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Germany's Role in Fighting Terrorism: Implications for U.S. Policy

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Summary

This report examines Germany's response to global Islamic terrorism after the September 11, 2001 attacks in the United States. It looks at current German strategy, domestic efforts, and international responses, including possible gaps and weaknesses. It examines the state of U.S.-German cooperation, including problems and prospects for future cooperation. This report may be updated as needed.

Although somewhat overshadowed in the public view by the strong and vocal disagreements over Iraq policy, U.S.-German cooperation in the global fight against international terrorism has been extensive. German support is particularly important because several Al Qaeda members and 9/11 plotters lived there and the country is a key hub for the transnational flow of persons and goods. Domestically, Germany faces the challenge of having a sizable population of Muslims, some with extremist views, whom terrorists might seek to recruit.

German counterterrorism strategy shares a number of elements with that of the United States, although there are clear differences in emphasis. Like the United States, Germany now sees radical Islamic terrorism as its primary national security threat and itself as a potential target of attack. Today, Germany also recognizes that threats to its domestic security lie far beyond its own borders, in places such as Afghanistan.

Germany has introduced a number of policy, legislative, and organizational reforms since 9/11 to make the country less hospitable to potential terrorists. Despite these reforms, critics point to continuing problems hampering Germany's domestic efforts. German law enforcement and intelligence communities face more bureaucratic hurdles, stricter constraints, and closer oversight than those in many other countries.

The German government has sent troops into combat beyond Europe for the first time since World War II. Currently Germany has about 7,800 troops based abroad of which some forty percent are directly engaged in counterterror missions. In Afghanistan, some 2,300 German soldiers participate in the *International Security Assistance Force* (ISAF). Germany's role in Afghanistan's stabilization and reconstruction is substantial. German military efforts have been hampered to some extent by delays in implementing military reforms to make German forces more expeditionary.

A key question for U.S. German relations is whether differences on issues such as Iraq policy — shaped by different national interests, practices, and historical experiences — will harm U.S.-German cooperation against terrorism. Some believe that understanding and accepting these differences (agreeing to disagree) may be the best approach to enhancing future U.S.-German cooperation in the global war on terrorism. Both countries have strong incentives to make the cooperation work.

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Germany's Role in Fighting Terrorism: Implications for U.S. Policy

Overview

Historically, Germany's experience with terrorism has been predominantly with domestic groups. Since the 1970s, Germany has demonstrated both the willingness and capability to combat domestic sources of terrorism. After the attacks of September 11, 2001, however, it became apparent to many within and outside Germany that its traditional approaches were ill-suited to dealing with the new threat of transnational, radical Islamic terrorism. Terrorists' use of German territory to hatch the 9/11 plot served as a wake up call for many. Three of the hijackers lived and plotted in Hamburg and other parts of Germany for several years,¹ taking advantage of liberal asylum policies and the low levels of surveillance by authorities.

The German response to the 9/11 terrorist attacks against the United States was immediate and unprecedented in scope for that country. Setting aside its post-World War II prohibition against deploying forces outside of Europe and overcoming pacifist leanings of some in the governing coalition, Germany quickly offered military and other assistance to the United States. In his initial reaction to the attacks of 9/11, Chancellor Gerhard Schroeder declared Germany's "unlimited solidarity" with the United States. On September 12, 2001, the German government, along with other U.S. allies, invoked NATO's Article V, paving the way for military assistance to the United States. The Chancellor gained approval from the German Parliament to deploy troops to Afghanistan with a call for a vote of confidence in his own government.

Since then, German efforts in the fight against terrorism have expanded across a wide spectrum. Germany has instituted significant policy, legislative, and organizational reforms. Bilateral cooperation with the United States has been extensive, despite differences stemming from the distinct approaches and constraints in each country and frictions resulting from sharp disagreement over Iraq policy.

The following sections examine the German domestic and international response to terrorism after 9/11 and potential issues and problems regarding the German approach. They assess the accomplishments of U.S.-German cooperation, as well as problems and future prospects.

¹ Bundesamt fuer Verfassungsschutz: *Aufgaben, Befugnisse, Grenzen*, 2002, p. 62. Available on the website for the German Federal Bureau for the Protection of the Constitution (in German) [http://www.verfassungsschutz.de/de/publikationen/allgemeine_infos/abg/abg.pdf].

Germany's Anti-Terrorism Policy after 9/11

Key Elements of German Strategy

Germany's counterterrorism strategy shares a number of elements with that of the United States, although there are clear differences in emphasis: Key elements include:²

- Identifying terrorists and their supporters, bringing them to justice, and breaking up their infrastructure at home and abroad.
- Assisting countries facing the danger of becoming failed states.
- Addressing the social, economic, and cultural roots of terrorism.
- Halting the proliferation of weapons of mass destruction.
- Seeking multilateral legitimization for any military action through the United Nations.

Significantly, Germany now sees radical Islamic terrorism as its primary security threat and itself as a potential target of attack.³ Although German citizens have not been directly targeted by radical Islamic terrorism to date, they frequently have been its victims. Since September 11, 2001, more German citizens have died as victims of Islamic terrorist attacks than in the entire history of domestic violence by the Red Army Faction (RAF), a German terrorist group that operated for over thirty years.⁴

Germany has responded to the fact that it was a center for the planning of the attacks of 9/11. Key figures in the attacks were part of a Hamburg cell and the evidence suggests that terrorist cells, even before 9/11, saw Germany as one of the easier places in Europe from which to operate. Terrorists were able to take advantage of Germany's liberal asylum laws, as well as strong privacy protections, and rights of religious expression which shielded activities in Islamic Mosques from surveillance by authorities.

² Statements by Chancellor Gerhard Schroeder (Government Policy Statement for the second term of office, October 30, 2002; speech on the 58th Session of the United Nations General Assembly, September 24, 2003); "Focal Points of Anti-terrorism", German Interior Ministry website (in German) [http://www.bmi.bund.de/top/sonstige/Schwerpunkte/Innere_Sicherheit/Terrorismus/ix9470_93173.htm].

