

# SWP Research Paper

Stiftung Wissenschaft und Politik  
German Institute for International  
and Security Affairs

*Ekkehard Brose*

## When Germany Sends Troops Abroad

The case for a limited reform of the  
Parliamentary Participation Act

RP 9  
September 2013  
Berlin

**All rights reserved.**

© Stiftung Wissenschaft  
und Politik, 2013

SWP Research Papers are  
peer reviewed by senior  
researchers and the execu-  
tive board of the Institute.  
They express exclusively  
the personal views of the  
author(s).

**SWP**

Stiftung Wissenschaft  
und Politik  
German Institute  
for International  
and Security Affairs

Ludwigkirchplatz 3-4  
10719 Berlin  
Germany  
Phone +49 30 880 07-0  
Fax +49 30 880 07-100  
[www.swp-berlin.org](http://www.swp-berlin.org)  
[swp@swp-berlin.org](mailto:swp@swp-berlin.org)

ISSN 1863-1053

*Translation by Rhona Brose*

(English version of  
SWP-Studie 18/2013)

# Table of Contents

5	<b>Problems and Recommendations</b>
7	<b>The Legal Position and Alliance Practice</b>
7	Parliamentary authority and Alliance solidarity in the judgements of the Federal Constitutional Court and the Parliamentary Participation Act
8	Germany and Alliance obligations: areas of concern
9	<i>Participation in NATO's Integrated Command Structure</i>
9	<i>Participation in Joint Reconnaissance and Command Capabilities</i>
11	<i>The German position considered: analysis and evaluation</i>
12	<b>Addressing Areas of Concern in the Parliamentary Participation Act: Proposed Amendments</b>
12	Regarding NATO's flexible Integrated Command Structure
13	Regarding Alliance owned and operated Reconnaissance and Command Capabilities
14	Possible objections
16	<b>Smart Defence and Availability for Military Operations</b>
16	Pooling
17	Sharing
19	<b>The 'Parliamentary Army' and Political Culture in Germany: The Outlook</b>
20	<b>Recommendations for the Parliamentary Participation Act with Proposed Amendments</b>

*Ekkehard Brose completed this study while he was a visiting fellow at the German Institute for International and Security Affairs. He is a member of the German Ministry of Foreign Affairs and was Deputy Chief of Mission at the German Permanent Mission to NATO in Brussels until June 2013. As Head of the Security Policy Desk in the Foreign Ministry, he advised on the drafting process of the Parliamentary Participation Act during 2004. The views expressed in this Study are the author's own.*

**When Germany Sends Troops Abroad:  
The case for a limited reform of the  
Parliamentary Participation Act**

Since the Parliamentary Participation Act came into force in 2005, the German Bundestag has given its assent to more than 70 requests of the Federal Government for the deployment of German troops abroad, or the extension of such mandates, and has not rejected a single application. Urgent requests were decided within a few days. German armed forces – with the support of the Bundestag – have been deployed for years to many trouble spots around the world: Afghanistan, Kosovo, the waters of the Mediterranean and the Horn of Africa. Although historical and other reasons mean that both public opinion and Parliament are sceptical of the use of military force, Germany does not, as a rule, shirk its multilateral obligations within NATO and the EU.

Nevertheless, recent decisions of the Federal Government have been subject to criticism within the Alliance. This was particularly so in the case of the withdrawal of German military personnel from the multinational crews of reconnaissance aircraft (AWACS) operating over Afghanistan at the beginning of 2011 and their withdrawal, once again, from AWACS in the NATO-led operation in Libya in the spring of 2011. For Germany's partners, participation with military personnel in the NATO Command Structure and in the Airborne Early Warning Command is a logical consequence of their membership of the Alliance, and so is not called into question during deployment. This is not the case in Germany, where participation during deployment has become the subject of fine-spun legal argument and heated political debate. Within the Alliance, the German position is perceived as being contradictory, lacking in solidarity, and not compatible with the nation's significant position. This creates a political predicament for Germany. In the EU context, it is only because military structures are less highly developed and the primary focus is on civilian crisis management, that these difficulties are less acute.

In spite of the apparent friction here, it is nevertheless clear that domestic democratic accountability and external alliance solidarity should go hand in hand: they form the dual imperative of German security policy. Making the deployment of German

armed forces abroad contingent on the constitutive consent of the Bundestag reflects a fundamental political choice. The deployment of German armed forces should not be left in the hands of the government alone, but rather be the subject of detailed examination and a deliberate choice taken by the representatives of the German people, and thus carry the endorsement of the democratic process. Equally, Germany has decided, as a matter of principle, to employ its armed forces only within the framework of the United Nations, NATO or the EU. This can be explained by the country's historical experience and its security needs as a mid-sized power at the centre of Europe. It is a fundamental German concern that North America be anchored to Europe by multilateral security policy and, further, that both Europe and Germany's own capacity for political action be strengthened. From a German point of view, the unappealing alternatives would be a widening transatlantic gap and *ad hoc coalitions of the willing* – on which the 'unwilling' can bring little influence to bear.

A closely circumscribed amendment of the Parliamentary Participation Act would underline Germany's willingness to demonstrate Alliance solidarity without weakening the democratic legitimacy of its 'parliamentary army'. The changes would centre on two NATO capabilities that are crucial to the functioning and operating capacity of the organisation. Firstly, the established practice of German participation in all Headquarters of the integrated NATO Command Structure should anticipate the actual transition of the Command Structure towards greater flexibility and thus be placed beyond doubt for future operations. Secondly, the participation of German military personnel in the NATO-owned Reconnaissance and Command capability should be guaranteed by law, without reference to individual cases, and thus be separated from parliamentary involvement in the authorisation of individual troop deployments. The right of the Bundestag to revoke its approval of a deployment of armed forces would remain unaffected.

One could ask whether these strictly limited exceptions might soon have to be followed by others, perhaps resulting in a gradual undermining of the parliamentary approval process. Even at a time when budgets are tight, Europe must keep modern military capabilities available. Most European countries will only be able to do this in future by means of increased multilateral cooperation and the development of joint projects. The current catchwords are *Smart Defence*

and *Pooling and Sharing*. The assured availability of capabilities crucial to operations is an important requirement in this context. In spite of this, the danger of a gradual erosion of Parliament's rights is remote. As far as security cooperation is concerned, the larger European nations cling to state sovereignty, and show little interest in transferring their powers to multilateral structures.

The proposed amendment of the Parliamentary Participation Act advocated here points to a broader, highly political discussion about Germany's international role, a discussion that is ongoing. In this context, a more Alliance-friendly interpretation of the democratic principle of the 'parliamentary army' would be a pragmatic partial response to current and future security policy challenges. It would show Germany's continued willingness to contribute its share to the management of international crises alongside its closest NATO and EU partners.

