

TEUTONIC TERROR

THE HISTORY OF GERMAN COUNTERTERRORISM POLICY



Although terrorist attacks are often construed as a largely 21st century phenomenon, the Federal Republic of Germany (BRD) faced similarly formidable acts of violence dating all the way to the 1960s. Chief among the German domestic terror groups who oversaw such violence was the Red Army Faction (RAF), which formed in 1970 and continued to operate until its official dissolution in 1998. As such, post World War II policy developments pertaining to German counterterrorism efforts have occurred in reaction to two fundamentally different security challenges. The first as stated above, arose out of a need to combat domestic left-wing militant groups such as the RAF; the second was necessitated by the events occurring on 9/11, intended to combat foreign Islamic terrorist organizations. This paradoxical shift of the general aims of German counterterrorism initiatives has forced governmental security agencies to revamp their policies and practices while also driving a fierce public debate.

In the 1960s, left-wing radicalism gained greater momentum, backed in large part, by student movements comprised mainly of the postwar generation of Germans. Among this new generation of German youth were the founders and leaders of the early RAF, Ulrike Meinhof, Andreas Baader, and Gudrun Ensslin. In 1970,

after a small group of RAF members shot and killed a civilian while successfully freeing Andreas Baader from incarceration, they coalesced as an organization and for the first time showed a willingness to resort to violence to achieve political goals. Unsurprisingly, the RAF's tactics became ever more violent following a short stint training Palestinian guerilla units in Gaza and the West bank. This violent behavior achieved headlines throughout the BRD, beginning in 1972 with the bombing of US military barracks in Frankfurt, leaving 13 soldiers stationed at the base badly injured. Similar attacks and kidnappings continued regularly until they reached an apex in both magnitude and infamy in the fall of 1977, during what is known as the Deutscher Herbst (German Fall). During this time, the RAF members kidnapped Hanns-Martin Schleyer, the president of the Federation of German Employers' Associations, and executed him near the German-Belgian border some five weeks later. Over the same time period, four Palestinian terrorists associated with the Popular Front for the Liberation of Palestine (PFLP) hijacked Lufthansa flight 181, killing the pilot and abducting 86 passengers. In exchange for the passengers, the hijackers demanded the release of 13 RAF prisoners held by the German government, but were ultimately unsuccessful. In all, the RAF was responsible for the death of at least 35 people, including the four American soldiers during attacks on two US military bases in May 1972.

Although there are some instances where the RAF worked in conjunction with foreign governments (especially the German Democratic Republic in East Germany, or DDR) and other terrorist groups, nearly all of their attacks occurred on German soil. As a result, the BRD's counterterrorism measures focused on domestic, secular terror organizations. Until the attacks of September 11th in the United States, most of the German efforts were geared towards homegrown threats. The German government did not have total freedom, however, as many checks were put on the BRD's various national security organizations. This imperative to contain governmental power and influence is largely a product of the widely publicized abuses that occurred during the Nazi era.

There were three different acts relating to counterterrorism that occurred in the BRD in direct response to the RAF; these occurred in 1972, 1976 and 1978. These three separate acts criminalized the formation of terrorist organizations or the support and encouragement of serious violent crimes; strengthened the powers of prosecution authorities; and limited the legal rights of the defense, in particular, allowing terrorist activity to be tried under different penal conditions than other criminal acts. Additionally, in 1977 the BRD implemented the contact ban law that limited the rights of the defense and allowed law enforcement bodies to isolate victims that have been charged with terror-related crimes. Beyond legal instruments, another key change that was precipitated by the RAF was the modernization and computerization of police and intelligence services, where databases were required to be kept on members of the RAF and other left-wing terror groups. Although the creation of a new digital database for criminals may seem innocuous to many observers, it certainly was not for many German citizens, who had grown distrusting of such programs following egregious abuses seen among the Nazis. Even though these developments may seem commonplace when observed through the lens of an American citizen, these legal changes and instruments led to an intense debate over whether they challenged the fundamental rights and freedoms of the German citizenry.

THE PRINCIPLES OF GERMAN COUNTERTERROR POLICY

Prior to the escalation in RAF attacks beginning in 1972, German collective understanding of terrorism was framed overwhelmingly by the way it related to the Nazi government from 1933-1945. This history shaped a disjointed counterterrorism policy aimed more at leveraging against federal overreach rather than external national security threats. This security apparatus was based on three overarching principles: first, police and security authorities had to be organized along both federal and state lines, meaning that the 16 German Länder (states) were equipped with their own police, intelligence services, and legal institutions each operating independently from the federal branch. Germany has no federal police force that serves as the overarching national authority for domestic security, similar to the FBI in the United States. Second, there had to be a clear legal and political distinction between police and intelligence services, as stated by the separation clause. Third, German authorities had to distinguish between internal and external security issues, creating a strong separation between the police and military.

These three guiding principles led to the establishment 39 separate departments tasked with protecting national security interests. The most important of these offices in regards to counterterrorism strategy are the Federal Office for the Protection of the Constitutions (BfV), tasked with domestic intelligence gathering that includes a federal office and 16 different Länder offices, the Federal Criminal Police Office (BKA) that provides information exchange and central databases for criminal records, finger prints, photographs, and DNA analysis in conjunction with 16 State Criminal Police Offices (Länderkriminalämter or LKAs). Additionally, there are the Federal Intelligence Service (Bundesnachrichtendienst or BND), the Military Counterintelligence Service (Militärischer Abschirmdienst or MAD), the Federal Border Guard (BGS), and the Customs Criminal Office (ZKA).