³ Statement of the Minister of the Interior, Otto Schily, during press conference of issuing the "Verfassungsschutzbericht 2003" at May 17, 2004.

⁴ This would include, for instance, those Germans who died in the World Trade Center on 9/11, and in the terrorist bombings in recent years in Bali, Djerba/Tunisia etc. Eleven Germans are believed to have died in the World Trade Center attack. The bombing of a Tunisian synagogue in April 2002, reportedly linked to Al Qaeda, killed 21 people, including 14 Germans.

In its efforts to combat terrorism, Germany has emphasized the need to ensure that all of its domestic and international actions are consistent with the country's own laws, values and historical lessons of the Nazi era. Germany has given high priority to the protection of the civil rights and liberties of all those residing in Germany, including non-citizens. Germans stress that this long-standing emphasis on civil rights should not be seen as a lack of political will to target terrorists today.⁵ However, some observers are concerned that the German interpretation of its civil rights requirements could hinder the capture and prosecution of important terror suspects.

Although Germany has contributed troops to international operations, German officials do not believe that military force can serve as the principal instrument to fight terrorism and do not even like to use the term "war" to describe the international response to global terrorism. Germany tends to stress "soft power" instruments such as diplomacy, development assistance, and addressing issues that can give rise to terrorism: "Providing support for modernization, resolving bitter regional conflicts, rebuilding shattered structures is just as important as the work being done by the military, the police and the secret services", according to Foreign Minister Joschka Fischer.⁶ Chancellor Schroeder has said that "the foremost task of international politics is to prevent wars"⁷ and that Germany seeks peaceful resolution of international disputes as a guiding principle. Some critics, however see Germany's stance against the use of force as unrealistic, particularly when facing hard core Islamic terrorist groups and "rogue" states.

Germany also sees itself as limited in its ability to respond militarily to the threat of terrorism abroad both by its historical experience and by the fact that upon the reunification of the two Germanies in 1990, Germany formally pledged to use its military forces only within the framework of the UN Charter.

Although Germany supported the UN-sanctioned intervention in Afghanistan to root out the Taliban and al Qaeda, the German government strongly opposed the U.S. policy of broadening the war against terrorism to a war against Iraq. Chancellor Schroeder argued that "those who want to resolve the crisis with military means must have an answer to the question of whether this will help the global alliance against terrorism, which includes about fifty Moslem states, or whether it will jeopardize this alliance, or perhaps even destroy it."⁸ From Germany's perspective, the war in Iraq is intensifying the terrorist threat.⁹

Despite differences over Iraq, Germany is viewed as a key partner in the global war on terrorism. In the wake of the 9/11 attacks, Germany has redefined its security

⁵ CRS Report RL31612, *European Counter terrorist Efforts: Political Will and Diverse Responses within the First Year after September 11*, October 17, 2002, p. 40-42.

⁶ Foreign Minister Joschka Fischer before the German Parliament in November 2003.

⁷ Chancellor Gerhard Schroeder, Policy Statement "Our Responsibility for Peace," February 13, 2003, Berlin.

⁸ Ibid.

⁹ Minister of the Interior Otto Schily in *Der Spiegel*, April 26, 2004.

strategy and foreign policy.¹⁰ Today, Germany perceives threats to its domestic security that lie far beyond its own borders. The so-called “Struck-Doctrine”¹¹ states that Germany’s security is now defended in places far removed from its borders, such as in Afghanistan.

Germany’s global economic position makes counterterrorism an important German foreign policy concern. Alongside security concerns, Germany has extensive economic interests worldwide that it believes are now potentially threatened by terrorism. As one of the world’s largest exporting nations, Germany exports nearly 50% of its goods to non-EU (European Union) countries.¹² Furthermore, Germany imports 98% of its natural gas and oil from abroad. Germany views secure trade routes and markets as vital to its economic security. Thus, global stability and combating terrorism are connected in German foreign policy.

Domestic Policy

Reform Measures Implemented. The German government has taken extensive domestic measures against terrorism since 9/11, in the legal, law enforcement, financial, and security realms. The first step taken was to identify weaknesses in the laws that allowed some of the terrorists to live and plot in Germany largely unnoticed.

After 9/11, Germany adopted two major anti-terrorism packages. The first, approved in November 2001, targeted loopholes in German law that permitted terrorists to live and raise money in Germany. Significant changes included (1) The immunity of religious groups and charities from investigation or surveillance by authorities was revoked, as were their special privileges under right of assembly, allowing the government greater freedom to act against extremist groups; (2) terrorists could now be prosecuted in Germany, even if they belonged to foreign terrorist organizations acting only abroad; (3) the ability of terrorists to enter and reside in Germany was curtailed; and 4) border and air traffic security were strengthened.

The second package was aimed at improving the effectiveness and communication of intelligence and law enforcement agencies at the federal and state levels. Some \$1.8 billion was made immediately available for new counterterrorism measures. In fiscal years 2002 and 2003, the budget for relevant security and intelligence authorities was increased by about \$580 million.¹³ The new laws provided the German intelligence and law enforcement agencies greater latitude to gather and evaluate information, as well as to communicate and share information with each other and with law enforcement authorities at the state level.

¹⁰ According to Chancellor Gerhard Schroeder’s Government Policy Statement, October 11, 2001.

¹¹ Statement by Minister of Defense Peter Struck, November 2002.

¹² Ministry of Economics and Labor: Jahreswirtschaftsbericht 2004.

¹³ According to an interview with Gerhard Schindler, Head of Counterterrorism Section within the Ministry of the Interior, July 28, 2004.

The most important intelligence authorities in Germany are the Federal Intelligence Service (BND),¹⁴ the Federal Bureau for the Protection of the Constitution (BfV),¹⁵ and the Military Counterintelligence Service (MAD).¹⁶ The most important security authorities are the Federal Bureau of Criminal Investigation (BKA)¹⁷ and the Federal Border Guard (BGS). (For a more detailed picture of the organizational structure, see Appendix A.)

Since the approval of these laws, further measures have been instituted. For instance, aviation security has been increased by placing armed security personnel and installing bullet- and entry-proof cockpit doors on German planes. Full inspection of all luggage is now mandatory at German airports.

