



***Comparison of the legal base  
for the participation of  
German Police Forces and German Armed Forces  
in a mission / operation  
under lead of an International Organization  
on the example of the  
United Nations Mission in the Republic of South Sudan  
(UNMISS)***

**Lieutenant Colonel (GS)**

**Markus Schneider**

**German Army**

**Israel National Defense College (INDC)**

**44<sup>th</sup> Class 2016-2017**

Course: National Security Court Strategy component:  
Selected Issues in Public Law

Lecturer: Prof. Suzie Navot

Team Instructor: Haim Waxman

Place / Date: Tel Aviv, January 26<sup>th</sup> 2017



## Content

I.	Introduction .....	4
II.	UN Mission in South Sudan (UNMISS) .....	5
A.	Background .....	5
B.	Legal Base .....	5
C.	Mission .....	6
D.	Strength and German Participation .....	6
III.	The legal base for a German participation in missions and operations under the lead of an International Organization .....	7
A.	Introduction .....	7
B.	German Military Forces .....	7
1.	Task and legal base .....	7
2.	German Military Police .....	8
C.	German Police Forces .....	9
1.	German Federal Police .....	9
2.	Police Forces of the Federal States .....	10
3.	The legal base for the police forces in general .....	11
4.	The legal base for the police forces in missions / operations outside of Germany ..	11
IV.	Conclusion .....	13
V.	Abbreviations .....	14
VI.	Bibliography .....	15

VII. Annexes .....	17
A. Background of the German participation in UNMISS and the withdrawal.....	17
1. More specialists for South Sudan .....	17
2. “Fighting in South Sudan: Federal government induce fly out of Germans” .....	17
3. “Disengagement of German policemen from southern Sudan ‘a serious blow’ ” ....	18
4. Germany ignores Bans' demands .....	18
B. Extract from the UN Charta - Acting under Chapter VII .....	19
C. Tasks UNMISS .....	20
1. Protection of civilians .....	20
2. Monitoring and investigating human rights .....	21
3. Creating the conditions for delivery of humanitarian assistance .....	21
4. Supporting the Implementation of the Cessation of Hostilities Agreement.....	21
D. Extract from the German Basic Law .....	22
1. Art 87a Armed Forces .....	22
2. Art 24 Transfer of sovereign powers – System of collective security .....	22
3. Art 35 Legal and administrative assistance and assistance during disasters .....	23
E. Extract from the Bundespolizeigesetz (BPolG), Law for the German Federal Police .	24

## **I. Introduction**

On July 13<sup>th</sup> and 18<sup>th</sup> 2016 Germany flew out all 7 police men, members of the international police forces of the United Nation Mission in South Sudan (UNMISS)<sup>1</sup>. These policemen were members of the German Police Forces, seconded from the Police Forces of the Federal States to the Federal Police<sup>2</sup> for their duty in the South Sudan. Main reason for the withdrawal were according to the German Government welfare and protective reasons because of the deteriorate security situation in the mission area and a risk of life for the unarmed policemen. The tasks of the policemen until then were advice and training of South Sudanese policemen<sup>3</sup>. The 15 soldiers of the German Armed Forces remained in the mission.

This decision, although due to German information in forehand announced to the United Nations (UN), led to a huge reaction of the UN<sup>4</sup>. Germany was officially criticized and disinvited for this part of the police mission. For more details about the withdrawal see Annex A.

The main question for this paper is the following:

Is the German decision to withdraw only the German Police Forces determined by the legal status of the police forces or is it driven by political considerations?

Therefore I will analyze the legal base of the UNMISS in general and for the German participation in this mission in detail. Hence I separate the legal base of the German Armed Forces (Bundeswehr in the following) and the German Police Forces. After that I will compare them for this case and draw a conclusion.

---

<sup>1</sup> See (Tagesschau, "Bundesregierung lässt Deutsche ausfliegen", 2016), (Tagesschau, "Das falsche Signal zur falschen Zeit", 2016) and Annex A.

<sup>2</sup> Germany is a Federal Republic (Bundesrepublik Deutschland) and consists out of 16 Federal States (Bundesländer). The division of the federal republic into federal states has historic reasons and was maintained after the II World War to distribute the power on "two legs". The German Basic Law is the base for this distribution and gives the Federal Republic and the Federal States special degrees of sovereignty. In the following, the terms "federal states" or "police forces of the federal states" refers to the 16 Bundesländer, the term "federal (republic)" or "federal police" refers to the Federal Republic of Germany.

<sup>3</sup> See (Bundestag, Drucksache 18/9450, 23.08.2016, S. 11)

<sup>4</sup> See (Bundestag, Drucksache 18/9341, 05.08.2016, S. 6) and (FAZ, 2016)

## **II. UN Mission in South Sudan (UNMISS)**

### **A. Background**

After 20 years of war in Sudan, the fighting parties - the Sudanese government versus the Sudanese People's Liberation Movement (SPLM) - signed a comprehensive peace agreement on 9<sup>th</sup> January 2005. The ensuing peace process lasted for more than six years and resulted in the founding of the new state of South Sudan on 9<sup>th</sup> July 2011 as a result of which the Republic of South Sudan gained independence from the Republic of Sudan. The UN decided to set up the mission UNMISS, based on Chapter VII of the UN Charter, in the Republic of South Sudan to back it up in building the new state.

