The US Army War College Quarterly: Parameters

Volume 26
Number 1 *Parameters Spring 1996*

Article 3

3-22-1996

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Recommended Citation

Karl-Heinz Borner, "The Future of German Operations Outside NATO," *Parameters* 26, no. 1 (1996), doi:10.55540/0031-1723.1763.

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The Future of German Operations Outside NATO

KARL-HEINZ BÖRNER

From *Parameters*, Spring 1996, pp. 62-72.

No German soldier or airman fought in the 1991 Gulf War coalition. No US or allied effort to coax Germany to share the combat burdens of providing worldwide security during or after the Cold War succeeded. In fact, since World War II German units have been constitutionally forbidden from operating outside of Europe, or so most Germans believed.

The perceived restriction disappeared in 1994, clearing the way for Germany to participate in future missions around the world. Did the new challenges of the post-Cold War era awaken the German people to the need to change their constitution so that Germany could fulfill the role of a great power? Should one expect Germany to leap to the front of the queue of nations supplying military forces to UN operations? The answers to these and similar questions lie in German law and German politics. This article explains the decision that changed German policy and suggests some implications of the change.

For years a restrictive interpretation of Germany's constitution, or Basic Law, regarded as unconstitutional any international missions by German armed forces exceeding common self-defense within the geographical areas defined by NATO or the Western European Union (WEU).[1] Conversely, most constitutional lawyers supported a more extensive interpretation of the Basic Law, one that differentiated between national or collective defense and other international missions outside NATO territory.[2] This situation gave rise to vigorous debate whenever German forces were employed outside NATO territory to fulfill UN missions.[3] Operations of the German military in Somalia, in the Adriatic, and even on NATO AWACS flights over the former Yugoslavia prompted two political parties in the German legislative assembly, the Bundestag,[4] to ask the Federal Constitutional Court[5] to settle the matter once and for all.

On 12 July 1994 that court issued the following ruling:

In the proceedings on the dispute over the deployment of German forces the Federal Constitutional Court (Second Panel) has ruled that the Federal Republic of Germany is at liberty to assign German armed forces in operations mounted by the North Atlantic Treaty Organization (NATO) and Western European Union (WEU) to implement resolutions of the Security Council of the United Nations (UN). The same applies to the assignment of German contingents to peacekeeping forces of the UN.

... The Court also finds, however, after thoroughly analyzing the provisions of the Basic Law relating to the status of the armed forces in the constitutional system, that the Federal Government is required to obtain the Bundestag's explicit approval for each deployment of German armed forces. Such approval must in principle be obtained prior to their deployment. The Bundestag must decide on the deployment of armed forces with a simple majority. Once parliament has given its approval, the decision on the modalities of deployment, especially the question of the size of the force and the duration of their deployment and on necessary coordination within and with the governing bodies of international organizations, falls within the government's sphere of competence. The nature and extent of parliament's involvement is for parliament itself to decide within the scope of these constitutional constraints.

As noted in a subsequent press release by the court, the decision "legitimized the long-disputed admissibility of the deployment of German forces [outside the NATO area] under a United Nations mandate but at the same time made their deployment in each individual case subject to the approval of the German Bundestag." [6]

In light of this landmark ruling, it remains to be seen how German forces may now be employed outside of the NATO area. Not only must there be a decision to deploy and employ those forces, but criteria for determining when to commit German forces must be developed. The will of the German people to support such missions also will have to

be determined.

Implications of the Ruling

General Klaus Naumann, Chief of Staff of the German armed forces, commented shortly after the ruling that:

Germany's 1949 Constitution does not prohibit participation in multilateral peacekeeping or combat operations, and . . . German troops are permitted to join military missions abroad if parliament approves. With that finding, German foreign policy has regained sovereignty, freeing Germany to act fully in concert with other members of the community of nations to which it belongs and to accept the burdens that go along with such an international role.[7]

In fact, with the unification of Germany on 3 October 1990 and the termination of all World War II victors' rights, Germany had already regained full sovereignty and was hindered from participation in international military affairs only by its own internal political and legal processes.

