

Background Paper

Civil-Military Relations in Germany

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BACKGROUND PAPER

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PREFACE

A Pakistan delegation comprising members of the PILDAT Dialogue Group on Civil-Military Relations as well as some MPs and academics was facilitated by the Friedrich Ebert Stiftung, Pakistan, alongside PILDAT, to take part in a Study Visit to Germany to learn about the German model of Civil-Military Relations and democratic control on defence sector.

This paper, authored by **Mr. Shahid Hamid**, one of the delegates in the Study Visit, and Senior Advocate Supreme Court of Pakistan, former Federal Minister of Defence, Establishment and Law and former Governor Punjab, draws from the learning through the Study Visit and examines the model of democratic control of defence that Germany follows.

The paper is part of the PILDAT's body of work on Parliamentary Control and Oversight of the Defence Sector and Civil-Military Relations. Towards the end, the paper draws from earlier work of PILDAT on the issue in comparing the German model to Pakistan.

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The views expressed in this paper belong to the author and are not necessarily shared by PILDAT. Furthermore, the opinions, findings and conclusions or recommendations expressed in this paper are those of the author and do not necessarily reflect the views of PILDAT, or the Friedrich Ebert Stiftung, Pakistan.

Islamabad
January 2011

ABOUT THE AUTHOR



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Shahid Hamid is a senior Advocate Supreme Court of Pakistan and has previously held the portfolio of Federal Minister of Defence, Establishment and Law from November 1996 - February 1997 and Governor of the Punjab Province from March 1997 to August 1999.

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Mr. Shahid Hamid joined the Civil Services of Pakistan in 1964 and during his career from 1964-1976, he held many portfolios ranging from district administration to provincial finance department and later as Secretary to the Chief Minister, Punjab. He has practiced as an Advocate of the High Court from 1978 onwards.

Mr. Shahid Hamid has been a distinguished member of the PILDAT Dialogue Group on Civil-Military Relations since 2005-2006.

Constitutional Basis of Civil-Military Relations in Germany

The Constitution of Germany is contained in its Basic Law adopted by its Parliamentary Council in May 1949 and ratified by more than two-thirds of the German Landers (Provinces) during the same month. Article 87a relates to the Armed Forces of Germany. It reads:

1. *The Federation shall establish Armed Forces for purposes of defence. Their numerical strength and general organisational structure must be shown in the budget.*
2. *Apart from defence, the Armed Forces may be employed only to the extent expressly permitted by this Basic Law.*
3. *During a state of defence or a state of tension the Armed Forces shall have the power to protect civilian property and to perform traffic control functions to the extent necessary to accomplish their defence mission. Moreover, during a state of defence or a state of tension, the Armed Forces may also be authorised to support police measures for the protection of civilian property; in this event the Armed Forces shall cooperate with the competent authorities.*
4. *In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, the Federal Government, if the conditions referred to in paragraph (2) of Article 91 obtain and the police forces and the Federal Border Police prove inadequate, may employ the Armed Forces to support the police and the Federal Border Police in protecting civilian property and in combating organised armed insurgents. Any such employment of the Armed Forces shall be discontinued if the Bundestag or the Bundesrat so demands.*

During peace-time the Commander-in-Chief of the German Armed Forces is its Defence Minister. On promulgation of a State of Defence, i.e., when Germany is under attack or under imminent threat of an attack, the power of command over its Armed Forces transfers to its Federal Chancellor (Article 115a of the Basic Law).

Civilian Control over Defence

At what the Germans call the strategic level, the political leadership is provided by its Defence Minister under whom

the senior most Armed Forces Officer is the Bundeswehr Chief of Staff. In the hierarchy of the Armed Forces the next is the operations level comprising the heads of the three Services, and the heads of the (Joint) Operations Command and the (Joint) Medical Command.

The German Defence Ministry

The Defence Ministry is the high command of the Armed Forces. It is manned by officers drawn from both the Armed Forces and the civilian services. Under the Minister there are two Secretaries of State and two Parliamentary Secretaries. The Federal Chancellor appoints the Chief of Staff. All other star appointments (about 200) in the five commands are normally made by the Defence Minister who has a Military Defence Council to assist him in this behalf. The Chief of Staff is a member of this Council.

The National Security Council

Germany has a National Security Council (NSC) which is a Cabinet Committee headed by the Chancellor and comprising eight (8) Cabinet members. The NSC has a diplomatic-cum-military advisor who is also its Secretary. The Bundeswehr Chief of Staff is a permanent 'guest' at NSC meetings but not its member.

Instruments of Parliamentary Oversight of Defence

There are three (3) major instruments of Parliamentary control and oversight over the functioning of the Armed Forces in Germany.

