

The Importance of Public Debate and the Role of Law in Security and Defense Policy

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This article belongs to the debate » [Sicherheitsstrategie nach der Zeitenwende: Institutionen, Recht, Politik](#)

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The End of Germany's Strategic Restraint

In a special session of the German Bundestag on February 27, 2022, on the occasion of the Russian invasion of Ukraine, the federal government announced nothing less than a realignment of the Federal Republic of Germany's long-standing security and defense policy principles. In agreement with parts of the opposition and in contradiction to the provisions of the coalition agreement signed only a few months before, the government decided to supply weapons to the current crisis area in Ukraine. Further, it decided to prepare the Bundeswehr for new defense challenges in the future by setting up a special fund of 100 billion euros, as well as deciding to exceed NATO's two percent target by permanently increasing the defense budget. As a result, these moves replaced the "culture of strategic restraint" that had for decades characterized German decision-making in foreign, security and defense policy with a more active, independent and robust foreign policy role.

The use of military force: Part of the solution or part of the problem?

More or less simultaneously with the Bundestag session, two demonstrations took place in its immediate vicinity. On the western side of the Brandenburg Gate, more than 100,000 participants gathered on the *Straße des 17. Juni* to protest the Russian invasion of Ukraine. The protesters were responding to an initiative arranged by various civil society organizations, including ver.di, the DGB, the Arbeitsgemeinschaft bäuerliche Landwirtschaft, attac, various environmental protection organizations, as well as the protestant church. In addition to the situation in Ukraine, the call for this demonstration addressed the extinction of endangered species and climate change, the COVID-19 pandemic and social inequality. The lack of association of these topics with the war caused resentment among some of the participants. In the *Süddeutsche Zeitung*, journalist Gustav Seibt drew parallels between this demonstration and the large protests of the peace movement in Germany in 1983 against the decision to position Pershing II rockets on German soil, as well as the demonstrations which took place across many European cities against the Iraq war in February 2003.

Indeed, the appeal for this demonstration and the statements by speakers and on banners can be related to concepts of the peace movement. These pacifist sentiments are also represented in parts of the current German government and the German international law community. Up to the “Zeitenwende”, noticeable parts of German society were of the view that weapons cannot play a helpful role in crisis situations under any given circumstances.

At the same time, on the eastern side of the Brandenburg Gate between Alexanderplatz and the Russian Embassy, a much smaller group of about 10,000 participants gathered for a demonstration called for by the Ukrainian NGO Vitsche. The participants, in this case mostly Ukrainian, voiced their outrage at the Russian invasion and demanded arms deliveries and the enforcement of an international no-fly zone. No connection was made to climate policy or other goals. The use of military force was treated as part of the solution, not the problem. Anecdotaly, a Ukrainian friend had forwarded me the call for this demonstration (tellingly with the hashtag #helpukrainewin instead of the widespread #standwithukraine) with the following remark: “According to the organizers, the German one is skeptical about demanding NATO actions, etc (...). It is rather a pacifistic movement that I was and am allergic to, because this is partially what brought us here.”

Germany’s strategic deficit

The inconsistency and lack of cohesion across the protests reveal the immense task the German government is asking of parts of society: A large part of the German public, as well as considerable parts of the SPD, the GREENS and the LEFT parties, were convinced – at least until the end of February – that military means rarely represent a meaningful solution to a conflict, and that military restraint is preferable invariably. With the decisions of February 27, 2022, the government is turning its back on these convictions. The chancellor’s decision encompasses the admission that the policy of strategic military restraint – at least in relation to Russia – has failed. External policy analysts had been insisting since Russia’s invasion of Crimea in 2014 that Germany must take a more active role in security and defense policy. These voices are now joined by the German government.

The analysis of Germany’s strategic restraint has dual significance: on the one hand, military engagement has been very restrained since Germany’s first foreign military deployments in the late 1990s and has always only been carried out under intense pressure from allied partners, with minor German contributions. On the other hand, and on a meta-level, “strategic restraint” also refers to a reluctance to identify interests, approaches and resulting policies, thereby refraining from formulating, publicly discussing and regularly adjusting a security strategy. So far, we have not only witnessed military restraint but also strategic restraint in the sense of a deficit in strategy-formulation, as well as a deficit in public debate on Germany’s foreign, security and defense policy in conflict situations.

The lack of a security policy debate

France, the United Kingdom and the United States all have security strategies that are regularly updated and widely discussed in the public sphere. These strategy papers identify security risks, explore options for action, set priorities and outline approaches for necessary political steps. The EU has the EU Global Strategy, revised in 2016, which is now being replaced by the new “[Strategic Compass](#).” Further, NATO is currently in the process of revising its security strategy to adequately respond to changing threat scenarios. Also, the US, British and French governments publish and defend security strategies on a regular basis. So, while the most important partners and security organizations which Germany participates in have a security strategy, Germany itself only has the 2016 [White Paper on Security Policy and the Future of the Bundeswehr](#) by the Federal Ministry of Defense. This is a document which only a specialized audience is familiar with and which is primarily focused on the development of military capabilities. In terms of its status, ambitions and public reach, it is not comparable to the strategy papers mentioned above. Exemplary for this disconnect are the previous attempts made by the German government to bring the public into the discussion about the armament of German combat drones, as they only managed to reach an already interested expert audience.