## The Legal Position and Alliance Practice

The constitutive role of the Bundestag in authorising the deployment of the Bundeswehr abroad is firmly anchored, both legally and politically, in German security policy thinking. The legal situation, the convictions of the political elite and the general level of public acceptance leave no room for doubt in that regard. Germany's historical and political commitment to providing for its security in a multilateral framework, specifically within the United Nations, NATO and the EU, is equally clear. When acting in an Alliance context, Germany always faces the political challenge of remaining aware both of the issue of democratic legitimacy at home as well as the legitimate expectations of its partners abroad.

### Parliamentary authority and Alliance solidarity in the judgements of the Federal Constitutional Court and the Parliamentary Participation Act

The German Basic Law (*Grundgesetz*) makes no reference to the deployment of German armed forces abroad, with the exception of the prohibition on planning a war of aggression contained in Article 26 paragraph 1. It is, rather, the Federal Constitutional Court that has defined the parameters that currently determine legal practice, through its interpretation of the constitution, particularly in the two landmark decisions of 1994 and 2008.<sup>1</sup> In keeping with this, the deployment of German armed forces abroad requires, as a matter of principle, the prior constitutive consent of the Bundestag. As a 'parliamentary army', the Bundeswehr is embedded within the democratic constitutional order and the rule of law. The requirement of parliamentary approval flows directly from the constitution and cannot be infringed by subsidiary legislation; the ambit of this provision is to be interpreted in favour of Parliament.

According to the rulings of the Federal Constitutional Court, German armed forces are regarded as

being on operations (*im Einsatz*) when the specific circumstances of the case warrant the assumption of a real expectation that they will become involved in armed operations. In its ruling of 2008, the Court expands on the participation of German military personnel on board air-based NATO reconnaissance aircraft (AWACS) as follows: 'In the course of an armed operation, for example, those who supply important information for the use of arms, who carry out reconnaissance that immediately directs the armed operation, or who are even entitled, as part of their military function, to give orders for the use of arms, are involved in armed operations, without it being necessary for them to carry arms themselves.'<sup>2</sup>

The possibility of a transfer of sovereignty is explicitly endorsed in the Preamble to the Basic Law. The Federal Republic is authorised by Article 24 paragraph 2 of the Basic Law to enter into a system of mutual collective security and to consent to limitations upon its sovereign powers that this would entail. There are few indications of the details that the Federal Constitutional Court envisages as defining the obligations of membership of an alliance. The Court clarified, however: 'The constitutional requirement of parliamentary consent to specific deployments of troops must not impair the Federal Republic's ability to defend itself nor its ability to meet its obligations as a member of an alliance.'<sup>3</sup> The Court therefore concedes to the Federal Government the right to authorise the immediate deployment of armed forces in situations of 'imminent danger' (*Gefahr im Verzug*). Parliamentary approval must be secured retrospectively. Furthermore, in regard to the membership of an alliance, it provided that 'the level of parliamentary participation could be scaled back' where the circumstances of deployment are already delineated in a treaty-based programme of military integration.<sup>4</sup>

The Parliamentary Participation Act enacted by the Bundestag in 2005 follows directly from the 1994 ruling of the Federal Constitutional Court, which had expressed an expectation that the legislature would

1 Decision of 12 July 1994, Federal Constitutional Court, 90: pp. 286ff and decision of 7th May 2008, Federal Constitutional Court, 121: pp. 135ff.

2 BVerfGE 121: pp. 135ff, <81>.

3 BVerfGE 90: pp. 286ff, <344>.

4 Ibid., <347>.

regulate ‘the details and extent of parliamentary participation.’<sup>5</sup>

The reasoning for the Act put forward as part of the draft law by the ruling Social Democratic and Bündnis 90/The Greens parliamentary parties on 24 March 2004, sheds a particularly interesting light on the obligations of membership of an alliance. It states that ‘in accordance with previous practice, the participation of German military personnel in permanent integrated and multilateral staffs and headquarters of the North Atlantic Treaty Organisation (NATO) and other organisations of collective security (...) shall not be regarded as a deployment (*Einsatz*) of armed forces in accordance with this law.’<sup>6</sup> This wording gives explicit meaning to the concept of alliance obligations. The principle is subsequently qualified, stating that: ‘participation in staffs and headquarters of NATO and other collective security organisations that are specially formed for a specific armed operation requires the constitutive consent of the German Bundestag.’<sup>7</sup>

### Germany and Alliance obligations: areas of concern

Whereas the concept of the ‘parliamentary army’ is largely defined by German law, the notion of alliance obligations must be explained primarily in political terms. A closer look at some examples will provide points of reference about the interaction of national political and legal parameters with Germany’s role in the multilateral decision-making process. The practical experience gathered within NATO as a politico-military alliance gives a better indication than is the case with the EU, where the focus is on political and civil crisis management.

Alliance obligations are not restricted to operations of collective self-defence under Article 5 of the NATO treaty. In fact, the current political focus is on the management of crises outside the treaty area. Against this backdrop, alliance solidarity does not necessarily entail the participation of the national forces of member states in each and every operation.<sup>8</sup> No member

state of NATO or the EU wishes to relinquish control over decisions about national military contributions into the hands of these alliances. The German Parliamentary Participation Act is another expression of these reservations about the transfer of sovereignty. In an Alliance made up of 28 states, there will always be situations in which, for political or practical reasons, not every member is able to participate fully in military operations. In this regard, a certain measure of flexibility is crucial in preserving the Alliance’s cohesion and ability to act. While, generally speaking, all member states are engaged in Afghanistan, this is no longer the case for the second largest NATO-led operation, in Kosovo. Less than half the NATO member states participated with their own military forces in ‘Operation Unified Protector’ in Libya. Even the leading nation within the Alliance opted to ‘lead from behind.’

On the other hand, the basis of a viable defence alliance is shared risk and trust in the mutual solidarity of its members. A successful demonstration of solidarity builds respect and influence within the organisation and ensures the protection and support of the Allies when needed. The demonstration of Alliance solidarity will certainly require a contribution to the most important NATO-led operations, consistent with a country’s role and capabilities. When decisions are taken at the national level, a NATO member state should take into account the extent to which its allies may be dependent on the capabilities that it provides. Germany, for example, has at its disposal specialised capabilities in the area of protection against chemical agents and in the electronic suppression of hostile air defence, both of which play an important role in the NATO framework. The joint participation of all member states in the Integrated Command Structure and in the Alliance owned and operated Air-based Reconnaissance Capability is particularly important in forging Alliance solidarity.

In the NATO Council, decisions are arrived at by consensus. The efficient performance of the mechanisms that build consensus is of vital importance to the functioning of the Alliance. In Council, member states are represented by their governments and enter

<sup>5</sup> Ibid.

<sup>6</sup> German Bundestag, Printed paper 15/2742 of 23 March 2004, p. 4.

<sup>7</sup> Ibid.

