

German Foreign Minister Fischer wants carte blanche for overseas military operations

By Verena Nees
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On June 19, a significant case opened in Germany's Constitutional Court in Karlsruhe. The Party of Democratic Socialism (PDS—the successor organization to East Germany's Stalinist state party) had earlier filed a complaint against the federal government. A few weeks after the start of the Kosovo war, the government had agreed a new strategic concept of the NATO military alliance without first seeking the consent of the *Bundestag* (parliament), as laid out in the constitution. The aggressive reaction of the government representatives invited to the first hearing—Foreign Minister Joschka Fischer (Green Party) and Defence Minister Rudolf Scharping (Social Democratic Party, SPD)—shows that the “red-green” coalition has become the champion of German militarism.

At their Washington summit in April 1999, the NATO members declared that combat missions outside the territory of the alliance and, if necessary, without a mandate from the United Nation Security Council, were legitimate. In order to strengthen the “security and stability” of the European-Atlantic sphere, according to the final communiqué in 1999, NATO may take part “actively in conflict prevention and crisis reaction”. This supplied the retrospective justification for the air raids mounted against Serbia, NATO's first combat mission without a UN mandate since the establishment of the alliance in 1949.

The fact that the German government signed up to the NATO summit resolution without having received any mandate from the *Bundestag* is the starting point of the legal complaint filed by the PDS.

PDS leader Gregor Gysi charges that the decision taken in Washington meant a fundamental transformation of NATO from a defensive alliance into an organisation that includes undertaking interventions in third countries among its functions. This represented an illegal expansion of the purposes of the alliance, which is not covered by

the NATO charter or Germany's constitutional requirement to gain *Bundestag* approval. According to Article 59 of the constitution, any agreement regulating Germany's political relations must be presented to parliament for approval.

Foreign Minister Fischer and Defence Minister Scharping aggressively deny this. The NATO countries have not changed the original charter, according to Fischer, but have only agreed “new political arrangements”, which do not necessitate prior agreement by the *Bundestag*. Defence Minister Scharping presented a similar argument: It was not the “purpose” of the NATO alliance that was changed, but only the “political context”. Both warned repeatedly of “devastating” damage to Germany's foreign policy if the court upheld the PDS' complaint. Germany's “capacity to act in foreign policy matters” and “credibility” would be endangered, claimed Fischer.

When the judges referred to the obvious link between the new NATO strategy and the Kosovo war, Fischer answered with disarming logic: The Kosovo war could not have been based on the new strategy, since it had started one month earlier. Moreover, German foreign policy must be able to react to developments such as in Kosovo, without immediately having to agree “legally binding changes”.

Some newspaper editorials noted that the SPD and the Greens were now defending a position that they had denounced in the mid 1990s. In 1994, the SPD with the support of the Liberals (FDP) mounted a constitutional challenge against the Christian Democratic Kohl government because of the *Bundeswehr's* (Armed Forces) participation in the NATO mission in Somalia—which had received a UN mandate. They argued that their parliamentary rights had been infringed. The Greens supported the SPD, but could not be a party to the legal challenge as they were not represented in the

Bundestag at this time. The constitutional judges ruled in 1994 that the *Bundeswehr* was allowed to participate in NATO missions that had received a UN mandate, but that each individual mission would have to first be approved by parliament.

In Karlsruhe, a correspondent from the *Frankfurter Rundschau* newspaper put to Joschka Fischer: “When you were in opposition, you regarded the necessity for involving parliament somewhat differently!” Whereupon Fischer crossly responded: “It may be that you do not like the political direction of the [NATO] strategic concept, but that is somewhat completely different. The strategic concept has no binding effect for us... It is incorrect to claim that we are pursuing a policy that avoids parliament. We discussed these questions very intensively with parliament... Moreover, the *Bundestag* decides about each foreign mission undertaken by the *Bundeswehr*... Nothing takes place in the dark.”

Fischer may deny it as often as he wants, but his appearance before the Constitutional Court is nevertheless directed towards ensuring that in questions of war and peace the government can pursue “a policy that avoids parliament,” thus excluding any democratic control over the government in these decisive matters.

Since the 1994 judgement, although the *Bundestag* has debated foreign missions undertaken by the Armed Forces and regularly agreed such operations, each time this was associated with internal party conflicts in the Greens and also in the SPD. On October 16 1998, after the SPD and the Greens had agreed in the *Bundestag* to the participation of Armed Forces in the NATO war against Yugoslavia, there were tumultuous scenes at the Greens’ Party Congress, where Fischer was also pelted with paint. The fact that this war was conducted with obvious disregard for international law has continually led to disputes.

In order to create a broad parliamentary majority for such operations, the German government had to take recourse to alleged constraints like the “danger posed to Germany’s ability to support the alliance” or excessively exaggerated, in part completely invented propaganda concerning violations of human rights and genocide, as was the case in the Kosovo conflict. Leading Green Party member Ludger Vollmer coined the phrase a “unique transgression” at that time.

Fischer and Scharping are calling for the PDS’ complaint to be thrown out, in order to have a free hand in the future to pursue an aggressive foreign policy without having to take into consideration any possible

parliamentary opposition. Such a judicial ruling—expected later this autumn— would also be the first step in eliminating the 1994 judgement, which requires *Bundestag* approval for each individual Armed Forces’ mission.

In the long run, the gradual elimination of every parliamentary control is contained within the logic of such future military operations themselves, which do not serve a defensive purpose, but rather advance Germany’s strategic and economic interests around the world. Such aggressive actions cannot be reconciled with lengthy parliamentary procedures; they require taking rapid and unpopular decisions. In the past, militarism has never sat easily with democracy, and it does not do so today.

What is new is that the Greens, who once proclaimed themselves in favour of rank-and-file democracy and pacifism, now champion the reduction in parliament’s rights to exercise any control. They are fully supported in this not only by the SPD, but also by the conservative opposition.

CDU politician Rupert Scholz represented the legislature before the Constitutional Court, in his capacity as a chairman of the *Bundestag* legal committee. He testified that except for the PDS, all other parties represented in the *Bundestag* did not regard their right to co-determination [*Mitspracherecht*] had been violated. The new NATO concept was discussed “exhaustively” in plenary session and was then transferred to the committees. Nobody in the *Bundestag* had any interest in passing a formal resolution.

As far as the plaintiff is concerned—the Party of Democratic Socialism—it has already admitted that it wants to play a part in any future decisions about *Bundeswehr* missions. At the last PDS congress in Cottbus, the party professed its support for the German nation and Gregor Gysi strongly argued that the party’s past blanket rejection of *Bundeswehr* participation in international missions should be abandoned in favour of taking a decision in each individual case. It is highly questionable whether the PDS today would still submit its legal complaint against the federal government.

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