One could have developed an ambiguous understanding of the Constitutional Court's ruling by reading German newspapers shortly after the decision. Politicians announced that henceforth participation of German soldiers in joint operations would be legal. Such statements were misleading, because operations of that kind had in fact always been legal. Since many politicians' interpretations of the German Basic Law were flawed, policy positions articulated to the German people and to Germany's allies misled both audiences.

Now, after the ruling of the High Court, Germany faces a new political challenge. As General Naumann suggested, "Gone are the days when [German politicians] could hide behind a strict interpretation of the constitution that was held to circumscribe severely German participation in UN and NATO operations." [8] Criteria will be developed gradually to decide when, where, and to what extent German soldiers will be part of multilateral military missions.

The remainder of this analysis is organized around responses to five questions posed by Dr. Philip Crowl, questions that "strategists must ask before they commence a war, or before they take actions which might lead to war, or before they undertake a wartime campaign, or before they end a war in which they are already engaged." [9] The questions, similar to those suggested in the Weinberger Doctrine and General Colin Powell's list of considerations for determining when to employ armed force, will shape responses to proposed deployment of Bundeswehr forces in support of humanitarian operations or in support of NATO, UN, or European Union initiatives throughout the world.

What is it about?

Even with a relatively secure peace and a promising policy of détente between West and East in Europe, every larger state has to rely on armed forces, not only as a counter to a possible threat, but as an attribute of sovereignty and of the national independence which the force is supposed to protect.

The German armed forces, the Bundeswehr, serve as a striking example. Without Germany's military contributions to NATO or the West European community, the nation's goal to regain full sovereignty and equal rights within the international political environment would have been highly problematic. Whether the Bundeswehr will be as significant for the Federal Republic's future as it was during the 45-year Cold War largely depends on the development of the security interests and the security policy of the Western alliances and Germany's role within this process. It is clear, however, that as a member of various alliances, Germany must take up the burden of mutual security: "Every Western European member state has to make a military contribution towards a common defense and security system. The means to fulfill this obligation will be the national armed forces." [10] Therefore the Bundeswehr has to be a responsive instrument of Germany's foreign and security policy, able to share future burdens equally with other allied forces.

These obligations are detailed in the decision of the Federal Constitutional Court:

According to Article 24(2) of the Basic Law, the federation may become a party to a system of collective security and in so doing consent to limitations upon its sovereign powers. The Federal Constitutional

Court also sees in this power conferred by the Basic Law the constitutional foundation for an assumption of responsibilities that are typically associated with membership of such a system of collective security. Hence German servicemen may be deployed within the scope of UN peacekeeping missions even if the latter are authorized to use force. The objections submitted by the applicants [SPD and FDP] on constitutional grounds to the participation of German forces in the UNOSOM II mission in Somalia, in the NATO/WEU naval operation in the Adriatic to monitor the UN embargo on the Federal Republic of Yugoslavia, and in the AWACS monitoring of the ban on flights in the airspace over Bosnia-Herzegovina, likewise imposed by the United Nations, are therefore rejected. German servicemen may also be integrated into NATO formations which are deployed within the framework of UN operations. This, according to the Court, is covered by parliament's approval of Germany's accession to NATO and the UN Charter.[11]

Immediately after the ruling, in July 1994, the German government asked the Bundestag for approval of the missions of German soldiers in Southeast Europe. Following a special session of the parliament, during which the required enabling legislative decisions were made, the cabinet lifted the restrictions on the use of German forces as of 27 July. That cabinet decision meant, inter alia, that the Bundeswehr could follow NATO rules of engagement and operational orders of responsible NATO commanders without exception. Among the immediate results were the use of German AWACS crew members in the Hungarian orbit (supporting NATO forces deployed in the former Yugoslavia) and participation by German ships in "stop and search" operations in the Adriatic, including the territorial waters of Albania and Montenegro.[12] Thus the German Chief of Staff sees a clear signal from the German government to become a mature partner in shared responsibilities.

The Constitutional Court's ruling definitely answered the question posed above: the issue of deployment is about Germany's sovereignty, about the nation's international obligations, and about the new role of its armed forces.

Is military strategy tailored to meet the national political objectives?