<sup>8</sup> Markus Kaim argues that Germany is subject to the ‘paradigm of collective action’ in security policy to such a great extent that it has no other option than to contribute forces to any NATO-led operation. See Markus Kaim, ‘Deutsche

Einsätze in der Multilateralismusfalle?’, in: *Auslandseinsätze der Bundeswehr. Leitfragen, Entscheidungsspielräume und Lehren*, ed. Stefan Mair, SWP-Studie 27/2007 (Berlin: Stiftung Wissenschaft und Politik, September 2007), pp. 43ff. In the context of an enlarged NATO, intensified partner relations and recent operational experience, this no longer appears as compelling for Germany or for other member states.

into negotiations with one another on a special basis of trust. This is only possible when each government is able to act with a sufficient measure of autonomy, and thus is another factor that enables countries to meet their Alliance obligations.

### **Participation in NATO's Integrated Command Structure**

The command of a NATO operation is vested in the permanent Integrated Command Structure. All NATO member states participating in military integration hold posts in the headquarters of the Command Structure. Since it became a member of NATO in 1955, Germany has also appointed personnel to serve in the Integrated Command Structure. In accordance with the agreed quota, around 15% of the peacetime establishment of just under 7,000 posts are currently held by German military personnel.

The permanent Integrated Command Structure is NATO's backbone. It provides a specific capability, a unique reservoir of reconnaissance, planning and command capacities that are permanently available and are essential for political decision-making and control within the Alliance. One aspect of the reform of the Integrated Command Structure decided on at the NATO summit in Lisbon in 2010 is a transition towards the greater flexibility of these structures.<sup>9</sup> This would mean, for example, organising a number of the existing headquarters so that some of their components, the mobile Battle Staffs, could be deployed to theatre, should the need arise.

In the context of the reform currently being implemented, it is a moot point whether the scenario of a flexible and mobile Integrated Command Structure would still fall within an interpretation of the German Parliamentary Participation Act, under which the participation of armed personnel in 'permanent integrated staffs and headquarters' is not regarded as a deployment and thus not subject to the consent of the Bundestag. Or would this cross the boundary where 'staffs and headquarters are specially formed for a specific armed operation'?

This is by no means an academic question. It played a role in connection with 'Operation Unified Protector' in Libya, and could potentially bring Germany to the point of withdrawal from the Integrated Com-

mand Structure in a future NATO operation. A forward-looking policy towards the Alliance should already be anticipating the transition of the NATO Command Structure today.

The decision to launch a NATO operation can only be taken with the agreement of all member states. After this, the Integrated Command Structure stands ready to assume command of the operation. No member state has ever questioned this automatic Alliance mechanism and there is no case in which personnel from any nation have deliberately been withdrawn from the integrated staff with a view to their participation in a particular operation.<sup>10</sup>

### **Participation in Joint Reconnaissance and Command Capabilities**

Since the late 1970's, NATO has owned the Airborne Early Warning and Control System AWACS. The Supreme Allied Commander Europe (SACEUR) has operational command (OPCOM) over the system. The participating nations have delegated considerable authority to him, including the potential redeployment of the aircraft. In the case of deployment outside the NATO treaty area, this would need the consent of the North Atlantic Council.

The NATO Airborne Early Warning and Control Fleet currently is made up of two operational commands. The NATO Command consists of 17 AWACS Boeing-707 aircraft and has been stationed in Geilenkirchen since 1982. A UK Command of 7 aircraft, crewed exclusively by UK personnel, operates out of Waddington. (GBR) The NATO unit is commanded by a German general, and the military personnel are provided by 15 nations. Germany holds around one third of these posts. This means, in fact, that operations of the NATO Command cannot be sustained without the participation of its German personnel.

At the Chicago Summit in April 2012, NATO also decided to procure the Global Hawk system, i.e. drones for airborne ground surveillance. (Alliance Ground Surveillance, AGS). As with AWACS, this new NATO capability will be stationed under the command of SACEUR. It will be deployed in Sigonella (ITA) from 2016. Germany provides about 30% of the procurement costs. This makes it one of the two biggest con-

<sup>9</sup> Cf. para. 49, NATO Summit Declaration of 20 November 2010.

<sup>10</sup> France's withdrawal from NATO's military integration in 1967 is not such a case, but was rather a fundamental political decision. It was reversed in 2009.

**Parliamentary participation and the deployment of troops abroad:  
the legal basis and political practice in member countries of NATO and the EU**

- ▶ In 18 of 33 NATO and EU member states, Parliament participates in the deployment of armed forces on the basis of a provision of the constitution or a statute. In a further seven states, parliamentary participation is political usage despite the absence of a national legal requirement. This effectively means that, in the overwhelming majority of NATO and EU member states, the views of Parliament are taken into account when sending armed forces abroad.
- ▶ A closer look reveals considerable differences in terms of the level of detail and binding nature of parliamentary participation. Two states, Luxembourg and Spain, have more stringent rules than in Germany. Turkey and nine other smaller states have provisions that are comparable to those in Germany. In France, authorisation by Parliament only takes place retroactively and only for deployments of longer than four months duration.
- ▶ It is instructive to compare the four nations in the small group that, in view of their military capabilities, generally determine NATO's specific operational planning. Germany is the only partner in this group where far-reaching parliamentary participation is mandatory. The current discussion about a possible military reaction to the use of chemical agents in Syria nevertheless reveals a trend in the UK, the US and even in France towards strengthening parliamentary participation. In the US, the President, in his role as Commander-in-Chief, decides on the deployment of armed forces, irrespective of the unresolved constitutional conflict on this point. In the United Kingdom, the right to deploy is regarded as the sole privilege of the government (Crown Prerogative), despite the fact that, since the Iraq intervention in 2003, the common-law case for a parliamentary debate preceding a decision has become more compelling. In view of the weaker voice of the French Parliament, the decision to deploy effectively rests with the President alone.
- ▶ With a view to fulfilling Alliance obligations, the issue of how individual states treat the military personnel assigned to integrated NATO and EU staffs and commands is of particular importance. In all other countries except Germany, even including countries such as Spain, Denmark and Turkey, where deployment is otherwise governed by similarly stringent regulations, participation of these military personnel in NATO or EU-led operations is not dependent upon separate parliamentary authorisation. It is accepted pragmatically as a logical consequence and integral part of membership of these organisations.

tributors – by far – to the project, together with the US.

Neither the NATO Command in Geilenkirchen nor in Sigonella form part of the NATO Command Structure but both are closely linked to it as capabilities of strategic importance. It is beyond doubt that, without this resource, neither the Command Structure nor NATO as a whole could deploy their specific capabilities for the preparation and command of an operation during a crisis. Under today's circumstances, Alliance owned Joint Intelligence, Surveillance and Reconnaissance (Joint ISR) plays a crucial role in the success of each operation. This was borne out impressively by 'Operation Unified Protector' in Libya.

Germany's participation in NATO's Airborne Reconnaissance capability has, on a number of occasions, presented it with a difficult dilemma. The last such case arose in connection with the renewal of the Afghanistan mandate in January 2011. The maximum

number of German military personnel included under this national mandate did not provide for participation in AWACS, despite the existence of NATO plans for their use over Afghanistan. At a time when the draw-down of the international troop presence in Afghanistan was beginning, the German government did not wish to send what would have been, in its view, the wrong political signal, by increasing its military contingent. As a result, the AWACS deployment began in January 2011 *without* German participation. NATO staffs began to investigate how long this operation could be sustained under these conditions.

