Articles

Deployment of Armed Forces at Home and Abroad: Constitutional Framework and Need for Reform in Light of Democratic Resilience

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Abstract

This paper provides an overview of the constitutional framework governing the deployment of the German armed forces, highlights shortcomings in their contribution to democratic resilience, and evaluates selected proposals for constitutional amendments against this background.

Regarding domestic deployments, it discusses a proposal for an amendment addressing competence-related challenges of drone defence. The proposal would explicitly permit the armed forces to support the police to maintain or restore public security or order where police capabilities are insufficient. Concerning foreign deployments, the paper examines a proposal to align constitutional and international law regarding foreign deployments, as certain deployments permissible under international law lack a clear constitutional basis. Subsequently, it turns to legislative initiatives to create a new procedure before the German Federal Constitutional Court for reviewing the substantive requirements for foreign deployments. Finally, it assesses the compatibility of these two demands.

The paper identifies a need for reform to ensure greater legal clarity and reviewability. Concerning domestic deployments, it regards the proposal as suitable, although further clarification by the Federal Constitutional Court would likely suffice. Regarding foreign deployments, it advocates a "near-complete alignment". Especially pending such alignment, it recommends a procedure enabling the Court to at least review the stricter constitutional requirements independent of international law. Furthermore, drawing on historical lessons, it demands that deployments of armed forces, domestically and abroad outside mutual collective security systems, remain a last resort.

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A. Introduction

On 24 February 2022, Russia invaded Ukraine.[1] On 27 February 2022, former German Chancellor Olaf Scholz stated that we were experiencing a "turning point" (*Zeitenwende*).[2] With the start of the largest war in Europe since the Second World War,[3] the German Armed Forces (*Bundeswehr*) have moved to the centre of the political debate. Scholz declared that an "efficient, state-of-the-art, advanced *Bundeswehr*" must be created to "protect our freedom and our democracy".[4]

Since then, various measures have been taken. The newly introduced Article 87a paragraph 1a of the German Constitution (*Grundgesetz*, GG) laid the foundation for the Act on the Financing of the *Bundeswehr* and the Establishment of a "*Bundeswehr* Special Fund"[5] passed later the same year, which provides for a credit authorisation for a single amount of up to 100 billion euros. In addition, the German Federal Parliament (*Bundestag*) passed a draft law on the modernisation of military service, which is initially voluntary, but allows for the reintroduction of compulsory military service in the future.[6]

These current far-reaching measures stand in contrast to constitutional provisions that have remained unchanged since 1968.[7] Against this background, the question arises as to whether, and if so, in what form, reforms of the constitutional framework for armed forces deployments are also necessary in order to allow the Bundeswehr to "protect our freedom and our democracy", as Scholz called for. In the following, this demand is treated under the

[1] Andrea Bachstein, 'Ukraine-Krieg: Chronik der Tage vor dem Einmarsch' (*Süddeutsche Zeitung*, 25 February 2022) <www.sueddeutsche.de/politik/russland-ukraine-krieg-chronik-1.5536075> accessed 20 December 2025.

[2] Bundesregierung, 'Regierungserklärung von Bundeskanzler Olaf Scholz' (*Bulletin der Bundesregierung*, 25-2, 2022) 1.

[3] Nicu Popescu, 'Europe's two wars: The danger of the comfort zone' (*European Council on Foreign Relations,* 24 November 2024) <https://ecfr.eu/article/europes-two-wars-the-danger-of-the-comfort-zone/> accessed 20 December 2025.

[4] Bundesregierung (n 2) 5.

[5] Gesetz zur Finanzierung der Bundeswehr und zur Errichtung eines „Sondervermögens Bundeswehr" und zur Änderung der Bundeshaushaltsordnung v. 1.7.2022, BGBl I 1030.

[6] BT-Drs 21/1853, 2 (government proposal).

[7] Dieter Weingärtner, 'Rechtliche Grundlagen Deutscher Verteidigungspolitik' (*Bundeszentrale für politische Bildung*, 1 May 2015) <www.bpb.de/themen/militaer/deutsche-verteidigungspolitik/199281/rechtliche-grundlagen-deutscher-verteidigungspolitik/> accessed 20 Dezember 2025.

concept of "democratic resilience". This concept refers to the ability of a democratic regime to overcome external and internal challenges and adapt to changing conditions without damaging its fundamental principles.[8]

Applied to the constitutional regulations governing the deployment of armed forces, this means, on the one hand, that they contribute to the resilience of our democracy when they enable the *Bundeswehr* to effectively fulfil its protective mandate, even in the face of new security policy challenges at home and abroad. On the other hand, they must protect against abuse of power, which requires legal clarity and comprehensive democratic oversight of military operations. Effective capacity to act, legal clarity and reviewability also promote public confidence in government action, which offers protection against anti-democratic influence.

In order to assess whether the current constitutional framework meets these requirements derived from the concept of democratic resilience, this contribution discusses possible constitutional amendments aimed at strengthening the resilience of our democracy in the context of the deployment of armed forces, starting with a section on domestic deployments (B.), followed by one on foreign deployments (C.) To give a general overview and to provide a substantive basis, both sections begin with an explanation of the respective current legal situation, which is then analysed in the light of selected proposed constitutional amendments with regard to democratic resilience.

B. Domestic deployments

I. Regulations governing domestic deployments

According to Article 87a paragraph 2 GG, the armed forces[9] may only be deployed for purposes other than defence if and to the extent that the German Constitution expressly permits this. The exceptions provided for in the German Constitution regarding domestic deployments, meaning deployments on the territory of the Federal Republic of Germany, can be found in Article 87a paragraphs 3 and 4 GG ("external" and "internal emergency")

[8] Wolfgang Merkel, 'Demokratische Resilienz als Konzept' in Julian Nida-Rümelin and Frank-Walter Steinmeier (eds), *Normative Konstituenzien der Demokratie* (De Gruyter 2024) 341, 343.

[9] The term "armed forces" within the meaning of the constitution encompasses all military units of the Federal Republic of Germany, which are characterised, on the one hand, by being subject to the command authority of the Minister of Defence or, in the state of defence (*Verteidigungsfall*), of the Federal Chancellor (Helmut Aust, 'Art 87a GG' in Ingo von Münch and Philip Kunig (eds), *Grundgesetz-Kommentar* (8th edn, C.H. Beck 2025) para 29), and on the other hand, by their highly capable armament (Sebastian Müller-Franken, 'Art 87a GG' in Peter Huber and Andreas Voßkuhle (eds), *Grundgesetz. Kommentar,* vol 3 (8th edn, C.H. Beck 2024) para 38). They are to be distinguished from police officers, the *Bundeswehr* administration, military criminal courts, military service courts, and military chaplaincies (Otto Depenheuer, 'Art 87a GG' in Günter Dürig, Roman Herzog and Rupert Scholz (eds), *Grundgesetz. Kommentar*, vol 6 (107th supplement, C.H. Beck 2025) para 70).

and Article 35 paragraph 2 sentence 2 and paragraph 3 GG ("natural disasters and grave accidents").[10]

In its plenary decision on the Aviation Security Act (*Luftsicherheitsgesetz*, LuftSiG), the Federal Constitutional Court explained that only the use of armed forces "as a means of executive power in the context of intervention" exceeds the threshold for deployment (*Einsatzschwelle*).[11] Such use is said to exist both in the application of coercion and in the use of "the armed forces' personnel or material resources in their potential for threat or intimidation".[12] Measures that are "typically not associated with the exercise of sovereign power and thus also not with infringements of fundamental rights" do not constitute deployment within the sense of Article 87a paragraph 2 GG.[13] The use of the *Bundeswehr* by way of administrative assistance, as regulated in Article 35 paragraph 1 GG, must therefore be distinguished from the concept of "deployment".[14]

