

Germany: Push to use military for domestic policing

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Over the last few years fundamental legal rights in Germany, such as the division of power between the police and secret services, data protection and the use of torture, have been increasingly put into question. Now a traditional demand of the conservative right in Germany—the use of the army for domestic purposes—is being advanced in parliament by parties across the board. In general, fundamental legal issues are being ignored with the debate concentrating on such issues as possible exceptions to the internal use of the army.

For years representatives of Germany's conservative right have been calling for the army to be used for domestic purposes. This debate took new and more concrete forms after the terror attacks of September 11, 2001. After the attacks the prime minister of the state of Bayern, Edmund Stoiber (CSU), called for a change to the German constitution to enable the army to be utilised in the struggle against terrorism inside the country. It was foreseen that the army would be put under the control of the police, which itself is subject, under German law, to the authority of the individual states.

The conservative union parties (Christian Democratic Union—CDU, Christian Social Union—CSU) continued their calls for a change to the constitution during German elections in autumn of last year. In the *Bild am Sonntag*, the union candidate for chancellor, Stoiber, said that should he win the chancellorship he would push forward with plans for the domestic use of the army. In future the German army must “be implemented domestically to supplement the police—for example to protect airports against attack,” he said.

At the conference of state interior ministers held in Bremen at the beginning of December 2002 the interior ministers of Bayern and North-Rhine Westphalia, Günther Beckstein and Fritz Behrens, introduced an appropriate draft proposal. The draft was rejected at that time by other SPD (German Social Democratic Party)-led states.

Up until this point the SPD and Green parties had signalled their opposition to such a proposed law. The main argument used by the SPD and the Greens was that existing law was sufficient when required to permit the use of internal operations by the army. On this basis, for example, as it became clear the United States was intent on a war with Iraq at the end of last year, the German government assured the US that German soldiers would take full responsibility for the protection of American bases in the country and partial responsibility for the defence of US civil institutions.

The debate on this issue was reignited by what was on the face of it a trivial incident. At the start of this year a mentally confused 31-year-old flew a glider over the city of Frankfurt for two hours and threatened at one point to fly into a banking office tower block. In the ensuing debate on the incident, readers sent letters to local newspapers stating they were more fearful of the two German air force tornados, which were scrambled to observe and possibly shoot down the small plane, than they were of the glider itself.

In fact nobody disputes that existing law covers the possible use of the army to support local authorities—for example to oppose a real terrorist threat. Nevertheless, the incident in Frankfurt was used by some politicians to reinforce the case for a change of law.

Most notable is the change of stance by members of the governing coalition. In addition to the union politicians Angela Merkel, Friedrich Merz and Edmund Stoiber, German Defence Minister Peter Struck (SPD) also joined the debate. According to Struck there was not an “appropriate law” to allow air force pilots to shoot down the Frankfurt plane. A report in the *Spiegel* magazine revealed that Struck has instructed officials in his department to draw up new “defence policy guidelines”, including a “clarification of the constitution” for the expanded use of the German army inside the country.

Afterwards a vigorous debate developed over this demand. The Interior and Justice ministries together with Chancellor Schröder himself rejected a change of the constitution. It was notable, however, that the discussion concentrated on formal issues. There was no reference to the possible dangers arising from the merging of the police and intelligence services, with arguments restricted to the issue of whether the existing legal situation was sufficient to allow the army to intervene domestically.

The general secretary of the SPD, Olaf Scholz, has declared that in his opinion a change of the constitution is not imperative. The legal clarification of this question is an “entirely open process”, he stated. The SPD would prefer a solution which avoided a change to the constitution. The home affairs speaker of the SPD parliamentary faction, Dieter Wiefelspütz, stated in the *Passauer Neue Presse* that the constitution permits the intervention of armed forces against terror attacks when it is adjudged that political means are insufficient to deal with the problem.

The reaction of the Green Party has been less muted. Green leader Angelika Beer said that in principle her party does not approve of changes to the constitution. However for the problem

of airplanes which take off from inside Germany and then threaten targets inside the country it was necessary to come up with a “legally equitable solution”.