The current international security situation makes the development of national political objectives and a national military strategy inordinately complex for any nation with international interests and obligations. The salient features of the international environment which influence national objectives and consequently national military strategy include:

- the United States' role as the only world power capable of unrestricted global action;
- economic problems and challenges of Western Europe and Japan;
- the relatively unstable political landscape in Eastern Europe and Russia;
- the controversies of the multipolar world of the 21st century, whose powerful northern hemisphere centers will be called to help the south to solve its problems; and
- Germany's role as an ally and a continental middle power with worldwide economic interests.

The mission and structure of the Bundeswehr are being tailored to match this strategic environment. In a speech delivered at the Royal United Services Institute for Defense Studies, London, on 21 October 1994, General Naumann stated:

The primary task of the Federal Armed Forces will continue to be the protection of Germany from external threats. But in accordance with the new political requirements, the German armed forces must now [in particular after the ruling of the High Court] also be available as a flexible instrument for peacekeeping and crisis management. . . .

. . . [Consequently] the armed forces cannot be structured for only one concrete scenario, as in the past. Part of the Bundeswehr must be able to respond to a broader spectrum of options. Another part of the Bundeswehr, that is by far the largest part, must after a longer preparation time be able to secure the protection of our country through Alliance defense.[13]

Three categories of forces must be available to German leadership to fulfill the nation's responsibilities in the new security environment: the main defense forces, reaction forces, and infrastructure organizations.

- The main defense forces (MDF) comprise all the standing and augmentable forces that would be employed in defense of Germany and its allies. The augmentable elements of the main defense forces are the foundation of national defense. They are to be kept at graduated levels of readiness and must be able to reach prescribed levels of operational readiness within the time available to make military preparations for national and Alliance defense. They are composed of active duty personnel and, to an even greater extent than before, reservists of all ranks who receive basic and continuation training during their active military service and periods of reserve duty training. Selected units of standing MDF, particularly from the logistic and medical corps, will be employed in support of the reaction forces, described below.
- The reaction forces are those elements of the armed forces that can be employed for conflict prevention and crisis management within the Alliance framework and as a contribution to international peace missions. As standing defense forces, they contribute to national defense and protect the augmentation of the mobilization-dependent MDF. If necessary, they can receive specific support from augmentable elements or from forces of the basic military organization.
- Infrastructure units, called the "basic military organization" are required to exercise command and control of all forces, to support the operation of the armed forces, to carry out training and service support functions, to perform civil-military cooperation tasks, and to support Alliance forces stationed in Germany.[14]

The Bundeswehr is being restructured along the lines described above to make certain that its organizations and capabilities are compatible with the new military strategy.

What are the limits of military power in support of national policy?

The challenge to strategists, now as ever, is to determine in each national crisis just how the military can contribute to resolution of the crisis. When the 1994 Defense White Paper declared that "Germany's ability to act strategically is not only a political and mental challenge. It is also a question of military capabilities and options," it echoed similar assessments in comparable publications in most NATO and other European nations.[15] Political and intellectual challenges as well as the military capabilities and options must be considered separately.

Part of the answer to questions about the effects of political and intellectual challenges to the use of military power appeared in the *Frankfurter Allgemeine Zeitung* on 13 July 1994:

To be sure, the Federal Constitutional Court's decision on sending Bundeswehr troops outside the territory of NATO does not give the government, any government, a free hand in using the Bundeswehr. The decision adheres closely to the instances at hand: the Adriatic, AWACS, Somalia. But the decision also says, and this points to the future, that the collective security systems the Federal Republic has joined--the United Nations foremost, but also NATO and the Western European Union--can change in character, as we have seen since 1989.[16]

The *Süddeutsche Zeitung*, in Munich, added the same day:

Foreign Minister Kinkel has already warned that the restraint in military matters [practiced] up to now should not be "relinquished hysterically." He has good reasons for that warning: legally there will be only a single absolute prohibition in the future--the prohibition against wars of aggression as identified under international law. With this decision from Karlsruhe, the most consequential struggle since the 1955 debate over rearmament [of the Federal Republic of Germany] comes to an end. The decision changes Germany's entire foreign and military policy.[17]