1. Deployments for defence (Article 87a paragraph 2 GG)

According to Article 87a paragraph 2 GG, the armed forces may be deployed for "defence". The scope of the term "defence" within the meaning of Article 87a paragraph 2 GG is controversial, particularly as to whether it permits not only domestic deployments but also deployments abroad.[15]

In the context of domestic deployments treated in this section, the term "defence" is understood as "the repulsion of an attack on the federal territory by armed force in order to maintain or restore the external security of the Federal Republic of Germany on the basis of international law".[16] The primary object of defence is the Federal Republic of Germany.[17] The legitimate goal is solely the protection of the state's existence and its liberal democratic basic order.[18]

Traditionally, attacks that may justify defence are understood as armed attacks within the meaning of Article 51 of the United Nations Charter and under customary international

[10] Carsten Kalla, 'Inlandseinsätze der Bundeswehr – Brauchen wir eine Verfassungsänderung?' (*Bundesakademie für Sicherheitspolitik*, 2015) <www.baks.bund.de/sites/baks010/files/arbeitspapier_sicherheitspolitik_11_2015.pdf> accessed 27 September 2025, 4.

[11] cf BVerfGE 132, 1, 20 (para 50).

[12] ibid.

[13] Kalla (n 10) 1.

[14] cf Kalla (n 10) 2.

[15] BVerfGE 90, 286, 355; Aust (n 9) para 40; David Hummel, 'Art 87a GG' in Michael Sachs, Christian von Coelln and Thomas Mann (eds), *Grundgesetz. Kommentar* (10th edn, C.H. Beck 2024) paras 11 ff. This debate is further elaborated in section C.

[16] Depenheuer (n 9) para 56.

[17] Kyrill-Alexander Schwarz, '§ 23 Äußere Sicherheit und militärische Verteidigung' in Markus Möstl, Helge Sodan, Klaus Stern, *Das Staatsrecht der Bundesrepublik Deutschland im europäischen Staatenverbund* (2nd edn, C.H. Beck 2022) para 32.

[18] Depenheuer (n 9) para 85.

law.[19] Defence in the conventional sense is therefore usually directed against military attacks by the armed forces of another state.[20] In view of new types of threats, there is debate as to whether the concept of defence needs to be broadened. Controversy exists over, on the one hand, the possibility of carrying out a domestic defence deployment against attacks by international terrorist organisations and, on the other hand, repelling cyberattacks by military means.[21]

There is broad agreement that the concept of defence within the scope of Article 87 paragraph 2 GG is broader than that of a state of defence under Article 115a paragraph 1 sentence 1 GG.[22] According to the legal definition contained therein, a state of defence exists when "the federal territory is attacked by armed force or imminently threatened with such an attack". The possibility of defence situations that do not constitute a state of defence is explained in the chapter on foreign deployments.[23]

The decision to make use of the constitutionally permitted option of domestic deployment for defence purposes under Article 87a paragraph 2 GG is taken at federal government level, as there is no general requirement for the *Bundestag* to give its approval for domestic deployments.[24] In peacetime, the Federal Minister of Defence has the power of command over the armed forces in accordance with Article 65a GG. In the event of a state of defence, his power of command is transferred to the Federal Chancellor in accordance with Article 115b GG. According to Article 115a paragraph 1 sentence 1 GG, this requires the determination of a state of defence by declaration of the *Bundestag* with the consent of the Federal Council (*Bundesrat*). Nevertheless, the wording of Article 115a paragraph 1 sentence 1 GG does not indicate any parliamentary reservation regarding the deployment itself.

[19] Frank Schorkopf, *Staatsrecht der internationalen Beziehungen* (1st edn, C.H. Beck 2009) § 6 para 29. The debate over the scope of the concept of defence in international law is further examined in section C.

[20] Schwarz (n 17) para 33.

[21] Maik Bäumerich and Maximilian Schneider, 'Terrorismusbekämpfung durch Bundeswehreinsätze im Inneren: Eine neue alte Diskussion' (2017) 36 NVwZ 189; Christian Frick, *Der Einsatz von Streitkräften im Inneren* (1st edn, Nomos Verlagsgesellschaft 2024) 413-24, 431-37; Schorkopf (n 19) § 6 paras 29 ff.

[22] Sven Hölscheidt and Martin Limpert, 'Einsatz der Bundeswehr innen und außen' (2009) 41 JA 86, 88; Hans Jarass and Martin Kment, *Grundgesetz für die Bundesrepublik Deutschland. Kommentar* (18th edn, C.H. Beck 2024) Article 87a para 10; Aust (n 9) para 33.

[23] see section C.

[24] BVerfGE 126, 55, 71; Stefanie Schmahl, 'Art 87a GG' in Helge Sodan (ed), *Beck'sche Kompakt-Kommentare. Grundgesetz* (5th edn, C.H. Beck 2024) para 12.

2. Deployments with express authorisation

a. Deployment in the case of an "external emergency" (Article 87a paragraph 3 GG)

One of the explicit authorisations for domestic deployment is provided in Article 87a paragraph 3 GG for cases of so-called "external emergencies".[25] Under sentence 1, the armed forces are authorised to protect civilian property and to perform traffic control functions within the scope of their defence mission. Sentence 2 permits the transfer of authority to protect civilian property in support of police operations.

An "external emergency" exists both in a situation of the aforementioned state of defence and in a state of tension.[26] The state of tension is regulated in Article 80a paragraph 1 GG and is predominantly regarded as a preliminary stage to the state of defence.[27] As in the case of a state of defence, an armed attack on the federal territory must be imminent, although a high probability is sufficient.[28]

According to Article 80a paragraph 1 sentence 2 GG, the state of tension must be determined by the *Bundestag* with a two-thirds majority of the votes cast. According to Article 80a paragraph 2 GG, the measures based on it must be terminated at the request of the *Bundestag* (by a simple majority).[29] To date, the *Bundestag* has never declared a state of defence or tension.[30]

b. Deployment in the case of an "internal emergency" (Article 87a paragraph 4 GG)

Article 87a paragraph 4 sentence 1 GG contains a further explicit authorisation in the case of an "internal emergency".[31] It authorises the use of armed forces "to support the police and the Federal Border Guard [now the Federal Police] in protecting civilian property and in combating organised armed insurgents" under three conditions: The deployment must serve to avert an imminent danger to the existence or the free democratic basic order of the Federation or one of Germany's 16 Federal States (*Länder*), the conditions set out in Article 91 paragraph 2 GG must be met (i.e. the *Land* itself is neither willing nor able to combat the danger), and the police forces and the Federal Border Guard must be insufficient.

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[25] Kalla (n 10) 4.
[26] ibid.
[27] Jarass and Kment (n 22) Article 80a para 1; Thomas Mann, 'Art 80a GG' (n 15) para 2.
[28] ibid.
[29] Jarass and Kment (n 22) Article 80a para 2.
[30] cf Frick, *Der Einsatz von Streitkräften im Inneren* (n 21) 215.
[31] Kalla (n 10) 4.

