

# The *Bundestag* as a Champion of Parliamentary Control of Military Missions

Wolfgang Wagner

**Abstract:** With more than 140 votes since the end of the Cold War, the Bundestag has been an exceptionally powerful and active parliament in controlling the deployment of armed forces. A closer look at the actual deployment votes shows that military missions are contested along a left/right axis: Whereas the radical left is consistently opposed, support grows as one moves further to the right of the political spectrum, with the Christian Democrats being most supportive. These preferences over substance also translate into preferences over procedure: Political parties on the left whose main concern is to fence in the use of armed force tend to prefer strong parliamentary control, whereas political parties at the center-right of the political spectrum would like to see more executive discretion in deciding about *Bundeswehr* deployments.

**Keywords:** Bundestag, military missions, political parties, Federal Constitutional Court

**Stichwörter:** Bundestag, Militärmisionen, politische Parteien, Bundesverfassungsgericht

## 1. The practice of parliamentary control of military missions in Germany

The *Bundestag* has become world champion in the parliamentary control of military missions. Although spelled out only after the end of Cold War, the *Bundestag*'s peculiar powers reflect Germany's militarist past and subsequent efforts to fence in the use of force. To be sure, the *Bundestag* is not the only parliament whose *ex ante* authorization is required in order to deploy armed forces. Parliaments in Austria, Denmark, Ireland, Sweden, Switzerland, Turkey and several other countries also are endowed with the power to veto deployment decisions (for an overview see Wagner et al. 2010). What is more, governments that may send troops without prior parliamentary authorization may nevertheless decide to ask for parliament's approval for political reasons. For example, Tony Blair in 2003 and David Cameron in 2015 both asked the British House of Commons to authorize the use of force against Iraq and Syria, respectively. No other parliament, however, has been asked to authorize military missions as often as the *Bundestag*: Since the end of the Cold War, the *Bundestag* has voted on deployments of the *Bundeswehr* more than 140 times. As figure 1 illustrates,<sup>1</sup> the *Bundestag* has thus been far more active than its counterparts in other countries. In the same period, the US Congress has authorized military interventions only three times, namely in 1991 (Gulf War), 2001 ("against terrorists", interpreted to include the intervention in Afghanistan and still used as a basis for fighting Daesh as a terrorist group that branched off from Al Qaeda) and 2003 (Iraq War) (Böller 2014).<sup>2</sup> The failure of the Iraq War has led to the introduction of a parliamentary veto power in Spain in 2005 and established a new practice of

deployment votes in the United Kingdom (Wagner et al. 2017a; Kaarbo/Kenealy 2017). In Spain, however, Parliament has voted no more than ten times over the last decade. The new British practice has been even more restrictive even though the United Kingdom has not been militarily inactive: after the 2003 Iraq vote, the House of Commons voted only five times. In France, a constitutional reform in 2008 has introduced the requirement to approve of a military mission once it exceeds two months (Ostermann 2017). The new provision led to five votes in 2009 but no more than two votes in any year since (with several years without any vote).

The very high number of deployment votes in the *Bundestag* results from a combination of the following factors: First of all, very few types of missions are exempted from the requirement of prior parliamentary approval. Only operations with special forces that require secrecy and participation in permanent multinational headquarters (outside combat zones) are exempted. In contrast, the French deployment practice not only exempts operations with special forces but also maritime missions (because the high sea is not considered to be 'abroad') and interventions that result from bilateral defense treaties (of which France has many with African countries) (Ostermann 2017: 107).

Second, authorization is not limited to large or high-risk deployments but includes small- and low-risk ones as well. For example, the German contribution to the United Nations Mission in Liberia, which is limited to five soldiers in UNMIL's headquarter, has been subject to prior approval of the *Bundestag*.

Third, an authorization is not only required for the initial deployment but also for any major change in the mandate or size of the German contribution.