As elsewhere in Europe, the presence of Germany's large Muslim population also influences anti-terror policies. Germany has a strong record of tolerance and protecting Muslim religious freedoms. However, the government is determined to go after Muslim extremists. Profiling is considered an acceptable means for identifying likely terrorists under German law.

The government launched a major effort to identify and eliminate terrorist cells. Germany's recent annual "Report on the Protection of the Constitution 2003"¹⁸ indicated that about 31,000 German residents are thought to be members of Islamic organizations with extremist ties. Shortly after the 9/11 attacks the government moved against twenty religious groups and conducted more than 200 raids.¹⁹ Three radical Islamic organizations are now banned in Germany (i.e., Kalifatstaat, Al-Aksa e.V., and Hizb-ut-Tahrir). Currently, the German Justice Ministry is involved in 80 preliminary proceedings related to Islamic terrorism against 170 suspects.²⁰ Since February 2004, the German government has prosecuted members of a splinter group of the Iraqi Tawhid and Jihad (referred to as the Al Tawhid case in Germany). This terrorist group is accused of having prepared attacks against Israeli facilities in Germany; some members were caught in April 2002. Reportedly, they had

¹⁴ The BND is limited to gathering intelligence abroad.

¹⁵ The BfV gathers domestic intelligence. Within the BfV the following terrorism-related analysis-boards have been established: "Arab Mujaheden Training Camps," "Travel Movements," and "Recruitment" (According to an interview with Gerhard Schindler, Head of the Counterterrorism Section within the Ministry of the Interior, July 28, 2004).

¹⁶ The MAD is charged with gathering intelligence to assure readiness of the German military.

¹⁷ Within the BKA the following terrorism-related information-boards have been established: "Financial Investigations", "Human Trafficking and Drug Crime", "Narco Terrorism", "Arab Mujaheden Networks" (According to an interview with Gerhard Schindler, Head of Counterterrorism Section within the Ministry of the Interior, July 28, 2004).

¹⁸ See website Ministry of the Interior (in German) [http://www.bmi.bund.de/Annex/de_25544/Download.pdf], released on May 17, 2004.

¹⁹ Katzstein, Peter J.: "Same War - Different Views: Germany, Japan, and Counterterrorism," in: International Organization, Vol. 57, No. 4, 2003, p. 731-760.

²⁰ Minister of Justice Brigitte Zypries in *Sueddeutsche Zeitung*, June 11, 2004.

connections to Abu Musab Al-Zarqawi, head of the Iraqi Tawhid and Jihad, and also affiliated with Al Qaeda.

With the legislative reforms giving it the authority to lead its own investigations and with increased law enforcement capacity, the BKA has placed some 250 to 300 suspects who are thought to have links to international terror networks under surveillance.²¹ Shortly after 9/11, German authorities conducted a computer-aided search of the type that had proven successful in profiling and eventually dismantling the Red Army Faction in the 1990s. Reportedly, this effort uncovered a number of radical Islamic “sleepers” in Germany, and a “considerable number of investigations” have been started.²²

In the financial area, new measures against money laundering were announced in October 2001. A new office within the Ministry of Interior was charged with collecting and analyzing information contained in financial disclosures. Procedures were set up to better enforce asset seizure and forfeiture laws.²³ German authorities were given wider latitude in accessing financial data of terrorist groups. Steps were taken to curb international money laundering and improve bank customer screening procedures. The Federal Criminal Police Office set up an independent unit responsible for the surveillance of suspicious financial flows. Measures to prevent money laundering now include the checking of electronic data processing systems to ensure that banks are properly screening their clients’ business relationships and following the requirement to set up internal security systems.

In seeking to dry up the sources of terrorist financing, new laws²⁴ are aimed at strengthening Germany’s own capabilities, as well as German cooperation with the broader international effort. Under the oversight of the German Federal Banking Supervisory Office, banks, financial service providers and others must monitor all financial flows for illegal activity. Within the BKA, a Financial Intelligence Unit (FIU) was established to serve as Germany’s central registration office for money laundering as well as a main contact point for foreign authorities. Germany was the first country to implement an EU guideline against money laundering as well as the recommendations of the Financial Action Task Force on Money Laundering (FATF).²⁵ The FATF has characterized Germany’s anti-money laundering regulations as comprehensive and effective.²⁶

²¹ *Die Zeit*, May 6, 2004 (“Ueberforderte Ermittler”).

²² According to an interview with Gerhard Schindler, Head of the Counterterrorism Section within the Ministry of the Interior, July 28, 2004.

²³ U.S. Department of State. Bureau for International Narcotics and Law Enforcement Affairs. International Narcotics Control Strategy Report, March 2002. Chapter 12, p.117-119.

²⁴ 4th Financial Market Promotion Act, effective since July 1, 2002; amended Law against Money Laundering, effective since August 15, 2002.

²⁵ see website Federal Bureau of Criminal Investigation (in German) [http://www.bundeskriminalamt.de/profil/zentralstellen/fiu/fiu_jahresbericht_2002.pdf].

²⁶ Dow Jones VWD Newswire, (“Deutsche Massnahmen zur Geldwaeschebekämpfung (continued...)”).

Additional measures are being implemented by Germany. A new aviation security law is under consideration which would allow the military to shoot down threatening hijacked aircraft.²⁷ A new immigration law makes it easier to deport suspected foreigners and makes naturalization more difficult.²⁸ In early July 2004, federal and state Ministers of the Interior implemented some key organizational changes: 1) a central database will now collect and store all available information regarding Muslim radicals suspected of terrorism; 2) a joint Coordination Center consisting of the BKA, BND, BfV and MAD will seek to cooperate more closely to prevent terrorist attacks; and 3) German federal states will be integrated into the coordination center.

Germany's approach to terrorism is influenced by its geographic position in the heart of Europe and its membership in the European Union. Germany has two borders, its own and the EU border within which it sees its economic and security future. EU procedures and the EU jurisdiction in certain areas affect the domestic affairs of its member states. A lot of basic anti-terrorism measures — for instance EU definitions of terrorism, terrorist organizations and common penalties, border control within the Schengen System, the EU-wide arrest warrant and the EU-wide asset freezing order — are governed by EU legislation.