On 15<sup>th</sup> December 2013 struggles within the SPLM government led to the outbreak of armed conflicts in the Sudan People's Liberation Army (SPLA) and afterwards to a civil war-like development. In South Sudan, the government-supporting SPLA and the opposition (especially the Vice President Riek Machar supporting Sudan People's Liberation Army in Opposition (SPLA-IO)) fought against each other. In August 2015, the conflict parties signed a peace treaty negotiated under the intermediary of the Intergovernmental Authority on Development (IGAD). The conflict had killed thousands of people and displaced more than two million people from their homeland. Mid July 2016 new fights arose in Juba between the SPLM and SPLM-IO for a couple of weeks. Vice President Riek Machar fled the capital.

### **B. Legal Base**

The legal base for UNMISS is primarily the following:

- UN Security Council Resolution (UNSC Res) 1996(2011),
- UNSC Res 2132(2011),
- UNSC Res 2155(2014),
- UNSC Res 2241(2015) and
- UNSC Res 2304(2016).

These UNSC Res are all based on Chapter VII, which include “*ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION*”<sup>5</sup>.

---

<sup>5</sup> See (United Nations, 1945) and Annex B

The UNSC announced in this base its intention to contribute to the peace-keeping, long-term formation and economic development of South Sudan. Therefore, the UN support the Government of the Republic of South Sudan in conflict prevention, mediation, conflict resolution and protection of the civilian population. These measures aim to pave the way for a civil society based on the rules of law.

### **C. Mission<sup>6</sup>**

Within the framework of a robust mandate, UNMISS has the core task of assisting the Government of the Republic of South Sudan in the disarmament, demobilization and reintegration of armed forces.

In addition, UNMISS is inter alia mandated to assist the Government of the Republic of South Sudan in developing its own capacity to ensure internal security and the rule of law, and to strengthen security and justice. To this end, the International Police Force helps by contributing with experience, knowledge and personnel to the implementation especially in protecting the civilians. For more details see Annex C.

### **D. Strength and German Participation**

The development of the possible ceiling of personnel according to the UN mandates from 2011 till 2016 is as follows:

- Possible upper limit of soldiers rose from 7.000 up to 17.000 and
- Possible number of civil policemen rose from 900 up to 2.001 police men, including individual police officers, formed police units and corrections officers.

According the UN the latest numbers were (UN DPKO U. D., 31.08.2016):

- 12.099 troops and
- 1.454 police.

The German mandate<sup>7</sup> allows the participation of up to 50 soldiers.

Because of the non-military tasks as advisors, trainers and monitoring personnel there is no mandate for the police forces from the German Bundestag; only a decision of the German Government to participate with up to 20 policemen (Bundesregierung, 2015)

Before the 13<sup>th</sup> July 2016 Germany participated with 15 soldiers and 7 police men.

---

<sup>6</sup> See (United Nations Security Council, UNSC Res 2155(2014), 2014) and (United Nations Security Council, UNSC Res 2304(2016), 2016)

<sup>7</sup> See (Bundestag, Drucksache 18/10188, 02.11.2016, p. 2+3), (Bundestag, Drucksache 18/10547, 01.12.2016) and (Bundestag, Namentliche Abstimmung zu UNMISS, 15.12.2016)

### **III. The legal base for a German participation in missions and operations under the lead of an International Organization**

#### **A. Introduction**

The legal base for all governmental activities is the German Constitution, called Grundgesetz (literally Basic Law, GG). *"The Basic Law is the constitution of the Federal Republic of Germany. It lays down the fundamental structure and essential values of the state. Among other things, the Basic Law defines the principles according to which the elections to the German Bundestag are conducted. It provides the basis for the status and rights of Parliament's freely elected members and outlines how the German Parliament should be organized and carry out its business."* (Bundestag, The Basic Law, 2012).

The Grundgesetz is accompanied and complemented by a variety of laws at the federal level (*Bundesebene*) and the federal states level (*Länderebene*).

#### **B. German Military Forces**

##### **1. Task and legal base**

The Bundeswehr and their main tasks are covered in a variety of articles (Art) in the GG<sup>8</sup>. According to many sources<sup>9</sup> these are especially:

- Art 87a (Armed Forces),
- Art 24(2) (Transfer of sovereign powers – System of collective security) and
- Art 35 (Legal and administrative assistance and assistance during disasters).

Furthermore there are Articles in the GG with relation to the use of military forces or the relation of military forces to other entities; inter alia in the Preamble (Call to promote the world peace), Art 25 (Primacy of international law), Art 26 (Securing International peace), and Art 87b (Federal Defense Administration)<sup>10</sup>. Based on this there are plenty of specific Armed Forces laws, like the Soldier Law and the German Military Penal Code.