Germany is preparing its military to meet new and expanded responsibilities inherent in full sovereignty as well as those related to full partnership with its Alliance partners. German participation in operations will not be automatic. It will always be based on national values and interests, since there is no obligatory norm within international law for support of such activities. As General Naumann commented, "Of course, Germany will continue to exercise great restraint in the use of military power, and for good reasons. I think it would send the wrong signal if Germany now prepared to acquire forward projection capabilities, which its armed forces currently do not have. In fact, our long-term planning does not include such a step." [18]

From that understanding the matter of Germany's military capabilities and options can be addressed. Germany's Federal Minister of Defense, Volker Rühe, said during a Conference of the Aspen Institute on 24 August 1994 in Berlin:

Today, the Bundeswehr is still best prepared for the most unlikely case--an aggression against NATO. It is least prepared for the most likely case--the new tasks associated with international crisis management. For this reason the German government has initiated a fundamental reform of the German armed forces that will give them the necessary shape to master the challenges of today and tomorrow. . . . The main emphasis of the reform will be the buildup of highly professional reaction forces with a high degree of readiness and availability, and able to cover the entire spectrum of crisis management tasks.[19]

Fundamental changes in Germany's relations with its Alliance partners require a new approach to armed forces equipment planning. At the moment the Bundeswehr is adequately equipped for national defense at home, since the main defense forces have predominantly modern equipment at their disposal. For the near future, however, the high value attached to the crisis reaction capability will determine the principal materiel procurement requirements for the Bundeswehr. Priority is being given to equipping designated reaction forces for international crisis management operations. Enlarged reconnaissance capabilities are needed as well as internationally interoperable communications, command, control, and information systems for disseminating information quickly through several echelons of command. Steps must be taken to provide logistic and medical support for units engaged in crisis management operations, international peace missions, and humanitarian aid activities.[20] Germany has neither the intention nor the resources to engage in unilateral military operations of any kind, and thus needs its major allies to share common burdens and responsibilities as it prepares to assume its role as a full partner in international affairs.

What are the alternatives?

Decisions with regard to national security are made in conjunction with national objectives and national military strategy, i.e. the protection of Germany from external threats and participation in peacekeeping and crisis management operations within the framework of the United Nations. The only means to carry out such decisions are military forces.

Some Germans doubtless would like NATO and the Bundeswehr to disappear entirely. Such an outcome, however, cannot be considered to be a realistic alternative to the current political position of full partnership with allied and friendly nations. Should Germany fail now to meet its international obligations, results could include loss or reduction of credibility, sovereignty, and freedom of action within the international political environment. Consequently there is no serious alternative to pursuing the stated national security interests and objectives.

Alternatives, however, should be defined and evaluated before deciding to conduct military operations in support of national policy. This is of particular importance when conducting crisis management operations. The Bosnia-Herzegovina conflict shows clearly the entire spectrum of alternatives that UN and NATO decisionmakers have to take into consideration prior to the use of military force. The alternatives range from simply demonstrating military readiness, to embargo as an economic sanction, to blockade, to containment, and finally to military intervention as the last resort.

These are the kinds of decisions that the ruling of the Constitutional Court now requires of German politicians. The alternatives, therefore, will no longer be "Are we or are we not *allowed* to participate?" but rather "Do we or do we not *want* to participate?" in military operations within the UN and NATO frameworks. This new and unaccustomed situation, as suggested in one German newspaper, "despite the clear wording of the Karlsruhe decision, will cause domestic conflicts over the new role of the Bundeswehr in international crisis management to continue." [21] The requirement to address these questions in each instance of national policymaking leads directly to what is perhaps the most important question of all.

How strong is the home front?

Consider the historical record from the German perspective:

For the German people [the ruling of the High Court] means an enormous psychological adjustment. The

Federal Republic never was a power of military intervention like the United States, England, or France. Two lost wars have taken away the pride in military performance. It took a great deal of trouble to accept the Bundeswehr's defensive mission throughout the last four decades. Therefore it will be very hard to achieve general approval for worldwide operations with German participation.[22]

All else follows from understanding this view of the German experience in the 20th century.

Not only the German people and those who have to make the decisions, but the German soldier as well will have to adjust to the new situation following the 1994 court decision. Those in the military will have to develop a new way of seeing themselves. This process will include participation of German citizens, the parliament, and individual soldiers in shaping a new perception of the role and functions of our military forces. Change of this magnitude will take time. A broad national consensus about the Bundeswehr and its new role and missions lies yet in the distant future.

