

# Shifting Power and Human Rights Diplomacy

## Germany



*Edited by Doutje Lettinga & Lars van Troost*



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## Table of Contents

*List of Authors and Editors* 5

*Introduction* 9

*German foreign policy and human rights* 15

Michael Krennerich

*From normalcy to hegemony to impotence? German foreign policy and European external relations* 27

Ulrike Guérot

*German human rights policy in a multipolar world* 37

Katrin Kinzelbach & Garima Mohan

*Foreign policy, migration and human rights* 53

Almut Möller

*Foreign policy, development assistance/international cooperation and human rights* 61

Andrea Kämpf

*The future of Germany's support to the Responsibility to Protect* 73

Sarah Brockmeier

*Shaping the German foreign policy (and human rights) debate: actors, influencers and agendas in Berlin* 83

Wolfgang Büttner

*The challenging inconsistencies of German external human rights policy* 93

Alexia Knappmann and Andrea Berg

*References* 107



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## Introduction

For many years after its reunification, the Federal Republic of Germany was, perhaps, not a middle power but a modest power in international affairs. It operated preferably in coalition with others, in multilateral settings such as the United Nations, guided by international law and with an aversion to the use of military power. Certainly in the early years after reunification of the German Democratic Republic with the Federal Republic of Germany in 1990, it was aware of fears within Europe and elsewhere for the resurrection of a Central European giant that would undo the long road West which, according to the historian Heinrich August Winkler, it had been travelling for two centuries. During a meeting of European heads of state and government only a month after the fall of the Berlin Wall in November 1989, the British Prime Minister Margaret Thatcher had remarked, with the minimum of subtlety that was her trademark: 'We beat the Germans twice and now they're back.' To her mind, reunification was out of the question. Only, of course, it wasn't.

Nonetheless, history weighed heavily on the foreign policy of a reunited Germany. In the last decade of the twentieth century it became a champion of right over might, of human rights and of an international rule of law. *Realpolitik* was not the country's creed. First and foremost foreign policy seemed to be a matter of norms. At the end of the twentieth century an awareness in the country's foreign policy establishment of the meaning of German history for its contemporary foreign relations fitted a European *Zeitgeist* that nurtured idealism in international affairs after decades of cold war. In the United Kingdom Robin Cook, Foreign Secretary in the new Labour government, also aimed to add an ethical dimension to the United Kingdom's foreign policy with human rights at the heart of it.

By 1998 German diplomats were at the helm of successful negotiations on the establishment of an international criminal court, at the end withstanding massive United States opposition (as well as opposition from China, India and the Russian Federation) to a European Union backed treaty. 'There is nothing so strong as an idea whose time has come' was the favourite motto of the German chief negotiator Hans-Peter Kaul. After the establishment of the International Criminal Court (ICC), German diplomats kept working on proposals to add the crime of aggression (to many minds 'the mother of all crimes' and one with a particular place in German contemporary history) to its subject matter jurisdiction. They succeeded partly at a 2010 conference of states parties to the ICC.<sup>1</sup>

<sup>1</sup> In 1998, at a diplomatic conference in Rome, 120 out of 160 participating states voted in favour of the adoption of the Statute of the International Criminal Court. According to

A sense of historical responsibility was, of course, not the only driver of German foreign policy. To many politicians and policymakers it was at least equally important to show that after reunification Germany was a normal European country among others, albeit the number one in terms of size of its economy and population. Therefore exceptionalism, *Sonderweg* and like notions were not particularly popular in German foreign policy thinking. In 1999 after heated political debates the Red-Green coalition government of Chancellor Gerhard Schröder decided to team up with Atlantic and European allies in Operation Allied Force, a NATO bombing campaign against the Federal Republic of Yugoslavia (FRY). Its proponents considered Operation Allied Force a humanitarian intervention aimed to prevent and stop ethnic cleansing in the autonomous region of Kosovo, which nine years later would declare independence from Serbia, a successor state of the FRY. Without preceding Security Council mandate, the NATO operation clearly seemed to lack legality under international law. But to Schröder, political relations with major allies like France, the United Kingdom and the United States seem to have been more important than legal niceties. It was not Germany's role and certainly not in its interest to blow up Western alliances. Schröder wanted Germany to be a normal European country.

For Joschka Fischer, then-Minister of Foreign Affairs and leader of the Greens (*die Grünen*) considerations of humanity trumped issues of legality. Fischer defended German bombs on Yugoslavia with the view that in this particular case one political guiding principle, No More Auschwitz, took precedence over another one, No More War, though, not unexpectedly, some took issue with the seeming analogy between major Nazi crimes and the crimes perpetrated by the FRY government in Kosovo. What did No More Auschwitz actually mean: no more genocide, no more crimes against humanity, no more mass atrocities, no more grave human rights violations? And where did German responsibility for stopping such crimes committed abroad by other governments start and end?

From different arguments the social democrat Gerhard Schröder and Joschka Fischer came to the same conclusion and so, within nine years after reunification and on a shaky legal basis at best, Germany was willing to go to war, albeit a relatively small one.

In later years Operation Allied Force became a textbook case of what some called illegal but legitimate armed intervention. It triggered the Responsibility to Protect debate that

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Article 5 of the Statute, the Court would have jurisdiction over genocide, crimes against humanity, war crimes and aggression, while it would only be able to exercise jurisdiction over aggression after a future agreement of states parties on the definition and conditions for the exercise of jurisdiction over this crime. At a review conference in Kampala in 2010 states parties reached agreement on a definition and conditions for the exercise of jurisdiction, but also agreed that activation of the Court's jurisdiction with respect to aggression would be conditional upon a further positive decision by the Assembly of States Parties after 1 January 2017.

would result in a somewhat opaque doctrine agreed by the World Summit of 2005, celebrating the 60<sup>th</sup> anniversary of the United Nations.<sup>2</sup>