Possible Issues and Problems. Despite Germany's sweeping reforms, critics point to continuing problems hampering Germany's domestic efforts. As a result of the emphasis on guarding civil liberties, the German law enforcement and intelligence communities face more bureaucratic hurdles, stricter constraints, and closer oversight than those in many other countries. They are required to operate with greater transparency. Privacy rights of individuals and the protection of personal data are given prominent attention. These protections are extended to non-citizens residing in Germany as well. Police are prohibited from collecting intelligence and can only begin an investigation when there is probable cause that a crime has been committed. Thus, no legal recourse exists against suspected "dangerous persons," until a case can be made of a felony or its planning.²⁹ In turn, intelligence agencies cannot make arrests and information collected covertly cannot be used in court.

Although the ease of entry of terrorists into Germany and their movement has been significantly curtailed, suspects already living in Germany are able to take advantage of apparent weaknesses in German law. Academic and job training

²⁶ (...continued)
umfassend") July 21, 2004.

²⁷ This is awaiting approval by the Bundesrat. Apparently it does not enjoy support from the CDU/CSU opposition. If approved, the law would allow the military to shoot down hijacked airplanes assessed as threats. The Minister of Defense would be in charge of issuing the final order.

²⁸ This was approved on July 9, 2004 and will be effective on January 1, 2005. Major changes include suspected foreigners can be expelled faster and with fewer hurdles; before naturalization, applicants will be investigated and certified by the Federal Bureau of the Protection of the Constitution; and the automatic right of relatives of applicants to remain in Germany has been revoked.

²⁹ This is the current state of the German penal code.

programs, as well as the granting of asylum, have allowed potential terrorists to obtain extended residency permits.³⁰ Some terrorists may have married into German citizenship. Second generation immigrants possess citizenship and serve as a potential recruitment pool. The new immigration law, which becomes effective in January 2005, is expected to close some loopholes.³¹

Authorities have arrested, interviewed, and searched the homes of a number of suspects but released them for lack of evidence.³² Similarly, the number of asset seizures and forfeitures in Germany has remained relatively low because of the high burden of proof under German law.³³

Another problem relates to Germany's organizational framework for fighting terrorism. No central agency or person is in charge of overseeing and coordinating all anti-terrorism and counterterrorism efforts.³⁴ Opinions differ on whether greater centralization would be beneficial or harmful. Moreover, the most important domestic security and intelligence authorities, the BKA and BfV, are divided into one federal and 16 state bureaus each. The state bureaus work independently of each other and independently of the federal bureaus.³⁵ Furthermore, German law requires a complete organizational separation of executive agencies such as the BKA and federal state police agencies, as well as intelligence authorities such as the BfV.³⁶ The fact that automatic cooperation is not possible, increases the potential for information loss.³⁷ Cooperation is possible only in selected cases after formal requests have been approved. An Information Board was recently established to facilitate such exchanges

³⁰ *Die Welt*, May 24, 2004 ("Innenexperten mahnen Gesetzesänderung an").

³¹ After January 2005 the new Immigration Law will bring several changes: It will be possible to expel extremist agitators or persons who were trained in Afghan terrorist camps, even though they are not currently involved in any questionable activities. A "threat assessment" of the suspects towards Germany's security will be conducted. Although he had wanted even stronger measures, the Minister of the Interior, Otto Schily, was not able to overcome resistance from the CDU/CSU-opposition in the Bundesrat.

³² *The New York Times*, July 11, 2002.

³³ U.S. Department of State. Bureau for International Narcotics and Law Enforcement Affairs. International Narcotics Control Strategy Report, March 2002. Chapter 12, p.117-119.

³⁴ The Ministry of the Interior could be seen as the central junction of counterterrorism efforts due to the fact that BKA, BfV, BGS, Civil Defense and certain asylum procedure agencies are subordinated to this Ministry. Beyond, no person or division is coordinating the work of these authorities.

³⁵ Bundesamt fuer Verfassungsschutz: *Aufgaben, Befugnisse, Grenzen*, 2002, p. 84. Available on website Federal Bureau for the Protection of the Constitution (in German) [http://www.verfassungsschutz.de/de/publikationen/allgemeine_infos/abg/abg.pdf]. Apparently the state-bureaus are in charge of information and actions with a regional reference and the BKA and BfV are in charge of nationwide measures.

³⁶ Bundesamt fuer Verfassungsschutz: *Aufgaben, Befugnisse, Grenzen*, 2002, p. 86-87. Available on website Federal Bureau for the Protection of the Constitution (in German) [http://www.verfassungsschutz.de/de/publikationen/allgemeine_infos/abg/abg.pdf].

³⁷ According to interview with Gerhard Schindler, July 28, 2004.

and interaction between authorities in certain investigations.³⁸ Recently, the decision was made to establish a Coordination Center to improve cooperation among federal and state-level authorities.

Eliminating remaining weaknesses in Germany's domestic response may be difficult. Many doubt that the German government will be able to institute significant further changes to its institutional and legal structures, so long as Germany does not suffer a large-scale attack. Already, the 16 federal states are blocking proposals for tighter centralization at the federal level, not wanting to cede authority.³⁹ Yet, there have been indications of terrorist activities in individual states with important international traffic hubs (e.g., airports, harbors) and large Muslim populations.⁴⁰ Some have suggested that the upcoming 2006 Soccer World Cup in Germany, a potential target for terrorist attacks, might provide a catalyst for officials and security experts to rethink legal and security measures and to gain support for further steps to counter the terrorist threat.

International Measures

The German international response to the 9/11 terrorist attacks also has many elements. On September 12, 2001, the German government, along with other U.S. allies, invoked NATO's Article V, paving the way for military assistance to the United States. Chancellor Schroeder gained parliamentary approval to deploy troops to Afghanistan. Since then, Germany has contributed in a number of ways to the international fight against terrorism. However, the German support has stopped short of supporting U.S. actions in Iraq or playing a direct role there. The German government has continued to oppose the war and occupation and to reject the linkage between Iraq and the war on terrorism. Some highlights of German efforts follow.