The Libya crisis finally led to an unexpected turn of events. Following Germany's abstention in the UN Security Council vote on the Libya resolution, it gave a green light in the NATO Council on 22 March 2011, only a few days later, for a NATO-led operation in Libya. In common with a number of other member states, Germany did not participate with national

means, yet German military personnel were the only contingent to be withdrawn from the AWACS aircraft deployed in the course of the Libya operation. At the same time, however, on 25 March 2011, the Bundestag approved a government request for a separate mandate covering AWACS deployment over Afghanistan – although circumstances there had not changed. This gesture of solidarity brought practical and political redress for the military non-participation and the opt-out of AWACS over Libya. Nevertheless, the incident left mixed feelings within the Alliance.

### **The German position considered: analysis and evaluation**

In spite of the outspoken criticism of its non-participation in the NATO operation in Libya, Germany continues to be sought after as a partner. It provides important capabilities and resources and makes a substantial contribution to almost every Alliance operation, and is likely to continue to do in future. The stationing of German Patriot units in Turkey at the beginning of 2013 confirms this assessment. Equally, the allies appreciate Germany's willingness to demonstrate solidarity during NATO-led operations. Even in cases where it does not take part in military operations itself, it seeks to relieve the burden on its allies with practical measures and gestures. Germany has the reputation of being sceptical towards the use of military means in crisis situations. It is not alone in this view, either within the Alliance or in the EU. Due to its considerable military and political weight, however, it often finds itself at the focus of attention.

The participation in integrated military structures during operations proves to be a neuralgic point in Germany's commitment to the Alliance. From the allies' point of view, this should be a matter of course. The prevailing legal situation in Germany, as laid down by the decisions of the Federal Constitutional Court, extends its reach to the deployment of German military personnel in joint Alliance staffs and headquarters and thus has a direct impact on Alliance concerns. The application of this proviso sends Germany down a political *Sonderweg*. On more than one occasion, it has already led Germany to pull out of the Alliance owned and operated capability for Airborne Reconnaissance (AWACS). There are reasons to suppose that Germany is limited by the strictures of its constitution as far as the agreed transition towards greater flexibility of the Integrated Command Struc-

ture is concerned. This could, in turn, raise the threat of a partial withdrawal from operations.

It would be incorrect to hold the *principle* of parliamentary participation responsible for this situation. Many member states of NATO and the EU observe parliamentary participation and yet only Germany is confronted with the problems outlined above. The distinguishing features are a combination of specific legal provisions, political experience and misgivings, and the prevailing domestic political situation at a given moment. The deployment of troops abroad is a topic that bears considerable potential for conflict in the public arena as well as in Parliament. Every government suspects that the opposition will not let slip an opportunity of scoring points at the administration's expense during a parliamentary debate of the issue. Legal counsel in the ministries worry that every new government application for a deployment might trigger another round of legal conflict before the Federal Constitutional Court, with unpredictable consequences that might complicate the matter further. Within the administration, domestic political tactics carry the day over foreign policy strategies; to international observers, the German position appears hamstrung and inward looking.

## Addressing Areas of Concern in the Parliamentary Participation Act: Proposed Amendments

Members of Parliament who are engaged in foreign and defence policy as well as the Ministries concerned are aware of Germany's difficulties with its Alliance obligations, as described above.<sup>11</sup> A number of considerations are put forward in political circles although a clear concept of the way forward is not yet apparent.

It is often suggested that parliament and the government should become engaged in a closer dialogue on security policy matters: more active steps are required to forge a consensus within society on the role to be played by the armed forces and as to Germany's international political responsibility. A number of people see this as the real problem. Intensified dialogue and a broader consensus, they say, could improve the application of the Parliamentary Participation Act and thereby strengthen Germany's solidarity towards its allies. One proposal in this context is the idea of an annual general debate on security policy, which would shift the focus beyond individual operations towards the strategic challenges currently faced by German security policy. Although an intensified security policy discussion is certainly to be welcomed, it cannot be expected that this alone will provide Germany with a solution to the problem of its special situation within the Alliance. To achieve a solution, besides efforts to shape attitudes on security policy, a number of specific regulations would be required.

There are also proposals for the incorporation of the principle of parliamentary participation into the constitution.<sup>12</sup> This could be seen as a positive step, in that the legislature, whose mandate is legislative action, would snatch back the initiative, and the risk of running foul of the Constitutional Court, a risk that any change to the Parliamentary Participation Act must run, would be significantly reduced. At the same

time, the necessary two-thirds majority in both houses required for a change to the constitution presents a difficult political obstacle. The project of changing the constitution would certainly create an impression that fundamental concepts are to be changed or new provisions added. At any rate, now that the question of deployment abroad has been dealt with comprehensively in the Parliamentary Participation Act, there is no longer any need to change the constitution.

Finally, a limited revision of the Act could provide an opportunity for allowing the Bundestag and the government to agree on setting out useful clarifications and definitions in the light of experience within the Alliance in recent years.<sup>13</sup> This would strengthen Germany's role in NATO and the EU without weakening the democratic legitimacy of decisions on deployment. If the Bundestag were to decide to modify its own rights of participation by a change in the law, this would also provide a point of reference for the Federal Constitutional Court.

In the following paragraphs, two possible amendments to the Parliamentary Participation Act are proposed and discussed.

### Regarding NATO's flexible Integrated Command Structure

'The participation of military personnel of the Bundeswehr in permanent multinational staffs and headquarters of NATO and other organisations of collective security in Alliance-led operations shall not constitute

<sup>13</sup> This proposal is also put forward, for example, by Andreas Schockenhoff and Roderich Kiesewetter: 'Impulse für Europas Sicherheitspolitik. Die Zeit zum Handeln ist gekommen', in: *Internationale Politik* 67 no. 5 (September–October, 2012): pp. 88–97 (96). The authors favour a 'pre-emptive decision' by the Bundestag, that is, an annual decision authorising, in principle, the deployment of German armed forces and capabilities within multilaterally integrated crisis reaction forces. This appears problematic. Moreover, Schockenhoff and Kiesewetter do not draw a clear distinction between the participation of German personnel in integrated Alliance staffs and commands on the one hand and the deployment of German armed forces in the framework of the NATO Response Force or the EU Battle Group on the other.

<sup>11</sup> The author has raised these issues with a number of MPs from the CDU/CSU, SPD, FDP and Bündnis 90/Die Grünen and with the German Foreign Office and Ministry of Defence.

<sup>12</sup> See e.g. Dieter Wiefelspütz, 'Der wehrverfassungsrechtliche Parlamentsvorbehalt', *Humboldt Forum Recht*, no. 16 (2010): pp. 230–249. He proposes that the principle of parliamentary participation should be embedded explicitly within the constitution. This would avoid relying solely on the 'bold' interpretation of the constitution by the Federal Constitutional Court.