Recent polls, however, indicate that there is growing support among Germans for UN peacekeeping operations and for sharing responsibilities with other nations. Public opinion regarding the ruling of the Constitutional Court was overwhelmingly supportive, with a general feeling that the court had judged wisely. Relief that there would be no further legal hairsplitting seemed to be the common conclusion. The politicians and the press pointed out that normality finally had reached Germany, which was no longer exempt from the full measure of responsibilities inherent in sovereignty. National security decisionmaking has now been shifted to the appropriate forum, and the answers to international problems are now to be provided by elected politicians, not by lawyers and judges.[23]

The results of the October 1994 parliamentary elections, returning to office the Kohl government which had supported the participation of the Bundeswehr in UN operations outside the NATO area, indicate that the German voters agree with this broader international role.

Conclusion

Bonn, 31 December 1995:

NATO and with it the Bundeswehr are facing the greatest mission of their history. With the full support of the parliament and the people our soldiers will help to secure peace in former Yugoslavia. While making the preparatory decisions we received [so] much encouragement and support that we can speak of a new consensus. Germany is meeting its obligations and can be proud of its soldiers.

This excerpt of Minister of Defense Rühe's address to Germany's Federal Armed Forces, as well as the overwhelming majority in favor of the 6 December 1995 decision of the parliament to provide troops for the NATO mission in Bosnia,[24] proves that the German Constitutional Court's ruling of 12 July 1994 has thus had a significant effect on national security decisionmaking. Despite the fact that the ruling itself was not a security decision as such, it permits Germany to move away from its privileged and special position toward normality in Europe and in its activities as a member of the UN and NATO. It emphasized the supremacy of parliament over the military and put the entire responsibility for Germany's foreign and security policy on the political leadership, which is now challenged to decide when and to what extent the Bundeswehr is going to participate in WEU, NATO, and UN operations. The formal clarification of Germany's Basic Law ended debate over whether Germany's armed forces are *allowed* to be employed outside NATO territory to share with its allies the burdens of crisis management and humanitarian relief. Without question, the ruling of the high court can be considered a historic decision, although politicians could have made it superfluous by achieving consensus on the interpretation of the Basic Law years ago.

German participation in operations outside its borders is not automatic, however. Each mission must be decided on individually, based on national values and interests at the time the decision is made. The Chief of Staff of the German armed forces has posed his own set of questions for any such operation:

- Is it in our interest?
- Are the objectives of a given operation achievable?
- Can the operation be delimited before it is begun?
- Are the costs--and not only in financial terms--calculable and acceptable?[25]

It is noteworthy that America's Secretary of Defense during the Reagan Administration, Caspar Weinberger, posed similar questions. Their restraining rather than enabling character clearly emphasizes the intention to use military force only as a last resort.

General Naumann's list does not explicitly include what is perhaps the most important question in determining future German participation in multinational operations: "How strong is the home front?" But the German political and military leadership is clearly aware that it can act only with the approval and support of the German people.

NOTES

The author extends his thanks to Colonel Joseph A. Engelbrecht, Jr., USAF, of the Air War College, for his assistance in the preparation of this article.

1. Germany is a member state of the Western European Union (WEU), which is projected to be an integral part of the European Union, becoming its defense component. The aim of the WEU is "to afford assistance to each other, in accordance with the Charter of the United Nations, in maintaining international peace and security and resisting any policy of aggression." The parties to the treaty express their will to promote the unity and encourage the integration of Europe. The core of the WEU Treaty is the article under which the allies pledge to render mutual assistance if one of them should be the object of an armed attack in Europe. The WEU allows the Europeans to assume greater responsibility for their security and to be capable of taking action in contingencies where NATO does not commit itself.