The Bundeswehr is basically acting since 1992 in international (UN) missions<sup>11</sup>. The participation 1993 in Somalia led to the groundbreaking appeal to the German

---

<sup>8</sup> The Articles, relevant for this work, see Annex D (Bundestag, Grundgesetz, engl. Translation, 2012).

<sup>9</sup> See e.g. Wagner A. und Gießmann, 2009, p. 4

<sup>10</sup> See (Federal Ministry of Justice a. C., 2014) and (Wagner A. und Gießmann, 2009, p. 9)

<sup>11</sup> See (Wagner A. und Gießmann, 2009, p. 4)

Constitutional Court (Bundesverfassungsgericht, BVerfG) concerning the lawfulness of this participation. The Decision by the BVerfG was taken on 12<sup>th</sup> July 1994<sup>12</sup> and explained especially the use of Art 24(2) GG and the relation of the use of military force and the transfer of sovereign powers to a system of collective security. Based on Art 24(2) GG, Germany is allowed to participate in missions of the UN and other international organizations. This participation can be conducted in the full range of military tasks. As a necessity for the use of military forces under the lead of the UN the decision requests a UN mandate, based on a UN Security Council Resolution (UNSC Res)<sup>13</sup>. Additionally, the participation of the Parliament has to be ensured beforehand or in the case of emergency at the earliest possible point of time. Furthermore the BVerfG requests the development of a comprehensive concept for the mission and to give a military accomplishable task.<sup>14</sup>

To sum up, the current legal base allows – under some circumstances – the accomplishment of all possible military tasks in international missions / operations ranging from non-executive training, advising, mentoring and monitoring missions to executive full combat operations.

## **2. German Military Police**

In this case the role of the military police (MP), as part of the Bundeswehr, has to be highlighted. The German MP is not part of the German Police Forces and has due to its belonging to the Bundeswehr special tasks. These tasks are oriented at the military tasks and have in some areas intersections with the tasks of the German Police Forces. According to the German Joint Support Services “... *military police provide support for the German and allied armed forces. They ensure the enforcement of military law and order and traffic control. In these functions, they are perceived by the public, e.g. patrolling railway stations, training areas or inner-city areas. A solemn pledge ceremony may be an occasion. Their tasks involve ... certain security tasks. Similar to the work of civilian police forces, MPs also conduct surveys and investigations and provide support in area and point defence. Multifunctional military police operations are police tasks in theatres of operations abroad where regular police forces are not available or do not act in accordance with the principles of the rule of law. During*

---

<sup>12</sup> See e.g. (Tschentscher, 2016)

<sup>13</sup> See (Wagner A. und Gießmann, 2009, p. 6)

<sup>14</sup> See (Wagner A. und Gießmann, 2009, p. 9)



*operations abroad, military police personnel are an integral part of military operations of the land, naval and air forces as well as of rescue and humanitarian relief operations. With their special capabilities, they take on military police tasks during these operations, thus contributing to the conduct of operations and combat service support. In international missions, they cooperate closely with local authorities and organisations with security tasks, with the military police of other nations and international organizations.”* (German Joint Support Service, 2016).

The legal base for the MP is in general the same as for the Bundeswehr. The MP as a part of military forces can either work as a part of an international team or as a national component in a Formed Police Unit. It has to be noted that the European Union (EU) as a special form of MP has formed a European Gendarmerie Force; however, Germany is not a member of it<sup>15</sup>.

### **C. German Police Forces**

Basically Police work in Germany is in general the responsibility of the Federal States (*Bundesländer*). However, some police tasks are by law duties of the Government at the federal level. So we have to decide the following types of police forces in Germany:

1. Federal Police Force (Bundespolizei) and
2. Police Forces of the Federal States (Polizei der Bundesländer).

#### **1. German Federal Police**

The German Federal Police (Bundespolizei = BPol) is a (primarily) uniformed federal police force in Germany and subordinate to the Federal Ministry of the Interior (Bundesministerium des Innern; BMI). The Bundespolizei was previously known as the Bundesgrenzschutz (BGS, Federal Border Police) and has a different role since 1<sup>st</sup> July, 2005 when the law renamed the BGS to the BPol. Prior to 1994 BPol members also had military combatant status due to their historical foundation and border guard role.

The BPol has inter alia the following tasks<sup>16</sup>:

- Border security, to include passport control and the provision of coast guard services along Germany's shores;

---

<sup>15</sup> For more details see <http://www.eurogendfor.org/>.

<sup>16</sup> For details see (Federal Ministry of Justice a. C., 2016).

- Railway police;
- Air police, including sky marshal tasks;
- Support of other federal entities in the field of counter-terrorism; and
- Support international police missions for the UN, NATO, EU or another international organization.

The BPol can also be used to reinforce the police forces of the Federal States if requested to do so by a federal state (*Bundesland*) government<sup>17</sup>. For this case, the BPol keep up forces to deal with major demonstrations, disturbances or emergencies to supplement the local capabilities.

## **2. Police Forces of the Federal States**

Ordinary police forces fall under the administration of the individual German federal states and are called *Landespolizei* (LPol, Police of the Federal States).