“deployment” (*Einsatz*) of German armed forces for the purposes of this Act.’

This wording is derived from the reasoning of the draft Parliamentary Participation Act in 2004. It adopts current practice and the intention of the legislature at the time to exempt German personnel in permanent staffs and headquarters of the Alliance from the requirement of parliamentary authorisation. If this passage were added, an important aspect of the obligations engendered by membership of an alliance would be fixed within the text of the law itself.

The proposed provision is clear. The wording refers only to the participation of German armed forces in *permanent* staffs. In the case of NATO, this refers, at present, to the peacetime establishment of almost 7000 military and civilian posts in headquarters of the NATO Command Structure.

The wording takes account of the transition of the NATO Command Structure towards greater flexibility, as described above, including the possibility of deploying parts of the Command Structure into theatre outside Alliance territory. ‘Permanent’ does not necessarily mean static. It includes the possibility of the flexible adaptation of structures with a view to a specific operation, though this is strictly limited to the *permanent* posts of the peacetime establishment of headquarters of the Integrated Command Structure.

If the Command Structure needs to be reinforced beyond the peacetime establishment for a specific operation, this is done through a ‘force generation process’ in which member states provide additional personnel. Personnel of this category, possibly drawn from the headquarters of national armed forces, would definitely not be covered by the proposed amendment of the Act. Any deployment of these national capabilities would remain a sovereign decision by each member state, and in Germany would thus depend on authorisation by the Bundestag.

### Regarding Alliance owned and operated Reconnaissance and Command Capabilities

‘The operative command over NATO Airborne Reconnaissance and Command units has been transferred to the Supreme Allied Commander Europe. (SACEUR) Service by German military personnel in these units constitutes an important contribution by Germany towards the intended functioning of the NATO Inte-

grated Command Structure. Parliamentary authorisation of deployment according to Section 1(2) of the Act shall be deemed to be granted for service in these units. The military personnel serving in these units shall not be included in the maximum number of personnel in operations under Section 3(2) of this Act. The right of revocation of the Bundestag according to Section 8 of the Act remains unaffected.’

This draft text breaks new ground. It takes as its starting point the conclusion reached by the Federal Constitutional Court, that the participation of German military personnel in NATO’s Airborne Reconnaissance and Command capability should, in certain circumstances, be regarded as deployment and, on that basis, the proposed amendment clarifies that the Bundestag gives its consent to every deployment of this kind (*gilt als erteilt*: ‘is deemed to be granted’). It justifies this exception by reference to two points. Firstly, by pointing out the crucial importance of Airborne Reconnaissance and Command for the proper functioning of NATO’s Integrated Command Structure. Secondly, by referring to the corresponding transfer of operational command over this particular capability to an organ of the Alliance. Germany’s membership of the Alliance requires that its military personnel on service in these specialised units are available during a crisis as a matter of course, just as they are when serving in permanent Alliance staffs. The right of revocation ensures that the Bundestag retains the final right of decision even in this exceptional case.

The proposed amendment could be played through for the actual examples of NATO-led operations in Afghanistan and Libya. In the first case, it seems unlikely that the question of participation by German military personnel in AWACS missions over Afghanistan would have become the subject of a separate political debate in Germany. The ISAF mandate, which has been in place for many years, including the stipulation of a maximum number of military personnel in theatre, would have remained unaffected by the AWACS question. The participation of German military personnel on board NATO’s AWACS aircraft over Afghanistan would have been an obvious consequence of the German decision to give political support to the NATO-led operation. In retrospect, this seems fitting.

In the second case, as a result of Germany’s acceptance in Council of the NATO-led ‘Operation Unified Protector’ in Libya, its military personnel would have been employed on board AWACS aircraft in the frame-

work of NATO's Airborne Reconnaissance and Command unit. Again, this appears consistent. The German government, despite its abstention in the UN Security Council vote and the decision not to provide national contingents or weapons systems for the operation, did not wish to hamper NATO as an organisation from intervening in Libya. The Bundestag would have had the option of recalling German military personnel from the AWACS aircraft. It would certainly have been a difficult decision. That too seems appropriate, since the obvious harm such a far-reaching decision inflicts on the Alliance must be weighed carefully in each case against other considerations of foreign and security policy.

### Possible objections<sup>14</sup>

A number of possible objections could be made:

- ▶ The Federal Government has the right of initiative, and could thus use its parliamentary majority to ensure the consent of the Bundestag to the participation of German military personnel on board AWACS, as soon as this is required by a decision to launch an Alliance operation.

Submitting requests to the Bundestag to authorise the participation of individual armed personnel in integrated Alliance functions ahead of each decision to launch an operation would only drive Germany further down its *Sonderweg*. Even in cases where Germany is not involved in an operation with its own military forces, this would create the need for additional consultation with Parliament. Relations with the allies would suffer, as the integrity of the consensus-building process within the Alliance would be jeopardised. The essential prerequisite for this process is a sufficiently broad measure of autonomy on the part of the executive.<sup>15</sup>

<sup>14</sup> The focus is on a number of relevant objections. Fundamental criticism, which rejects Germany's NATO membership out of hand, or denies any possible justification for military intervention, will not be considered. A good survey of the wide spectrum of opinions, appears in the 'Forum zum Parlamentsbeteiligungsgesetz', *Sicherheit und Frieden* 30, no. 4 (2012): pp. 230ff, with contributions from Johannes Varwick; Klaus Naumann, Dieter Deiseroth, Reinhard Mutz and Peter Strutynski.

<sup>15</sup> The scholarly debate points towards the recent tendency in decisions by the Federal Constitutional Court, which anchors parliamentary participation to the principle of democracy and has, overall, strengthened the position of the legislature in the field of foreign affairs. This tendency,

- ▶ The deployment of some elements of the NATO Command Structure to a crisis zone or the use of airborne NATO reconnaissance forces carries the risk of NATO becoming gradually entangled in armed conflict. The proposed exceptions to the rule of parliamentary participation would therefore breach the constitution by limiting the constitutive requirement of parliamentary consent.

Decisions by NATO or the EU can have considerable impact on German security. This can apply to the decision to launch an operation led by NATO or the EU, but equally, for example, to the public pronouncements of these organisations during critical situations, or to the deployment of a NATO-led naval unit. Neither for Germany nor for its Allies does this imply that decision-taking is transferred from the Alliance into the parliaments of member states. It is a core task of every German government to promote Germany's security interests within international organisations in a responsible manner. In doing so, it should make proper allowance for any special risks. The government is responsible for withholding its consent in individual cases and thereby preventing recourse to NATO or the EU for a particular operation. Events in Iraq in 2003 demonstrate that this is not a purely theoretical option.