Military. Currently Germany has about 7,800 troops based abroad.⁴¹ Some forty percent of those troops are directly engaged in counterterror missions. Germany is directly involved in five major counterterror missions as part of the global coalition

³⁸ Within a weekly briefing in the Federal Chancellery the appropriated Ministries, the heads of the BKA, BfV, BND, MAD and the Attorney General conduct strategic adjustments.

³⁹ Minister of the Interior Otto Schily as well as Director of the BKA Joerg Zierke called for merging the 16 state bureaus with their federal analog BKA and BfV respectively. in: *Sueddeutsche Zeitung*, June 18, 2004.

⁴⁰ Roughly 80% (in 2002) and 85% (in 2003) of suspicious money laundering cases detected by the Financial Intelligence Unit originated in the states of Nordrhein-Westfalen, Bavaria, Hessen, Baden-Wuerttemberg, Niedersachsen, Berlin and Hamburg (FIU Annual Report 2002, p. 25 and FIU Annual Report 2003, p. 11, respectively). A German news magazine reported that Hamburg remains a German center of Islamic fundamentalism (*Der Spiegel*, May 29, 2004 "Zwei Hochzeiten und 3000 Todesfaelle").

⁴¹ As of June 1, 2004. Force levels are according to Colonel Carsten John Jacobson, Military Attache at the German Embassy, Washington DC; see also German Embassy website (in German)

[http://www.germany-info.org/relaunch/info/archives/background/Bwehr_factsheet.pdf]
and website of the Bundeswehr (in German)

[http://www.einsatz.bundeswehr.de/einsatz_aktuell/index.php].

(see below). German costs for these military deployments are estimated at \$3.5 billion for 2002 and 2003.⁴² In order to adjust German security strategy to the new threat environment, the Ministry of Defense issued new “Defense Policy Guidelines”⁴³ in May 2003.

In the aftermath of the September 11th attacks, German crews participated in Operation *Noble Eagle* patrolling North American airspace in NATO’s airborne early warning aircraft (AWACS). Germany contributed one third of the squadrons’ personnel. This mission lasted until May 15, 2002.

Since January 2002, when the first German troops were deployed there, Afghanistan has been central to Germany’s international military involvement. Chancellor Schroeder has said he is willing to maintain this engagement indefinitely.⁴⁴ In Afghanistan, some 2,300 German soldiers participate in the International Security Assistance Force (ISAF) and the Provincial Reconstruction Team (PRT) missions in the region of Kunduz and Feizabad. From February until August 2003, Germany and the Netherlands had joint command of *ISAF*. German special forces units which participated in special operations in Afghanistan are now on standby in Germany.⁴⁵

German forces are part of two naval missions as well: One associated with Operation *Enduring Freedom* (in the region around the Horn of Africa) and the other with *Active Endeavor* (in the southeastern Mediterranean Sea and Straits of Gibraltar). These multilateral missions are designed to gather intelligence about possible terrorist activity in these regions, cut off terrorist supply channels, and safeguard international shipping routes. Currently, some 720 German naval personnel participate in these two missions. From May 2002 until October 2002, Germany took command of allied naval forces in the Horn of Africa. Additionally, from February 2002 until July 2003, a Nuclear, Biological, and Chemical (NBC) detection unit with up to 250 soldiers was deployed in Kuwait as part of *Enduring Freedom*.

However critics point out that German military efforts have been hampered by the fact that, among major U.S. allies, German forces are presently among the least quickly deployable due to delays in implementing military reforms and, specifically, addressing a lack of airlift capacity. Delays and problems were encountered in fulfilling the German force commitments in Afghanistan in part because the military did not have the necessary transport planes and had to charter Ukrainian aircraft.

⁴² According to Master Sergeant Michael Ruess, Armed Forces Department, Bonn.

⁴³ The new guidelines adjust Germany’s defense strategy to the changed security environment after September 11, 2001. Even operations beyond NATO territory are possible now. In the long run the guidelines could be the blueprint of reforms in the structure of the Bundeswehr. See Ministry of Defense website [http://www.bmvg.de/misc/pdf/sicherheit/030521_VPR-english.pdf].

⁴⁴ Chancellor Gerhard Schroeder on the 58th Session of the United Nations General Assembly, September 24, 2003.

⁴⁵ See Bundeswehr website (in German) [http://www.einsatz.bundeswehr.de/einsatz_aktuell/oef_spezial/ueberblick/spez_ueb.php].

While Germany is implementing military reforms to make its armed forces more expeditionary and committed to overcoming post-Cold War deficiencies, budget shortfalls may delay these efforts.

Diplomacy. By hosting two international conferences on Afghanistan, Germany has been engaged in establishing global support for that country's post-war reconstruction.⁴⁶

Within the United Nations, Germany supported a number of counterterrorism resolutions, most notably the UN sanctions regime targeting members or associates of Al Qaeda and the Taliban. Germany also ratified the UN International Convention for the Suppression of Terrorist Bombings. Germany has ratified all eleven UN anti-terrorism Conventions and is preparing legislation for the ratification of the 12th Convention against terrorist financing.⁴⁷

At the European level, Germany is pressing to shorten the transition period before new EU anti-terror legislation takes effect. Germany is working with other countries to improve the Schengen-system (a system that allows passport-free travel between participating EU member states — travel into or out of the EU-wide system still requires traditional passports and visas) with photographs on visas and resident permits. Moreover, Germany is pushing for the use of biometric identifiers on passports, visas and resident permits, and for international standardization of these systems.⁴⁸ Germany views itself as a driving force in European counterterrorism efforts. Germany's Interior Minister has said: "Maybe a few of the EU countries will have to take the lead. After all, the pace cannot be set by the slowest, but by the fastest and most determined."⁴⁹

Within the G8, a German initiative has led to the establishment of a working group on biometrics. The U.S. has supported Germany's proposal that G8 countries develop joint standards for the deployment of air marshals.⁵⁰ Germany has coordinated its efforts to adopt measures against terrorism with the United States and other G-8 member states.⁵¹

⁴⁶ "UN Talks on Afghanistan in Bonn" in November/December, 2001; "Petersberg II Conference" in December 2002; "International Conference on Afghanistan in Berlin" in March/April, 2004.

