

Law Enforcement and Counter Terrorism in Post-9/11 Germany

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Abstract:

The low priority given to surveillance of suspected Islamic extremists in Germany before the September 11 attacks in the United States, coupled with Germany's fragmented and decentralized structure of law enforcement, contributed to the failure of the German intelligence services and the police to prevent the planning of the 9/11 attacks by what is now known as the Hamburg terrorist cell. Consequently, in the aftermath of the attacks on the World Trade Center and the Pentagon, the shocked and embarrassed German government enacted anti-terrorist legislation that provided greater freedom to law enforcement to act against suspected terrorists. In Germany, as in some other countries, the war on terrorism has aroused opposition by some who regard the new policies to be threatening civil liberties. Among other things, this article discusses the organizational structure and mission of Germany's major law enforcement agencies, as well as shifts in policy guidelines and the investigative priorities undertaken to enhance the ability of the authorities to counter terrorist threats in Germany. The article reviews some multi-lateral and unilateral actions taken against terrorism. Though no major terrorist attack has occurred in Germany, the article highlights some past potential deadly attacks such as the one by the Sauerland cell, and ongoing threats to the country's domestic security, intensified by recent threats made on the Internet and via videos.

Keywords:

Germany, Terrorism, Law Enforcement, Sauerland Cell, Al Qaeda

Introduction

Following the September 11 attacks on the World Trade Center and the Pentagon, Germany was shocked and embarrassed to learn that 3 of the 19 hijackers along with at least 3 other men believed to have planned and plotted the attacks on New York and Washington, belonged to an Al Qaeda terrorist cell that operated freely out of a southern suburb of Hamburg, Germany.

The fact, however, that Germany was used by Al Qaeda as a base of operations to launch terrorist attacks should not have come as a great surprise. As pointed out by Rohan Gunaratna (2002) in his book, *Inside Al Qaeda: Global Network of Terror*, Germany had been a center for "terrorist propaganda, recruitment, fund raising, investment, procurement and shipping" (p.129) for a long time. Germany's intelligence agencies had warned that radical Islamic organizations were taking advantage of their presence in the country to support terrorism, yet no German intelligence agents were planted within Germany's Moslem community before September 11 (Baer, 2002).

Because of its Nazi past, after World War II, Germany decentralized its police and created a constitutional and democratic political system that emphasizes the right to privacy and other constitutional protections analogous to the one enjoyed in the United States. Consequently, new directives giving more power to law enforcement agencies are viewed by most Germans with suspicion. It is now evident that the low priority given to surveillance of Islamic extremist before September 11, coupled with Germany's fragmented and decentralized structure of law enforcement, contributed to the failure of the intelligence services and the police to prevent what the German magazine *Der Spiegel*, in a lead article, referred to as Pearl Harburg (Brinkbaumer et al, 2001).

This article sheds some light on Germany's post-9/11 policies and efforts to counter the threat of international terrorism within its borders without damaging its democratic principles.

The Structure of Law Enforcement

Because of its Nazi past, law enforcement powers in Germany, before and after unification, were intentionally fragmented and decentralized to prevent the reemergence of a centralized secret police such as the Gestapo. Consequently, under Germany's federal system, each of its 16 states (*Länder*) controls its own police force. Each state has its own State Office of Criminal Investigations, responsible for investigating criminal offenses and collecting data. In each state, the police are further decentralized into municipal police forces called *Schutzpolizei* (uniformed police responsible for patrol, preliminary investigations, etc.) and *Kriminalpolizei* (detectives). The *Kriminalpolizei* is subordinated in each state to that State's Office of Criminal Investigations.

On the federal level, Germany's Constitution (Basic Law) provides for federal law enforcement responsibilities that are vested in the Federal Ministry of the Interior (*Bundesministerium des Innern*), headed by the minister of the interior. In the aftermath of 9/11, one of the major tasks, if not the major task, of the minister of the interior is to formulate and articulate the country's antiterrorism policies. Assisting the ministry in carrying out this task are the following federal law enforcement agencies:

The Federal Criminal Police Office (*Bundeskriminalamt*), known as the BKA.