9/11 and Resulting Policy Decisions

Following the terrorist events of September 11 in New York City, the BRD was required to reconsider the legal procedure and practices of its counterterrorism operations. This decision was further motivated by the fact that three of the four hijackers had been educated and radicalized in Hamburg. Prior to fall of the World Trade Center towers, the notion of terrorism was considered a domestic issue in the BRD. As a result, several new measures were required in order to meet the challenge of a dangerous transnational right-wing Islamist threat. This change in policy took place in two separate security packages that sought to achieve five key objectives: destroy terrorist structures through comprehensive searches and investigations, repel terrorists before they can launch attacks in Germany, enhance international cooperation in combating terrorism, protect the German population and reduce the vulnerability of the country, and remove the root causes of terrorism.

The first security package focused primarily on two issues, the first of which led to the abolishment of the “religious privilege.” It became possible to ban certain religious organizations if their purpose or activities ran counter to the provisions of criminal law, were directed against the constitutional order, or disregarded the “idea of international understanding.” This amendment entered into force in December 2001 and is primarily targeted at fundamentalist Islamic organizations that do not reject the use of violence. The BRD has begun to back away from this stance in recent years, making the provision less controversial than it was at the outset. The second measure came in the form of a new paragraph in the penal code that criminalized membership in, or support of, terrorist organizations based in other countries. This law came into force in September 2002 and for the first time it became possible for convictions to be made on the basis of membership in a foreign terrorist group, even if the group had not established any kind of formal base within Germany, in which case it would fall under different legal statutes.

A second security package was passed in January 2002 and dealt with a broader range of issues than the first. The plan contained changes to 17 laws and various administrative decrees. The main goal was to strengthen the rights and capabilities of security authorities. The new measures allowed for improvements in information sharing between

agencies, better identification and background checks in visa application procedures, and allowed for the use of armed sky marshals as well as the use of firearms by security officials on civilian airliners. Another provision granted police institutions, intelligence agencies and other law-enforcement entities the power to obtain information from various public and private services such as telecommunications, mail, air traffic, banking records, employment information and university records. Although this information can only be acquired after obtaining special permission from the government with oversight by a parliamentary body, the law greatly extended the reach and scope of intelligence and law-enforcement agencies involved in counterterrorism operations. During 2012, the policies enacted in the early 2000s were renewed and currently constitute the framework through which the BRD conducts counterterrorism operations.

Looking to the Future

The history of counterterrorism operations in the BRD has been shaped in large part by four overarching factors: the Nazi period, left-wing terrorist activity by the RAF and others, police and intelligence abuses by the East German Staatssicherheit (Stasi) and others institutions in the DDR, and the rise of right-wing Islamic terrorism beginning with 9/11. The events that occurred during Nazi rule and in the DDR have left an indelible mark on the German public conscious, creating a situation where most government officials and citizens alike are inherently reluctant to grant any institution too much authority over security operations. At the same time, the past threat of domestic terrorism and the current issue of transnational threats have forced Germany to have a serious policy discussion regarding the limits of governmental power. The paradox between the surrender of individual privacy and privilege in return for a government that is capable of combating terrorism may be as prevalent now as it ever has been, but it is an issue that Germany has struggled with for decades. The unique history of Germany during the 20th century highlights these concerns and the relationship between law-enforcement, intelligence agencies and the judicial system is still a major theme in the public discourse and will be for some time to come.

The current situation in Germany presents a few problems that present both similarities and differences with the last half-century in the BRD. Three of the concerns at the forefront of discussion are: fears that terrorist activity similar to

that seen in Paris on the satirical news outlet Charlie Hebdo will occur, that issues with the current influx of Syrian refugees may worsen and result in negative societal and political outcomes, or that anti-Islam nationalist groups like PEGIDA will gain greater momentum, exacerbating a deepening rift between Islamic and nationalist groups in Germany and giving rise to new domestic terror threats. While these are certainly not the only issues currently facing the BRD, they lie firmly at forefront of the national consciousness.

It goes without saying that nationalistic beliefs and behavior is approached very skeptically by most Germans, making the atmosphere around the debate even more polarized compared to other European states. Much work is left to be done in order to ensure that religious and cultural plurality is maintained in the BRD, while also making sure that the wellbeing and security of its citizens are protected. Performing this tightrope act will be difficult for the BRD go-

ing forward, but certainly not impossible. A mind for the abuses of the past along with a steady awareness of what perils may occur in the future are paramount in completing this task. Germany's economic predominance in the EU has recently it turned into a trendsetter in policy initiatives across the continent. As such, a successful security strategy could set an important precedent for all European nations going forward in how they deal with new immigrants, conduct counterterrorism operations, and control the dangerous proliferation of nationalistic fervor. Indeed, widespread international attention will be focused on Germany as it crafts its policy to combat these pressing

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Page 13: A car bombing by members of the Red Army Faction in 1981 targeting the U.S Air Forces in Europe headquarters at the Ramstein Air Base
Page 14: A training exercise by GSG 9, the German counterterrorism and special operations unit
Page 16: Lufthansa flight 181 - hijacked by members of the Popular Front for the Liberation of Palestine in 1977. The German homegrown terror group, the Red Army Faction, trained militants in Palestine