Fourth, Germany is quite unique in asking parliamentary authorization for a mission's continuation even in the absence of any changes to the size or mandate. Although the deployment law does not require a time limit for deployment decisions, it has become established practice that approval is given for a period of 12 to 14 months. Whenever the corresponding UN mandate is limited to six months only, a new decision may already be required after six months. The combination of changes in the mandate and regular prolongations made it necessary to vote

1 Data on deployment votes in Germany, Spain, France and the United Kingdom are available at [www.deploymentvotewatch.eu](http://www.deploymentvotewatch.eu). In the French case, votes in the Assemblé National and the Sénat are counted as a single vote if they are on the same mission at the same point in time.

2 Since the US Congress adopted the War Powers Resolution in 1973, it claims that the President is obliged to ask for Congressional approval of military deployment if they exceed 60 days. However, all Presidents since then have denied that any legally binding obligation exists and emphasized their discretion to ask Congress for approval. The US Courts have not ruled on this matter. Instead, "the courts have elevated judicial abstention to a principle that the courts will not decide 'political questions', and issues of foreign affairs have been cited as providing prime examples and a principal justification of the doctrine" (Henkin 1996: 143).

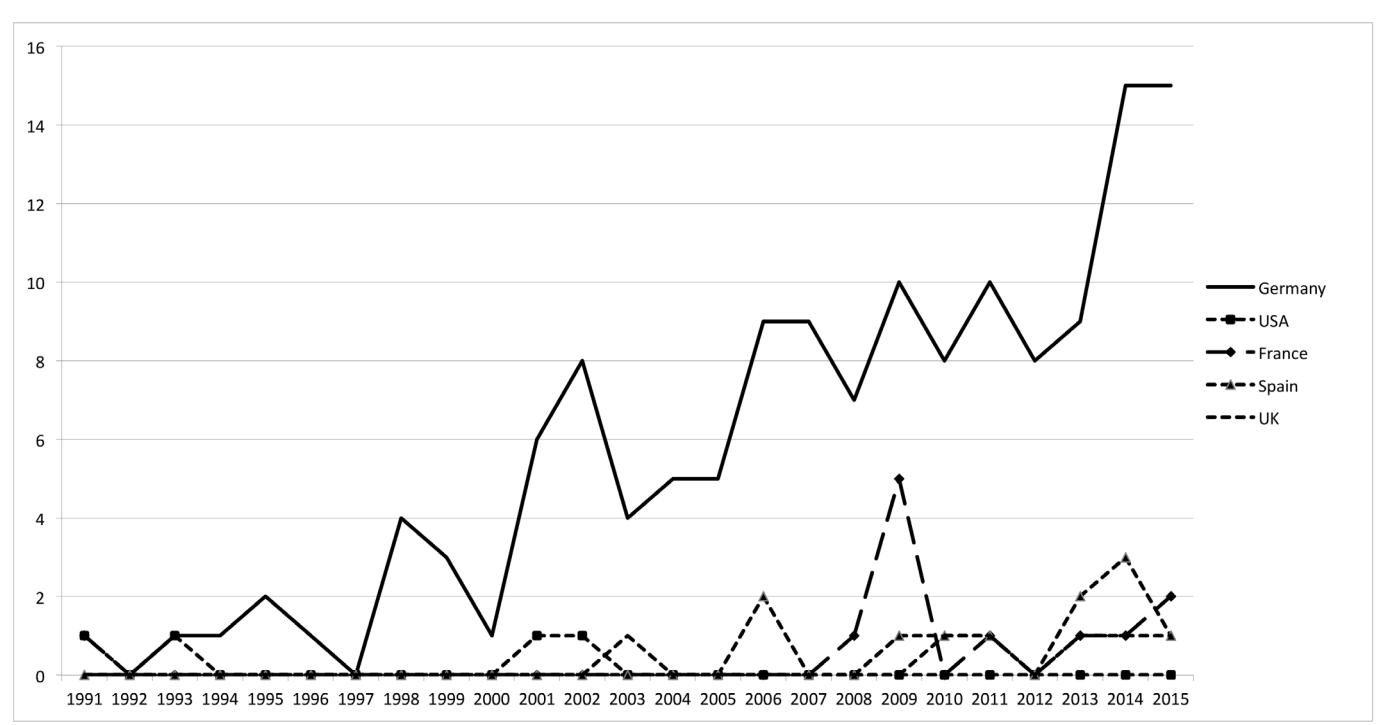


Figure 1: Number of Deployment Votes in Selected Countries, 1991-2015

no fewer than 18 times on the German contribution to the International Stabilization Force (ISAF) in Afghanistan.