In 2002, only three years after Operation Allied Force, German foreign policy makers had to face the question of armed intervention abroad again. This time the discussion was even more complicated since it was not an issue of humanitarian intervention like in Kosovo (nor a matter of collective self-defence with UN Security Council blessing like the military action against Afghanistan in response to the 9/11 attacks by Al Qaida in New York and Washington). In 2002 and early 2003 the issue was whether military action should be taken against Iraq for possessing weapons of mass destruction (WMDs) and shielding this possession from the rest of the world, while international inspections had found no evidence of the resumption or continuation of a WMD programme in Iraq. Atlantic allies were disagreeing seriously with each other on the appropriateness of military action, even in the Security Council, on which Germany would serve a two-year term as of 1 January 2003. Aiming to be 'a normal Western country' was of no help to German policymakers this time. In fact, without consensus in the UN Security Council, NATO or the EU, neither normalcy nor modesty could serve as a guiding principle for German diplomacy. Schröder and Fischer decided not to side with the UK and US and thus to oppose military action against Iraq. They were not convinced that Iraq actually had an active WMD programme at the time; furthermore, unlike Operation Allied Force in 1999 military action in Iraq would not be a humanitarian intervention and there was no international consensus anywhere they could join. Reluctantly Germany was on its way to become a rather big middle power with a voice of its own.

Germany took another important step on the road to major power status when it unequivocally put forward its candidacy for a permanent seat on the UN Security Council (and preferably with veto power) in 2004. By that time it was a major troop contributor to UN peacekeeping operations and the third largest financial contributor to the UN. But UN reform has always been an intractable process and Security Council reform even more so. Germany had built up political credit with many UN member states during its 2003-2004 term at the Council. Nonetheless, opposition, also from at least three of the five permanent Council members, to a permanent seat for Germany (as well as for Brazil, India and Japan) proved too powerful.

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2 In this doctrine national sovereignty is considered to be a responsibility of states, not an (absolute) legal right or power. As part of their sovereignty, states have a responsibility to protect their populations from genocide, crimes against humanity, ethnic cleansing and war crimes. The international community has the responsibility to encourage and help to protect populations against such crimes, if necessary by collective action through the Security Council in accordance with the UN Charter.

When in 2005 Angela Merkel entered the Chancellery and Frank-Walter Steinmeier the Ministry of Foreign Affairs, tensions were mounting with some Western allies, among them the US and the UK, about Germany's role in Afghanistan. Germany, while seeking a permanent seat on the Security Council, was willingly participating in development projects, civilian reconstruction and military and police training activities, but only very reluctantly in antiterrorism and military operations. It left the high-risk military work to others, critics said. Nonetheless a series of problems and crises closer to home would define the foreign policies of the three governments led by Angela Merkel since 2005.

Shortly before Merkel came to power, referendums in France and the Netherlands had smashed the European Constitution project. The constitution was meant to become a new legal basis for the EU and was agreed, but not yet ratified, by EU member states in 2004. After a period of reflection, in which referendums on the European Constitution were put on hold in several other EU member states, the German EU presidency managed to rescue much of the agreement that was reached in 2004 in the Lisbon Treaty which was signed by the then 25 member states in December 2007 and entered into force, after ratification by all, two years later.

The constitutional crisis was followed by a series of economic and financial crises that began in 2008 and would especially hit Cyprus, Greece, Ireland, Italy, Portugal and Spain. For reducing deficits and public debts some EU member states needed massive financial assistance in order to avoid bankruptcy. Unavoidably Germany was going to be the largest creditor among the EU member states in whatever solution would be found. On the other hand, the German government was vehemently opposed to making the EU or the Eurozone into a "transfer union", in which Germany and a few other EU member states would pay the bills of "fiscally irresponsible countries". Debtors had to foresee strict conditions aimed at economic restructuring as well as far-reaching interference with their financial and budgetary policies. Germany did not hesitate to show who was calling the shots. That some debtors would protest that their national sovereignty was being curtailed in an unacceptable measure, and therewith their national democracy trampled upon, did not impress Berlin.

The economic and financial crises in the EU and the Eurozone were followed by a humanitarian crisis when in 2015 more than one million Syrian, Afghan, Iraqi and other asylum-seekers reached the EU. Many of the Syrians who fled the war in their country of origin stayed in Turkey before trying to reach Europe. In order to regulate the flow of asylum-seekers, the EU reached a much criticized agreement with Turkey in which irregular Syrian asylum-seekers landing in Greece after 20 March 2016 would be returned to Turkey. In return the EU would resettle more Syrian refugees residing in Turkey (on a one-in, one-out

basis), substantially increase financial support for Syrian refugees in Turkey and, conditionally, provide visa liberalization for Turkish nationals. Again, the German Chancellor was taking the lead in the EU and on behalf of the EU. But also, of course, in the interest of Germany itself, which was receiving more than a third of the asylum-seekers that reached Europe, while its willingness to continue to do so seemed to be rapidly diminishing by early 2016.

And there, of course, it became clear that self-image and reality sometimes clash, also in foreign policy. Many German and foreign critics would say that all along in everyday practice German foreign policy had been driven primarily by (narrowly defined) national interests rather than by concerns about the international rule of law and the state of democracy and human rights abroad. They could, for instance, point to Germany's arms exports record. The country has been one of the biggest arms exporting countries behind the US, China and Russia. Its willingness to sell weapons and other military equipment to countries in conflict areas or with reports of serious human rights violations, seemed at odds with its reluctance towards the use of force in international affairs and its human rights promotion abroad.

Some have argued that in Germany, like elsewhere, domestic politics have always been an important determining factor in foreign policy. In that sense too, Germany has been a normal country all along. From this point of view, Gerhard Schröder's stance against the invasion of Iraq found its main origin in electoral politics. In 2002 the German public was opposed to a military adventure in Iraq and far more critical of the US than only a few years before, and the Chancellor was seeking re-election.

One could, perhaps, say that after Kosovo, Iraq, several EU crises and Germany's coming out as an (aspiring) major power in the EU and the UN, recalibration of values and interests, of perception and reality, of idealism and realism in German foreign policy was bound to happen. If not to set the historical record straight, then simply to realign words and deeds.