The LPol has mainly tasks in the field of law enforcement (repression) and security (prevention), these are inter alia:

- Protection of the citizens around the clock by ensuring public security. i.e. to ward off dangers; and to prevent, impede and prosecute criminal offenses and administrative offenses;
- As a law enforcement agency, it establishes offenders, facts and acts of crime in the case of illegal and criminal acts;
- Traffic control, inter alia initiates first-aid measures and takes accidents;
- Emergency aid, e.g. first responder next to the fire brigades and the rescue services;
- Protects events and advises the citizens;
- Performs environmental protection tasks;
- And last but not least, support of the BPol in their support of international police missions for the UN, EU or other international organizations.

The tasks and priorities differ from Federal State to Federal State, for more details see for example the tasks of the Bavarian Police (Bayerisches Staatsministerium des Innern, 2016).

---

<sup>17</sup> For example in accordance with Art 35(2+3) and Art 91 GG.

### **3. The legal base for the police forces in general**

The police of the Federal Republic and of the Federal States have their base in the German Basic Law, the *Grundgesetz*, especially in Art 20(1) (Constitutional principles), Art 23 (Protection of basic rights, Principle of subsidiarity), Art 25 (Primacy of international law), Art 28(1) (Land constitutions), Art 30 (Sovereign powers of the Länder), Art 31 (Supremacy of federal law), Art 35 (Legal and administrative assistance and assistance during disasters) and Art 73 (Matters under exclusive legislative power of the Federation).

The specific tasks and regulations are laid down:

- For the Federal Police Forces in the Law for the German Federal Police (BPolG, Bundespolizeigesetz);
- For the Police Forces of the Federal States in one of the 16 Laws for the Police of the German Federal States (LPolG, Landespolizeigesetz).

### **4. The legal base for the police forces in missions / operations outside of Germany**

German police forces are more and more involved in missions and operations abroad. This includes in addition to missions and operations of an International Organization as well bilateral or multilateral projects.

The German members in all those missions, operations or projects are formally members of the BPol. Due to the fact that the number of the BPol is limited, the BPol is supported by members of the LPol<sup>18</sup>, who are - according to the valid laws of the particular federal states in connection with §14 Civil Service Statutes (Beamtenstatusgesetz, BeamtStG) - delegated from the LPol to the BPol. § 14 BeamtStG rules the (part-time) secondment of police men/women for reasons of the (temporarily) service from one LPol to another LPol or to the BPol. The delegation to the BPol and afterwards into the international mission takes place in accordance with a variety of other laws, so inter alia with the Federal Civil Service Law (Bundesbeamtengesetz, BBG). However, it has to be mentioned, that the participation of police men and women is based on voluntary base<sup>19</sup>.

---

<sup>18</sup> This secondment is based on a decision of the Members of the Permanent Conference of the Federal States Ministries of Interior in 1994. See (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 9)

<sup>19</sup> See (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 17)

The participation of police forces (which means Federal Police and Police of the Federal States) in the bi- / multilateral projects is based on the consent of that particular state or a legal treaty which all sending states and receiving states have signed, for example the Shengen-Agreement<sup>20</sup>.

Taking part in a mission of the UN, NATO, the EU or any other international organization the legal base is either as well the consent of the state, an UNSC Resolution acting under Chapter VI or VII of the UN Charta<sup>21</sup> or any other mandate in accordance with Chapter VIII of the UN Charta (e.g. OSCE). The tasks of police forces in these missions / operations are mainly to secure the public security by monitoring, advising and in some parts executive police work. The specific tasks are laid down in the mandate; however, this does not include military tasks<sup>22</sup>.

Concerning the German jurisdiction, all these participations of German Police Forces in missions / operations are based on Art 24(2) GG in accordance with § 8 BPolG<sup>23</sup>. § 8 BPolG determines that police men can only be used for police or other non-military tasks, which includes the prohibition to fight like military forces. This does of course not prevent the use of force for self-protection or emergency assistance. Hence it can be concluded that police men have no combatant status<sup>24</sup>, which means that the external security against opposing military forces has to be ensured by military forces. If security cannot be assured a withdrawal should take place.<sup>25</sup>

Important is furthermore that for the use of police forces a mandate of the Bundestag is not necessary (Bundestag, Drucksache 18/9450, 23.08.2016, S. 1). However, in line with Art 24(2) GG and the decision of the BVerfG in 1994, it can be stated, that the German Parliament has the right to call back the policemen and stop the participation of German police forces in an International Mission.

---

<sup>20</sup> See (Kugelmann Dr., 2007, p. II 1)

<sup>21</sup> See (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 5)

<sup>22</sup> See (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 6)

<sup>23</sup> See (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 8)

<sup>24</sup> See (Gewerkschaft der Polizei, 2011) (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 12)

<sup>25</sup> See (Bund-/Länderarbeitsgruppe, 21.02.2014, p. 20+21)

#### **IV. Conclusion**

The beforehand description of the legal base for the German Armed Forces and the German Police Forces has shown, that military forces and police forces in general have a common base for the participation in a mission or operation under the lead of an International Organization.