According to Article 87a paragraph 4 sentence 2 GG, the deployment must be discontinued at the request of the *Bundestag* or the *Bundesrat*. To date, the armed forces have never been deployed under Article 87a paragraph 4 GG.[32]

c. Deployment in case of a regional disaster emergency (Article 35 paragraph 2 sentence 2 GG)

Another explicit exception can be found in Article 35 paragraph 2 sentence 2 GG, namely regarding a so-called "regional disaster emergency".[33] It grants the *Länder* the authority to request assistance from the armed forces in the event of a natural disaster or a grave accident. The subsidiarity clause of Article 35 paragraph 2 sentence 1 GG, according to which a *Land* may only call for assistance if its police could not fulfil their responsibilities without it, or could do so only with great difficulty, applies *mutatis mutandis* to sentence 2.[34]

With regard to new security policy challenges, the term "grave accident" is particularly relevant. This is understood as a damaging event of great magnitude and significance for the public, caused by accidents, technical or human error, or deliberately caused by third parties.[35] The Federal Constitutional Court has emphasised that only "events of catastrophic dimensions" are covered,[36] in order to ensure that the narrow limits of Article 87a paragraph 4 GG regarding the use of specific military weapons within the domestic territory are not undermined by a broad scope of application of Article 35 paragraph 2 sentence 2 and paragraph 3 GG.[37] The Federal Constitutional Court recognises cases in which the occurrence of a disaster is almost certain to fulfil the requirements of Article 35 paragraph 2 sentence 2 and paragraph 3 GG.[38] This is consistent with the context and purpose of the norm, which underline its precautionary character.[39]

Whether the request requires a decision by the state parliament, depends on the respective state constitution.[40]

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[32] cf Frick, *Der Einsatz von Streitkräften im Inneren* (n 21) 225.

[33] Hölscheidt and Limpert (n 22) 89.

[34] Hartmut Bauer, 'Art 35 GG' in Horst Dreier (ed), *Grundgesetz-Kommentar*, vol 2 (3th edn, Mohr Siebeck 2015) para 29; cf Hans-Georg Dederer, 'Art 35 GG' (n 9) para 134.

[35] BVerfGE 132, 1, 18 para 46; Mathias Schubert, 'Art 35 GG' (n 15) para 38.

[36] BVerfGE 132, 1, 17 para 43.

[37] ibid para 24.

[38] BVerfGE 115, 118, 144.

[39] Volker Epping, 'Art 35 GG' in Volker Epping and Christian Hillgruber (eds), *Beck'scher Online-Kommentar. Grundgesetz* (63th edn, C.H. Beck 2025) para 24.2.

[40] BVerwG 162, 269 (para 17).

d. Deployment in case of a supra-regional disaster emergency (Article 35 paragraph 3 sentence 1 GG)

Article 35 paragraph 3 sentence 1 GG regulates the "supra-regional state of emergency".[41] This explicit exception basically corresponds to Article 35 paragraph 2 sentence 2 GG, with the essential difference that the territory of more than one federal state must be affected. However, the specifications of the Federal Constitutional Court correspond to those of paragraph 2 sentence 2.[42]

Here too, the deployment of the armed forces is subsidiary to operations of the *Länder*'s police forces, as it must be necessary to combat the danger (Article 35 paragraph 3 sentence 1 GG). It is disputed under which conditions this is the case. Some argue that necessity only exists if the federal states are unable or unwilling to respond effectively to the disaster.[43] This is persuasively countered by the argument that paragraph 3 sentence 1 provides its own substantive basis in the cross-border emergency situation and that the principle of effective hazard prevention argues against waiting for the measures under paragraph 2 sentence 2 to fail.[44]

The authority to decide on the deployment of the armed forces is granted to the Federal Government as a collegiate body; delegation to a single member, such as the Minister of Defence, would be inadmissible.[45] According to Article 35 paragraph 3 sentence 2 GG, measures based on sentence 1 must be repealed on demand by the *Bundesrat* or immediately once the danger has been eliminated.

II. Impact of the regulations governing domestic deployments on democratic resilience

The armed forces play an ambivalent role with regard to the resilience of our democracy. While, on the one hand, they are responsible for defending against external attacks (Article 87a paragraph 1 sentence 1 GG) and are therefore indispensable for the state's self-assertion, on the other hand, they represent a source of danger for the state itself: they can become a "threat to liberal democracy within the country".[46] As a consequence of the excessive and abusive deployment of the armed forces in domestic affairs during the German Empire, and particularly during the Weimar Republic and the Nazi regime,[47] the German Constitution did not originally provide for any powers of deployment within the

[41] Hölscheidt and Limpert (n 22) 89.
[42] cf BVerfGE 115, 118, 145; cf BVerfGE 132, 1, 17 (para 24); cf Dederer (n 34) para 136.
[43] Bauer (n 34) para 33.
[44] Dederer (n 34) para 136; cf Michael Goldhammer, 'Art 35 GG' in von Münch and Kunig (n 9) para 72.
[45] BVerfGE 115, 118, 149; Bauer (n 34) para 33.
[46] Depenheuer (n 9) para 62.
[47] see Frick, *Der Einsatz von Streitkräften im Inneren* (n 21) 326-344.

territory of the Federal Republic.[48] Even though this changed with the creation of the German Emergency Acts of 1968, the powers of the *Bundeswehr* within the domestic territory remain very limited and are strictly separated from those of the police.[49]

This separation of powers, from a historical perspective, is fundamental to the resilience of democracy, since it is intended to guarantee the political neutrality of the armed forces.[50] Nevertheless, problems of competence resulting therefrom can have negative effects on resilience: An unclear allocation of competences can reduce the effectiveness of hazard prevention, for example if it leads to hesitancy in action. Soldiers depend on legal certainty in order to respond effectively.[51] Furthermore, the (partial) inability to act as perceived by the public carries the risk of weakening the population's trust in the state.[52]

With regard to the division of powers between the police and the *Bundeswehr*, the police may be responsible for cases for which they do not have the necessary means of response, while the *Bundeswehr* lacks the constitutional basis for deployment.[53] In view of new forms of threat, the discussion regularly returns to whether the powers of the *Bundeswehr* to deploy domestically should be expanded.[54] While it had already been reignited 10 years ago by the terrorist attacks in Paris, the increasing number of unmanned drone flights over the course of last year[55] provided further cause for discussion. Focusing on this example, the following section explains how legal resilience can be strengthened in relation to new types of threats.

1. The example of drone defence

The extent to which legal changes are necessary for effective drone defence is controversial. While some are calling for a constitutional amendment[56] to move away

[48] cf BVerfGE 132, 1 – dissenting opinion by Gaier (para 62).

[49] ibid.

[50] Wissenschaftliche Dienste, 'Dokumentation: Zum Einsatz der Bundeswehr im Inneren. Voraussetzungen, Rechtsgrundlagen, mögliche Verfassungsänderungen' (WD 2 – 3000 – 023/15, *Bundestag*, 03 February 2015) <www.bundestag.de/resource/blob/534516/116855dc8df769ba69d2f70a3a268a1e/wd-2-023-15-pdf-data.pdf> accessed 29 September 2025, 15.

[51] cf Christian Frick, 'Drohnenabwehr durch die Bundeswehr – Ergänzung der Rechtsgrundlagen erforderlich!' (2025) 8 GSZ 231, 233.

[52] cf comments on Victor Gojdka, 'Was sich wirklich gegen die Drohnenflüge machen lässt' (*Die Zeit*, 4 October 2025) <www.zeit.de/politik/deutschland/2025-10/drohnenabwehr-abschuss-jamming-bundeswehr-verteidigung> accessed 17 December 2025. This reference constitutes anecdotal evidence only and does not represent a social-scientific study.

[53] Christian Frick, 'Hybride Kriegsführung – Bedrohung durch Drohnenüberflüge' (2025) 58 ZPR 52, 53; Gojdka (n 52).

[54] Markus Decker and Malte Lehming, 'Drohnenabschuss im Inneren durch die Bundeswehr? Ein Pro und Contra' (*Das Parlament*, 7 October 2025) <www.das-parlament.de/inland/innenpolitik/drohnenabschuss-im-innern-durch-die-bundeswehr-ein-pro-und-contra> accessed 17 December 2025.