At the Security Conference in Munich in January 2014, Federal President Joachim Gauck, Minister of Foreign Affairs Frank-Walter Steinmeier and Minister of Defence Ursula von der Leyen reflected, not without coordination, on German foreign policy. Their basic message was that Germany was ready for, and had an interest in, sharing more responsibility for international peace, security and stability. Since then both foreign policy and security policy have been thoroughly reviewed.

What do these reflections, recalibration and reviews mean for the idealistic strand in German foreign policy, especially for the protection and promotion of human rights abroad? We hope that part of the answer and impulses for further discussion can be found in the essays in this volume in the *Shifting Power and Human Rights Diplomacy* series.

The views expressed in the contributions that follow are those of the authors and do not necessarily reflect positions of Amnesty International, its Dutch section or the Strategic Studies team. Most essays were written before the dramatic events that happened in Germany and France and the attempted coup d'état in Turkey in the Summer of 2016.

Doutje Lettinga and Lars van Troost

## **German foreign policy and human rights**

*The German government acknowledges human rights and pursues an active bilateral and multilateral human rights policy. Its specific implementation, however, is weighed against the interests of economic, security and refugee policy. Despite Germany's commitment to human rights, in practice no consistent human rights-based approach is taken that encompasses the various areas of policy.*

In 2014, the Federal Minister for Foreign Affairs, Frank-Walter Steinmeier, initiated a thorough review process under the slogan “A Fresh Look at German Foreign Policy”. The results of this process, which lasted one year, encouraged the Federal Foreign Office in its endeavours to assume more responsibility on the international stage. The greatest emphasis was placed on early, decisive action both in urgent crises and in the prevention of and follow-up to conflicts. In view of protracted armed conflicts and rapidly growing numbers of refugees, crisis diplomacy has continued to grow in importance. What does Germany's human rights (and foreign) policy look like in this context? And how does it fit in the overall picture of the political interests of a country of which the economy is based on exports and which has become an important host country for refugees?

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### **Principles of Germany's human rights and foreign policy**

The German government acknowledges universal human rights and officially views human rights policy as a cross-cutting task encompassing all areas of policy. This also includes the protection and promotion of human rights around the globe. In numerous official documents and statements, the German government has characterized human rights as the “core of a foreign policy based on values and guided by interests”. The mandate to respect, protect and promote human rights is derived from the German Constitution (“Basic Law”). Furthermore, it is founded on Germany's membership in international organizations (United Nations, Council of Europe, etc.) and is based on numerous international and regional human rights treaties ratified by Germany.

Ever since 1990, the consecutive German governments have rendered an account of their global commitment to human rights in a human rights report to the Bundestag every two

(to three) years. The reports highlight thematic priorities and detail the government's activities and initiatives in the field of human rights both at home and in the wider world. At the request of the Bundestag, as of 2005 an action plan for human rights is included. These human rights reports reveal that the German government is pursuing an active multilateral and bilateral human rights policy in various aspects of its foreign relations, embedded in the Common Foreign and Security Policy (CSFP) of the European Union.

For example, the German government specifically advocates human rights issues both bilaterally and together with EU partners as set out in the EU Human Rights Guidelines. These issues include worldwide abolition of the death sentence, combatting torture, protection of the freedom of religion or belief, of the press and of opinion, protection of the human rights of children and women, and protection of human rights defenders. With regard to LGBTI people, it opposes the criminalization and discrimination of homosexuals. Furthermore, the foreign and development policy of Germany advocates internationally for economic, social and cultural human rights, above all for the right to housing, the right to adequate food as well as the rights to safe drinking water and sanitation.

However, official reports of the government tend to show its actions in a favourable light. Additional, critical information, specifically from non-governmental organizations (NGOs), is required to complete the picture of the human rights policy pursued by the German government. Only then can gaps and points of criticism be seen. The reports of "Forum Menschenrechte" (Forum Human Rights), for example, a network consisting of approximately fifty member organizations with a critical eye on Germany's human rights policy, are revealing. The Forum Menschenrechte criticizes the fact that the acknowledgement of human rights is reflected only insufficiently or not at all, for instance, in the practice of German and European refugee policy as well as their foreign economic policy.

### **Who shapes the human rights foreign policy of Germany?**

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Despite a certain "parliamentarization of foreign policy", this policy is still considered to be the domain of the executive, also regarding human rights. The Federal Chancellor and her Foreign Minister are the most influential figures to shape Germany's human rights profile in public. The question of who Angela Merkel or Frank-Walter Steinmeier meet and to what extent they take a stand on human rights issues has repeatedly led to public debate in the past years on the importance of human rights in foreign relations. However, the human rights policy is not limited to the public appearances of high-ranking members of government. In fact, it is implemented bilaterally and multilaterally in day-to-day business.

In principle, it is the responsibility of the Federal Ministry of Foreign Affairs to combine and coordinate foreign policy activities in the field of human rights as well. Bilateral and multilateral human rights policy is its preserve, for example in the corresponding bodies of the United Nations (Human Rights Council etc.), the OSCE, the Council of Europe and – within the framework of the Common Foreign and Security Policy – of the European Union. The office of the federal government's Commissioner for Human Rights Policy and Humanitarian Aid, created in 1998, is attached to the Federal Foreign Office. The Federal Ministry for Justice and Consumer Protection, which has its own Representative of the Federal Government Relating to Human Rights, and the Federal Ministry for Economic Cooperation and Development also play an important role. Other ministries sporadically take the stage in foreign policy according to their field of responsibility when they participate in decisions of the German government or of international organizations that affect human rights directly or indirectly. This includes the Federal Ministry of Defence, for example, in the deployment abroad of the German armed forces, or the Federal Ministry of the Interior with regard to combatting international terrorism, or migration and refugee policy.