Article 24 paragraph 2 of the Basic Law (*Grundgesetz*) paves the way for Germany's entry into a system of collective security. In its landmark decision of 1994, the Federal Constitutional Court bore this in mind when providing for the possibility of scaling back parliamentary participation in response to Alliance obligations.<sup>16</sup> The Federal Constitutional Court's allusion here 'must not be (mis)understood to mean that (scaling back parliamentary participation) allows the principle of prior constitutive consent by the Bundestag to each specific deployment to be abandoned without compelling reasons. A general authorisation allowing the Federal Government to deploy such (a multilateral unit within an organisation of collective security) should be permissible under the constitution in narrowly defined circumstances, on condition that the right of revocation can be exercised

however, is specifically limited by the objective needs arising from Germany's wish to participate in international organisations and decision-making processes. The discussion among constitutional lawyers is on-going. Cf. Andreas L. Paulus/Henrik Jacobs: 'Neuere Entwicklungen bei der Parlamentsbeteiligung für den Auslandseinsatz der Bundeswehr' in: *Die Friedens-Warte* 87, no. 2-3 (2012): pp. 23-68.

<sup>16</sup> For details, cf. p. 7 above.

at any time'.<sup>17</sup> This was the opinion of Hans Klein, a former judge at the Constitutional Court, in a legal opinion given to the Bundestag Committee on the Rules of Procedure during a committee session on the Parliamentary Participation Act. Dieter Wiefelspütz, a Member of Parliament, a lawyer and one of the spiritual fathers of the Act, confirms this interpretation: 'The participation of the Bundestag can (...) be scaled back if this seems appropriate in view of military integration governed by treaty obligations. This would, however, require the express consent of the German Bundestag, which would have to waive (in part) its right of participation in this respect.'<sup>18</sup>

The proposed amendments take up these ideas. They adapt and shape the details and scope of parliamentary participation in a marginal area so as to maintain Germany's ability to act, and its reliability within the Alliance, at a time of changing circumstances.

▶ These two very limited changes in the law will not work wonders. The crucial points affecting German obligations towards its allies are its deep-rooted aversion to any use of military force and its lack of ambition for assuming a role on the stage of world politics consistent with its position.

This study deliberately follows a pragmatic approach. It proposes steps that are limited but politically feasible, and would ease Germany's burden both within the Alliance and, perhaps, in the context of domestic politics too. Even a small step can be politically significant, provided it points the way ahead: a considered decision that Germany will carry on playing a committed and responsible role in NATO and the EU. What specific decisions might this lead to in the Alliance context in a time of crisis? The answer is left open. The debate about the level of responsibility Germany might be willing to shoulder in maintaining order beyond its borders, or what form this responsibility might take, is not central to this study. There are, nevertheless, cross-references to the concept of the 'parliamentary army', points that will be referred to again below.

▶ Even if a majority of the Bundestag were convinced by the arguments for a limited reform of parliamentary participation, one important issue remains: the forces of globalisation and multilateral cooperation

present parliamentary assemblies with an increasing challenge to their role, especially in the areas of foreign and European policy. Seen from that angle, might the concepts of *Smart Defence* and *Pooling and Sharing* threaten to undermine the rights of the Bundestag to authorise each deployment of German armed forces abroad? If this were so, the narrowly circumscribed amendments to the Parliamentary Participation Act proposed here could turn out to be the first steps on a slippery slope, and ought to be rejected for that reason.

The following chapter will endeavour to demonstrate that, even in the long term, the consequences of the amendments to the law will remain as narrowly circumscribed as intended, and will give reasons why this is the case.

<sup>17</sup> Deutscher Bundestag, 15. Wahlperiode, *Stenografisches Protokoll der 25. Sitzung des Ausschusses für Wahlprüfung, Immunität und Geschäftsordnung vom 17. Juni 2004*, pp. 100ff.

<sup>18</sup> Dieter Wiefelspütz, 'Hände weg vom Parlamentsheer!', *Die Friedens-Warte* 87, no. 2-3 (2012): pp. 16-21 (20).

# Smart Defence and Availability for Military Operations

European countries must maintain adequate modern military capabilities if they are to retain their ability to participate in all aspects of international crisis management. Only thus will they remain a sufficiently attractive partner, in military and political terms, for the United States of America as it increasingly turns its attention to other regions of the world. Likewise, the prevailing economic difficulties mean that defence expenditure is coming under close scrutiny on all sides. Defence budgets in many EU and NATO member states are shrinking or, at best, stagnating. The smaller Alliance partners, in particular, will be able to participate in the sophisticated capabilities essential for conducting future operations only if they do so through multilateral cooperation projects. In future, even the larger states such as France, Germany and the UK will no longer have at their disposal the full range of capabilities necessary for complex operations, and will thus be dependent on the support of their partners.

NATO refers to various answers given in response to this challenge with the collective term *Smart Defence*. On the one hand, this implies the hope that by dealing with larger volumes, and with joint training and joint operation, essential and expensive capabilities could be maintained, developed and procured, while cutting costs at the same time. On the other hand, there is a view that not every state in Europe need cover the full spectrum of military capabilities, which would point to the prospect of specialisation. *Pooling* and *Sharing*, the terms commonly used in the EU, throw the differences between these two fundamentally different approaches into clearer relief and these terms will be adopted below.

Every model of the multilateral generation of military capabilities raises the problem of assured availability. Who decides whether the German transport plane assigned to the European Air Transport Command can be deployed to Mali and under what caveats? Is it the commander of the unit, the German Bundestag or even the French President? Should national sovereignty be subject to a general limitation when deciding on the deployment of multinational military capabilities, so as to enable these new points of departure to prove successful in practice?

## Pooling

The question of transfer of sovereignty is not relevant to the *pooling* of capabilities. Typically under this approach, the capabilities of several nations are consolidated in a *pool* for common, optimised, use and administration. The capabilities provided by each nation remain under national command. The initial potential advantage for all participants is the flexible – though not necessarily reliable – access to capabilities far beyond what they have contributed themselves. Furthermore, military advantages can accrue, for example, through increased interoperability or potential financial savings through astute management of the pool.

One such example is provided by the European Air Transport Command (EATC), which has already been mentioned. Approximately 140 tactical as well as non-tactical air transport forces were brought together under a single command in Eindhoven (Netherlands). Germany, France, the Netherlands and Luxemburg share in this pool. Operational Control – not Operational Command – was transferred to the commander of the unit. Each participating nation retains the command over *its own* aircraft.

During the French intervention in Mali at the beginning of 2013, the transport command played an important support role. France addressed requests with its requirements to the EATC. The decision as to whether a specific request can be fulfilled by *German* aircraft is subject, however, to national control. Legal caveats, for example, have to be taken into consideration. During the initial phase, specifically during the period before a mandate for deployment had been passed by the Bundestag, German participation was limited to flight configurations that were considered to lie below the threshold of actual military deployment. German planes were not permitted to transport French troops or weapons, while the transport of African troops belonging to the Economic Community of West African States (ECOWAS) in Africa was allowed. It became abundantly clear during this transitional phase that the *pooling* of capabilities certainly does not mean that national sovereignty is relinquished in favour of automatic availability.