Fifth, it is always the plenary that decides on deployments and their legislation. This contrasts with the practice in some other states where decisions are made in a committee. In Austria, for example, it is always the so-called 'main committee' (*Hauptausschuss*) that decides on military missions, not the plenary. Also in Spain, some decisions are made in a committee.

Sixth and finally, a practice has emerged according to which decisions are almost always taken in a roll-call vote ("namentliche Abstimmung"). Although the law on parliamentary involvement in deployment decisions ("Parlamentsbeteiligungsgesetz") allows decisions on deployments of minor importance to be taken in a simplified procedure without a vote, this procedure has been rarely used. Instead, a consensus across the political parties has emerged that military deployments are generally of such an importance to warrant a roll-call vote.<sup>3</sup> This implies high shares of MPs attending and a high visibility of everyone's individual voting decision. As a result, deployment decisions account for a substantial share of the *Bundestag*'s roll-call votes.

## 2. Rationale and reform

The *Bundestag* owes its impressive competences in controlling military missions to another powerful constitutional organ: the Federal Constitutional Court (FCC). In a landmark ruling in July 1994, the FCC stated that the *Bundeswehr* was

a "parliamentary army" whose deployment required prior parliamentary approval. To many constitutional lawyers, the FCC's claim that such a parliamentary proviso was a tradition in German constitutionalism since 1918 seemed rather bold (see, among others, Scherrer 2010: 75ff.). In any case, the ruling fulfilled an important function, namely to appease the heated discussions about the use of German troops out of area, i.e. for missions other than self-defense, that the end of the Cold War had brought about. Especially the Greens, but also major parts of the Social Democratic Party were highly skeptical as to the wisdom of participating in such missions (Harnisch 2006; Vollmer 1998). In contrast, the Christian Democrats envisioned a "normalization" of German defense policy that included contributions to peace and security missions. Because military reticence was deeply ingrained in German identity after World War II (Duffield 1998), the issue was highly controversial.

The ruling that the FCC delivered in July 1994 managed to appease this debate. It endorsed the government's position on the main point of contention: the court did not consider the deployment of the *Bundeswehr* out of area a violation of the Basic Law. At the same time, however, it constrained the government's freedom of action procedurally by endowing parliament with a veto power over any deployment.

Klaus Brummer (2014) has argued that the *Bundestag* may have strong formal competences but is ill-positioned to make use of these powers because the majority in parliament is unlikely to turn against "its own" government. For this reason, the *Bundestag* has never rejected any government proposal to send the *Bundeswehr* abroad. One could add that also outside Germany, parliamentary votes against military missions are extremely rare. David Cameron's failure to secure a majority in support of military strikes against the Syrian

<sup>3</sup> In 2005 and 2006 four decisions on the prolongation of Germany's support of the African Union's mission in Darfur and of the United Nations' mission in Sudan have been adopted in a simplified procedure. Since then, the procedure has not been used (Deutscher Bundestag 2015: 6).

government in 2013 and the refusal of the Turkish Grand National Assembly to permit the USA to use Turkey as a base for invading Iraq are rare exceptions (Kaarbo/Kenealy 2015; Kesgin/Kaarbo 2010).

Legislatures in parliamentary systems do indeed form a functional unit with the executive. Political control is not exercised by parliament as such but by the opposition, which, however, lacks the necessary majority to block a decision. It is for this reason that legislatures in presidential systems are generally considered more powerful than those in parliamentary systems. However, the formation of a functional unit with the executive does not render parliament a mere rubberstamping institution. Most importantly, executives in most countries aim at a broad majority when troop deployments are concerned. In order to achieve this, they are often prepared to make concessions on the mandate and/or size of the mission. According to Stephen Saideman and David Auerwald (2012), this explains why countries with powerful parliaments demand caveats more often than other countries. An alternative explanation for why the Bundestag never rejected an executive request to deploy troops therefore holds that the executive only requests what it knows to be acceptable to a broad majority in parliament. A welcome side-effect of broad consensus-building in the shadow of a parliamentary veto is that military commitments are immunized against changes in government.