This means that other ministries must be considered, within the scope of their portfolios, regarding foreign policy decisions that affect human rights. Occasionally, these ministries also take responsibility for individual matters. (To name just one example: the Federal Ministry for Labour and Social Affairs is primarily responsible for the International Covenant on Economic, Social and Cultural Rights, IESCR.) Although the Federal Foreign Office is a powerful ministry, the assignment of departmental responsibilities is strictly observed within the German government, and cabinet decisions are coordinated in advance between ministries. If an agreement cannot be found, decisions are usually postponed until general acceptance is achieved. (This explains why, for example, ratification of the Optional Protocol to the IESCR has been “studied” for years.)

Within their portfolios, however, the ministries attach varying degrees of importance to human rights and follow their own agenda, which is how the supposed inter-ministerial character of Germany's human rights policy is insufficiently applied in practice. The demands of the human rights policy are still not applied consistently in many areas (security, migration, foreign economic policy, energy, environment, etc.). Ultimately, strong political will and effective coordination would be needed in order to establish human rights in Germany as a comprehensive inter-ministerial policy. Agreement is difficult to achieve at times, even between the mandates to promote human rights – which are essentially complementary – of the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development.

## Multilateral and bilateral human rights policy

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The German government has ratified most of the key treaties and their optional protocols on the international and regional protection of human rights. At a global and regional level, it also campaigns for the ratification of human rights treaties and the recognition of corresponding monitoring instruments. However, Germany itself needs to make up ground in this respect.<sup>1</sup> For example, the following have not been ratified:

- I. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family;
- II. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which stipulates a complaints procedure, amongst other things;
- III. Protocol No. 12 to the European Convention on Human Rights, which contains a general prohibition of discrimination;
- IV. The Revised European Social Charter, including the corresponding collective complaints procedure;
- V. As well as various ILO Conventions, including ILO Convention 169 Concerning Indigenous and Tribal Peoples.

Non-ratification is essentially due to the resistance of ministries that would be or are responsible for implementation of these treaties at home. On the international stage, this compromises the legitimacy of Germany's human rights policy. Germany also loses credibility regarding the commitment of its foreign and development policy to economic, social and cultural human rights if it is not even prepared to recognize a complaints procedure for the International Covenant on Economic, Social and Cultural Rights. At least Germany regularly publishes its State Reports on ratified treaties. However, the implementation of concluding observations of treaty bodies at times leaves something to be desired, for example with regard to combatting racism or workplace gender equality. The criticism voiced by UN human rights treaty bodies – not least of the non-ratification of human rights treaties – is also addressed within the Universal Periodic Review procedure.

Of the many international and regional bodies of human rights protection in which Germany participates, it is the United Nations Human Rights Council (HRC) itself which provides an important forum for Germany's human rights foreign policy. Germany has successfully applied for the third time for a seat on the HRC (2006-2009, 2012-2015,

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<sup>1</sup> The claim on the official website of the Federal Foreign Office that Germany is a "signatory to all important human rights treaties of the United Nations and their optional protocols" is incorrect: Auswaertiges Amt (2016) principle. Available at: [http://www.auswaertiges-amt.de/DE/Aussenpolitik/Menschenrechte/GrundsaeetzeMRpolitik\\_node.html](http://www.auswaertiges-amt.de/DE/Aussenpolitik/Menschenrechte/GrundsaeetzeMRpolitik_node.html).

2016-2018). In the 10th cycle (2015), Germany appointed the President of the HRC, who earned much praise from NGOs for his performance.

However, Germany's portrayal of itself in the Universal Periodic Review could be more self-critical. The recommendations of other states commented on the still pending ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on better provision for the National Preventive Mechanism for implementation of the Optional Protocol to the Convention against Torture, as well as on better measures to combat racism. The German government accepted many recommendations from the UPR process ([www.upr-info.org](http://www.upr-info.org)). Although the Federal Foreign Office is not willing to submit to the good practice of voluntary mid-term reviews, it keeps the recommendations on the political agenda.

Its participation in resolutions of the HRC reveals an ambivalent picture (cf. [rights-docs.huritech.org](http://rights-docs.huritech.org)). At times, the German government takes a proactive role. In 2014 and 2015, Germany was one of the main sponsors of resolutions, for example, on the right to safe drinking water and sanitation (together with Spain) and the right to adequate housing (together with Finland), and also on the right to privacy in the digital age (with Brazil and others) as well as on the state of human rights in the Syrian Arab Republic, Belarus, Myanmar and the Democratic People's Republic of Korea (together with many other countries). Germany also acted as the main sponsor of resolutions on freedom of religion or belief and children's rights.

However, in many cases the German government leaves the active part, also in terms of sharing work, to other countries. The endeavours to elaborate on a UN Declaration on the Rights of peasants and other people working in rural areas, or resolutions such as the declarations on the right to development and the right to peace of 2014 and 2015, were not approved or were even rejected by the German government. Furthermore, Germany looks askance at the creation of an international legally binding instrument on transnational cooperation activities and other business enterprises with respect to human rights. Generally, Germany attempts to harmonize its voting behaviour in the Human Rights Council with that within the EU or the Western European and Others Group (WEOG) at the UN. The Human Rights Council has issued Germany with a standing invitation regarding Special Procedures.

Bilaterally, Germany uses a series of instruments to promote human rights. Here, it either acts alone or, wherever possible, within the framework of the Common Foreign and Security Policy of the European Union. The emphasis is on specific human rights dialogue

or addressing human rights as part of general political dialogue. At the annual talks with the NGO network “Forum Menschenrechte”, the Foreign Minister asserts that human rights are addressed in talks and dialogue of the government (however, to date no independent assessment of such endeavours has been made). Individual cases are also discussed, for example, via *démarches* (silent diplomacy) or public statements of the German government or of the EU. Where necessary, the German Government participates in the implementation of UN Security Council resolutions on sanctions via the EU or in individual sanctions determined by the EU within the framework of the Common Foreign and Security Policy. The German government welcomes the removal of sanctions against Iran in January 2016 and considers the nuclear deal with that country as agreed in 2015 a “historic success of diplomacy”. However, in 2015 there was disagreement – both within the EU as well as within the German Government – as to whether sanctions against Russia should be prolonged or relaxed.