“Networked approach” vs. institutional isolation

The reasons for the lack of public debate on issues of security and defense strategy are manifold, complex and have been extensively analyzed. In law, however, these findings have not received attention because they do not seem to be of legal relevance. Upon closer inspection, however, the status quo can also be explained by legal institutions: yes, the causes for the German strategic deficit are also rooted in a historically conditioned broad skepticism toward military means and the concomitant demilitarization of society. But political scientists such as [Klaus Naumann](#) or [Sönke Neitzel](#) have shown that, next to these historical explanations, there is also a deficit of inter-institutional communication in external and security political affairs. There is a lack of communicative linkages to bring the state of military, administrative and political knowledge within the separate governmental departments into conversation with one another. While a “networked approach” between foreign, security, defense and development policy has become a buzzword to explain and legitimize the German government’s approach to Bundeswehr missions abroad ever since the Afghanistan mission, this very networking is impeded at the inter-institutional level. The military strategic and administrative expertise available within the Bundeswehr is hardly communicated to other governmental departments or inter-governmental committees, such as the Foreign Office or the Federal Security Council. As a consequence, existing military and geopolitical analyses are not integrated with each other.

This was one of the reasons why the CDU called for a reorganization of the Federal Security Council in the 2021 election campaign. In recent decades, this Council had developed into a secretive decision-making body for taking arms exports decisions without providing any input for public debate or strategic analysis. And finally, an inter-institutional approach is also

lacking in the organization of parliament: while the ministries involved in arms deliveries or army deployments at the very least coordinate their standpoints in the Federal Security Council or in the cabinet regularly, a cross-departmental Bundestag committee is missing. The parliamentary committees for foreign affairs, defense and economic affairs work side by side and in their structure also reflect the departmental structure of the government. Joint meetings, analyses and the development of solutions do not take place. As a result, parliament has a hard time debating these issues in a cross-cutting, far-sighted manner. It also has difficulties initiating public debate on questions which go beyond specific policy measures.

The role of the Federal Constitutional Court

To a certain extent, at the very least, this state of affairs is a result of the case law of the Federal Constitutional Court: in a long line of adjudication, going back to the 1984 Pershing ruling, the court has repeatedly affirmed that foreign affairs lie fundamentally in the competence of the executive branch. Parliament does not always have a say in this area, and sometimes does not even dispose of the right to information that is crucial for exercising its rights of governmental control. Particularly with regard to arms export decisions, it is often made difficult for the Bundestag, and in particular to the opposition factions, to hold the government accountable: decisions are made in secret and the Bundestag is only informed ex post and only about the key data of approvals of arms exports. In the case of army deployments, the Bundestag is known to reside over a far-reaching parliamentary decision-making power (*wehrverfassungsrechtlicher Parlamentsvorbehalt*). Yet, when it comes to communicating these decisions back to the public, the situation is not much different with regard to arms exports or army deployments. In both cases, public debates going beyond limited and specific questions are seldom been held. As a result, foreign missions and arms exports are similarly unpopular, despite the very different institutional setup for decision-making in these fields. The way in which the Federal Constitutional Court has shaped the parliament's role in mandating a foreign deployment of the Bundeswehr as a time-limited, case-by-case decision with detailed information on troop strength, deployment duration, deployment area as well as military capabilities in the AWACS decision of 1994 no doubt contributed to this problem.

Dare more security strategy?

In its coalition agreement, "Dare More Progress", the current governmental coalition ignites the prospect of improvement: on p. 144, it details its aim to present "a comprehensive national security strategy in the first year of the new federal government". On March 18, 2022, Foreign Minister Baerbock announced that she would make good on this promise. With her speech at the kick-off event for the development of a National Security Strategy, she intended to initiate a broad debate with participants from the relevant ministries, parliament, international partners, experts and the wider public. The goal is to reconceptualize and

update the notion of security. With regard to the decisions of February 27 of 2022, it is essential to include those into the debate who demonstrated west of the Brandenburg Gate on this day. In addition to the development of a national security strategy, it is essential to work on the prerequisites for an inter-institutional debate on foreign and security policy that is also carried into the public arena. Which institutional approach would enable such debate: a networked Bundestag committee, a newly established Security Council, the amendment of the Parliamentary Participation Act on Bundeswehr deployments or legal codification of an Arms Export Act? This blog symposium aims at providing room for discussion to these questions.

A German version of this article has been published [here](#).



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