Even if the executive does not aim at a majority beyond its own, a parliamentary proviso creates strong incentives to listen to backbenchers from their own party/parties and take their concerns into account. A parliamentary veto power therefore has the important effect that the government engages in broad consultations with members of their own party/parties and to a lesser degree with those of the opposition.

### 3. Parliamentary deployment legislation in practice: Voting on military missions

With few exceptions, deployment decisions in the *Bundestag* have been taken by way of roll call votes (*namenliche Abstimmung*). While time-consuming, roll-call votes underline the importance of the decision taken. They also show the decision of every individual MP and the degree of party unity on every mission. Figure 2 visualizes the share of "no"-votes from the 12<sup>th</sup> legislative term (third government of Helmut Kohl, 1990-94) to the 18<sup>th</sup> term (third government of Angela Merkel; data until summer 2016). The figure demonstrates

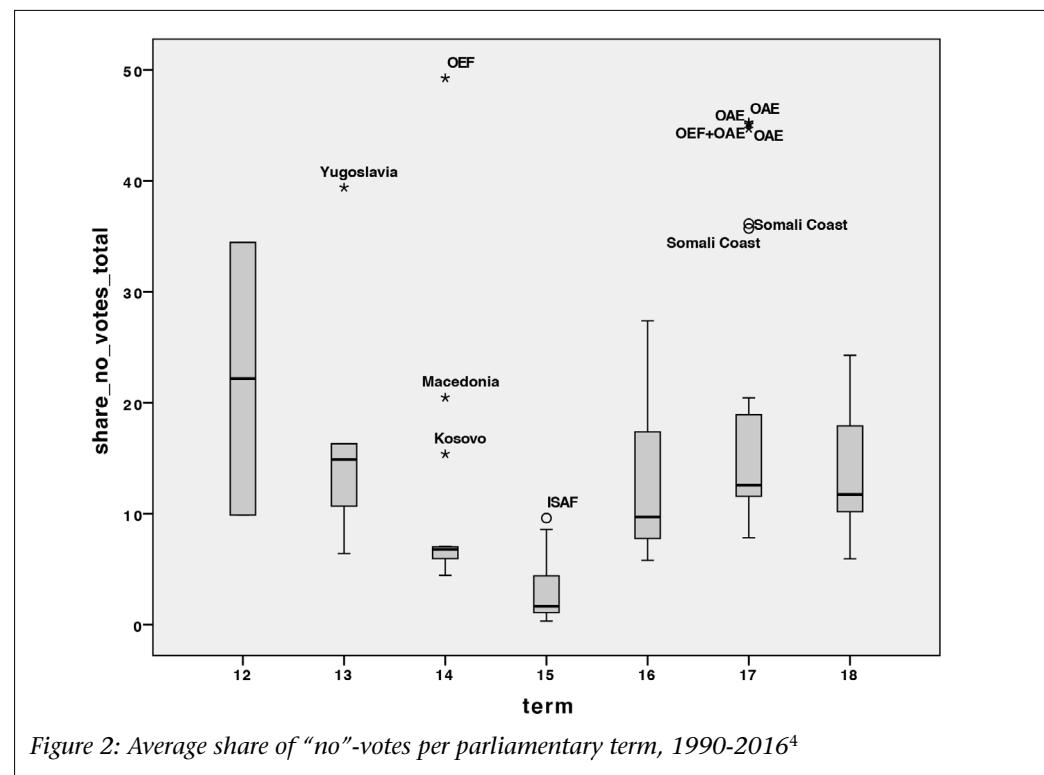


Figure 2: Average share of "no"-votes per parliamentary term, 1990-2016<sup>4</sup>

that the average share of "no"-votes never exceeded 23% (12<sup>th</sup> legislative term). Across all legislative terms, the average is around 13%. The figure also shows that the US-led war on terror stands out for being exceptionally controversial: There have been high shares of no-votes for the two interrelated missions "Operation Enduring Freedom (OEF)" and "Operation Active Endeavour (OAE)". In contrast to the vast majority of military missions, these operations draw on article 51 of the UN Charter and article 5 of the NATO treaty and thus justify the use of force in terms of self-defense, rather than collective security. Especially on the political left, the deployment to Afghanistan within OEF has been seen as overstretching the concept of self-defense. For the initial deployment decision in 2001, Chancellor Schröder tied the decision to a vote of confidence in order to secure a majority amongst the coalition of Social Democrats and Greens.