Officially, the degree of political, cultural and economic relations also depends on the state of human rights in the pertinent country. However, criticism is voiced by non-governmental human rights organizations regarding the close cooperation with authoritarian regimes that violate human rights.

### **Problematic dealings with authoritarian regimes**

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Globally, there is a growing number of countries that massively curb human rights, while referring to domestic order and stability. How should they be dealt with? A lively public debate is going on in Germany regarding this question. Some recommend the German government to show restraint in its criticism of human rights and to pursue a pragmatic approach of *realpolitik* with dictatorships, also in order to maintain the possibility of exerting influence. Others demand that the German government voice clear criticism of human rights violations and apply a resolute policy of human rights vis-à-vis dictators.<sup>2</sup>

The debate is about the conflict, often broached, between human rights and Germany's diverse interests abroad. Without abandoning its human rights agenda, the German government is at times reticent with regard to (public) criticism of human rights violations, so as not to place a strain on economic relations (for example, with self-confident economic heavyweights such as China and India). Human rights demands also risk being eclipsed, at least in the short term, vis-à-vis countries whose cooperation is considered necessary in order to ensure political stability in conflict zones (see below) or to stem the movement of refugees to Europe (Turkey, North African countries).

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<sup>2</sup> The contributions to the debate that were published in the well-respected weekly *Die ZEIT* are of interest in this respect.

On the other hand, it is also a question of how human rights can best be asserted vis-à-vis authoritarian regimes. Here it is a question of sounding out and exploiting the scope for asserting human rights in the relevant countries – and to take strategically prudent action. The German government focuses on not breaking off dialogue, even with “difficult partners”, and above all on discussing human rights in confidential talks. However, it could be questioned whether the German government does actually assess the scope for asserting human rights, particularly with regard to the authoritarian regimes Germany cooperates with, for example vis-à-vis countries in the Middle East (Qatar, Saudi Arabia, United Arab Emirates, etc.) with which the German government maintains friendly political and close economic relations. Or vis-à-vis Ethiopia, the “darling” of development cooperation. Or vis-à-vis Kazakhstan, an important partner for raw materials. Critical self-reflection is needed just as much as tenacity and creativity so as to find the best way in each case to promote human rights under difficult conditions.

There is no master plan, neither can there be one. A shrewd human rights policy selects the appropriate instruments from the large toolbox of a bilateral and multilateral human rights policy according to country and situation. Therefore, pertinent analyses and strategic planning are needed in order to identify the best ways and means of protecting and promoting human rights in those countries. Despite all human rights strategy papers, which are elaborated in the EU framework, strategic reflection on how human rights can best be protected in each situation is not always guaranteed in German foreign policy. There seems to be a lack of effective human rights policies tailored to individual countries (such as Saudi Arabia and other Middle Eastern states) and applied consistently. All too often the scope for political action is not exploited or the aim of promoting human rights is lost in the daily routine. A special challenge is presented by the question how to respond appropriately to the fact that authoritarian regimes have now developed effective strategies to repel, discredit and prevent criticism of human rights from being voiced at home and abroad. The Russian Federation is a case in point.

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### **Restraint vis-à-vis democracies**

In the section on human rights problems in the relevant reports of the German government, human rights issues in established democracies basically do not appear; exceptions being, for example, the death sentence in the US and Japan. In the country section of these reports, the countries of Northern America and the European Union are actually excluded on purpose. This negative selection is intended and reflects the restraint Germany exercises regarding shortfalls in human rights in these countries. Relations with the US are especially sensitive. Guantánamo, Abu Ghraib, rendition flights via Europa or

global spying; any criticism by the German government, whether expressed in public or in confidence, of the violation of human rights by the US has been very restrained to date.

With regard to EU countries, the German government tends to refer to the fact that the European Commission monitors compliance with EU treaties and that all EU member states are signatories to the European Human Rights Convention. In view of Germany's history and its economic clout, any criticism of human rights voiced by Germany is unlikely to be much appreciated by many EU states. Nevertheless – and despite the fact that Hungary played an important role in the reunification of Germany – the German government has expressed its concern over domestic developments in Hungary and also welcomes the corresponding treaty violation procedures of the EU. The German government has also voiced criticism of domestic developments in Poland. In this case, the EU Commission activated the rule of law mechanism, newly created in 2014. The question of how the EU deals with authoritarian tendencies within the Union will become a test of credibility for a community of values which demands and promotes human rights in other regions of the globe. In view of the dissent within Europe on asylum and refugee policy and the resulting crisis facing the European Union, it is now to be expected that Germany will, in the foreseeable future, exercise restraint in its criticism of human rights vis-à-vis the Visegrad Group, such as Poland and Hungary, in order not to exacerbate disputes.

However, it is essential that democratic governments themselves respect human rights diligently and are able to take a critical view of human rights issues in other democracies in order to preserve their credibility when calling for the respect and protection of human rights. Only in this way can sophisticated counter-strategies and counter-arguments applied by authoritarian regimes be parried. Nor should criticism of human rights be limited to violations of civil liberties and political rights. Foreign policy criticism on the inadequate implementation of economic, social and cultural human rights in established democracies is scarcely heard – for example, the unsatisfactory implementation of the rights to food and health in India, with which Germany has a strategic partnership.