Art. 24(2) GG in connection with the decision of the BVerfG in 1994 defines that Germany can participate with own forces under certain circumstances in missions or operations of UN, NATO, EU or other organizations. The main aspect is the existence of a valid mandate, based like in this case on an UNSC Resolution, and the participation of the German Parliament.

However, there are some specific regulations, which make a huge difference in the use of military and police forces.

The Bundeswehr is mainly acting in accordance with a valid UNSC Res and Art 24(2) GG, which allows the use of military forces according the particular chapter of the UN Charta and the valid Rules of Engagement.<sup>26</sup>

The involvement of police forces is not covered by this regulation. § 8 BPolG limits the use of force to the use in police- or other non-military tasks, which prevents a fighting task like the military has.

Although the current international situation shows that police forces become more and more a mean of German and EU Foreign politics, especially in the Comprehensive Approach of the EU; it has to be noted that police forces<sup>27</sup> in this case have a clear advisory and training task<sup>28</sup>.

Especially the danger of life, the resulting ministration reasons and the prohibition of the German police forces to participate in fighting shows that the withdrawal was legally justifiable.

The participation of German MP and/or Formed Police units in this case would have made this decision legally less justifiable.

However, all these decisions are political decisions. Therefore a comprehensive Strategic Communication towards the own population and especially the United Nations should have taken place.

---

<sup>26</sup> See (Bundestag, Drucksache 18/10188, 02.11.2016, p. 2)

<sup>27</sup> With the exception of Formed Police Unit with military tasks.

<sup>28</sup> See (Bundestag, Drucksache 18/9341, 05.08.2016, S. 6) and (Bundestag, Drucksache 18/9450, 23.08.2016, S. 11)

## V. Abbreviations

### **Abbreviation Longform**

Art	Article
BBG	Federal Civil Service Law, Bundesbeamtengesetz
BeamtStG	Civil Service Statutes, Beamtenstatusgesetz
BGS	Federal Border Police, Bundesgrenzschutz
BMI	Bundesministerium des Innern , Federal Ministry of the Interior
BPol	Bundespolizei, German Federal Police
BPolG	Bundespolizeigesetz, Law of the German Federal Police
BVerfG	Bundesverfassungsgericht, German Constitutional Court
EU	European Union
GG	Grundgesetz, German Constitutional Law / Basic Law
IGAD	Intergovernmental Authority on Development
LPol	Landespolizei, Police of the German Federal States
LPolG	Landespolizeigesetz, Law of the Police of the German Federal States
MP	Military Police
NATO	North Atlantic Treaty Organisation
OSCE	Organization for Security and Co-operation in Europe
SPLA	Sudan People's Liberation Army
SPLA-IO	Sudan People's Liberation Army in Opposition
SPLM	Sudanese People's Liberation Movement
UN	United Nations
UN DPKO	United Nations Department for Peacekeeping Operations
UNMISS	UN Mission in South Sudan
UNSC	United Nations Security Council
UNSC Res	UN Security Council Resolution