[55] Josina Johannsen and Flemming Maltzahn, 'Einsatz der Bundeswehr gegen Spionagedrohnen?' (*Junge Wissenschaft im Öffentlichen Recht*, 4 March 2025) <www.juwiss.de/24-2025/> accessed 17 December 2025.

[56] Frick, 'Hybride Kriegsführung' (n 53) 52; Johannsen and Maltzahn (n 55).

from the strict separation between external and internal security,[57] others consider the constitutional *status quo* to be sufficient and instead favour statutory reforms.[58] With regard to a constitutional amendment, a revision of Article 35 paragraph 2 sentence 1 GG has been proposed, adding that the state may "request the armed forces to support [the] police [of the federal state] if the forces of the federal police are insufficient".[59] The need for a constitutional amendment is justified by reference to changed security risks. The increasing number of hybrid attacks, such as those carried out by spy drones, is characterised by the fact that they are unarmed. As a result, the requirement for a "grave accident", which must be met under Article 35 paragraph 2 sentence 2 GG in conjunction with Article 87a paragraph 2 GG in order to permit the deployment of armed forces, is usually not reached. Additionally, a clear attribution to an adversary is often not possible, with the result that no attack justifying defence can be identified.[60]

The legislature has responded to the current threat situation not with a constitutional amendment but with a draft bill to amend the Aviation Security Act.[61] In addition to simplifying decision-making by amending section 13 LuftSiG, this draft bill provides for the creation of a new section 15a LuftSiG.[62] While paragraph 1 merely takes up the administrative assistance already enshrined in Article 35 paragraph 1 GG, paragraph 2 stipulates that the armed forces may also "use armed force or other means against unmanned aircraft" as a last resort to "prevent the occurrence of a grave accident".[63] Although this expands the substantive powers of the armed forces, Article 35 paragraph 2 sentence 2 GG remains the underlying constitutional basis. Thus, the fundamental problem persists, as the threshold of a "grave accident" is unlikely to be met in relation to hybrid attacks as envisaged by the proposed legislation.[64]

At the same time, however, the draft law expressly points out that the *Bundeswehr* is entitled to shoot down "military unmanned aerial vehicles of a foreign power entering German airspace" on the basis of its defence mandate under Article 87a GG.[65] Some voices who consider the constitutional *status quo* sufficient assume that both drones used as flying explosive devices and drones used for reconnaissance are to be classified as military

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[57] Frick, 'Drohnenabwehr durch die Bundeswehr' (n 51) 231.

[58] Patrick Heinemann, 'Verteidigung gegen Drohnen' (*Legal Tribute Online*, 2 October 2025) <www.lto.de/recht/hintergruende/h/bundeswehr-drohnen-verteidigung-aenderung-grundgesetz> accessed 17 December 2025; Laurids Hempel and Finn Preiss, 'Drohnenabwehr durch die Bundeswehr' (*Verfassungsblog*, 8 December 2025) <https://verfassungsblog.de/drohnenabwehr-bundeswehr-grundgesetz-luftsig/> accessed 18 December 2025.

[59] Frick, 'Hybride Kriegsführung' (n 53) 53.

[60] ibid 52.

[61] BT-Drs 21/3252 (government proposal).

[62] ibid 2.

[63] ibid 11 ff.

[64] Johannsen and Maltzahn (n 55); Hempel and Preiss (n 58).

[65] BT-Drs 21/3252, 12.

means that may justify defence by the *Bundeswehr*, provided they serve to prepare or carry out an attack. Accordingly, only civilian drones that serve solely to cause uncertainty should fall under the competence of the police.[66]

If, against the backdrop of a militant interpretation of the constitution (*wehrhafte Verfassungsinterpretation*),[67] this classification is convincingly assumed,[68] hybrid threats of this kind could also be countered under the existing constitutional system. One problem that nevertheless remains and would be avoided by the constitutional amendment is one that has already been discussed in the dispute over the division of powers with regard to terrorist attacks on domestic territory:[69] the difficulty of determining whether an attack is external or internal.[70] Under current constitutional law, only the police are responsible for internal attacks that do not constitute a grave accident in the sense of Article 35 paragraph 2 sentence 2 and paragraph 3 GG. The proposal to consider whether a presumption of responsibility on the part of the armed forces "*in dubio pro defensione*" could be constructed,[71] could compensate for this deficit associated with maintaining strict separation.

The example of drone defence demonstrates clearly how, in order to achieve maximum resilience, the effectiveness of hazard prevention must be weighed against the historically justified restrictive use of the armed forces within the territory of the Federal Republic. The debate shows that there are various ways to strengthen resilience at the legal level. One possibility is constitutional amendments. These are not only viewed critically in light of preconstitutional historical experiences regarding domestic deployment, but the two-thirds majority required for them also generally prevents a rapid response to new threats.[72] However, legal certainty can be strengthened through changes of statutory law, such as the draft law on the amendment of the Aviation Security Act. In this case, facilitating decision-making and expanding substantive powers contribute to an improved ability to react in drone defence operations.

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[66] Hempel and Preiss (n 58).

[67] Under the principle of *wehrhafte Verfassungsinterpretation*, the provisions of the constitutional security framework must not be interpreted in a manner that undermines the effectiveness of threat prevention (Depenheuer (n 9) para 52).

[68] Hempel and Preiss (n 58).

[69] cf Hummel (n 15) para 37.

[70] Hempel and Preiss (n 58).

[71] Wissenschaftliche Dienste, 'Abwehr von Drohnen durch die Bundeswehr im Inland: Handlungsspielräume zwischen Verteidigungsauftrag und Gefahrenabwehr' (WD 2 - 3000 - 061/25, *Bundestag*, 13 October 2025) <www.bundestag.de/resource/blob/1117014/WD-2-061-25.pdf> accessed 17 December 2025, 12.

[72] Hempel and Preiss (n 58).

2. The example of the concept of defence

However, a fundamental problem for resilience remains (even outside the debate on drone use)[73] – the interpretation of the concept of defence. The draft law does not clearly state that the Federal Government classifies reconnaissance drones as military means against which Article 87a paragraph 2 GG provides a secure legal basis for defensive actions. It is essential for purposes of legal security that such vague legal terms are unambiguously defined at least in legislative explanations or by the Federal Constitutional Court. If such ambiguities are not resolved, the need for a constitutional amendment to ensure effective drone defence remains.

C. Foreign deployments

I. Regulations governing foreign deployments

1. Definition and concept of foreign deployment

According to section 1 paragraph 2 and section 2 paragraph 1 of the Parliamentary Involvement Act (*Parlamentsbeteiligungsgesetz*, ParlBG), a foreign deployment of armed forces is deemed to exist if soldiers of the *Bundeswehr* are involved in armed operations outside the scope of the German Constitution or if such involvement is expected.

According to the jurisprudence of the Federal Constitutional Court, the "mere possibility" of such involvement is not sufficient; rather, a "qualified expectation" must exist.[74] In this regard, there must be "sufficient tangible factual evidence" and a "particular proximity to the use of armed force," understood in both factual and temporal terms.[75] This can generally be assumed if "the overall situation makes it likely that German soldiers will be automatically involved in the use of armed force and this depends practically only on coincidences in the actual course of events".[76] In practice, this distinction is reflected in the differentiation between "foreign deployments" and "recognised missions".[77] The latter merely serve to demonstrate NATO's defensive readiness.[78]

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[73] With regard to terrorism: cf Hummel (n 15) para 37; cf Depenheuer (n 9) para 30.
[74] BVerfGE 121, 135, 165.
[75] BVerfGE 140, 160, 191 (para 72).
[76] ibid para 75.
[77] Bundeswehr, 'Die Bundeswehr im Einsatz' (*Bundeswehr*) <www.bundeswehr.de/de/auftrag/einsaetze/missionen> accessed 13 December 2025.
[78] Deutsche Gesellschaft für Auswärtige Politik, 'Auslandseinsatz und anerkannte Missionen' (*Deutsche Gesellschaft für Auswärtige Politik*, January 2024) <https://dgap.org/de/forschung/glossar/sicherheitsglossar/auslandseinsatz-und-anerkannte-missionen> accessed 13 December 2025.

