a legal relationship outside the jurisdiction of the member States, for example the right to settle, access to education and training, and recognition of foreign instruction and training. These “supranational civil rights” are indirectly tied to the citizenship of the member State, but are no longer materially influenced by the latter. Under the Treaty of Maastricht, a “Union citizenship” will be decreed, which will first take concrete form with the active and passive right to vote in elections at communal level and in the election to the European Parliament for all citizens of the member States in every other member State. This right supersedes the national right to exclusive political self-representation. Thus, a “nation of the European Union” is being created. That has two long-term consequences. The European Union takes on a dual character, based firstly on the Treaty of Maastricht, for which the member States, as “masters of the Treaty” have sovereignty, and secondly on the fact that the European Union is directly linked to the “nation of the European Union”. In the long run, a “Union citizenship” without legislative parliamentary self-representation is unthinkable. But the need to interact between the various national citizenships and the “Union citizenship” makes essential a restructuring of national institutions as well. It is enough here to refer to the declining jurisdiction of the national constitutions and, in the case of Germany, to the dwindling jurisdiction of the Federal Constitutional Court. Whereas in the past the European Community was a State-like system without a nation, the problem now is the development of a “Nation of Europe” and its relationship to the European nations within and outside the European Community. In the past, the citizens of the European Community were primarily citizens of their own countries and only incidentally “citizens of the Common Market” without direct legislative representation. If foreign and defence policy, taxation, economic and currency decisions, environmental and technology policies and a detailed industrial policy are transferred to such a system, the status of citizens of the European Community can no longer be treated as an “additional Common Market citizenship”, because that would leave citizens without any political rights.
2. The decision-making process in the European Community has to a large degree severed itself from the system of national institutions for defending interests and resolving conflicts and has been transferred to the competence of bureaucracies. The strong position of the EEC Commission, through its

right to introduce legislation, puts the defence of interests in a bureaucratic, rather than parliamentary context. The preparing and taking of decisions by the Council of Ministers is also bureaucratically steered. The accusation of bureaucracy levelled at the "Eurocrats" does not refer to the size of the Commission and its staff, which is relatively small, or to the quality of the bureaucracy, which is relatively high, but rather to the dominance of one organizational type of political decision-making. The preparation and taking of decisions and their implementation all follow the principles of bureaucratic organization, i. e. no public presence, no parliamentary consultation, no control through an institutionalized opposition and no selection of personnel through a direct vote. Nor is that greatly modified by the consultation rights of the European Parliament and the Economic and Social Committee.

3. In bureaucracies, the creation and defence of interests follows the principle of departmentalization, i. e., a fragmentation of interests through the jurisdictions of a vertically-structured administration. The organization of government determines the parliamentary organization in the committees, the specialization of interest groups and the criteria of efficiency in the decision-making process which are applied. The political process is structured around "jurisdictions" and the impact on areas outside those "jurisdictions". The close network of European and national bureaucracies and their parallel organization promote the power of those interests that lie within the organized jurisdictions and subjugate them to the criteria of efficiency which serve the creation of the Common Market and the free movement of persons, services, goods and capital. The consequences of this European policy were passed on to the member States, which were expected to demonstrate adaptability. However the political process needs not only a bureaucratic, but also a democratic organization. As the parliaments have the right to determine the budget, there is a resulting need to examine and assess measures not only from the point of view of tight resources, but also from that of the interests of the population, which do not have a strong bureaucratic organization and for which no particular "jurisdiction" has emerged. Parliaments in the various territorial and self-governing bodies thus break open the rules of bureaucratic jurisdiction and force the inclusion of non-organized interests and a taking into account of differing criteria of efficiency. The "deficit of democracy in Europe" that is so often criticized is thus not only a question of legitimacy or participation, but also one that concerns the way in which institutions deal with conflicts.
4. The democracy deficit in the European Community has two dimensions. One is the weak status of the European Parliament and the other is the severing of European legislation from the jurisdiction and consideration of the national parliaments. The democracy deficit can be met in two ways:

by strengthening the competence of the European Parliament and by drawing more heavily upon the national parliaments. But that means carefully examining the interrelated distribution of competence. It is not likely that a Pan-European parliament alone will have a sufficiently cohesive effect: such a body, and the national parliaments as well, would need to be broadly integrated in the political process, with the support of intermediate institutions and interest groups. But as yet there are no European political parties, European public opinion or European associations. The greater the bureaucratization of the agenda-setting and the decision-making process, the more parties, intermediate institutions and associations will be weakened. Thus, even a European Parliament with increased competence would be hindered in its cohesion, its legitimacy and its role of defending interests and resolving conflicts of interest. That being the case, the European Union needs to be solidly integrated into the already existing and functioning national systems of institutions and intermediate organizations. But that will only succeed if the national political systems are not disconnected from European policy-making. A relevant institutional competence and the acknowledged right to participate should be retained at this level of the political process. That entails restrictions on competence at the European level and a clear division of jurisdiction. The problems that arise in that connection are considerable, and new procedures for solving conflicts are needed.

5. The federal principle is a traditional form of organization for defending the rights of different self-governing bodies, and it would seem to be suitable for the European Union. Of the member States of the European Community, only Germany has experience with an extensive federal system. But even in the Federal Republic of Germany, this principle has increasingly been reshaped by the planning, financial and implementation rights of the Federal Government. Although the governments of the *Länder* have the right to participate, through the Bundesrat, in the legislative process at federal level, their parliaments are losing their decision-making and control competence. In a federal system, the federal level takes precedence over the state level as a matter of principle, and jurisdiction, once transferred, asserts itself permanently, even though the states retain a monopoly for administration, financial sovereignty of their own and other prerogatives. The further development towards a European Union might aim towards a federal system, with results that are already visible in the Federal Republic of Germany. It is no accident that Great Britain refuses the principle of federalism for the institutions of the European Union: it fears that sovereignty will eventually be shifted to the European level and that it will only be left with jurisdiction in areas of lesser importance. The Treaty of Maastricht therefore chose the principle of subsidiarity as an alternative. While this avoids the implications

of federalism, it contains only a vague maxim that must be reinterpreted again and again. Whenever tasks are set, it must be decided which means are best, fastest and most effective for attaining the goal and therefore a European or a national regulation more adequate. A finalistic and instrumental assessment of each case cannot serve as a principle for creating institutions, whose power derives from fixed areas of jurisdiction that they can defend. The relationship between the European Union and Europe's national States thus remains fully open.

Hence, the Europe of the old EEC is facing an unusual process of institution-building. Even the twelve member States and their 340 million citizens must address the question to what extent the nation-State model of Western Europe from the nineteenth century and the institutional structure that was created with it can still serve as guidelines for the future. The inner complexity will grow, because the European Community will soon expand with the accession of the EFTA-countries: for example the number of languages will increase from 10 at present (including Catalan) to 13. Denmark's demands for a special status and a partial derogation from the obligation to adopt European regulations points in a new direction. A territorially contained and hierarchical allocation of jurisdiction must no longer serve as a model. New forms will appear for networking limited systems of varying scope.

The inner complexity of the European Union requires an internal adaptability that can only be ensured by the flexibility of national political systems. In the European heritage, the two main traditions for the institutionalization of conflicts were parliamentary democracy and industrial relations, and they both deserve particular consideration; but at a time in which the historically unique economic growth of the past 45 years has levelled off, and not only for short term economic reasons, and in which conflicts of interest can no longer be resolved by distributing the fruits of additional growth, these two traditions are being put to a difficult test. All the more so as the constraints of European integration are growing and there are no institutions at European or national level that could guarantee adaptability, compromise and legitimacy.

Thus, Eastern and Western Europe must make major innovations to create institutions for dealing with and channelling existing conflicts, to prevent such conflicts from taking on exaggerated importance and thus to ensure the inner peace. The interaction, cooperation and eventual linkage between such institutions poses another set of problems. Do we now, at the end of this century, have a better chance of creating a "new Europe" than at the beginning of the century? I believe that we do, if we take to heart the lessons to be learned from the causes and results of the two disasters of this century.

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