This is Germany's central agency for domestic investigations. The BKA by law carries out its law enforcement responsibilities in "partnership" with the state police forces. But it may investigate cases only when requested to do so by a state

police agency or in cases involving two or more states. Also, in special cases, at the direction of the federal prosecutor, the BKA may be ordered to investigate cases of federal interest. As such, the BKA investigates criminal activities related to terrorism, extremism (including neo-Nazis), espionage, and financial crimes. New post-9/11 counterterrorism measures are enhancing the BKA's power. For example, according to the federal minister of the interior, draft legislation approved by the German government on June 4, 2008, "adds to the Act of the Federal Criminal Police Office all the tools the BKA needs for its new task of preventing threats arising from international terrorism" (*Welt Online*, June 4, 2008).

The Federal Police (*Bundespolizei*), known as BPOL

Reconstituted as the Federal Police in 2005, and recently reorganized, this force is responsible for border protection, railway policing and aviation security. Among other things, it may assist state police forces, when so requested. The Federal Police now also houses Germany's famous counter-terrorism elite unit known as the GSG-9. Created in 1973, as a result of the 1972 Munich Olympics fiasco in which 11 Israeli athletes were murdered by Palestinian terrorists, this unit has been deployed in several rescue operations and missions still shrouded in secrecy.

The Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*), known as BFV

Domestic intelligence gathering is vested in the BFV, whereas traditional police responsibilities, as already discussed, are carried out by the states and the BKA.

Directorate-General P within the Federal Ministry of the Interior: Police Affairs, Counterterrorism.

Directorate-General P consists of the Directorate of Police Affairs and the Directorate for Counterterrorism. Among other things, the Directorate-General P oversees the BKA and, in matters related to extremism and terrorism by foreigners, also the BFV. The agency also houses the Office of the Standing Conference of State Interior Ministers, which coordinates federal and state domestic policy.

The Federal Intelligence Service (*Bundesnachrichtendienst*), known as BND

Akin to the CIA, the BND is responsible for foreign intelligence gathering. A specialized division within the BND was created in 2001 to fight terrorism and organized crime. Created in 1956, the agency reports directly to the Federal Chancellery in Berlin. At the present time, the BND is being reorganized and new headquarters are being constructed in Berlin.

Guiding Principles for Germany's War on Terrorism

Based on German government officials' pronouncements and Germany's military commitments in foreign lands, it is clear that the overarching principle guiding counterterrorism policy is based on soft rather than hard power. The government is, of course, obligated to protect its citizens, yet it tries to do so rationally without alienating Germany's Muslim population and playing into the terrorists' hands.

Guidelines for Domestic Security:

The following is a brief summary of official views and principles regarding the danger of terrorism, gleaned from recent statements issued by the Federal Ministry of the Interior:

- The German people have the right to live “a free and secure life” (BMI, May 15, 2008). It is the duty of the state and its representative agencies to secure this fundamental right and, when called for, to employ means to counter the danger of extremism. Islamic terrorism constitutes the gravest threat facing the nation. Germany has become more than just a staging point for terrorists, “it is now open to operations by Islamic terrorists” (BMI, May 15, 2008).
- The threat of terrorism is real for the number of active Islamic organizations in Germany has grown to 30 in 2007. They include such organizations as The Egyptian Muslim Brotherhood (1,300 members), Palestinian Hamas (300 members), Lebanese Hezbollah (900 members), the Turkish Milli Gorus (28,000) and others (*Welt Online*, December 26, 2007).
- Domestic security is based on federalism and is mainly the responsibility of the states and the state police agencies. The states know best their respective specific needs and the most effective means for solving problems (BMI, June 30, 2008).
- International terrorism has ushered in a new reality. Unlike any other phenomenon, terrorism blurs the distinction between internal and foreign security. Consequently, there exists a need to understand the asymmetrical means employed by terrorists and fight it domestically, and in foreign countries such as Afghanistan. This requires a multilateral rather than a unilateral approach (BMI June 30, 2008).
- Military means are insufficient to fight terrorism. Other means must include improved law enforcement (especially intelligence), as well as political, economic, judicial and legislative approaches (BMI, June 30, 2008).
- The key to fighting terrorism is prevention, and effective prevention depends on gathering information and sharing of intelligence. Still, it is necessary not to

confuse uncontrolled collection of data with the needs of security. In a democratic society, a balance must be found to strengthen the means leading to greater security and the right to privacy. However, in some unique situations, some “red lines” must be crossed. To be realistic, when terrorists use the internet and modern technology to advance their cause, the security apparatus must also be given new instruments such as the capability to conduct online searches (BMI, May 19, 2008).