Article 26 paragraph 1 GG, which prohibits wars of aggression, reflects the peace-oriented approach in international law. The legal basis for foreign deployments under international law is provided by the Charter of the United Nations.[79] Article 51 of the UN Charter states that the fundamental prohibition of the use of force does not affect the "inherent right of individual or collective self-defence". Article 42 of the UN Charter provides that, subject to authorisation by the Security Council, military measures may be undertaken to maintain or restore international peace and security. Customary international law provisions are explained in the context of deployments outside a system of mutual collective security.

2. Parliamentary reservation

The parliamentary reservation regarding foreign deployments of the *Bundeswehr* follows directly from the case law of the Federal Constitutional Court.[80] The Federal Constitutional Court understands the *Bundeswehr* as a "parliamentary army", in the sense of a limitation of the executive's power.[81] According to the case law of the Federal Constitutional Court, the requirement of parliamentary approval applies not only to deployments within systems of mutual collective security, but to armed foreign deployments in general.[82] The approval by the *Bundestag* requires a majority of the votes cast within the meaning of Article 42 paragraph 2 GG.[83]

These constitutional requirements have been elaborated in the Parliamentary Involvement Act. According to section 1 paragraph 2 ParlBG, any such deployment requires approval by the *Bundestag*. In exceptional cases, it may be granted retrospectively, e.g. when imminent danger cannot be postponed (section 5 paragraph 1 ParlBG). A simplified approval procedure is also provided for deployments of lesser intensity and scope (section 4 paragraph 1 ParlBG).

3. Constitutional embedding

Foreign deployments can be divided into two categories in terms of their constitutional embedding: those carried out within a system of mutual collective security within the meaning of Article 24 paragraph 2 GG and those carried out outside such a system.

a. Deployment of armed forces within a system of mutual collective security

The Federal Constitutional Court defines a system of mutual collective security as an

[79] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.
[80] BVerfGE 121, 135, 152.
[81] BVerfGE 90, 286, 382.
[82] BVerfGE 140, 160.
[83] BVerfGE 90, 286, 388.

institutionally consolidated association of states which, through binding rules, mutually commit to the maintenance of peace and to reciprocal protection.[84] Alliances for collective self-defence are also included, provided they are "strictly committed to maintaining peace".[85] These include(d), for example, the UN,[86] NATO,[87] and the WEU,[88] which existed until 2011. The EU is also classified accordingly by parts of the literature.[89] In its ruling on the anti-ISIS mission, the Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) deemed the aforementioned view to be "at least justifiable".[90] Due to their lack of institutional consolidation, so-called "ad hoc cooperations" are not included.[91]

Article 24 paragraph 2 GG constitutes the constitutional legal basis for deployments within these systems.[92] Although this article explicitly authorises only integration, it is interpreted as providing the basis for tasks typically associated with integration, such as the deployment of armed forces within the framework and according to the rules of the system.[93] Nonetheless, it is therefore not an "express" authorisation within the meaning of Article 87a paragraph 2 GG.[94] The Federal Constitutional Court has left open the question of whether Article 87a paragraph 2 GG is applicable to foreign deployments at all.[95] However, it assumes that it would not conflict with Article 24 paragraph 2 GG in any case,[96] since the purpose of introducing Article 87a paragraph 2 GG was not to restrict the possibility of deployment under Article 24 paragraph 2 GG, which was already laid down in the German Constitution.[97] Article 24 paragraph 2 GG remains in force as a more specific, independent legal basis alongside Article 87a GG.[98]

b. Deployment of armed forces outside a system of mutual collective security

In its second Lisbon ruling, the Federal Constitutional Court stated in an *obiter dictum* that foreign deployment "is only permitted in systems of mutual collective security, except in a

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[84] ibid 286.
[85] ibid 286, 287.
[86] ibid 349.
[87] ibid 351.
[88] cf ibid 349.
[89] Schorkopf (n 19) § 6 para 39; Wolff Heintschel von Heinegg and Robert Frau, 'Art 24 GG' in Epping and Hillgruber (n 39) para 33.3.
[90] BVerfGE 152, 8, 33.
[91] Dieter Wiefelspütz, 'Der Einsatz bewaffneter deutscher Streitkräfte im Ausland' (2007) 132 AöR 44, 87.
[92] ibid 83.
[93] BVerfGE 90, 286.
[94] Felix Lange, 'Ein verfassungsrechtliches Fundament für Auslandseinsätze der Bundeswehr durch Bindung an das Völkerrecht' (*Verfassungsblog*, 1 April 2022) <https://verfassungsblog.de/ein-verfassungsrechtliches-fundament-fur-auslandseinsatze-der-bundeswehr-durch-bindung-an-das-volkerrecht/> accessed 18 December 2025.
[95] BVerfGE 90, 286, 355.
[96] ibid.
[97] ibid 357.
[98] Schorkopf (n 19) § 6 para 35.

state of defence".[99] However, it clarified in the Pegasus ruling that the parliamentary reservation does not apply only to deployments "within systems of mutual collective security, but [...] also generally applies to armed deployments of German soldiers abroad" and "regardless of their substantive legal basis".[100] This implies that foreign deployments outside a system of mutual collective security may also be constitutionally permissible.[101]

The circumstances under which this is the case are highly controversial. Various legal bases are being discussed: one possibility is a broad understanding of the concept of defence contained in Article 87a paragraph 2 GG, which encompasses all defensive measures within the framework of Article 51 of the UN Charter. The other two lines of argument ultimately lead to a convergence of international and constitutional law with regard to foreign deployments. This result is achieved either by classifying Article 25 GG as a norm containing an "express" authorisation within the meaning of Article 87a paragraph 2 GG or by rejecting the applicability of Article 87a GG to foreign deployments. The following section sets out, for each relevant legal basis, which deployment scenarios may be constitutionally permissible.

aa) Broad understanding of the concept of defence

Proponents of a broad interpretation of defence, including the Federal Administrative Court, assume that Article 87a GG also applies to foreign deployments.[102] They interpret the concept of defence in line with the German Constitution's friendliness towards international law (*Völkerrechtsfreundlichkeit des Grundgesetzes*) in such a way that "defence" within the meaning of Article 87a GG "should encompass everything that, under applicable international law, can be considered self-defence under Article 51 of the UN Charter",[103] including defence outside systems of mutual collective security.[104]

Some scholars contend that additional substantive restrictions are required in order to fall under the constitutional concept of defence, such as the existence of a national security interest.[105]

This has been discussed particularly in relation to humanitarian interventions which in international law are generally regarded as a distinct concept alongside the concept of

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[99] BVerfGE 123, 267, 360.

[100] BVerfGE 140, 160, 187-188 (paras 66, 69).

[101] Wissenschaftliche Dienste, 'Ausarbeitung: Verfassungsrechtliche Grundlagen für Auslandseinsätze der Bundeswehr – Überlegungen zur Änderung der verfassungsrechtlichen Praxis' (WD 2 – 3000 – 025/16, *Bundestag*, 16 February 2016) <www.bundestag.de/resource/blob/416598/44c9aea5e7db605f1d9984afb68371f8/wd-2-025-16-pdf-data.pdf> accessed 19 December 2025, 7.

