Deploying the *Bundeswehr*: more transparency, more flexibility, but Parliament’s consent remains key

The Rühe Commission’s final report

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Besides the often invoked historical dimension behind Germany’s strategic culture of restraint, there are today very tangible legal reasons that prevent assertive German military interventionism (which are, of course, directly linked to the historical dimension): any intervention of the German armed forces requires the *Bundestag*’s consent.¹ The current regulations have been confirmed by the German Constitutional Court on a number of occasions.²

In the spring of 2014, the German Bundestag implemented a Commission – headed by former minister of defense Volker Rühe – that was tasked to

[…] investigate how the rights of the Parliament can be secured on the path of increasing Alliance integration and in spite of the diversification of tasks. The Commission’s aim is to investigate, in legal and political terms, the respective need for action to adapt the Law on Parliamentary participation. Building [on its investigation], the Commission should formulate options, if possible in consensus, that could potentially result in a formal law-making procedure.³

¹ The legal basis being the law on parliamentary participation (“Parlamentsbeteiligungsgesetz”).
² Most recently so in 2008 in a widely debated ruling on Germany’s participation in the use of AWACS aircraft over Turkey in 2003. The red-green government under Chancellor Schröder had not sought parliamentary consent, arguing that German participation in AWACS flights was part of NATO routine operations. The Constitutional Court strengthened the parliamentary reserve, arguing that the *Bundestag*’s consent is required under all circumstances in which there is a possibility for German military personnel to be involved in armed conflict. See GERMAN CONSTITUTIONAL COURT. BVerfG, 2 BvE 1/03 vom 7.5.2008, Absatz-Nr. (1-92).
³ Authors’s translation in the text: …. zu prüfen, wie auf dem Weg fortschreitender Bündnisintegration und trotz Auffächerung von Aufgaben die Parlamentsrechte gesichert werden können. Ziel der Kommission soll die
The Commission counted twelve members and was composed of representatives from the government parties (i.e. the Christian Democrats as well as the Social Democrats) and a number of external experts. The two opposition parties within the Bundestag – the Left Party (Die Linke) and the Greens (Bündnis 90/Die Grünen) – refused to take part in the Commission, out of fear that its results would be predetermined anyway and not in favor of keeping up strong parliamentary control. The Commission’s findings were published on 16 June 2015.

**Background**

The parliamentary reserve (potentially) constitutes a both legal and political obstacle to Germany’s making active use of the Bundeswehr abroad and participating in military operations. Unilateral decisions to deploy German forces are excluded, in line with the German prerequisite of multilateralism. Although its proponents rightly argue that, so far, parliament has never rejected any mandate for a military mission, critics retort that the government only presents the Bundestag with proposals it knows will pass. Moreover, for Germany to be considered a reliable partner in multinational settings, “assured availability” of German contributions is of key relevance when they are needed. Besides the deployment of German soldiers abroad in specific crisis management operations, the question is consequently also what this means for German staff and assets in integrated military structures. This matter is of course of utmost importance for any meaningful multinational defense cooperation, including the German-proposed Framework Nation Concept. Also such instances, the Constitutional Court has confirmed, are currently covered by the parliamentary reserve. In other words, German military personnel is not authorized to e.g. take part in AWACS missions within the framework of an operation in which Germany is not participating (and for which, therefore, exists no mandate adopted by the Bundestag).

At a more technical level, some finally complain, the Bundestag and its Defense Committee has a tendency to vote on mandates that are way too detailed (number of personnel, armament…) and – being the result of political compromise – not necessarily the best solution from a military perspective.
The Commission’s final report: key proposals

The Commission, in its own words, sought to “secure the Bundestag’s rights in accompanying military integration and, at the same time, to strengthen Germany’s ability to act within alliances”. Or, as Volker Rühe said during today’s press conference: “The Bundeswehr is not only Germany’s army”. The Commission nevertheless also concludes that the Bundestag is no obstacle to multilateral cooperation.

That the Commission would suggest the parliamentary reserve’s abolishment was not to expect – and has not happened either. Neither does it recommend so-called anticipatory resolutions (“Vorratsbeschlüsse”), where the Bundestag would consent in advance, e.g. for a year. The Commission did, however, come up with a number of proposals that are of relevance for Germany’s partners and allies:

- Increase transparency and the Bundestag’s understanding of multilateral military cooperation: to that end, the federal government should provide the Bundestag with a yearly report on “multilateral composite military capabilities”, detailing German responsibilities and its implications for “alliance solidarity”. The use of such capabilities in conflicts should, however, remain subject to the Bundestag’s acquiescence.
- Create specific rules for staff headquarters. The Commission suggests excluding the participation of German personnel in NATO, EU (or any other collective security institution) from parliamentary decision-making – as long as these soldiers do not serve in conflict zones.
- Elaborate a clear legal definition of a military operation (“Einsatz”) in order to get a clearer grasp of what missions require parliamentary consent – and hence excluding missions in which German soldiers do not carry weapons or carry weapons for self-defense only (logistics, medical operations; training and observation).
- The Commission suggests that the federal government make more use of its room for maneuver in formulating mandates, in order to be able to react to changed situations during an operation in a more flexible manner.

In addition to proposals pertaining to legal and domestic political issues, the Commission finally recommends that the Bundestag discusses a possible reform of Bundeswehr deployments’ constitutional framework.

Whether these suggestions become reality remains to be seen. So far, the report is not legally binding, and the suggestions are far from being applauded across the political spectrum. Although the opposition parties (who refused to take part in the Commission’s work) are weak in the Bundestag, they have their word to say in Germany’s second Chamber (Bundesrat) and consequently in changing the existing legal framework.

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