⁴⁷ Even so, Germany was chided by the European Coordinator for Counterterrorism, Gijs de Vries, for not ratifying earlier the UN resolution on terrorist financing (*Sueddeutsche Zeitung*, May 21, 2004: "EU mahnt Deutschland zum Anti-Terror-Kampf").

⁴⁸ For further information on biometrics, see CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*.

⁴⁹ Otto Schily, Federal Minister of the Interior, Opening Remarks at 2004 Roundtable on Transatlantic Cooperation in Homeland Security, May 10, 2004, Washington, D.C.

⁵⁰ European Institute: *Transatlantic Cooperation on Homeland Security and Counterterrorism 2003 International Conference*, Washington, DC, 2003.

⁵¹ According to interview with Gerhard Schindler, July 28, 2004.

Reconstruction and Foreign Aid. Foreign assistance and economic development are integral parts of Germany's security and foreign policy. As a member of the German Federal Security Council, the Ministry of Economic Cooperation and Development takes an active part in foreign policy decision-making.

The Schroeder Government unveiled a new plan for "Civil Crisis Prevention, Conflict Resolution, and Peace Consolidation,"⁵² in May 2004. Financial resources for reconstruction and other foreign aid are constrained, however, by spending cuts to deal with current German economic problems. Critics have argued that the plan is underfunded.⁵³ Nonetheless, Germany's contribution remains important, especially in Afghanistan. By the end of 2004, Germany will have contributed \$384 million for the reconstruction of Afghanistan. Through 2008, Germany has promised \$1.2 billion (non-monetary contributions not included).⁵⁴ Germany is coordinating and leading efforts to build the Afghan police forces.⁵⁵ Despite its opposition to the war in Iraq, Germany has contributed about \$196 million toward the postwar effort there. Moreover, at the Paris Club Germany has agreed to waive some fifty percent (\$ 2.4 billion) of debt owed it by Iraq in three stages through 2008.⁵⁶ Total German foreign aid and reconstruction funding worldwide for 2002 and 2003 was about \$13.9 billion.⁵⁷

U.S.-German Bilateral Cooperation: Status, Problems, and Prospects

Security cooperation between the United States and Germany, which had been close even before 9/11, was greatly expanded after the attacks. The BKA now has two permanent liaison officers at the German Embassy in Washington, DC and a liaison officer from the office of the German Federal Prosecutor is working in the U.S. Department of Justice. In Germany, up to 15 U.S. liaison officers are participating in the investigations of the 9/11 terrorist cells that were based in Germany.

⁵² See Foreign Ministry website (in German) [http://www.auswaertiges-amt.de/www/de/aussenpolitik/friedenspolitik/ziv_km/aktionsplan.pdf].

⁵³ Germany's five leading Peace-Research-Institutes in their "2004 Peace Survey" (Frankfurter Rundschau: "Das Faustrecht bringt keinen Frieden") June 16, 2004.

⁵⁴ See German Embassy website, Washington, D.C., Fact Sheet: Fight Against International Terrorism - Prevention and Stability (in German) [http://www.germany-info.org/relaunch/info/archives/background/Afghanistan_factsheet.pdf].

⁵⁵ Besides the provision of facilities and training supervisors, additional monetary contributions, to date, amount to \$112 million.

⁵⁶ *Sueddeutsche Zeitung*, November 22, 2004, p. 8.

⁵⁷ According to Gabriele Ziller, Ministry for Economic Cooperation and Development, Berlin.

Several other measures have been taken. An agreement on bilateral cooperation for the protection of computer systems and networks was reached in June 2003. This effort is aimed at defending critical infrastructure such as power supplies, and transportation and telecommunications grids in both the United States and Germany. Steps are being taken to extend this cooperation to the protection of nuclear facilities.⁵⁸ Moreover, the United States and Germany reached an agreement on increased legal cooperation in criminal matters in October 2003. Bilateral cabinet-level meetings are frequent.

Germany plays an active role in the U.S. Container Security Initiative (CSI). Officials in Washington, DC and Berlin signed an agreement to improve bilateral cooperation on container security with the aim of stopping terrorists from smuggling weapons of mass destruction in sea-cargo containers. U.S. Customs agents are stationed in Germany to monitor suspicious containers before they leave German harbors.⁵⁹ Furthermore, Germany is an active member of the 14-country core group of the Proliferation Security Initiative (PSI). This initiative is aimed at preventing the spread of materials that could be used to build weapons of mass destruction. U.S. and German intelligence cooperation led to seizure of a ship bound for Libya in the Mediterranean Sea in October 2003. Illicit nuclear material aboard was confiscated.⁶⁰

Some believe that bilateral cooperation is weaker in the field of information sharing for a variety of reasons. The United States has security concerns about sharing sensitive information. German authorities in turn fear that the United States will use sensitive shared information in ways that might conflict with Germany's practices with regard to data protection and civil liberties.⁶¹ Also, German critics claim that the U.S. expectation of information sharing by others is not matched by a U.S. willingness to share with them.

A recent example of the problems created by inadequate information sharing concerned two trials of suspects in the 9/11 attacks. Mounir el Motassadeq and Abdelghani Mzoudi were eventually acquitted by a German Federal Court with the explanation that the United States had not made crucial evidence available.⁶² After the Department of Justice forwarded the evidence requested by the German government, the Motassadeq trial was reopened on August 10, 2004. What effect the information might have on the outcome of the new trial is unclear.

⁵⁸ See German Embassy website, Washington D.C., Fact Sheet: Fight Against International Terrorism - Prevention and Stability (in German) [http://www.germany-info.org/relaunch/info/archives/background/anti_terror_factsheet.pdf].

⁵⁹ Wolfgang Ischinger, German Ambassador to the United States in the Journal for Homeland Security, "Fighting Terrorism -International Cooperation as a Strategy of Prevention," April 15, 2004.

⁶⁰ Ibid.

⁶¹ In this context the U.S. "Total Awareness Program" is viewed as a major barrier to further cooperation.