[102] BVerwGE 127, 302 (para 107); Aust (n 9) paras 40 ff.

[103] BVerwGE 127, 302 (para 107).

[104] cf Hummel (n 15) para 24.

[105] cf Depenheuer (n 9) para 137; ibid.

defence within the meaning of Article 51 of the UN Charter.[106] The International Commission on Intervention and State Sovereignty, however, argues that what is treated under the heading of humanitarian interventions can exceptionally be encompassed by Article 51 of the UN Charter in the case that regional organisations act with respect to one of their member states.[107] A similar view can be found in German constitutional scholarship, where it has been suggested that such interventions can be covered by the concept of defence if the massive human rights violations "endanger regional security in such a way that the deployment of German armed forces can be justified – at least also – as 'defence' of Germany".[108]

Another scenario in which the permissibility of defensive actions is debated is counter-terrorism operations on foreign territory. There is no discernible emergence of an *opinio iuris* suggesting that this constellation is generally regarded as lawful.[109] However, there is broad agreement that defensive actions against supporting states are permissible if the actions of the terrorists can be attributed to them, although the criteria for attribution are controversial.[110] There is growing support for the view that defensive action may be directed against terrorists directly, regardless of whether their conduct is attributable to a state,[111] as already applied in the Security Council resolutions 1368 (2001)[112] and 1373 (2001)[113] adopted in response to the attacks of 11 September 2001. The International Court of Justice, however, advocated in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory that Article 51 of the UN Charter refers to the case of an armed attack by one State against another State only,[114] and state practice shows restraint as well.[115]

The United States in particular advocate the "unwilling or unable" doctrine, according to which defence against terrorists on foreign territory is permissible if their country of

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[106] International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect' (*International Development Research Centre*, December 2001) <https://idrc-crdi.ca/en/books/responsibility-protect-report-international-commission-intervention-and-state-sovereignty> accessed 12 December 2025, 47 (para 6.4).

[107] ibid.

[108] Depenheuer (n 9) para 137.

[109] Andreas von Arnauld, *Völkerrecht* (5th edn, C.F. Müller 2023) § 13 para 1133.

[110] ibid paras 1127-28.

[111] Thomas Franck, 'Terrorism and the Right to Self-Defense' (2001) 95 AJIL 839, 840; Daniel Bethlehem, 'Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors' (2012) 106 AJIL 770, 775; Karin Oellers-Frahm, 'Article 51 – What Matters Is the Armed Attack, not the Attacker' (2017) 77 ZaöRV 49, 51.

[112] SC Res 1368, 56 UN SCOR, UN Doc S/RES/1368 (2001).

[113] SC Res 1373, 56 UN SCOR, UN Doc S/RES/1373 (2001).

[114] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, 194 para 139.

[115] cf von Arnauld (n 109) § 13 paras 1131-32.

residence is unwilling or unable to take effective action against them.[116] However, this doctrine has not attained the status of customary international law.[117] In its anti-ISIS mission, the German government has made it clear that its mission is directed against ISIS, but not against the Syrian Arab Republic.[118] Even though it did not explicitly rely on it, Germany seems to have taken up the argumentation of the "unwilling or unable" doctrine to justify its use of force in Syria.[119] In its ruling on the anti-ISIS mission, the Federal Constitutional Court classified it as "at least justifiable" to "consider attacks by non-state actors to be included in the meaning and purpose of the right of self-defence".[120]

In addition, the concept of so-called "defence of persons" (*Personalverteidigung*) is debated in the context of rescuing nationals abroad without the host state's consent. Some scholars argue that attacks on German citizens abroad could trigger the right to self-defence.[121] However, under international law, invoking Article 51 of the UN Charter is not recognised in such cases.[122] Others see such evacuations as falling within the concept of defence, as the state thereby fulfils its duty to protect under Article 2 paragraph 2 sentence 1 GG.[123] This is countered by the argument that, following this line of reasoning, all constitutionally protected goods would be stylised as objects of defence, which would contradict the exceptional nature of Article 87a paragraph 2 GG.[124] For this reason, evacuations with the character of a deployment fall outside the scope of defence, even in the broadest sense of the term. In any case, the exception under customary international law discussed in this regard would not find its way into German constitutional law via the concept of defence.

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[116] UN Security Council, *Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General* (UN Doc S/2014/695, 23 September 2014).

[117] International Law Association, 'Final Report on Aggression and the Use of Force' (*International Law Association*, 2018) <https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-7> accessed 13 December 2025, 16-17.

[118] UN Security Council, *Letter dated 10 December 2015 from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations addressed to the President of the Security Council* (UN Doc S/2015/946, 10 December 2015).

[119] Benjamin Nussberger, 'The Federal Government continues to justify the fight against ISIL in Syria on grounds of collective self-defence' (2019) GPIL <https://gpil.jura.uni-bonn.de/2019/10/the-federal-government-continues-to-justify-the-fight-against-isil-in-syria-on-grounds-of-collective-self-defence/> accessed 13 December 2025.

[120] BVerfGE 152, 8, 31 para 50.

[121] cf Otto Depenheuer, 'Der verfassungsrechtliche Verteidigungsauftrag der Bundeswehr – Grundfragen des Außeneinsatzes deutscher Streitkräfte' (1997) 112 DVBl 685, 688; Müller-Franken (n 9) para 49.

[122] Aust (n 9) para 50.

[123] Jarass and Kment (n 23) Article 87a para 13.

[124] Volker Epping, 'Die Evakuierung deutscher Staatsbürger im Ausland als neues Kapitel der Bundeswehrgeschichte ohne rechtliche Grundlage? – Der Tirana-Einsatz der Bundeswehr auf dem rechtlichen Prüfstand' (1999) 124 AöR 423, 440.

bb) Article 25 GG as an "express provision" / Restriction of Article 87a GG to domestic deployments

Following the Federal Constitutional Court's finding that Article 87a GG does not preclude the classification of Article 24 paragraph 2 GG as an enabling provision, it is sometimes assumed that the requirement of "strict adherence to the text", emphasised by the Federal Constitutional Court in relation to domestic deployments,[125] does not apply to foreign deployments.[126] According to the line of argument which softens the requirement of explicitness, it cannot be ruled out that Article 25 GG also contains an "explicit" authorisation.[127] Proponents of this view argue that, just as the legislature did not intend to restrict deployments within a system of mutual collective security by introducing Article 87a GG, it likewise did not intend to prohibit foreign deployments that are generally permissible under international law.[128]

If Article 25 GG is regarded as an "express" authorisation, deployment scenarios that are permissible under international law, but would otherwise be unconstitutional, become constitutional. Those who contend that Article 87a GG is not applicable to foreign deployments at all arrive at the same conclusion,[129] which, they argue, is supported by the fact that debates on the emergency constitution have been limited to domestic deployments.[130]

If one follows one of these views, interventions by invitation of the host state, which are permissible under international law,[131] as well as counter-piracy operations[132] would be constitutional. The same applies to evacuations conducted with the host state's consent.[133] According to the prevailing view in legal scholarship, evacuations without the consent of the host state would also be permissible within narrow limits due to an exception under customary international law.[134] It should be noted, however, that the International Court of Justice seemed to regard evacuations without consent as a breach of international law in its judgment in the case between the USA and Iran in 1980.[135]

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[125] BVerfGE 115, 118, 142.
[126] Aust (n 9) para 47.
[127] ibid para 49.
[128] cf Schorkopf (n 19) § 6 paras 43, 63; ibid para 49.
[129] Matthias Herdegen, '§ 27 Außen- und Wehrverfassung' in Matthias Herdegen and others, *Handbuch des Verfassungsrechts. Darstellung in transnationaler Perspektive* (1st edn, C.H. Beck 2021) para 83; Hummel (n 15) para 15.
[130] Hummel (n 15) para 14.
[131] von Arnauld (n 109) § 13 para 1054.
[132] Aust (n 9) para 49.
[133] cf Schorkopf (n 19) § 6 paras 60, 63.
[134] Schorkopf (n 19) § 6 paras 60, 63; Wolff Heintschel von Heinegg, '§ 56 Ausnahmen vom Gewaltverbot' in Volker Epping, Wolff Heintschel von Heinegg and Knut Ipsen, *Völkerrecht* (8th edn, C.H. Beck 2024) paras 46-47, 49.
[135] cf United States Diplomatic and Consular Staff in Teheran (United States of America v Iran) (Judgement) [1980] ICJ Rep 3, 43 f.