2. German Ministry of Defense (MOD), Navy Staff, III 2 (Bonn: October 1994).

3. The restrictive interpretation of the Basic Law did not prohibit the use of military forces for humanitarian purposes. German soldiers have been providing humanitarian support for more than 30 years, comprising over 120 missions in 53 countries all over the world. As a member state of the UN, Germany has participated on six operations since 1990:

- Minesweeping operations in the Gulf.
- UNSCOM (United Nations Special Commission in Iraq) inspection and weapon destruction program.
- UNTAC (United Nations Transitional Authority, Cambodia), providing medical support and operate a general hospital in Phnom Penh.
- UNPROFOR (United Nations Protection Force in Ex-Yugoslavia) including airlift to Sarajevo, control of the embargo in the Mediterranean, and AWACS missions to control the "no-fly-zone" over Bosnia-Herzegovina.
- UNOSOM II (United Nations Operations in Somalia) airlift operations for the immediate delivery of food for the people of Somalia and logistic support for a brigade.
- UNOMIG (United Nations Observer Mission in Georgia) military observers and medical support.

4. The German Bundestag is the parliamentary assembly representing the people of the Federal Republic of Germany. It is elected by the people every four years. It may be dissolved prematurely only under exceptional circumstances, the final decision lying with the Federal President. The Bundestag's main functions are to pass laws, to elect the Federal chancellor, and to keep track of the government. The two parties that brought the issue to the Constitutional Court are the SPD and FDP. The SPD is the Social Democratic Party of Germany, a recreation of the former mainly labor-oriented party of the same name. It is currently in opposition. The FDP is the Free Democratic Party, which has adopted programs in the tradition of German liberalism. It is currently in coalition with the ruling parties, the Christian Democratic Union of Germany, CDU, and the Christian Social Union, CSU.

5. The main task of the Constitutional Court is to decide questions of constitutional law and to settle disputes in constitutional matters. Its function is to enforce the basic principles laid down in the constitution and to safeguard the constitution against possible violations by state institutions. Unlike the Supreme Court in the United States, which can avoid adjudicating the constitutionality of certain political matters, according to the "political question doctrine" the German Constitutional Court is bound to uphold the constitution even if this may undermine the authority of the parliament.

6. Press release issued by the Federal Constitutional Court, No. 29/94 (Karlsruhe, Germany).
7. General Klaus Naumann, Chief of Staff, German armed forces, address at a round table at the Konrad Adenauer Foundation, in Washington, 15 July 1994.
8. Ibid.
9. Philip A. Crowl, "The Strategist's Short Catechism: Six Questions Without Answers," The Harmon Memorial Lectures in Military History, No. 20 (Colorado Springs, Colo.: US Air Force Academy, 1978), p. 4. Dr. Crowl's first five questions in this source form the outline on which the present analysis is organized. His sixth question is "What Have I Overlooked?"
10. Lothar Rühl, in "Sicherheitspolitik kontrovers," Band II (Bonn: 1990), p. 410.
11. Press release issued by the Federal Constitutional Court, No. 29/94, para 2 (Karlsruhe, Germany).
12. German MOD, Navy Staff, III 2 (Bonn: October 1994). As of 18 October a total of 27 search missions by German ships were reported, which clearly indicates the beginning of a new era of German cooperation in international security affairs.
13. German MOD, White Paper 1994 (Bonn: 5 April 1994), p. 89.
14. Ibid.
15. Volker Rühe, German Federal Minister of Defense, luncheon address at the Conference of the Aspen Institute on 24 August 1994 in Berlin.
16. *Frankfurter Allgemeine Sonntagszeitung*, 17 July 1994.
17. *Süddeutsche Zeitung* (Munich), 13 July 1994.
18. Naumann address, 15 July 1994.
19. Rühe address, 24 August 1994.
20. German MOD, White Paper 1994 (Bonn: 5 April 1994), p. 99.
21. *Dresdener Neueste Nachrichten* (German newspaper), 13 July 1994.
22. Karl Feldmeyer, in *Frankfurter Allgemeine Sonntagszeitung*, 17 July 1994.
23. German MOD, Navy Staff, III 2 (Bonn: October 1994).
24. Germany provides 4000 soldiers to NATO's Implementation Force (IFOR) in the former Yugoslavia. They add to IFOR's 20,000 US, 14,000 British, and 10,000 French troops. Non-NATO nations provide an additional 10,000 soldiers, 1500 of whom are Russian.
25. Naumann address, 15 July 1994.

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