## **VI. Bibliography**

- Bayerisches Staatsministerium des Innern. (2016, December 21). *Polizei Bayern*. Retrieved December 27, 2016, from <https://www.polizei.bayern.de/wir/aufgaben/>
- Bund-/Länderarbeitsgruppe, ". (21.02.2014). *Leitlinien für den Einsatz deutscher Polizeivollzugsbeamtinnen und -beamter im Rahmen internationaler Friedensmissionen*. GSt AG IPM.
- Bundesregierung. (2015, October 07). *More specialists for South Sudan*. Retrieved December 27, 2016, from More German police officers for UN missions: [https://www.bundesregierung.de/Content/EN/Artikel/2015/10\\_en/2015-10-07-polizeimissionen-uno\\_en.html](https://www.bundesregierung.de/Content/EN/Artikel/2015/10_en/2015-10-07-polizeimissionen-uno_en.html)
- Bundestag, D. (01.12.2016). *Drucksache 18/10547*. Deutscher Bundestag.
- Bundestag, D. (02.11.2016). *Drucksache 18/10188*. Deutscher Bundestag.
- Bundestag, D. (05.08.2016). *Drucksache 18/9341*. Deutscher Bundestag.
- Bundestag, D. (15.12.2016). *Namentliche Abstimmung zu UNMISS*. Deutscher Bundestag.
- Bundestag, D. (2012, November 1). *Grundgesetz, engl. Translation*. (D. Bundestag, Editor) Retrieved December 18, 2016, from [http://www.bundestag.de/blob/284870/ce0d03414872b427e57fccb703634dcd/basic\\_1aw-data.pdf](http://www.bundestag.de/blob/284870/ce0d03414872b427e57fccb703634dcd/basic_1aw-data.pdf)
- Bundestag, D. (2012, November 1). *The Basic Law*. (D. Bundestag, Editor) Retrieved December 18, 2016, from <http://www.bundestag.de/en/documents/legal>
- Bundestag, D. (23.08.2016). *Drucksache 18/9450*. Deutscher Bundestag.
- FAZ. (2016, July 21). *UNO Kritik - Abzug deutscher Polizisten aus Südsudan „ein ernsthafter Schlag“*. Retrieved November 29, 2016, from <http://www.faz.net/aktuell/un-kritisiert-abzug-deutscher-polizisten-aus-dem-suedsudan-14350506.html>
- Federal Ministry of Justice, a. C. (2014, December 23). *Gesetze im Internet*. Retrieved December 27, 2016, from [https://www.gesetze-im-internet.de/englisch\\_gg/index.html](https://www.gesetze-im-internet.de/englisch_gg/index.html)
- Federal Ministry of Justice, a. C. (2016). *Bundespolizeigesetz (BPolG)*. Berlin: Federal Ministry of Justice and Consumer Protection.
- German Joint Support Service. (2016, Januar 7). *Bundeswehr Military Police*. Retrieved December 28, 2016, from [http://www.streitkraeftebasis.de/portal/a/streitkraeftebasis/start/uleist/fjg!/ut/p/z1/hY7LDoIwEEX\\_iCINKHWJ-CIiaCBqZ2Mm2FRMLcQQ4udbdeHKOKuZe09OBhCOgI7G1tDQdo6svxWK01Tmdc4nnEf1SrJM7MpNKdMk5Az2cPiHoK\\_Zj0kYVNqB8o7465jNI2\\_HOs3CiEsRQwUIaA0oD\\_vtSiM9gr67D1YPATWv](http://www.streitkraeftebasis.de/portal/a/streitkraeftebasis/start/uleist/fjg!/ut/p/z1/hY7LDoIwEEX_iCINKHWJ-CIiaCBqZ2Mm2FRMLcQQ4udbdeHKOKuZe09OBhCOgI7G1tDQdo6svxWK01Tmdc4nnEf1SrJM7MpNKdMk5Az2cPiHoK_Zj0kYVNqB8o7465jNI2_HOs3CiEsRQwUIaA0oD_vtSiM9gr67D1YPATWv)
- Gewerkschaft der Polizei. (2011, September 15). *Grundsätze der Gewerkschaft der Polizei zu Einsätzen der Deutschen Polizei im Ausland*. Retrieved December 23, 2016, from

[https://www.gdp.de/gdp/gdp.nsf/res/7E48CBAD04C69195C1257D420031E3B2/\\$file/GdPPosAusland.pdf](https://www.gdp.de/gdp/gdp.nsf/res/7E48CBAD04C69195C1257D420031E3B2/$file/GdPPosAusland.pdf)

Kugelman Dr., D. (2007). *Einsatz von Polizeibeamten im Ausland*. Retrieved Dezember 23, 2016, from <http://www.kriminalpolizei.de/weitere-rubriken/internationale-zusammenarbeit/detailansicht-internationale-zusammenarbeit/artikel/der-einsatz-von-polizeibeamten-im-ausland.html>

Tagesschau. (2016, July 13). *"Bundesregierung lässt Deutsche ausfliegen"*. Retrieved November 29, 2016, from <https://www.tagesschau.de/ausland/sudan-123.html>

Tagesschau. (2016, July 22). *"Das falsche Signal zur falschen Zeit"*. Retrieved November 29, 2016, from <https://www.tagesschau.de/ausland/sudan-polizisten-abzug-101.html>

Tschentscher, A. (2016, September 15). *BVerfGE 90, 286 - Out-of-area-Einsätze*. (A. Tschentscher, Editor) Retrieved December 28, 2016, from Internationales Verfassungsrecht: <http://www.servat.unibe.ch/dfr/bv090286.html>

UN DPKO. (2016). *UNMISS Mandate*. Retrieved December 27, 2016, from <http://www.un.org/en/peacekeeping/missions/unmiss/mandate.shtml>

UN DPKO, U. D. (31.08.2016). *Peacekeeping Fact Sheet*. New York: UN.

United Nations. (1945). *UN Charta*. San Francisco: UN.

United Nations Security Council. (2014). *UNSC Res 2155(2014)*. New York: UN.

United Nations Security Council. (2016). *UNSC Res 2304(2016)*. New York: UN.

Wagner A. und Gießmann, H. (2009, November 23). Auslandseinsätze der Bundeswehr. *Aus Politik und Zeitgeschehen*, 2009(48), pp. 3-9.



