

III. Status and Control of the German Armed Forces

The fundamental organisational and administrative requirements for the German Armed Forces (*Bundeswehr*) are laid down in the Basic Law, which regulates the establishment of the German Armed Forces, the general prohibition of their employment within Germany, the command of the German Armed Forces and specific parliamentary oversight mechanisms.

As an “Army of the Parliament” (*Parlamentsarmee*) the German Armed Forces are subject to parliamentary control. Thus, the numerical strength and the general organisational structure of the German Armed Forces must be shown in the budget (Art. 87 a para. 1 Basic Law). The budget is adopted annually as a budget law by the *Bundestag* (i.e. the lower house of the national parliament of the Federal Republic of Germany). The Defence Committee of the *Bundestag* has a special status as the only committee with the autonomous right to convene as a committee of inquiry (Art. 45 a para. 2 Basic Law) and thus constitutes a strong tool in the scrutiny of government actions. Art. 45 b Basic Law provides for a Parliamentary Commissioner appointed to safeguard the basic rights of soldiers and to assist the *Bundestag* in exercising parliamentary control over the German Armed Forces.

In 1994, the Federal Constitutional Court ruled in a landmark decision that any deployment of German Armed Forces abroad in which there is a well-founded expectation that soldiers of the *Bundeswehr* will be involved in armed activities would need the consent of the *Bundestag*. This consent is, in political language, the “parliamentary mandate” for the deployment. The requirements for a parliamentary mandate were set out in the Parliamentary Participation Act of 2005 (*Gesetz über die parlamentarische Beteiligung bei der Entscheidung über den Einsatz bewaffneter Streitkräfte im Ausland, Parlamentsbeteiligungsgesetz*). For the deployment of German Armed Forces abroad as described above, the Parliament must give its approval generally in advance. The Federal Constitutional Court has further ruled that in cases of imminent risk, the Federal Government has the right to authorise immediate action by German Armed Forces. In such cases, subsequent parliamentary approval of the ongoing deployment suffices. However, if the mission has already come to an end before parliamentary approval could be sought (e.g. military evacuation operations), the *Bundestag* does not have to approve the deployment, but has to be informed of it in a qualified man-

ner to enable it to exercise its oversight. The exercise of parliamentary oversight goes well beyond IHL compliance in deployments abroad but also constitutes an important national enforcement mechanism to ensure the German Armed Forces' compliance with IHL.

Additional measures Parliament and members of Parliament can, and regularly do, adopt in order to promote respect for and the development of IHL, include the deliberation of IHL-related issues, in particular within its Committees (such as the Committee on Human Rights and Humanitarian Aid), as well as the submission of major and minor interpellations involving IHL-related questions addressed to the Federal Government.⁷

⁷ Parliament's rights to submit interpellations and questions to the Federal Government are based on Arts. 20 and 38 Basic Law and regulated in the Rules of Procedure of the Bundestag (Rules 100–106).