- i. There is, in the first place, a Defence Committee comprising Parliamentarians drawn from all political parties. The current chairperson is a member of the Opposition Social Democratic Party.
- ii. Secondly, the size and structure of the Armed Forces is regulated on an annual basis through the annual budget.
- iii. Third there is a Parliamentary Commissioner for the Armed Forces, an Ombudsman, who is a Parliamentarian and who reports to the Parliament. He assists Parliament in executing its civil control over the Armed Forces and serves as a liaison between the Bundestag and the Bundeswehr.

Deployment outside the NATO Area

In 1994 Germany's Constitutional Court allowed the deployment of German forces outside the NATO area. Such deployment requires first a mandate given by a resolution of the UN Security Council, secondly approval of Germany's Parliament and third deployment as part of a multi-national force.

Presently, 7000 German troops are deployed abroad. The largest deployment is in Afghanistan. Germany's Parliament has placed an upper limit of 5,000 for troop deployment in Afghanistan with another 350 in reserve in Germany. The German troops are part of the International Security Assistance Force (ISAF) mandated by the UN Security Council Resolution 1386 and are deployed in Northern Afghanistan.

Perspectives on War in Afghanistan

The stated ISAF mission is to support the Afghanistan Government in maintaining security and to create a secure environment for reconstruction of civil and humanitarian aid works.

When we asked the (Joint) Operations Commander as to what was Germany's strategic objective in Afghanistan, his reply was "to secure a more stable Afghanistan." When we asked further as to what had caused a 300% increase in security-related incidents in Southern and Eastern Afghanistan, he said it was because of a more active military posture of the US and ISAF forces. When we pointed out that the presentation given to us showed an increase of security-related incidents in Northern Afghanistan also, from 559 in the 10 months - January to October 2009 - to 1148 during the same period in 2010, where there was no surge of troops, he said that there was a resurgence of local Taliban, a renewed influx of fighters from [the Muslim Brotherhood of] Uzbekistan as also from various Arab countries and then there were 'others.'

The Afghanistan operations are costing Germany 3.5 billion Euros per annum. The Germans intend to withdraw all their forces starting 2011.

Amongst other points that emerged during the discussions at the Joint Operations Command was the estimation of its Commander that the capability of the Afghanistan National Army was reasonably satisfactory but not that of the Afghanistan National Police, that the troop surge of the US

and ISAF forces covered only 40 out of 121 districts in Afghanistan and that the military operation by itself would not be successful in the absence of political reconciliation.

German Intelligence Agencies

Germany has three Intelligence Services:

- i. Foreign Intelligence
- ii. Domestic intelligence, and
- iii. Military (counter-) intelligence

There is also a separate State Office for Protection of the Constitution (against extremist groups).

The numbers in each service were given to us in confidence by the Bundestag members and cannot therefore be revealed but they are not large.

The composition, the functions and the activities of the Intelligence Services are regulated by the Federal Intelligence Service Act, the Federal Act on the Protection of the Constitution and the Act on the Military Counter Intelligence Service. Each of these Acts contains provisions for Parliamentary scrutiny of the activities of the Intelligence Services.

There are two bodies of the German Bundestag specialized in oversight of intelligence activities. First, there is the Parliamentary Control Panel (Parlamentarisches Kontrollgremium or PKGr). It consists of members of the Bundestag and is involved in "political" oversight.

Secondly, there is the G10 Commission (G10 Kommission). The G10 Commission performs more of a judicial function, with regard to surveillance measures restricting the privacy of correspondence, posts, and telecommunications. Without its permission, no such surveillance can take place.

The existence of these two bodies is anchored in the Basic Law, or Grundgesetz (the German Constitution). The details of their activities are regulated by the Parliamentary Control Panel Act and the Article 10 Act. However, neither body has exclusive competence. The Bundestag and its other Committees (the Committee on Internal Affairs, the Defence Committee and Committees of Inquiry) are also empowered to deal with intelligence matters.

Size of the Armed Forces

After the collapse of the Soviet Union and the Warsaw Pact Germany does not presently face any meaningful external threat. This is probably the reason why the German Government, and its Parliament, have decided to reduce the size of the German Armed Forces from about 250,000 to 185,000. Compulsory conscription in Germany is scheduled to end simultaneously with this reduction in size.