## VII. Annexes

### A. Background of the German participation in UNMISS and the withdrawal

#### 1. More specialists for South Sudan<sup>29</sup>

*“In response to a UN request, the number of German police officers involved in the United Nations Mission in the Republic of South Sudan (UNMISS) is also to be raised from 10 to 20. This mission has strong military, police and civilian components. German troops are also deployed in South Sudan, so that the police component once again rounds off the overall German engagement.*

*The security situation in parts of the country has deteriorated dramatically, and the humanitarian emergency has worsened. Currently almost 200,000 internally displaced persons are being cared for by UNMISS facilities in South Sudan. The scale of conflict-related violence, particularly towards women and children, is giving grounds for serious concern.*

*For this reason the mission would like to use a team of specialists to tackle the field of sexual and gender-based violence exclusively and in the longer term. For this team the UN has requested German expertise in particular. Germany has earned itself an excellent reputation in this field, and has specially trained police officers for this area.*

*Since 1948 the **United Nations** has conducted a total of 69 peacekeeping missions (also known as blue helmet missions). Currently 16 UN peacekeeping missions are ongoing, with more than 125,000 peacekeeping forces from 120 countries.”*

**The following are private translations<sup>30</sup> of parts of the reports about the German withdrawal of Police Forces.**

#### 2. “Fighting in South Sudan: Federal government induce fly out of Germans”<sup>31</sup>

Due to the ongoing fighting in southern Sudan, the federal government is letting German nationals leave the country. The Bundeswehr has already brought several

---

<sup>29</sup> See (Bundesregierung, 2015)

<sup>30</sup> An official translation could not be found.

<sup>31</sup> See (Tagesschau, "Bundesregierung lässt Deutsche ausfliegen", 2016)

diplomats and development aid with a Transall to safety. The US wants to send additional soldiers into the country.

For days, the army and rebels have been fighting hard in the South Sudan capital Juba, hundreds of people have already been killed. The Federal Government has now decided to fly out German nationals for security reasons. This was stated by a Foreign Ministry spokesman, confirming several media reports. The evacuations were already on Wednesday. However, the 15 soldiers who are stationed in southern Sudan as part of a UN operation remain in the country.

...

### 3. “Disengagement of German policemen from southern Sudan ‘a serious blow’ ”<sup>32</sup>

...

The police were part of the UNMISS mission in South Sudan to train and advise the local police. The Blue Helmet Mission is supposed to help pacify the conflict-torn country. Within the scope of this mission are also some soldiers of the Bundeswehr in southern Sudan. The federal government had brought most German citizens with four evacuation flights from southern Sudan in mid-July, after heavy fights between rival troops there.

### 4. Germany ignores Bans' demands<sup>33</sup>

...

The message was clear: this UN mission must not falter. We stay and help. But two days later in Juba, the capital of South Sudan, landed a Transall of the Bundeswehr. All seven German police officers for the UN mission were flown out on 13 and 18 July as a duty of care on the order of the German Ministry of the Interior.

...

---

<sup>32</sup> See (FAZ, 2016)

<sup>33</sup> See (Tagesschau, "Das falsche Signal zur falschen Zeit", 2016)

**B. Extract from the UN Charta - Acting under Chapter VII**

**CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE,  
BREACHES OF THE PEACE, AND ACTS OF AGGRESSION**

**Article 39**

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

**Article 40**

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

**Article 41**

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

**Article 42**

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

## C. Tasks UNMISS<sup>34</sup>

### 1. Protection of civilians

- i. To protect civilians under threat of physical violence, irrespective of the source of such violence, within its capacity and areas of deployment, with specific protection for women and children, including through the continued use of the Mission's child protection and women's protection advisers;
- ii. To deter violence against civilians, including foreign nationals, especially through proactive deployment, active patrolling with particular attention to displaced civilians, including those in protection sites and refugee camps, humanitarian personnel and human rights defenders, and identification of threats and attacks against the civilian population, including through regular interaction with the civilian population and closely with humanitarian, human rights and development organizations, in areas at high risk of conflict including, as appropriate, schools, places of worship, hospitals and the oil installations, in particular when the Government of the Republic of South Sudan is unable or failing to provide such security;
- iii. To implement a Mission-wide early warning strategy, including a coordinated approach to information gathering, monitoring, verification, early warning and dissemination, and response mechanisms, including response mechanisms to prepare for further potential attacks on United Nations personnel and facilities;
- iv. To maintain public safety and security within and of UNMISS protection of civilians sites;
- v. To exercise good offices, confidence-building and facilitation in support of the Mission's protection strategy, especially in regard to women and children, including to facilitate inter-communal reconciliation in areas of high risk of conflict as an essential part of long-term State-building activity;
- vi. To foster a secure environment for the eventual safe and voluntary return of internally displaced persons (IDPs) and refugees, including, where compatible and in strict compliance with the United Nations Human Rights Due Diligence Policy (HRDPP), through monitoring of ensuring the maintenance of international human rights standards by, and specific operational coordination with the police services in relevant and protection-focused tasks, in order to strengthen protection of civilians;

---

<sup>34</sup> See (UN DPKO, 2016)

## **2. Monitoring and investigating human rights**

- i. To monitor, investigate, verify and report publicly and regularly on abuses and violations of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity;
- ii. To monitor, investigate, verify and report specifically and publicly on violations and abuses committed against children and women, including all forms of sexual and gender-based violence in armed conflict by accelerating the implementation of monitoring, analysis and reporting arrangements on conflict-related sexual violence and by strengthening the monitoring and reporting mechanism for grave violations against children;
- iii. To coordinate with, and offer technical support to, where appropriate, the African Union's Commission of Inquiry for South Sudan;