Another deployment scenario that could be constitutional under this understanding is humanitarian intervention in the event of massive human rights violations. Such intervention is only permitted under international law if the UN Security Council classifies the situation as a "threat to the peace" within the meaning of Article 39 of the UN Charter and authorises the use of military force to end it on the basis of Article 42 of the UN Charter.[136] This is also significant outside the scope of Article 24 paragraph 2 GG, as Article 42 of the UN Charter provides for authorisation by "Members of the United Nations", which may also act individually or within a coalition of the willing (see Article 48 of the UN Charter). This applies not only to humanitarian interventions, but to all uses of force authorised by the Security Council that Germany is permitted to carry out under international law outside the framework of a system of mutual collective security.

Whether humanitarian intervention without a UN mandate can be permissible under international law, for example if the Security Council does not recognise a situation within the meaning of Article 39 of the UN Charter or if it is blocked,[137] is controversial. Even proponents of customary recognition of humanitarian intervention impose strict requirements.[138] Within the framework of the ICISS report, a set of guidelines was developed regarding the concept of the "responsibility to protect" established therein. In the absence of authorisation from the Security Council, this set of rules provides that the General Assembly may act on the basis of the "Uniting for Peace" resolution[139] and that any intervention would take place within the framework of a regional organisation within the meaning of Chapter VIII of the Charter.[140] Consequently, no unilateral deployments are envisaged, so that even if the "responsibility to protect", currently only a political concept,[141] were to become customary international law, deployments within this framework would find their constitutional basis in Article 24 paragraph 2 GG.[142] Thus, the parallelism between international and constitutional law with regard to foreign deployments only affects the constitutionality of humanitarian interventions authorised by the Security Council.

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136 cf Heintschel von Heinegg (n 134) para 50.

137 Schorkopf (n 19) § 6 para 53.

138 cf Heintschel von Heinegg (n 134) para 50.

139 UNGA Res 377 (V) (3 November 1950).

140 International Commission on Intervention and State Sovereignty (n 106) XIII para 3 letter E.

141 Schorkopf (n 19) § 6 para 56.

142 However, humanitarian intervention without authorisation by the Security Council is not recognised under international law by the majority (cf Oliver Dörr, 'Use of Force, Prohibition of' (*MPEPIL*, August 2019) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e427> accessed 13 December 2025, para 52) and therefore cannot be considered relevant within the framework of Article 24 paragraph 2 GG either.

II. Impact of the regulations governing foreign deployments on democratic resilience

As explained above, there is disagreement regarding the constitutionality of various deployment scenarios. This is due in particular to the fact that the norms date from a time when foreign deployments were not yet being considered.[143] However, since reunification, the role of the *Bundeswehr* has been transformed into an "army in action"[144] and has become even more important with the turning point, or *Zeitenwende*, in German security policy. Against the backdrop of this new understanding in particular, various proposals for strengthening resilience with regard to foreign deployments are being discussed.

In addition to the debate on reforming the parliamentary reservation,[145] there are two further demands: the demand for constitutional and international law to be brought into line with each other and the demand for the Federal Constitutional Court to exercise greater oversight, both regarding foreign deployments.

1. Call for constitutional law and international law to be brought into line regarding foreign deployments

The current situation, in which certain deployments permissible under international law and at times regarded as politically self-evident lack a clear constitutional basis, such as the evacuation mission in Afghanistan,[146] adversely affects resilience. Not only is the *Bundeswehr's* ability to act restricted beyond what is required under international law, but the population's confidence in the state's crisis management capacity is also undermined.

For these reasons, there are calls for the establishment of a constitutional basis under which foreign deployments are constitutionally permissible as long as they do not violate international law.[147] Professors *Helmut Aust* and *Claus Kreß* propose rewording Article 87a paragraph 2 GG to read: "The armed forces may only be deployed abroad to the extent that this is compatible with international law; domestically, only to the extent that this is expressly permitted by the German Constitution."[148]

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[143] Christian Marxsen, 'Verrechtlichte Kontrolle' (*Verfassungsblog*, 22 March 2022) <https://verfassungsblog.de/verrechtlichte-kontrolle/> accessed 19 December 2025.

[144] Bundeswehr, 'Die Geschichte der Bundeswehr als Einsatzarmee' (*Bundeswehr*) <www.bundeswehr.de/de/selbstverstaendnis/geschichte-bundeswehr/armee-einsatz-geschichte> accessed 19 December 2025.

[145] As elaborated in: Malte Seyffarth, 'Eine verfassungsgerechte Reform des Parlamentsbeteiligungsgesetzes' (2019) 2 GSZ 57.

[146] Helmut Aust and Claus Kreß 'Evakuierungen ohne Rechtsgrundlage?' (*Frankfurter Allgemeine Zeitung*, 7 September 2021) <www.faz.net/einspruch/exklusiv/afghanistan-evakuierungen-ohne-rechtsgrundlage-17526259.html> accessed 18 December 2025. The German Federal Government relied not only on the exception under customary international law recognised in legal scholarship, but also on a continuing consent to the evacuation granted by the Government of the Islamic Republic of Afghanistan (government motion in BT-Drs 19/32022, 1.

[147] Aust and Kreß (n 146); Marxsen (n 143); Lange (n 94); cf Aust (n 9) para 50.

[148] Aust and Kreß (n 146).

This might lead to a loss of significance of Article 24 paragraph 2 GG. Moving away from acting within the framework of mutual collective security systems would not be desirable, as the multinational integration of the *Bundeswehr* is fundamental to preventing unilateral actions[149] and thus constitutes, especially against the backdrop of German history, an essential supervisory instrument. Acting outside such a system should always be only the second choice. However, one could argue that "a departure from the requirement of collective involvement could [even] increase Germany's military 'capacity for cooperation and action' vis-à-vis its allies".[150]

In order to reconcile these two interests, this paper proposes a "near-complete alignment". It would be limited to a single constitutional requirement that goes beyond the demands of international law: namely, that recourse to action outside, rather than within, a system of mutual collective security should be permissible only as a measure of last resort. Such a "near-complete alignment" would largely preserve the advantages of complete alignment while simultaneously reducing the risk of unilateral action and of undermining the significance of systems of mutual collective security.

Of course, such alignment does not create complete legal clarity regarding the permissibility of foreign deployments, as points of discussion under international law remain. Nevertheless, legal certainty would be increased and the population's trust in the state would potentially be strengthened. Both the debate over the unconstitutionality of the Federal Government's actions as well as the failure to act on constitutional grounds despite the possibility under international law offer avoidable grounds for criticism.