- Radicals in Germany must be isolated. Thus, society must act against the social circumstances that give rise to recruitment of potential terrorists and alleviate the sense of grievance and alienation that often feeds the radicals. Consequently, efforts must be made to better integrate the immigrant population and counter youth violence (crimes committed by 14-18 year-olds rose from 0.7 percent in 2006 to 4.9 percent in 2007) by opening up communications between the police, schools and youth organizations (BMI, May 19, 2008). Moreover, means must be found to better communicate with the country's Muslim population. (Regarding the latter, the first German Conference on Islam, “Muslims in Germany-German Muslims,” intended to improve the religious and social integration of the approximately 3 million Muslims in Germany, opened in Berlin in summer 2008.)

Multilateral and Unilateral German Initiatives in the War on Terrorism

Multilateral Action:

Military Cooperation

Immediately after the September 11 attacks, Germany declared its solidarity with the United States and began supporting America's war on terrorism by taking several concrete military steps. In response to an American request for assistance in the global war on terrorism, Germany joined the United States effort by taking part in “Operation Enduring Freedom,” initially dispatching more than 1000 German troops to Afghanistan to fight the Taliban and help rebuild that country's police forces. Despite strong opposition to the war in Iraq, the German Parliament in 2004 reauthorized the deployment, but set a limit of 3,500 soldiers. More recently, under pressure from its NATO allies, the German government agreed to seek parliamentary approval to add another 1,000 troops to the earlier deployment. In this connection, however, it must be noted that Germany's aversion to fight wars has resulted in a policy that shelters the German troops in Afghanistan by keeping them in the Regional Command North, where they are engaged mainly in training the Afghan police and Army. Nevertheless, at least 25 German soldiers have died in Afghanistan (compared to more than 450 American soldiers). The German Navy, too, has been

partaking in “Operation Enduring Freedom” by patrolling the waters off the Horn of Africa and the Mediterranean Sea. A number of German warships and support vessels have been involved for several years in preventing Al Qaeda from using the sea lanes for smuggling weapons and moving terrorists from country to country. Also, along the East African coast, the German Navy has been conducting surveillance flights to track suspicious vessels.

Financial Consideration and Cooperation

Another important area in which Germany has been cooperating with the United States and other countries is the effort to combat money laundering by international terrorist organizations. Thus, for example, taking advantage of a law passed after the 9/11 attacks (see below), Germany has shut down some Islamic charity organizations linked to such terrorist organizations as Hamas and Hizb ut-tahrir. German law was also brought into line with the international requirements of the Financial Action Task Force on Money Laundering, making it possible for the BKA's Financial Intelligence Unit (FIU) to cooperate more closely with its counterparts in other countries (BMI, August 12, 2004).

Germany has also played an important role in getting the European Union (EU) to adopt measures against money laundering and coordinate antiterrorist policies among EU members. Thus, for instance, the EU has begun to monitor cash transactions across national boundaries and has created the position of an Anti-Terror Coordinator linked to a unit of the EU that meets in secret to assess potential terrorist activities in Europe. Related to Europe's greater awareness of the danger posed by terrorism, the EU and the United States have begun to overcome a long-simmering conflict that developed after the 9/11 attacks over the sharing of personal data, especially information related to people flying from Europe to the United States. As reported by *The New York Times*, in a statement issued on June 10, 2008, the United States and the EU declared that “the fight against international crime and terrorism requires the ability to share personal data for law enforcement” (Savage, 2008).

Unilateral Initiatives

Legislative and Judicial Action

Following the 9/11 attacks, and the growing realization of its own vulnerability to international Islamic terrorism, the German government pushed through Parliament two important antiterrorism legislative packets, called “Security Packet” I and II. The newly enacted legislation made it possible for the German authorities to take concrete actions against religious organizations