OSCE Code of Conduct on Politico-Military Aspects of Security

All OSCE (Organization for Security and Cooperation) governments are bound by the Code of Conduct on Politico-Military Aspects of Security, adopted during the ministerial session in Budapest on December 3, 1994. Excerpts from this Code in regard to the provisions for democratic control of the Armed Forces are listed below:

- S.20. *The participating states consider democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security. They will further the integration of their armed forces with civil society as an important expression of democracy.*
- S.21. *They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework.*
- S.22. *Each participating state will provide for its legislative approval of defence expenditure ... and provide for transparency and public access to information to the armed forces.*
- S.23. *Each participating state, while providing for the individual service member's exercise of his or her civil rights, will ensure that its armed forces as such are politically neutral.*
- S.24. *.... will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms.*
- S.25. *... will reflect in their laws or other relevant documents the rights and duties of armed forces personnel...*

On the basis of this Code, a report prepared by Victor Yves Ghebali and Alexander Lambert titled "The OSCE Code of Conduct on Politico-Military Aspects of Security: Anatomy

and Implementation" (2005) states that the tasks of a National Assembly can be defined as follows:

- *The main body for political guidance and control over the armed forces, which is exercised either directly or through its control over the government, in accordance with legal and constitutional provisions.*
- *It adopts laws concerning the armed forces, including their budget, the National Security Concept and the Military Doctrine.*
- *It declares War and Peace, Martial Law or State of Emergency on the territory of the country, and authorises the sending and use of troops abroad and the entry and stationing of foreign troops on national territory.*
- *It ratifies international treaties.*

Parliaments in NATO countries perform these tasks in different ways. All possess Standing Committees on Foreign Affairs and on Defence or National Security, many also on Intelligence and on European Affairs. With the increase in the terrorist threat the Committees on Justice and Home Affairs also enter the security picture. The committee on defence/national security is in charge of the working contacts and consultations with the institutions of the executive branch of government. In an extensive interpretation of this task its activities can be further defined as follows.

On Security Policy

- *to examine and report on any major policy initiative announced by the Ministry of Defence;*
- *to report annually on the MoD's performance in the light of national military/security strategy objectives;*
- *to periodically question the defence minister on his discharge of policy responsibilities;*
- *to scrutinise the MoD's compliance with freedom of information legislation, and to check if it informs Parliament adequately, by whatever means;*
- *to conduct inquiries and report to Parliament on any issues raising special concern (which falls under the authority of the committee in Belgium, Canada, Germany, Hungary, Italy, the Netherlands, Norway and others, but for instance not in Poland and Turkey);*
- *to examine petitions and complaints from military personnel and civilians concerning the security*

sector. This task is linked with the existence of a complaint procedure for military personnel, either through an Inspectorate General who functions outside the chain of command, or an independent Ombudsman, either for the general public or specifically for the military (as in Canada).

On legislation:

- to consider, and report on, any draft legislation proposed by the government and referred to it by the Parliament;
- to prepare parliamentary decisions on the size, composition, structure of the armed forces and their medium- and long term development; on White Papers or similar documents and on laws on the legal status of military personnel, their recruitment and system of promotion;
- if appropriate, to initiate new legislation by asking the minister to propose a law or by drafting the law itself (as is the case in Belgium, Canada, Hungary, Italy, Norway, Poland, Turkey and others).
- On expenditure:
- to examine and report on the main estimates and annual expenditure of the MoD
- to consider supplementary estimates;
- to report periodically on the impact of efficiency savings on the running cost of the MoD;
- to consider reports by the Board of Auditors.
- On management and administration:
- to consider major reorganizations of the defence sector and its component parts."

Our inter-action with the military and civilian authorities in Germany suggests that although no Parliament can fulfil the above-stated agenda in its entirety, this agenda is nevertheless the target that the Germans have set for themselves. In this behalf when asked by us on several occasions as to what was the state of relations between civilian authorities and the military the invariable answer was very smooth, no problem. This was the answer given by both the civil and the military.

Serving Military Personnel's Participation in Politics

There was one feature of the German system which, to some of us at least, came as a big surprise. Serving members of their Armed Forces are allowed to become members of their political parties and also to stand for elections. Some serving officers have done so successfully. On completion of their elected terms, they

can return to their respective services. We were informed that Germany is not unique in this matter. This practice is also in vogue in Austria and some of the Scandinavian countries.

Another surprising discovery was that the German Armed Forces do not have the equivalent of our National Defence University (National Defence College) though thought is now being given for establishing such an institution.

Public Trust in Armed Forces

Do the German's trust their Armed Forces? The answer is a very definite yes. A 2006 poll held throughout Europe found that 72% of Germans trust their Armed Forces. The level of trust was lowest in Spain (57%) and highest in Finland (89%).

Comparison with Pakistan

The German system simply does not compare with that in Pakistan. Recently Mr. Sartaj Aziz, Pakistan's former Finance and Foreign Minister, presented his views in a PILDAT paper on the way forward with respect to civilian oversight of defence in Pakistan. This is what he had to say:

"Before evolving specific policies and mechanisms for Parliamentary oversight of the defence sector, it will be necessary to identify and then meet certain important pre-requisites.