## Opposing poles

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Crisis prevention and conflict management are a focal point of German foreign policy.<sup>3</sup> In view of the many deaths, numbers of refugees and violations of human rights that are the result of armed conflicts around the globe, this is of great importance in terms of human

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<sup>3</sup> And with the German Presidency of the OSCE in 2016, the German government is focussing on handling crises in all phases of the crisis cycle (early warning, prevention of conflict, crisis management and follow-up to conflicts).

rights. At the same time, advocacy of human rights is an important part of crisis prevention. This view is shared generally by the Federal Foreign Office. “When human rights are systematically questioned, this means that social and political crises are looming and strife is inevitable,” said Foreign Minister Frank-Walter Steinmeier in his speech to the UN Human Rights Council on 3 March 2015.<sup>4</sup>

However, containing armed conflicts which bring about massive violations of human rights, requires the cooperation of authoritarian regimes – in the case of Syria, for example, this means the inclusion of Russia, Saudi Arabia and Iran. At the same time, the German government fears further destabilisation of areas of conflict, particularly in Africa and the Middle East. Somalia, Libya and Syria are warning enough. This results in German foreign policy prioritizing stability over vigorous support for human rights. The real danger is that the German government, despite any criticism it may voice regarding human rights, will now come to an agreement with authoritarian regimes and not provide sufficient support for a change in the human rights record of such countries. The question of how to deal with the repressive regime in Egypt, for example, was hotly debated in Germany.

Especially sensitive is the question when cooperation extends to aspects of security policy. According to the statements of the German government, it pursues a restrictive policy of arms exports. However, the reports of the German government on arms exports do not give the impression that permits are granted strictly in line with the Government’s own rules or that the observance of human rights is emphasized. Although the German government always professes the contrary, in the past countries where human rights were violated have been supplied with arms from Germany. For example, the fact that arms were exported extensively to Saudi Arabia in recent years – although tanks were not supplied after all – was an issue in terms of human rights.<sup>5</sup> Currently, the supply of tanks to Qatar is giving rise to public criticism. The corresponding permits issued by the previous government have not been withdrawn.

Although capacity building may well be important, nevertheless even in countries without an overtly authoritarian regime, such as Mexico or Nigeria, it is to be feared that the support provided to combat drugs or terror can be counterproductive because the security

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4 Auswaertiges amt (2015) *Speech by Foreign Minister Frank-Walter Steinmeier at the 28th session of the United Nations Human Rights Council*. Available at: [http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Reden/2015/150303-BM\\_VN\\_MRR.html](http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Reden/2015/150303-BM_VN_MRR.html).

5 See the official Military Equipment Export Reports by the government (available at: [www.bmwi.de](http://www.bmwi.de)) as well as the GKKE Arm Export Reports by Joint Conference Church and Development (GKKE) (available at: [www.gkke.de](http://www.gkke.de)) (only in German).

forces in those countries also commit severe violations of human rights. This applies all the more to the support of police, border police and military structures in the Sahel or the security programmes of the EU in the countries of North Africa. These give rise to serious concerns and objections in terms of human rights. They also concern sensitive cooperation with these countries in the field of migrant and refugee policy since these are countries where human rights are violated or insufficiently protected. It is all the more problematic that Morocco and Algeria, for example, are discussed to be classified as “safe countries of origin” in Germany. Furthermore, the German government has been the driving force behind the EU-Turkey refugee deal (March 2016) which has been criticized as a blow to human rights by Amnesty International and other human rights organizations. There is also the risk that the agreement serves as a blueprint for refugee deals with North African states.

The current conflicts and refugees movements almost overshadow the “classic” tension between economic interests and human rights. The foreign policy of an export-oriented country such as Germany is always focused on foreign trade. In terms of human rights, it is not only a question with whom Germany is cooperating economically. It is just as important to ensure that economic cooperation does not infringe human rights (do not harm!) or is possibly even used to protect and promote human rights. In this context, it is interesting to see how Germany will implement the UN Guiding Principles on Business and Human Rights in a National Action Plan, the elaboration of which is being coordinated by the Federal Foreign Office and is to be adopted in 2016. After a multi-stakeholder process lasting eighteen months, the results so far are rather disappointing in terms of human rights, also because no legal obligations regarding the transnational activities of businesses are to be expected. Furthermore, it can be assumed that Germany, like other EU member states, will continue to block the elaboration of binding rules under international law for transnational businesses.

## **Closing remarks**

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The protection and promotion of human rights around the globe is the expression of moral and political responsibility as well as a legal obligation. It is therefore an independent aim of foreign policy in Germany. At the same time, human rights are an integral part of foreign policy interests. Human rights play a key role, for instance, in the prevention of violent conflicts and associated movements of refugees. They also promote the development of poor countries and can help to create a stable environment for economic cooperation. This view is generally shared by the German government; however, in practical terms, striking contradictions can be seen. Demands for human rights are often considered as a burden on crisis diplomacy and on relations with countries with which Germany cooper-

ates in terms of economic, security and refugee policy. If the German government wishes to assume more international responsibilities, human rights should play a central role, also and especially in crisis situations.



*Ulrike Guérot*

## **From normalcy to hegemony to impotence? German foreign policy and European external relations**

*Germany's foreign policy has become the object of detailed analysis, observations and criticism. Whereas after World War II the country had no autonomous foreign policy whatsoever, it has now become a major actor on the global scene and its foreign policy choices tend to have a huge impact on the European Union and its strategic agenda. Germany often tilts the balance between the US and Russia. For other big powers such as China, Iran or Saudi Arabia, Germany seems often the only legitimate interlocutor, shaping the agenda of key European dossiers. How has Germany evolved from a foreign policy dwarf to one of the leading European foreign policy actors? This essay tries to explore the culture of Germany's foreign policy making and its most recent developments and shifts, which are to a large extent not driven by a strategic community, but by the interest of its export industry.*

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### **The new German visibility in international relations**

The general quest for leadership in Europe's external relations is not new. The tricky thing is that this quest was never directed at Germany, and still less at Germany alone. Traditionally, both France and the United Kingdom were the big strategic players in Europe. It is largely forgotten in current discussions on the German leadership in Europe that the whole European integration adventure was designed for Germany *not* to lead in Europe, meaning more precisely: not allowing Germany to once more lead Europe into disaster. It seems important to discuss the current German leadership question in EU affairs – and Germany's impact on the EU's external relations, against this historical backdrop. The historical backdrop tells us that the sheer fact that today we are discussing a German leadership role for the EU in foreign relations is basically the opposite of the intention of the founding fathers – or a serious *contradictio in adjecto* to the European project as such. Words such as those spoken in 2011 by then Polish Minister of Foreign Affairs Radek Sikorski that he feared German power less than he was beginning to fear Germany inactivity therefore mark a paradigm change for Germany and the EU's external relations (Economist 2011). Before, Germany was rather a dark horse in European foreign policy, and with reason.