used as fronts by extremist elements in Germany. Thus, a revised section (129B) of the German Penal Code eased restrictions on the police to act inside Germany against members of foreign terrorist organizations (such as Hamas) if they incite violence or pose a threat to the country's national security. The antiterrorist legislation also made it easier for law enforcement agencies to obtain electronic information and communications records from telecommunications companies and Internet providers. This legislation, of course, has raised deep concerns among German civil rights advocates who are ever so cautious over privacy issues. There is an ongoing debate in Germany between advocates of more stringent measures to protect national security and those who fear that such measures only weaken the German democratic system. Most recently it surfaced once again in reference to the government's quest to monitor the computers of suspected terrorists and their sympathizers. The specific surveillance technique at issue involved the sending of e-mails with so-called Trojan horses to a suspect's computer to make it possible for the nation's intelligence services to spy on that computer's activities. That particular surveillance technique was challenged before Germany's highest court, the Constitutional Court, which consequently ruled that the law enforcement authorities could indeed monitor the computers of suspected terrorists, but only if there is sufficient evidence of pending danger (BMI, February 27, 2008). On the other hand, shortly after, the same court limited the above mentioned law that allowed the government to collect data from telecommunications companies and Internet providers (BMI, March 19, 2008). Still, the German Parliament (*Bundestag*) on November 12, 2008 enacted an amendment to the BKA ACT (the so-called *BKA Gesetz*), which would authorize the BKA to tap telephone calls, conduct telecommunications interceptions at the source through remote searches of computer hard drives, as well as bug private homes to prevent an imminent threat. The latter power even goes so far as allowing bugging of a home of a third party (not a suspect) as long as there is reason to assume that the suspect himself is located on the premise (BMI, November 12, 2008). Since this new legislation would provide the BKA some concurrent constitutional powers already vested in the states, as of this writing, the new amendment still awaits approval by the upper chamber of the Parliament (*Bundesrat*). The controversy over the granting of additional police powers to the BKA continues to reflect the country's dilemma in finding a proper balance between national security needs and the cherished civil liberties enshrined in the German conscience after World War II. This issue is also overshadowed by internal politics as the Ministry of the Interior is controlled by the conservative Christian Democrats, and the Justice Ministry is under the control of the liberal partners of the so-called grand coalition, the Social Democrats.

The Terrorism Information and Analysis Center

As already mentioned, German counter-terrorism policies are guided by the belief that the key to preventing terrorist attacks depends primarily on improved intelligence and greater coordination and cooperation among law enforcement agencies. To that end, the German government in December 2003 created the Terrorism Information and Analysis Center, which brings together 11 government departments and agencies for the purpose of exchanging information in real time, analyzing threats, and organizing timely response. At the time of the center's inauguration, the then minister of the interior declared, "With the intensified and expanding cooperation we are achieving a qualitative jump in the war on international terrorism (BMI, December 14, 2003).

Terrorism-Linked Police Raids

The Sauerland Arrests

Throughout Germany there have been numerous police raids mounted in recent years in an effort to preempt any terrorist attacks. One of the most successful raids, and the one most talked about by German officials and politicians, occurred in September 2007. Known as the Sauerland (so named after the geographic location) arrests, this particular operation, in which some 600 officers raided 41 houses and apartments in several German states, foiled planned car bomb attacks that could have been the largest and most deadly terror attacks in Germany. These large-scale attacks were aimed at several sites, mostly frequented by Americans, including military bases such as the Ramstein Air Base and the Frankfurt International Airport. Seized by the police were 12 containers of hydrogen peroxide, which when mixed with other chemicals, could produce a huge bomb or bombs more powerful than those used by terrorists in Madrid and London. Arrested were three men, two German citizens who had converted to Islam and a Turkish national. Another German of Turkish origin was later arrested in Turkey. Allegedly, those arrested had been trained in Pakistan by an Al Qaeda-linked group of terrorists. Reflecting relief among German officials, the German federal prosecutor, Monika Harms, at a specially called news conference, declared, "This is a good day for German security" (*Welt Online*, September 5, 2007). The most important raid of the entire operation, which yielded the explosives and the arrests, was mounted by the BKA and the GSG-9 in a remote village in western Germany. The Saureland arrests did not come as a complete surprise to the German authorities. Indeed, German officials had issued several warnings of a pending terrorist attack for some time. These officials, of course, knew that an elaborate investigation had been undertaken and that suspects were under