These considerations also apply to the multilateral troop contingents created specifically with rapid availability in crisis in mind: the NATO Response Force (NRF) and the EU Battle Groups (BG) or the far-reaching bilateral Memorandum of Understanding of 28 May 2013 on co-operation in defence matters between Germany and the Netherlands. The character of these units as rapid deployment forces should not obscure the fact that each deployment of the NATO Response Force in which armed forces of the Bundeswehr participate, for example, would be contingent upon constitutive authorisation by the Bundestag. No prior transfer of sovereign decision-making powers to another country or to a multilateral organ has taken place here.

## Sharing

*Sharing* refers to the binding pledge by one or several states to provide capabilities for joint use. This raises diverse questions of national sovereignty: is the state providing the capability really willing to limit its freedom of decision in favour of another state? How do the individual ownership rights play out against one another when several states join together to provide the capability? Can a third party really rely on the binding undertaking to provide capabilities given by other states?

*Sharing* typically takes place within the framework and under the command of an alliance. The AWACS Command in Geilenkirchen, which provides the joint Airborne Reconnaissance and Command capability of the Alliance, is the most striking example. The planned Alliance-Ground-Surveillance-Command in Sigonella (ITA) would be another. Smaller Alliance members cannot afford modern reconnaissance aircraft of this kind. Instead, they contribute towards financing the Alliance capability, in the firm expectation that they too will benefit from it.

AWACS provides an example that highlights a certain nuance in the roles played by France and the United Kingdom. Both countries maintain their own AWACS units, the United Kingdom within NATO, France as a national capability. Both units are, in principle, at the disposal of the Alliance upon request. In the case of the French national unit, this is according to availability at any particular moment, and following a decision at the national level. Germany has taken a different road, by contributing, at a level commensurate with its size, to the procurement and

operation of capabilities jointly owned by the Alliance. While this high level of commitment to the Alliance certainly does receive recognition, the problems surrounding the availability of German AWACS personnel have left the more powerful political impression.

It is possible that, in future, joint capabilities such as satellite reconnaissance, will be developed in the EU context. Ideas of this kind are currently being discussed in preparation for the EU Defence Summit in December 2013. They raise the same questions as in the NATO context: who decides, according to which rules, on deployment? What would the chain of command look like? Finding answers to these questions will require much more time and further reflection.

There are modest beginnings in the area of the specialisation of capabilities. These are usually dictated by practical constraints. *Air Policing* in the Baltic states provides one example. Since these countries are not in a financial position to establish air forces of their own and doing so would make little sense from the military point of view, Alliance partners that do have their own air forces, including Germany, take turns in performing this duty for the three countries.

Experience in both NATO and the EU shows that the larger European states, particularly France and the United Kingdom, are unwilling to put their diminishing independent military capabilities under constraints which would limit their sovereign decisions about deployment.<sup>19</sup> If it is at all possible, a small measure of success may be achieved bilaterally between nations with a similar political outlook. An initial assessment of Franco-British security and defence policy cooperation, which has been intensified since November 2010, gives an idea of the potential as well as the limitations of this approach.<sup>20</sup> On balance, the evidence clearly demonstrates that the traditional forces of national interests and the wish to preserve sovereignty stand in the way of rapid advances in developing joint capabilities. This holds true despite the considerable financial and political

<sup>19</sup> As far as France is concerned, the so-called Védérine Report is more than clear. See: Hubert Védérine, *Sur les conséquences du retour de la France dans le commandement militaire intégré de l'OTAN, l'avenir de la relation transatlantique et les perspectives de l'Europe de la défense*. Paris, 14 November 2012. The UK too, has consistently resisted any expansion of an integrated command structure in an EU framework.

<sup>20</sup> Ronja Kempin, Jocelyn Mawdsley and Stefan Steinicke, *Entente Cordiale. Eine Erste Bilanz französisch-britischer Zusammenarbeit in der sicherheits- und verteidigungspolitik*, DGAPanalyse 10 (Berlin, Deutsche Gesellschaft für Auswärtige Politik [DGAP], August 2012).

pressure on the European allies. Under the proposed amendment to the Parliamentary Participation Act, the list of special capabilities for which the authorisation of the German Bundestag for the deployment of military personnel is to be presumed is unlikely to go beyond the special case of AWACS for the foreseeable future. From the present perspective, the joint capability of Alliance Ground Surveillance (AGS) is the only instance to which these limited criteria might also apply, starting in 2016.

## The 'Parliamentary Army' and Political Culture in Germany: The Outlook

The concept of the 'parliamentary army' ensures that in each instance the momentous decision to deploy the Bundeswehr on an armed mission abroad is carefully weighed up by Parliament and the public, and receives comprehensive democratic support. In this context, it is appropriate to refer to the important contribution that the procedure of parliamentary participation has made to German politics 'in order to overcome, step by step, the persistent misgivings, even anguish, in dealing with the armed forces, without trivialising the use of armed force or allowing it to become a matter of routine.'<sup>21</sup>

Expectations are growing, not least among NATO and EU partners, that Germany should accept a larger role in international crisis management, commensurate with its political, military and economic potential.<sup>22</sup> Parallel processes in the European economic and monetary spheres reinforce this view. Key allies would like to see a substantial commitment from Germany and determined efforts on its part to help shape political outcomes, particularly in crisis situations. NATO and the EU provide a platform of Germany's own choosing. It faces a dilemma. While wishing to influence policy making, it faces a number of expectations. Its future authority will partly depend on whether or not it can meet those expectations.

This perspective lends political depth to the somewhat technical aspects of the reform of the Parliamentary Participation Act. The proposed amendments deal specifically with corrections to regulations currently in force, which put Germany's role as a partner under strain and impair its influence within the Alliance. At the same time, this limited reform would amount to a declaration of political solidarity and illustrate Germany's commitment to maintaining international order and security.<sup>23</sup>

The basic direction of Germany's post-war foreign policy has been aptly described as that of a 'civil power' (Zivilmacht).<sup>24</sup> Its neighbours and partners are aware that Germany's response to international conflict is unlikely to be an instinctive call for military intervention. Careful consideration and the exploration of non-military solutions have their place in international efforts at crisis diplomacy, but any realistic political participation cannot ignore the more challenging facets of the possible solutions.

The concept of a 'parliamentary army' does not refer exclusively to democratic legitimacy in the domestic context. It requires, in addition, the consideration of external factors, an in-depth analysis, in both Parliament and society, of today's security challenges. Only deliberations of this kind can provide the political foundation for the considered judgement needed to underpin each decision to deploy armed forces.

<sup>21</sup> Wiefelspütz, 'Hände weg vom Parlamentsheer!' (see note 18), 16ff.

<sup>22</sup> This sentiment was expressed succinctly by the Polish Foreign Minister Radosław Sikorski when he said: 'I fear German power less than I am beginning to fear German inactivity.' See: *Poland and the Future of the European Union*, Berlin, 28 November 2011.