2. Call for strengthening the Federal Constitutional Court's oversight of foreign deployments

Another democratic deficit is perceived in the fact that "there is practically no way for the Federal Constitutional Court to review the admissibility of the deployments".[151] Legal control of foreign deployments takes place in disputes between federal organs (*Organstreitverfahren*) and is limited to asserting the *Bundestag's* participatory rights regarding the requirement of parliamentary approval for deployments of armed forces (*wehrverfassungsrechtlicher Parlamentsvorbehalt*).[152] A review of the constitutionality of legislation (*Normenkontrolle*) is not possible, as the parliamentary decision concerning the deployment (as an individual measure) does not constitute federal law within the meaning of Article 94 paragraph 1 number 2 GG.[153] This shortcoming has become

[149] cf Wissenschaftliche Dienste, 'Ausarbeitung' (n 101) 11.
[150] ibid 13.
[151] Mehrdad Payandeh and Heiko Sauer, 'Die Beteiligung der Bundeswehr am Antiterroreinsatz in Syrien' (2016) 49 ZPR 34, 37; cf Marxsen (n 143).
[152] Marxsen (n 143).
[153] Payandeh and Sauer (n 151) 37.

significant in the context of the deployment in Syria, where it was controversial whether it was carried out within the framework of a system of mutual collective security, which the Federal Constitutional Court deemed "at least justifiable".[154]

On the grounds that "it must not matter whether one can 'justify' that [the deployments] are constitutional, but rather that the relevant questions [...] must be subject to a final and binding clarification by the Federal Constitutional Court",[155] two legislative initiatives were introduced.

These were intended to create a new type of procedure for reviewing the substantive requirements for foreign deployments.[156] However, they did not find a majority. Nonetheless, constitutional review would be important for effective supervision, as it is unlikely that the *Bundestag* would oppose the government it supports. To date, it has approved all mandates.[157]

3. Compatibility of these demands

The implementation of both demands would contribute to strengthening resilience in each case. However, their compatibility remains questionable. If constitutional and international law were aligned for foreign deployments and substantive supervision were established simultaneously, the task of the Federal Constitutional Court would theoretically still be to review constitutional law due to the dualistic understanding of the legal system. In practice, however, it would be limited to ensuring compliance with international law.

German constitutional law already recognises a review procedure relating to international law, the norm verification procedure under Article 100 paragraph 2 GG. This is a referral procedure in which the Federal Constitutional Court determines whether a rule of international law, namely the rules of universal customary international law and general principles of law,[158] is part of federal law and directly creates rights and obligations for individuals within the meaning of Article 25 GG. The procedure serves to "ascertain their validity and status"[159] and thus to prevent divergent classifications by German courts.[160] Its purpose is therefore to counteract domestic fragmentation. However, the review of the compatibility of individual acts with international law cannot

[154] BT-Drs 19/14025, 5 (opposition proposal); BVerfGE 152, 8, 29.
[155] BT-Drs 19/14025, 5.
[156] BT-Drs 18/8277 (opposition proposal); BT-Drs 19/14025.
[157] Marxsen (n 143).
[158] BVerfGE 109, 38, 53.
[159] Steffen Detterbeck, 'Article 87a GG' (n 15) para 26.
[160] cf von Arnauld (n 109) § 7 para 537.

be the subject of the referral procedure.[161]

The review of the legality of foreign deployments under international law may be carried out in proceedings before the International Court of Justice, provided that the states concerned recognise its jurisdiction under Article 36 of the ICJ Statute.[162] If constitutional law and international law were aligned with regard to foreign deployments and a review procedure of the Federal Constitutional Court were to be created, the International Court of Justice and the Federal Constitutional Court would ultimately rule on the same matter. This would entail the risk of further fragmentation of international law and could lead to the Federal Constitutional Court restricting the *Bundeswehr's* ability to act in individual cases beyond what the International Court of Justice might consider contrary to international law. Furthermore, there is a risk that the Federal Constitutional Court could develop into a kind of "court of international law" by determining Germany's positions under international law.[163]

At the same time, however, the creation of such a procedure would increase certainty that German foreign deployments are conducted within the framework of international law. This appears to be particularly important in light of the difficulties in enforcing international law and the current federal government's ambivalent relationship with international law.[164]

Even if the concerns mentioned above lead to the rejection of a procedure enabling the Federal Constitutional Court to review purely international law criteria, it would at least be desirable to establish a permanent, institutionally independent expert commission to review the legality of each deployment under international law and publish its findings. The federal government should be required to take a clear stance on the findings. This would at least strengthen parliamentary and public oversight. This, too, could help to promote legal clarity and ensure compliance with international law.

In any case, as long as international law and constitutional law have not been brought into line with each other, it seems desirable to at least create a procedure in which the Federal Constitutional Court reviews the existing stricter constitutional requirements which are independent of international law. This includes, for example, assessing whether the deployment actually took place within a system of mutual collective security, or whether

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[161] BVerfG NVwZ 2008, 878, 879.

[162] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, art 36.

[163] Marxsen (n 143).

[164] German Chancellor Friedrich Merz stated, for example: "Categorizing the events under international law will have relatively little effect. This is especially true when these classifications remain largely inconsequential." Bundesregierung, 'Press statement by Federal Chancellor Merz on the situation in the Middle East. Iranians deserve a better future' (*Bundesregierung*, 1 March 2026) <www.bundesregierung.de/breg-en/news/chancellor-statement-near-east-2409224> accessed 6 March 2026.

criteria specified by the Federal Constitutional Court were applied. This would initially ensure compliance with the constitutional requirements existing in addition to international law. Subsequently, this could increase the pressure for reform if these requirements prove impracticable for the *Bundeswehr's* ability to act. Even if a "near-complete alignment" as recommended above were established, the procedure could still be useful in determining whether acting outside, rather than within, a system of mutual collective security was genuinely a measure of last resort. In any case, legal clarity would be strengthened.

D. Conclusion

Regarding the constitutional basis for domestic and foreign deployments, it can be noted that, despite numerous clarifications by the Federal Constitutional Court, legal uncertainties persist. This is particularly evident in debates on domestic challenges, such as drone defence and counter-terrorism operations, as well as in discussions on foreign deployments, such as defence on the territory of third countries or the evacuation of the state's own nationals.

A *Bundeswehr* that reliably protects our freedom and democracy, as called for by Olaf Scholz in his *Zeitenwende*-speech, should not operate based on ambiguous and possibly outdated legal foundations. The current constitution makes it difficult to act in a legally secure and swift manner. Moreover, this may negatively affect public trust in state crisis management, which provides additional leverage for anti-democratic forces.

For these reasons, it is important for the resilience of our democracy to establish clarity regarding the constitutional basis for armed forces deployments and to ensure that these deployments meet the new security policy challenges. Constitutional amendments can contribute to this, for example by explicitly expanding the possibilities for domestic deployments and by largely bringing constitutional law and international law into line regarding foreign deployments. On the other hand, the Federal Constitutional Court could enhance legal certainty by clarifying specific terms, which would be particularly beneficial with regard to the concept of "defence" in Article 87a GG.

The creation of a new type of procedure, which would at least allow for the review of compliance with constitutional requirements for military deployments that exceed international law, could also increase the pressure for reform, in addition to providing greater legal clarity. Furthermore, the establishment of a permanent, institutionally independent expert commission to review the legality of each deployment under international law on whose findings the federal government is required to take a clear

stance would also be beneficial.

At the same time, it is important for a resilient democracy to set clear limits on the deployment of armed forces. Apart from compliance with international law, it is essential that deployments of armed forces, both domestically and abroad outside of mutual collective security systems, remain a last resort.

A resilient democracy therefore requires a constitutional framework for military deployments that is adapted to new security policy challenges, thus contributing to effective capacity to act, legal clarity and democratic accountability, while at the same time preserving historical core principles that protect against abuse of power.