In recent years, however, Germany's general position in the EU's foreign policy, and especially its impact on EU's external relations, has come to shine. Since quite some time now Germany – or more precisely Angela Merkel – is generally considered to be the most important actor in European foreign policy. She alone can talk to Putin. She has been key in establishing the EU's Minsk agreements regarding the conflict with Ukraine. She travels to China, for business or solar energy matters. US President Barack Obama awarded Merkel the Presidential Medal of Freedom. She is the leading figure – or the person being most blamed – in the current European refugee crisis. She is paving the way for a refugee crisis solution with Turkey. In short: she (more than Germany) is the one, the “indispensable leader” as *the Economist* (2015) put it. *Time* magazine featured her as the “most powerful woman of the world”,<sup>1</sup> and she was also listed for the Nobel Peace Prize. Americans travelling through Berlin have no problem whispering that Germany “runs the EU” and that the next US government – whichever that will be – would adjust to this. Forget about the EU – go with Germany.

Germany never was in such a position, being so visible – and engaged – in foreign affairs. And never it played such a pivotal role on behalf of Europe. Obviously, Angela Merkel is not alone. German Foreign Minister Frank-Walter Steinmeier is highly engaged in the Middle East talks in Vienna and Geneva about a solution to the Syrian war and the threat of ISIS. This is no small thing, since Germany historically has a very specific relationship to the Middle East, especially to Israel, and has always resisted being a prominent player there, much different from the United States, France or the United Kingdom. But today, Germany's shuttle diplomacy between Riyadh, Damascus, Bagdad and Vienna is of key importance: nothing is done without Germany. And then there is business. A lot of arms business, firstly. Germany has become the third biggest arms seller worldwide, with an upward trend, selling arms into conflict regions too.<sup>2</sup> Cynics report that whatever side in the disordered and complex war in Syria – Assad troops, ISIS warriors or rebels –, they all use guns from Heckler & Koch. And the most recent German hope is of a strengthening of commercial ties with Iran in engineering and machinery industries, as the economic relationship between Germany and Iran has traditionally been very strong and the nuclear talks, in which Germany also took part, were finished successfully in October 2015. Germany is all over the place. Globally respected, if not admired. The underlying structural conflict, however, is that Germany is path dependent from exports for its economy. The impact and influence of German export industry on foreign policy choices of Germany is therefore a key factor. Yet, some choices of the German export industry might,

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1 See Forbes (2016) *The world's most powerful women*. Available at: <http://www.forbes.com/power-women/>.

2 Bittner, J., M. Geis, J. Lau & B. Ulrich (2013) 'Deutsche Außenpolitik: Wir tun doch nix', *Die ZEIT*, 21 March. Available at: <http://www.zeit.de/2013/13/Deutschland-Aussenpolitik>.

in strategic terms, not be good for Europe. Hence, Germany should not allow its export industry to have a too big and uncontrolled influence over Germany's – and thus European – foreign policy choices, as this is a bias for clear strategic choices. In conflicts like the Syrian war this seems like a *contradictio in adjecto*, when Germany e.g. sells arms to Saudi Arabia, which are used in the Syrian conflict, which it wants to resolve because it triggers the refugees which are causing problems at home.

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### **The metamorphosis of Germany as international actor**

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It's a bit like the story of the ugly duckling who became a haughty swan. Germany has, within just a couple of years, adapted to a new role in its external presentation. It has sort of grown into the world and international politics from the backbench to Europe's master class. Today, Germany is definitely an international player of the highest importance; the question is whether this is good – or always good – for Europe or only for Germany.

It is important to state that the internationally shining Germany of today is the result of a long and sometimes difficult learning curve. Germany, traditionally a bit shy and reluctant in foreign policy, with a strong preference for military abstention and non-intervention policies, needed a decade or so, and several consecutive circumstances such as the Bosnian wars in the 1990s, to come to grips with a politics of international engagement. For obvious historical reasons, politics of military abstention and non-intervention have become a cornerstone of German political culture since the end of World War II. The *Bundeswehr* was designed – and legally bound – to engaging troops only on Germany's own soil and for purely defensive reasons. The first events to make Germany move out of this mentality – with a lot of constitutional trouble – were the Yugoslav Wars and their genocide and ethnic cleansings in the 1990s. It was Joschka Fischer who brought an at the time largely pacifist Green Party to accept that “no more war” must be complemented by “no more Auschwitz”. Germany then participated in military missions in Serbia (1999) and in Afghanistan (2001). Still, as the only country in the EU, Germany has a *Parlamentsvorbehalt* (meaning parliament must vote on military missions); and, much different from France and the United Kingdom, had for long a conscription army, which only was abandoned in 2011. And a tacit rule – again much different from France and the United Kingdom, who tend to make strategic and military choices alone if need be – is not to participate in a military intervention without an international mandate from either NATO, the UN or both. Germany, during the past decade, was thus striving beyond strict defence, yet was not merely as interventionist as France or the United Kingdom. Even though contributing to or participating in military or humanitarian missions of the EU, for example in Chad in 2008/2009, Germany never was a front runner. Instead, it took a leading role in peacekeeping activities, flanked by ZIF, the Center for International Peace

Operations, which plays a leading advisory role for the German Foreign Ministry and the Ministry of Defence. Anti-interventionist policy became the trademark, as it were, of German foreign policy, its unique selling point, and this in a pretty categorical way. Where France or the United Kingdom are more flexible to respond to new facts or changes in a conflict, Germany tends to be firm. This was the case, for example, when France and the United Kingdom both were considering arming Syrian rebels in 2011, but Germany remained on a categorical no. As experts said at the time, this looked in the end like a non-policy towards Syria (Khoury 2013). The German word for this is *Vogel-Strauss*-policy, 'ostrich policy', meaning policy while keeping its head in the sand, like an ostrich. It could not remain like this for long. Germany needed another wake-up call.

