

Legal Aspects of Overseas Operations of the Bundeswehr

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Constitutional logic

- Basic understanding behind the legal framework guiding the role of armed forces in foreign missions (out-of-area)
- Legal framework is not always identical with political debate
- Pivotal role of the Federal Constitutional Court in bringing back political debate to legal framework

German Constitution (Basic Law)

- In 1949 drafted by the Parliamentary Council
- Defense issues were skipped
- Exceptions
 - Prohibition to launch a war of aggression
 - Right to conscientious objection

German Constitution (Basic Law)

- Four provisions of relevance
 - The readiness to transfer sovereign powers to international organizations
 - Primacy of international law over national legislation
 - Preference for international arbitration
 - The Federation may enter into a system of mutual collective security, and may give up sovereignty

System of Mutual Collective Security

- New approach in the field of foreign-, security and defence policy: **not Pacifism**
- Needed contributions by German state, too, in order to function
- Lost its relevance during the times of the Cold War

System of collective defence

- NATO became the preferred system of collective defense since 1955 for Germany
- German contribution to this system was indispensable
- Amendment to the Basic Law in 1955: „The Federation shall establish Armed Forces for purposes of defense“

After 1990

- New role of system of collective security
- Question: what is the role of Germany?
- Shall Germany contribute to system of collective security by sending troops?

At least 4 positions

- CDU/CSU: out-of-area missions by the Bundeswehr were admissable as long as they were part of collective defense or collective security
- Liberal Party (FDP): Basic Law allows only military missions for national and alliance defence
- Social Democrats (SPD): Basic Law does not allow out-of-area missions, let's change the constitution
- Greens: against all missions for Pacifist reasons

Federal Constitutional Court

- Decision 21 July 1994
 - Basic Law pays special reference to system of collective security: Germany cannot stay outside
 - Broad definition of system of collective security
 - Germany has to play by the rules of systems of collective security
 - Foreign military missions within collective security are compatible with Basic law
 - Strategic reorientation of NATO and EU do not constitute necessity of renewed ratification
 - Parliamentary approval needed for foreign military missions

Fundamental legal logic

- New approach of Federal Republic of Germany means not a pacifist orientation
- It means orientation at (and contributions to) systems of collective defense in combination with readiness to surrender sovereignty
- It means Parliamentary approval of any mission

Parliamentary Participation Act of 2005

- Any deployment of German Armed Forces requires the approval of Parliament, except planning and preparatory measures, humanitarian services and assistance
- Standard procedure for approval process
- Simplified procedure for minor involvements and for emergency situations

Basic idea

- Instead of pacifism applying instruments of security policy which are posing an alternative to traditional defence policy
- Pacifist illusions still prevalent in German political debate