Figure 2 also shows that the parliamentary terms with the lowest share of "no"-votes were the years of the "red-green coalition", 1998-2005 (14<sup>th</sup> and 15<sup>th</sup> parliamentary terms). This is because being in government made it particularly difficult for anti-interventionist MPs of the Greens and the SPD to vote against their own government. Ironically, the highest share of "no"-votes occurred when Chancellor Schröder linked the continuation of OEF to a vote of confidence in his government that disciplined his own coalition (only four Green MPs voted against) but made the Christian Democrats in opposition vote against a mission, which they otherwise supported.

4 In the figure's box plots, the thick lines represent the median, and the gray boxes represent the middle 50 percent of the data, with the second quartile above the mean and the third quartile below the mean. "Whiskers" – the long vertical lines – represent the spread of data up to one-and-a-half-times of the interquartile range (the difference between the first and third quartiles). The small circles above represent outliers within the data. The asterisks represent extreme outliers.

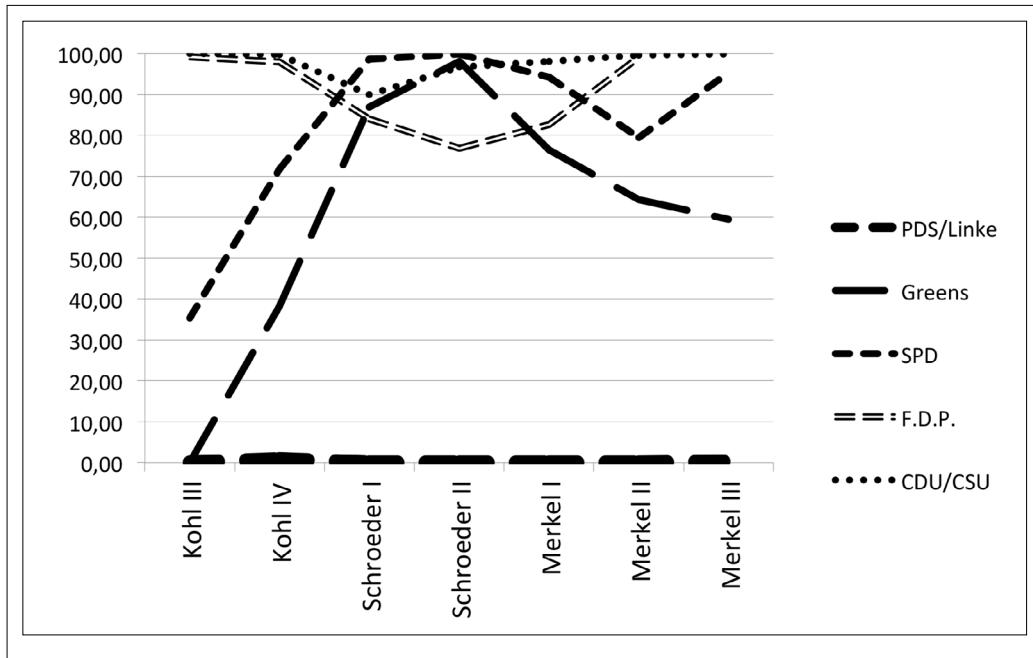


Figure 3: Average share of "yes"-votes, 1990-2016

The disciplining effect of being in government is also demonstrated by figure 3 that visualizes the average share of "yes"-votes amongst members of the parties in the *Bundestag*. The only party that continuously voted against military deployments is the radical left (PDS/Die Linke). At the time of the third government of Helmut Kohl, the Greens had joined the PDS in unanimously voting against any German troop deployment.<sup>5</sup> In the next parliamentary term, the Greens became more and more supportive, culminating in only 12.7% opposing SFOR in 1998. In government (and with Joschka Fischer as foreign minister), the share of "no"-votes dropped to 4.7% (1998-2002) and even 1.2% (2002-2005). During this period, even the unpopular OEF mission was supported by an overwhelming majority. Back in opposition, the average share of "yes"-votes dropped only slightly again – although support for OEF plummeted. A similar development is visible for the SPD. Liberals and Christian Democrats both start with virtually unanimous support for military missions when forming the governing coalition between 1990 and 1998. Their support drops while in opposition. Whereas the Christian Democrats retain a support rate of 89% or more, the FDP shows a more pronounced dip during the years of the Schröder/Fischer government.