<sup>23</sup> In the defence policy guidelines issued by the Ministry of Defence on 18 May 2011, 'the fulfillment of international

obligations and responsibilities' is given as one of three goals of German security policy.

<sup>24</sup> Hanns W. Maull, 'Deutschland als Zivilmacht', in: *Handbuch zur deutschen Außenpolitik*, ed. Siegmund Schmidt, Gunther Hellmann and Reinhard Wolf (Wiesbaden, 2007): pp. 73–84.

# Recommendations for the Parliamentary Participation Act with Proposed Amendments

Parliament should not wait until its hand is forced again, by another ruling of the Federal Constitutional Court, or by political problems within the Alliance. Eight years after the Parliamentary Participation Act became law, sufficient evidence has been amassed for a pragmatic reform that would bring Germany back from its *Sonderweg* in NATO while at the same time reinforcing the pivotal role of the Bundestag in the deployment of armed forces abroad. The beginning of a new legislative period provides an opportunity for initiating the process of a strictly limited amendment of the Parliamentary Participation Act to this effect.

In the text of the Act below, the proposed amendments are underlined.

## Act governing Parliamentary Participation in Decisions on the Deployment of armed forces Abroad (Parliamentary Participation Act)<sup>25</sup>

The Bundestag has adopted the following Act:

### Section 1: General and Common Provisions

1. This Act regulates the form and extent of the Bundestag's participation in decisions concerning the deployment of German armed forces abroad. Article 115a of the Basic Law shall remain unaffected.
2. The deployment of German armed forces outside the area of application of the Basic Law shall require the German Bundestag's approval.

### Section 2: Definition of Terms

1. A deployment of armed forces shall be defined as the involvement, or anticipated involvement, of Federal Armed Forces in armed operations.
2. Preparatory and planning measures shall not constitute 'deployment' for the purposes of this Act.

<sup>25</sup> The English version of this text is based on an unofficial translation of the Act taken from a memorandum by Dr Katja S. Ziegler, University of Oxford, submitted to the Select Committee of the Constitution in the House of Lords of the UK Parliament on 7 December 2005. Following the controversial deployment of UK troops during the Iraq war, and in the context of considering a potential change in the law, evidence from Dr. Ziegler was heard about the legal situation then prevailing in Germany.

Such measures shall not require the Bundestag's approval. The same shall apply to the conduct, by the armed forces, of humanitarian relief or support operations in which arms are borne solely for the purposes of self-defence, provided that no involvement of the service personnel in armed operations is anticipated.

3. The participation of military personnel of the Bundeswehr in permanent multinational staffs and headquarters of NATO and other organisations of collective security in Alliance-led operations shall not constitute 'deployment' (Einsatz) of German armed forces for the purposes of this Act.

4. The operative command over NATO Airborne Reconnaissance and Command units has been transferred to the Supreme Allied Commander Europe. (SACEUR) Service by German military personnel in these units constitutes an important contribution by Germany towards the intended functioning of the NATO Integrated Command Structure. Parliamentary authorisation of deployment according to Section 1(2) of the Act shall be deemed to be granted for service in these units. The military personnel serving in these units shall not be included in the maximum number of personnel in operations under Section 3(2) of this Act. The right of revocation of the Bundestag according to Section 8 of the Act remains unaffected.

### Section 3: Request for Deployment

1. The Federal Government shall forward its request for approval of a deployment of the armed forces to the Bundestag in good time, prior to the start of the deployment.
2. The Federal Government's request shall contain the following details in particular:
  - ▶ the operational mandate
  - ▶ the operational area
  - ▶ the legal bases for the mission
  - ▶ the maximum number of service personnel to be deployed
  - ▶ the capabilities of the armed forces to be deployed
  - ▶ the planned duration of the mission, and
  - ▶ the anticipated costs and funding arrangements
3. The Bundestag may approve or reject the request. Amendments to the request shall not be permissible.

#### **Section 4: Simplified Approval Procedure**

1. For deployments of minor scope and intensity, approval may be granted in a simplified procedure. The Federal Government must give reasons why the proposed deployment is of minor scope and intensity. The President of the German Bundestag shall refer the request for approval to the chairpersons of the parliamentary groups, the chairpersons of the Committee on Foreign Affairs and Defence Committee and one spokesperson of each parliamentary group on these committees, and shall arrange for the request to be distributed to all Members of the Bundestag as a printed paper. Approval shall be deemed to be granted unless, within seven days of the printed paper's distribution, a parliamentary group of five per cent of the Members of the Bundestag demand that the Bundestag hold a debate. If a debate is demanded, the decision shall lie with the Bundestag.

2. A deployment shall be deemed to be of minor scope and intensity if the number of service personnel deployed is small, it is apparent from the accompanying circumstances that the deployment is of minor significance, and it does not entail any participation in warfare.

3. As a rule, deployment shall be regarded as being of minor scope and intensity if:

- ▶ it involves a reconnaissance team bearing arms solely for the purpose of self-defence
- ▶ it involves individual service personnel who are serving with allied armed forces on the basis of exchange agreements, or
- ▶ it involves the deployment of individual service personnel within the framework of a mission led by the UN, NATO or the EU, or by another organisation in fulfilment of a UN mandate

#### **Section 5: *Ex-post* Approval**

1. Deployments in the event of imminent danger, which allow no scope for delay shall not require the Bundestag's prior approval. The same shall apply to operations whose purpose is to rescue persons from particularly dangerous situations, provided that the holding of a public debate in the Bundestag would endanger the lives of the persons in need of rescue.

2. The Bundestag shall be informed appropriately prior to and during deployment.

3. The Bundestag's *ex-post* approval for the deployment must be sought promptly. If the Bundestag rejects the request for approval, the ongoing operation must be terminated.

#### **Section 6: Obligation to Furnish Information**

1. The Federal Government shall inform the Bundestag regularly about the progress of the missions and about developments in the operational area.

2. In cases dealt with in accordance with section 4(1) (Simplified Approval Procedure), the Federal government shall report promptly to the committees responsible and to the spokespersons of the parliamentary groups represented on these committees.

#### **Section 7: Extension of Deployment**

1. The procedure defined in Section 4 shall also apply to decisions to extend the approval of deployments in cases where no substantive amendments arise.

2. If the Federal Government requests the extension of a deployment, approval shall be deemed to be granted until two days of sittings have passed following the distribution of the request as a Bundestag printed paper. If the request is dealt with in accordance with the simplified procedure defined in Section 4, approval shall be deemed to be granted until the expiry of the time period defined in section 4 (1), fourth sentence; if a debate in the Bundestag is demanded within the time period, approval shall be deemed to be granted until the end of the sitting week following the demand for a debate. The period of validity of the original approval shall remain unaffected by the provisions of the first and second sentences.

#### **Section 8: Right of Revocation**

The Bundestag may revoke its approval for a deployment of armed forces at any time.

#### **Section 9: Entry into Force**

This Act shall enter into force on the day after its promulgation.