- i. Adherence to genuine democratic principles and respect for the rule of law are essential pre-requisites for establishing civilian supremacy. These in turn require free and fair elections, conducted by an independent Election Commission and separation of powers between the Executive and an independent judiciary. The civil society and an independent media are also important stakeholders in safeguarding democratic institutions and practices.*
- ii. The civilian set up at all levels must demonstrate its capacity for good and fair governance. This objective can be achieved only if a merit based system is enforced for recruitment, promotions and transfers at every level and professionalism is encouraged through training and incentives. As Stephen P Cohen has pointed out: "Army's professionalism may contribute to intervention in politics if civilian authority decays."*
- iii. Thirdly, the civilian leadership must respect and protect the legitimate corporate interests of the armed forces. They must have adequate control over all operational matters and all postings and transfers except those of the service chiefs. Their views on national security issues and in determining the size of the defence budget must be given full weightage.*
- iv. The army will accept the supremacy of elected civilian leaders in interpreting national interests and in laying down the broad parameters of defence and foreign*

policies only if there is an effective mechanism for developing a national security system. For this purpose the National Security Council set up by General Musharraf in 2004 must be replaced by a new Cabinet Committee on Defence and National Security chaired by the Prime Minister. General Musharraf's Council included the Prime Minister, Chairman of the Senate, Speaker of the National Assembly, Leader of the opposition, four Chief Ministers and four service chiefs, but not the Ministers of Defence, Foreign Affairs, Interior or Finance. The purpose of this Council was to institutionalize military control over the political system, rather than deal with actual security issues. This serious lacuna in the system must be addressed as early as possible to give the democratically elected leadership its legitimate role in formulating the main parameters of national security policies.

Extending Parliamentary Oversight of the Defence Budget

These important pre-requisites cannot be met instantly but significant steps must be initiated to move towards them. This process will be reinforced if simultaneously suitable mechanisms are developed for extending Parliamentary oversight over the defence budget and defence procurement:

- 1. The power of the National Assembly to approve the annual budget under Article 73 of the Constitution includes the defence budget. The present practice, under which there is only a one line block provision for defence, is only a tradition that has no legal sanctity.*
- 2. A joint meeting of the Defence and Finance Committees of the National Assembly can be convened two or three weeks before the budget is presented to the National Assembly for a general discussion of the defence budget. It can be agreed in advance that details of income and expenditures of a secret nature will not be included in this presentation. Any recommendation that may emerge from the special meeting of these two Committees, can be sent*

- (confidentially if necessary) to the Finance Minister and the Defence Minister for consideration.*
3. *For such a system of Parliamentary oversight over the defence budget to become meaningful, it would be necessary to upgrade the capacity and skills of these Parliamentary Committees. Ministries of Finance and Defence may provide the services of experienced officers for a few months in a year. In the past the Army was openly opposed to a scrutiny of the Defence budget, on grounds of security but in the past two years, a limited discussion was tolerated. This window of opportunity can be widened if the task is undertaken prudently, is backed by professional expertise and does not raise too many controversial issues in the media.*
 4. *The Public Accounts Committee of the National Assembly can exercise Parliamentary oversight of defence procurement and other items of defence expenditure on the basis of the reports prepared by the Auditor General whose position and role has been further strengthened under the 18th Constitutional Amendment.”*

Conclusion

The contrast between what exists in Germany and what is (hopefully) the way forward for Pakistan is stark but the objective conditions are also so very different. Germany is not faced, as we are, with multiple external and internal threats to its security. Germany has open borders on all sides. We have troubled borders on the East and West. Germany has problems with some neo-nazis and some remnants of the Red Brigade, all of whom can be adequately handled by its Federal Police. We have internal insurgencies in more than one Province which are clearly beyond the control capacity of our police and civilian agencies.

Over the last six decades Germany has been able to develop and mature its democratic system under the protective cover of the NATO and the support of the European Union nations. For a large number of reasons our democratic system has yet to take indelible roots. If a democratic order does remain intact in Pakistan then, at some stage, all military activities will have to come under the scrutiny of the political leadership to ensure their consistency with other national priorities.

However, in the context of our civil-military relations this will need what may be called 'a balance of trust.' The military will have to accept political leadership and refrain from interfering in political affairs. Simultaneously, the Government and Parliament will have to accommodate, on an institutionalized basis, the military's role in the formulation of policies relating to defence and national security and accept responsibility for decisions taken and policies made. Government and Parliament will also have to refrain from any attempt at micro-management in military affairs and instead focus on ex-post accountability.

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