All in all, roll-call votes in the *Bundestag* show that military missions are contested along a left/right axis: Whereas the radical left is consistently opposed, support grows as one moves further to the right with Christian Democrats most supportive. Comparative research shows that similar pattern can be found in France, Spain and the United Kingdom (Wagner et al 2017b). This finding resonates with earlier comparative research that found right governments to be more likely to be involved in militarized disputes than left governments (Palmer et al 2004)

<sup>5</sup> It should be noted, however, that the high voting coherence amongst Green MPs is also due to their small number (only 4 MPs were represented in the 12<sup>th</sup> German *Bundestag*) and deployment decisions (only the participation to UNOSOM and to the embargo in the Adria were decided upon).

and more likely to initiate them (Arena and Palmer 2009; Clare 2010). With a view to the Kosovo conflict and the Iraq war, Patrick Mello also finds that right governments are more willing to engage militarily than their left counterparts (2014: 197). One explanation holds that parties that promote the welfare state oppose the (costly) use of force (and defence spending in general) because expenditure for the military competes with spending on other issues such as health care, education and social programs (Koch/Sullivan 2010: 619). Another explanation points to genuine foreign policy differences that have no discernible link to

domestic politics. For example, Brian Rathbun (2004: 19; 42) argues that right parties believe in what Robert Jervis called the 'deterrence' model of international politics, whereas left parties subscribe to what he dubs the 'spiral' model. According to the former, interests are best guarded by military strength and resolve; in contrast, the latter stresses empathy and 'security dilemma sensitivity' (Jervis 1976).

#### 4. Discussing reforms

All in all, the decision-making rules around the deployment of the *Bundeswehr* have been very stable. This is remarkable because Christian Democrats, Liberals and Radical Left all voted against the adoption of the deployment law (*Parlamentsbeteiligungsgesetz*) in 2004, which passed with the votes of the Social Democrats and Greens who formed the government at the time. Furthermore, the stability contrasts with major reforms in France, Spain and the United Kingdom (Wagner et al. 2017a). The key to understanding the stability in deployment decision-making is the 1994 decision by the Federal Constitutional Court. The principles established in the 1994 landmark ruling have clearly limited the room for subsequent reform. Furthermore, subsequent case law has re-confirmed that the court's main concern has been to ensure effective parliamentary oversight (Paulus/Jacobs 2012). For example, in its ruling on the constitutionality of the Lisbon Treaty of the European Union, the court stated that "the constitutive requirement of parliamentary approval for the deployment of the *Bundeswehr* abroad is not open to integration" (*Bundesverfassungsgericht* 2009, paragraph 255).

The shadow of the Federal Constitutional Court notwithstanding, the competences of the *Bundestag* have been subject to party political debate. In general, political parties' position on legislative-executive relations in this field results from their position on the use of the armed forces as an instrument of

German foreign policy. Political parties whose main concern is to fence the use of armed force tend to prefer strong parliamentary control (Wagner et al. 2017a). This holds for "Die Linke" and the Greens and, to a lesser extent, the Social Democrats. Not surprisingly then, proposals to require a super-majority of two-thirds of MPs to approve a military mission were indeed made by politicians of the Greens and the SPD.<sup>6</sup>

In contrast, political parties in the centre and the centre-right of the political spectrum would like to see Germany contributing to international peace and security missions on an equal footing with other states. As a consequence, they prefer more executive discretion in deciding about *Bundeswehr* deployment. This applies to the Liberals and the Christian Democrats.<sup>7</sup> For example, in 2006 the Christian-Democratic MP Andreas Schockenhoff argued that the deployment law was incompatible with the concept of the EU Battlegroups. Schockenhoff's call for a revision of the deployment law was seconded by the then Minister of the Interior, Wolfgang Schäuble (CDU) and Parliamentary State Secretary in the German Federal Ministry of Defence, Christian Schmidt (CSU). They proposed to have the *Bundestag* approve the deployability of the German contribution to integrated forces in advance instead of having parliament decide on specific deployments. Social Democrats and Liberals immediately rebuffed this proposal.