⁶² *Neue Zuericher Zeitung*, April 8, 2004.

U.S.-German cooperation in the area of information sharing mostly occurs on a case-by-case basis and is not based on formal governmental agreements. Some question whether this is adequate. Given the way that transnational terrorist networks operate, some argue that it is necessary to target the entire terrorist infrastructure (e.g., recruitment, fund raising, logistics, and training).⁶³ A shared database containing all available information regarding the most threatening persons might allow both countries to better track terrorist suspects, to harmonize surveillance activities, and to target travel by terrorists (as was recommended by the U.S. 9/11 Commission). Apparently the only databases of such dangerous persons accessible to both governments are the lists of Islamic terrorist organizations and persons maintained by the UN and the EU.⁶⁴

Sharply different perspectives on the death penalty have also hampered bilateral cooperation in some cases. Germany, like all EU member countries, has abolished the death penalty. German law does not allow extradition of a person wanted by another country if there is a possibility that the person might be executed if found guilty. In previous cases, Germany extradited suspects only after it had received assurances that the death penalty would not be imposed. In 1998, Germany arrested and extradited a key suspect in the 1998 U.S. Embassy bombings in Africa, after U.S. prosecutors agreed to waive the death penalty. Germany has interpreted its laws to forbid even provision of evidence relating to such a case, if that information might lead to the imposition of a death sentence. This became an issue when the United States sought to obtain documents from Germany related to the case of Zacarias Moussaoui, the so-called 20th hijacker. The information was eventually supplied based on the understanding that the United States would agree not to seek the death penalty solely based on the evidence gained from Germany.⁶⁵ Still, the death penalty issue remains a potential impediment to cooperation in specific cases.

Germany and the United States also differ on the question of the status of prisoners, particularly the Al Qaeda and Taliban detainees in Guantánamo Bay. Germany's Foreign Minister Joschka Fischer and other politicians have argued that all detainees should be granted formal status as prisoners of war. Germans, like other Europeans, have also criticized U.S. plans to use military tribunals to try at least some of the terrorist suspects. Such tribunals are seen as unnecessary and counterproductive by German officials. Some question has been raised whether terrorist suspects would be extradited by Germany and other EU countries, if they were likely to face a military tribunal.⁶⁶

In the German view, conduct of the fight against global terrorism requires multilateral cooperation, formally sanctioned by the relevant international organizations. Germans argue that most unilateral measures are illegitimate and ineffective. In this context, German officials are hoping that the second Bush

⁶³ Sageman, Marc: *Understanding Terror Networks*, Philadelphia, 2004, p. 175 et seq.

⁶⁴ Interview with Gerhard Schindler, Head of Counterterrorism Section within the Ministry of the Interior, July 28, 2004.

⁶⁵ *Washington Post*, June 11, 2002.

⁶⁶ *The Wall Street Journal*, November 28, 2001.

Administration will place greater emphasis on multilateralism to strengthen international support for U.S. counterterrorism initiatives. From Germany's perspective, joint action on counterterrorism is also tied closely to joint decision making.⁶⁷

The U.S. Administration rejects any absolute commitment to multilateralism in terms of waiting for UN approval for any military action. Such a policy would be seen in the United States as a dangerous and unacceptable recipe for paralysis. Some criticize the German approach as too wedded to process over results, especially when dealing with "rogue" states and weapons of mass destruction. While Germany has declared WMD non-proliferation a core element of its national security strategy, the German approach has been criticized by some for relying almost exclusively on positive engagement and avoiding conflict, an approach that might not be very successful in influencing certain regimes or potential terrorists. Some observers believe that the German stance reflects the reality that the country presently lacks the military means or the political will to confront WMD states with anything other than "soft power" instruments (such as diplomacy and economic levers).

Some see a complementarity in the differing U.S. and German approaches. The U.S. has extensive military capabilities to deal with threats of terrorism, while Germany views its strengths in conflict prevention and reconstruction. This could mean, for instance, that Germany might be better positioned to take on a greater role in long-term reconstruction efforts in countries like Afghanistan. Some argue that with a better understanding of the potential complementary roles the two countries can play based on the strengths and advantages of each, new opportunities for enhanced cooperation in the global war on terrorism might be found. The final report of the U.S. 9/11 Commission suggests that long-term success in the war against terrorism demands the use of all elements of national power, including "soft power" instruments such as diplomacy, intelligence, and foreign aid.

A key question is to what degree differences are likely to hamper U.S.-German cooperation against terrorism. It could be argued that U.S. and German security in the near and mid-term are likely to be affected far more by what Germany does to cooperate with the United States in terms of domestic security and bilaterally than by Germany's stance on other international issues. Lapses in German domestic surveillance or other shortcomings in German domestic policy could directly threaten U.S. security. For example, according to statements from the BND, some dozen or so Islamic militants capable of carrying out assaults may have left Germany for Iraq not too long ago.⁶⁸ Therefore, many question whether the United States and Germany can afford the risk of allowing international policy differences to lead to declining cooperation within the crucial arena of domestic security.

The United States and Germany may see security threats through different lenses, and responses to those threats are shaped by different national interests,

⁶⁷ Already stated on September 28, 2001, by Karsten D. Voigt (coordinator for U.S.-German relations within the German Foreign Ministry), in German: [http://www.auswaertiges-amt.de/www/de/archiv_print?archiv_id=2127].