## **3. Creating the conditions for delivery of humanitarian assistance**

- i. To contribute to the creation of the conditions for the delivery of humanitarian assistance, including by helping to establish the necessary security conditions and by exercising its good offices, confidence-building and facilitation, so as to allow, in accordance with relevant provisions of international law and United Nations guiding principles of humanitarian assistance, the full, safe and unhindered access of relief personnel to all those in need in South Sudan and timely delivery of humanitarian assistance, in particular to internally displaced persons and refugees;
- ii. To ensure the security and freedom of movement of United Nations and associated personnel where appropriate, and to ensure the security of installations and equipment necessary for implementation of mandated tasks,

## **4. Supporting the Implementation of the Cessation of Hostilities Agreement**

- i. To ensure proper coordination with the Joint Technical Committee (JTC), the Monitoring and Verification Mechanism (MVM), and Monitoring and Verification Teams (MVTs), as appropriate;
- ii. To provide mobile and dedicated fixed site security to IGAD's MVM, as established in line with the decisions of the 31 January and 13 March meetings of the IGAD Assembly of Heads of State and Government; and iii. To provide support to the work of the MVM as described within the Cessation of Hostilities (CoH) Agreement.

## **D. Extract from the German Basic Law**

### **1. Art 87a Armed Forces**

(1) The Federation shall establish Armed Forces for purposes of **defence**. Their numerical strength and general organisational structure must be shown in the budget.

(2) **Apart from defence, the Armed Forces may be employed only to the extent expressly permitted by this Basic Law.**

(3) During a state of defence or a state of tension the Armed Forces shall have the power to protect civilian property and to perform traffic control functions to the extent necessary to accomplish their defence mission. Moreover, during a state of defence or a state of tension, the Armed Forces may also be authorised to support police measures for the protection of civilian property; in this event the Armed Forces shall cooperate with the competent authorities.

(4) **In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land**, the Federal Government, if the conditions referred to in paragraph (2) of Article 91 obtain and the police forces and the Federal Border Police prove inadequate, may employ the **Armed Forces** to support the police and the Federal Border Police in protecting civilian property and in combating organised armed insurgents. Any such employment of the Armed Forces shall be discontinued if the Bundestag or the Bundesrat so demands.

### **2. Art 24 Transfer of sovereign powers – System of collective security**

(1) The Federation may by a law transfer sovereign powers to international organizations.

(1a) Insofar as the Länder are competent to exercise state powers and to perform state functions, they may, with the consent of the Federal Government, transfer sovereign powers to transfrontier institutions in neighboring regions.

(2) With a view to maintaining peace, the Federation may enter into a **system of mutual collective security**; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world.

(3) For the settlement of disputes between states, the Federation shall accede to agreements providing for general, comprehensive and compulsory international arbitration.

**3. Art 35 Legal and administrative assistance and assistance during disasters**

(1) All federal and Land authorities shall render legal and administrative assistance to one another.

(2) In order to maintain or restore public security or order, a Land in particularly serious cases may call upon personnel and facilities of the Federal Border Police to assist its police when without such assistance the police could not fulfil their responsibilities, or could do so only with great difficulty. In order to respond to a grave accident or a natural disaster, a Land may call for the assistance of police forces of other Länder or of personnel and facilities of other administrative authorities, of the **Armed Forces**, or of the Federal Border Police.

(3) If the natural disaster or accident endangers the territory of more than one Land, the Federal Government, insofar as is necessary to combat the danger, may instruct the Land governments to place police forces at the disposal of other Länder, and may deploy units of the Federal Border Police or the Armed Forces to support the police. Measures taken by the Federal Government pursuant to the first sentence of this paragraph shall be rescinded at any time at the demand of the Bundesrat, and in any event as soon as the danger is removed.

**E. Extract from the Bundespolizeigesetz (BPolG), Law for the German Federal Police**

PRIVATE Translation<sup>35</sup>

**§ 8 Use abroad**

(1) The Federal Police may in participation in police or other non - military tasks of International measures on request and under responsibility of

1. the United Nations
2. a regional arrangement or body as defined in Chapter VIII of the Charter of the United Nations, to which the Federal Republic of Germany is a member,
3. the European Union or
4. the Western European Union

used abroad. The use of the federal police may not be contrary to the will of the state on the territory of which the measure is to take place. The decision on the use in accordance with sentence 1 lies with the Federal Government. The German Bundestag is aware of the intended use. He may, by resolution, demand that the use is terminated.

(2) The Federal Police may also, in individual cases, rescue persons from a present danger for body or life abroad. The use is for humanitarian purposes only or in perception of urgent interests of the Federal Republic of Germany and in agreement with the state whose territory the measure is to take place. The decision shall be taken by the Federal Minister of the Interior with the Foreign Office.

(3) The conduct by the Federal Police of the tasks referred to in paragraphs 1 and 2 shall be addressed according to the applicable international agreements or the agreements concluded on the basis of such agreed regulations.

---

<sup>35</sup> An official translation could not be found.