surveillance. The investigation included monitoring phone calls, observation of suspects, and even entry of the storage place of the containers of hydrogen peroxide and the successful replacement of some of these containers with less lethal material. The fact that the leader of the terrorist cell, Fritz Gelowicz, was a German convert to Islam and the others of Turkish origin has focused public debate and commentaries by politicians on the need for more stringent security (for instance, making training at a terrorist camp a criminal offense and giving the BKA enhanced powers to conduct surveillance) as well as improving the relationship with Germany's Muslim community, especially its large Turkish minority. Not surprisingly, shortly after the Sauerland arrests, it was revealed that the BKA has created a list of "890 names of German residents of Islamic background, who potentially constitute a threat" (*Welt Online*, September 5, 2007). Moreover, overall German anxiety was raised after the authorities released a new study about "Muslims in Germany," which indicated that the number of "Islamists" (followers of political Islam) in Germany needed to be revised from 32,000 (based on a 2006 BFV report) to 390,000 "Islamists who exhibit anti-democratic and anti-Western attitudes, and who wish to see the institution in Germany of *Sharia* law" (*Welt Online*, December 26, 2007). As of this writing, the Sauerland arrests continue to make news. Almost one year to the date after the original raid, German prosecutors formally charged the arrested men "with membership in foreign and domestic terrorist organizations and with plotting bombing attacks..." (Mekhennet, 2008), and the trial itself opened in Düsseldorf in late May 2009. Regarded as the biggest terrorism trial in more than 30 years, it is expected to last some two years (*Welt Online*, March 16, 2009). Furthermore, this past August the BKA arrested yet another individual suspected of having rendered material assistance to the Sauerland cell (*Welt Online*, August 18, 2009).

Neu-Ulm and other Arrests

In another major antiterrorist operation, the police raided more than a dozen suspected terrorist sites throughout Germany. The police arrested and charged nine Germans with radicalizing German converts to Islam and promoting Jihad. Those arrested are said to have been connected to the Multicultural House in Neu-Ulm, the same center frequented by Fritz Gelowicz, previously mentioned as the leader of the Sauerland cell (see above). In fact, fear of possible terrorist attacks prompt the German police and intelligence services to be extra vigilant and execute arrests. Thus, for instance, after the release of recent videos threatening retribution against Germany, the police took into custody, as a preventive measure, two suspected Al Qaeda supporters, obtaining a judicial order to hold them in detention until after the celebration of "Oktoberfest" (*Welt Online*, September 28, 2009).

The Fear of Homegrown Terrorism

Daily life in Germany is affected by the fear that Germans (rather than Middle-Eastern looking persons) are being trained by Al Qaeda for possible suicide operations inside Germany. In September 2008, for example, the German authorities arrested a Turkish national suspected of having tried to recruit Germans to join the Al Qaeda terrorist organization for training during 2005-2007 (*Welt Online*, September 13, 2008). That fear has been reinforced by the disclosure that the CIA had informed the German authorities that two suspected terrorists (the German-born Eric Breininger and his Lebanese-born friend Hussein al-Malla) have crossed the so-called Green Line into Germany. Not surprisingly, a manhunt for the two was launched throughout the land (looking for the brown-haired and blue-eyed Breininger), with "Wanted" posters displayed in subways and other public places (*Welt Online*, September 27, 2008). Consequently, the head of the BND issued another warning that the threat of terrorism in Germany has taken on a "new dimension," namely, the threat of "homegrown terrorism" (*Welt Online*, October 24, 2008). More recently, as if to prove the point, a propaganda video was released in Germany showing a number of young German radicals in training, calling on German Muslims to join the Jihad (*Welt Online*, October 3, 2009). This latest video was preceded by several other videos and Internet messages threatening Germany with terror attacks. The first of these was a 30-minute Al Qaeda video message posted on the Internet on January 12, 2009, threatening Germany with terror attacks in Berlin and other cities.

A man issuing the threat who identified himself as "Abu Talha the German" was heard speaking in German, accompanied in the background by loud explosions and salvos of rapid gunfire. German intelligence experts were taking the threat very seriously, especially since the message was explicit and uttered in fluent German. According to the BKA, the video proved that Germany was becoming a target for Al Qaeda (*Welt Online*, January 24, 2009).

Conclusion

In Germany, as in the United States and other democracies, the events of 9/11 have exposed domestic security-related weaknesses that, to some extent, have since been remedied by strengthening the ability of law enforcement agencies to monitor, through a variety of means, the activities of suspected individuals, and thus hinder or prevent looming terrorist activities. Like fighting crime, the challenge of terrorism in a free society strains the delicate balance between security and individual civil liberties. Though not comprehensive, this paper has highlighted the danger of terrorism in Germany and that nation's attempts to counter that threat by employing means that include both hard power (military and law enforcement) as well as soft power (cultural understanding and better integration).

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