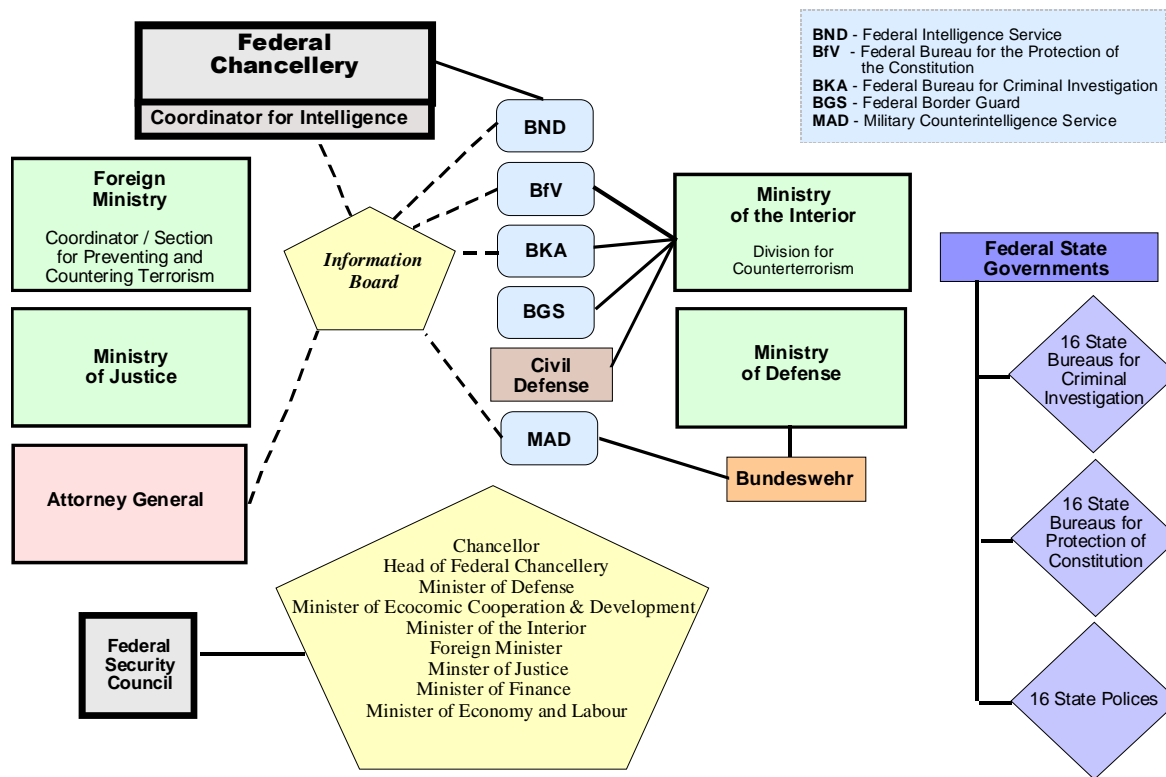
⁶⁸ *Die Zeit*, November 27, 2003, ("Im Fadenkreuz der Terroristen").

practices, and historical experiences.⁶⁹ Ultimately, understanding and accepting these differences (agreeing to disagree), in the minds of some observers, may be the best approach to enhancing future U.S.-German cooperation in the global war on terrorism. Close bilateral cooperation with the United States is important for Germany's own global interests. For the United States, as well, German cooperation against terrorism is likely to remain significant in light of Germany's importance as a European and world actor, as a key hub for the transnational flow of persons and goods especially to the United States, and as a country whose soil has been used by terrorist to target the United States.

⁶⁹ Katzstein, Peter J.: "Same War - Different Views: Germany, Japan, and Counterterrorism," *International Organization*, Vol. 57, No. 4, 2003, p. 731-760.

Appendix A (Organization Chart)⁷⁰

Most Relevant Ministries, Intelligence, and Security Authorities in Anti-Terrorism



At the Information Board data is shared regarding Networks of Arab Mujaheden (“Jihadists”). The Federal Security Council is a committee of the Federal Cabinet. Its top-confidential sessions are convened and led by the Chancellor.

⁷⁰ Compiled from official German government sources.

Appendix B (Germany's Post-9/11 Reforms)⁷¹

Association/Organization Law. Before 9/11, religious associations were protected from surveillance and investigation under German law. The anti-terror laws passed in late 2001 have removed this legal protection, permitting state authorities to probe and investigate groups with suspected terrorist ties. In the future, associations of foreigners that promote violent or terrorist activities will be prohibited.

Penal Code Changes. In the future terrorist activities are subject to prosecution of German authorities even if they occur outside Germany's borders and without direct involvement of German citizens or organizations.

Alien Act. People who present a danger to the democratic order in Germany, and who are engaged or encourage others to engage in terrorist organizations will be denied entry or residence permits in Germany regardless of whether the individuals are tourists, immigrants, or asylum seekers.

Asylum Procedure Law. All asylum applications will be required to include a voice recording stating the exact country of origin of applicants. Fingerprints will also be collected with applications. All records will be on file with the security authorities for 10 years.

Law on Central Foreigner Registry. Information filed in the Central Alien Register (for instance) is now automated and more accessible for security authorities. Moreover the collected data includes information about visa applications and decisions and about people already living in Germany.

Security Oversight Law. Personnel working in areas of counterterrorism and other sensitive defense occupations will receive security screening.

Air Traffic Law. Clarification of this law restricts the carrying and use of firearms to air marshals. Additionally, security clearances are required for all airport and flight personnel, as well as others working in activities connected to airports or air traffic.

Passport and Personal I.D. Law. Changes in this law will provide for an improved computer-supported identification system. This will help prevent the use of bogus identification documents. Encrypted biometric identification codes will be added to photographs and signatures.

Act on the Protection of the Constitution. The Federal Bureau for the Protection of the Constitution (BfV) is given authority to track any activities of extremist groups that seek to intensify ideological or religious differences. The law calls for combining

⁷¹ All information from the website of the Ministry of the Interior, (in German) [http://www.bmi.bund.de/top/sonstige/Schwerpunkte/Innere_Sicherheit/Terrorismus/ix9470_93173.htm] and from the website of the Federal Government, (in German) [<http://www.bundesregierung.de/artikel-,7418.59654/Erstes-Anti-Terror-Paket.htm>] and [<http://www.bundesregierung.de/artikel-,413.65820/Zweites-Anti-Terror-Paket-in-K.htm>].

several databases with civil information to make computerized searches more effective.

Federal Bureau for Criminal Investigation. The BKA now has the right to lead its own investigations, replacing the former system which required formal requests by the BfV.

Federal Border Guard Act. Armed officers of the Federal Border Guard (BGS) are now deployed aboard German airplanes. Moreover, the BGS has been tasked to conduct in-depth screening of border traffic.