On the basis of these legal arguments the German minister of the interior, Otto Schily (SPD), indicated at the end of January this year that he was planning a change to the air-policing law, in order to regulate military support for the police. On March 1, the dpa news agency reported that there was widespread agreement in government circles over such a law.

In the newspaper *Die Welt* the SPD home affairs expert, Dieter Wiefelspütz, spoke in favour of a draft law to article 35 of the constitution to regulate the internal use of the German army for official assistance. “An air-policing law would be insufficient,” he said. The defence expert of the union parliamentary fraction, Christian Schmidt (CSU), said that the union parties would not vote in favour of the Schily draft: “It is not possible without a change to the constitution:” The Schily proposals “do not go far enough because there will still remain no rules regarding the use of the army for the tackling of dangers on the ground and at sea.”

It is highly doubtful that parliament will approve a revamped version of the air-policing law. What is clear is that there will be a broadening of the law regarding internal use of the army.

The argument given by all parties is that such a measure is necessary for the struggle against terrorism, although such attacks as those of 9/11, or even the glider affair in Frankfurt, could not have been prevented by the army. At present the paramilitary Federal Border Police is employed throughout the country as a matter of course. How is the army supposed to support these forces? These are questions which are not even discussed. As is the case in the US, the catch phrase “terrorism” is used in Germany to intimidate and justify wide-reaching attacks on democratic rights.

The whole debate inevitably brings to mind the discussions which took place in the '90s regarding interventions abroad by the German army. At that time there were endless debates about whether or not to change the constitution in order to permit the German army to intervene in areas outside of NATO territories. Today, without any change to the constitution, Germany has more soldiers on active service abroad than any other country apart from the United States.

Arising from the experiences of German history there are good reasons for the limitations placed at the end of the Second World War on the use of the German army.

Under the rule of Emperor Wilhelm II at the end of the nineteenth and beginning of the twentieth century not only was the army used against striking workers, but in addition the military command, largely drawn from the ranks of the conservative Prussian Junker, played a considerable and disastrous role both at home and abroad.

As a result, the German army was subject to strict and massive limitations by the victorious great powers at the end of the First World War. Even so, the remaining military structures together with paramilitary elements from the defeated German army were instrumental in suppressing revolutionary revolts, employing terror against working class organisations and undertaking their own putsches against elected governments.

Hitler's SA and SS storm troopers were mainly drawn from the ranks of the German army *Freikorps* and had close links to the official military apparatus. Their job was to secure public order through terror, intimidation and violence. With the official swearing of loyalty by the German army to Hitler on August 2, 1934, the militarization of every aspect of German society was complete. The fascist state was only able to secure power and destroy the working class with the assistance of the German army.

Based on these experiences, which had a profound effect on popular consciousness, the discussion on the rearmament of the Federal Republic in the '50s revolved around definite limits governing the use of the army. The German army could only be mobilised for defensive purposes against an external foe and was never to be employed against the German people. There had already been vigorous opposition to the establishment of a paramilitary-type federal border police force (*Bundesgrenzschutz*).

Since 1960 attempts have been made to weaken the established limits and through the passing of so-called emergency laws enable the internal employment of the army. Emergency laws were eventually passed in 1968 by a grand coalition of the union parties and the SPD in the midst of student protests. The laws established the basis for the use of the army against the population as a whole—for example in the case of mass strikes.

In the current discussion such questions as the significance of the fundamental legal requirement of a division of powers between police and military are not even raised. Instead there is much empty talk of a confused glider pilot. Under conditions where the government is intensifying its attacks on the social conditions of the broad masses and intends to substantially increase the defence budget, basic democratic rights are being continually eroded. The German state is preparing to deal with the emergence of popular resistance and discontent.

Just as was the case in 1968 it is no accident that such proposals for alterations to the law should be greeted with broad support across the political spectrum at a time when masses of people are beginning to intervene actively in political life—most recently in mass demonstrations against the Iraq war.



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