In May 2012, Christian Democrat MPs Andreas Schockenhoff and Roderich Kiesewetter published a paper in which they pointed to the tensions between the benefits of having European, national high readiness forces, such as the NATO Response Force and the EU Battlegroups, on the one hand, and national parliamentary provisos on the other. They argued that in case of integrated multinational forces, the *Bundestag* should not decide on individual deployments but should give a general green light at the beginning of a given year and leave the decision over the use of the forces to the governments in the EU or in NATO. The *Bundestag* would retain the right to call German troops back (Schockenhoff and Kiesewetter 2012).

Christian Democrats put this question on the agenda when they negotiated a coalition agreement with the Social Democrats in 2013. Given the opposition of the Social Democrats to any changes in the current deployment legislation, the coalition agreement stipulated the establishment of a commission that would assess how parliamentary rights can be safeguarded in the face of deepening integration within NATO and the EU (Deutschlands Zukunft 2013: 171). The Greens and Radical Left refused to participate in the commission as they saw no need for any changes. The commission published its

report in June 2015. It suggested a couple of minor revisions to the current deployment law, such as exempting officers in NATO or EU headquarters from its remit (Deutscher Bundestag 2015). A respective legislative proposal has been submitted to the *Bundestag* by Christian Democrats and Social Democrats (Deutscher Bundestag 2016). At the time of writing (February 2017), the Christian Democrats decided to put the legislative procedure to a halt due to concerns that the reform would narrow, rather than broaden the executive's room for maneuver.

## 5. A German *Sonderweg*?

The *Bundestag* is not the only parliament whose prior approval is required before armed forces can be sent abroad. However, other countries follow a lighter interpretation of what *ex ante* approval entails in practice by setting a higher threshold for parliamentary approval being required, by exempting the prolongation of missions or by delegating decisions to committees. It is also interesting to note that other parliaments' appetite to emulate the *Bundestag* in its comprehensive practice is limited. In France, for example, MPs across the political spectrum consider "approval rights à l'allemande (...) as incompatible with French tradition" (Ostermann 2017: 113).

In Germany, the tight control regime enjoys broad support (Böcker 2012). Although Christian Democrats in particular have asked to relax the approval requirement for integrated multinational units, the key parameters of the current regime are hardly ever questioned. Obviously, the demand for institutional checks on the executive differs across countries and societies. There is no doubt that the particular high demand for parliamentary control in Germany can be traced back to the horrors of World War II, and it is no coincidence that the other main aggressor in WWII, Japan, is similarly constrained (Sakaki/Lukner 2017). The Federal Constitutional Court has understood very well that the redefinition of the role of the *Bundeswehr* after the Cold War is best accompanied by tight procedural constraints as a reassurance against any misuse of the armed forces.



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6 The Radical Left (*Die Linke*) was staunchly opposed to any use of armed force except for self-defence and therefore refrained from addressing procedural issues. An exception was its initiative to enhance parliamentary oversight of operations with special forces in 2007 (Deutscher Bundestag 2007), which, however, failed to find the necessary majority.

7 The position of the new populist-right party „Alternative für Deutschland“ (AfD) is not (yet) clear. Its "Programm für Deutschland" asks to participate in military missions only if German security interests are taken into account. The program does not address the question of parliamentary control of such missions. Because the party is not (yet) represented in the *Bundestag*, there is a lack of information on its voting behavior when deployment decisions are made.

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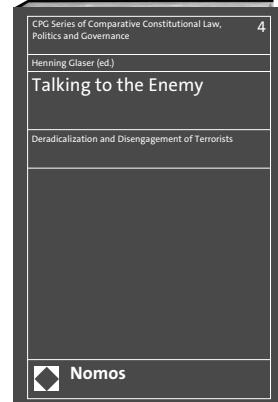
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