The real boost of Germany in foreign and international relations, with high reciprocal effects on the EU's external relations, came only in recent years. Germany was confronted with multiple complaints of its European partners, reproaching Germany for a lack of international engagement – for example in Georgia in 2008, Libya in 2011 or Mali in 2013 – while foiling EU's interest through bilateral business relations, for example with Russia and with China (Kundnani & Parello-Plesner 2012). Around 2008, German *Ostpolitik* and the intimate German relationship with Russia (the so-called "Gazprom connection" of former Chancellor Gerhard Schröder) became a thorn in the flesh of the Baltic states and Poland. In 2011, Germany was loudly criticized for its abstention on the Libya humanitarian mission by the United States and its European partners, and in January 2013 for not assisting the French in Mali.<sup>3</sup> In other words: Germany got the – very ambivalent, if not doubtful – reputation for not being on board for military interventions or humanitarian missions, but to only be around when it comes to business. In short: Germany did the selling, not the fighting. The biggest European economy had a duty to care for European foreign policy beyond trading and selling, its European partners, first and foremost France and the United Kingdom, were subtly signalling by that time. This was the second event leading to Germany's changing habits. Selling arms to dictators but not taking responsibility for human rights, and vending strategic interests to either the Chinese or the Russians without caring for neighbours, would need to stop (Lau & Bittner 2013). And Germany adapted to the critics. The starting point of this second U-turn was the Munich Security Conference of 2014. In several speeches, Chancellor Angela Merkel, Foreign Minister Frank-Walter Steinmeier, Defence Minister Ursula von der Leyen and President Joachim Gauck launched a broad public discussion about the new need to engage Germany more

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3 Although the French intervention took place precisely two days before the 50 years celebration of the Elysee Treaty, and France had asked for airlift support, Germany only supplied two airplanes, with the restriction that they wouldn't transport troops, see e.g. Diarra, A. & Valdmanis R. (2013) 'Maliens celebrate, French led-force clear Timbuktu', Reuters, 27 January. Available at: <http://www.reuters.com/article/us-mali-rebels-idUSBRE9000C720130127>.

strongly in global affairs and to consider crisis abroad as being within Germany's strategic sphere of interest.<sup>4</sup> Politics and budget followed. The Foreign Ministry reshuffled its strategy department in a one-year-long review process between 2014 and 2015. In March 2015, the ministry published its "Review-Report" with new strategies to better enable Germany's Foreign Service to deal with new international challenges.<sup>5</sup> The Ministry of Defence, which in 2014 increased spending, took measures to modernize the equipment of the troops and also engaged in an internal review process. All this shows that there was and is political willingness in Germany to not escape from European duty in foreign relations. And some results are indeed visible.

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### **Leader or slacker?**

Indeed, Germany seemingly boosted its engagement in, and responsibility for, European external relations for the better. The scorecard of the European Council on Foreign Relations on European foreign policy lists Germany as leader in most European foreign policy areas (ECFR 2016). Only with respect to the Eastern Partnership policies of the EU, is Germany perceived as a slacker. With respect to pushing for sanctions in relation to the Ukraine conflict, engaging with the Balkans, the refugees or even the Middle East crisis, Germany is perceived as leader in European foreign policies. Especially on Ukraine and the leadership position on sanctions one may argue that Germany – to the astonishment of many – placed its own economic interests behind European necessities. This can be judged as a clear commitment to defending an overall European interest and shifting away from the former German *Ostpolitik*. With this, Germany also tried to counter an increasing shift in complaisance with Russia in internal German politics: "*Putinversteher*" ("those who understand Putin") was a code word in domestic politics, depicting a trend of German alienation from the United States and of large parts of public opinion showing complaisance with President Putin on Ukraine or believing that the United States are more damaging to Germany than Russia. At a moment in time when relations with the United States had been clearly damaged through the NSA affair, and complicated by TTIP negotiations, it was important for Germany to demonstrate its alliance with the West in the Ukraine conflict. The new German meandering between the United States and Russia is one of the essential reasons for fissures within Europe and Europe's poisoning in external affairs. Probably this is also the reason why Germany is keen to take a leading position in the TTIP

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4 For Joachim Gauch's speech see, Der Bundespräsident (2014) Opening of the 50th Munich Security Conference. Available at: <http://www.bundespraesident.de/SharedDocs/Reden/DE/Joachim-Gauck/Reden/2014/01/140131-Muenchner-Sicherheitskonferenz.html>.

5 The conclusions about the Review of the Auswärtiges Amt (2014) Review 2014 – Die Schlussfolgerungen. Available at: <http://www.auswaertiges-amt.de/DE/AAmt/Review2014/Ueberblick/Text.html>.

negotiations – despite strong domestic protest – as the scorecard on European policy actors and their performance in specific foreign policy issues indicates (ECFR 2016).

Yet, the German role in Europe – despite this apparent success story – starts to be irritating for many (Lippert 2015). Perhaps it is the problem for a hegemon that he can never comply with the expectations: if Germany leads in Europe, it is criticized, if it doesn't, it is also criticized. The German leadership role thus has to be examined in detail and the problem seems to lay in the fact that, whereas Germany's leading role in the EU's foreign policy is generally appreciated, it is not with respect to inner EU domains such as the German behaviour in the Grexit crisis or in the refugee crisis. In other words, where Germany is gaining ground, at least partially, in international relations for the EU, it is losing ground in inner-European affairs and the two momentums are conflicting.

### **The new-old question of German hegemony or leadership**

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The eurocrisis was the starting point for a yearlong, European-wide discussion on whether Germany would 'go it alone' – and leave Europe behind (Guérot 2010). The 'German hegemony' talk swelled over the past years, closely related to the German (mis-)management of the eurocrisis (Kundnani 2014). It probably peaked in the Summer of 2015, where during several weeks the euro system was nearly pushed into the abyss of a Grexit. Memorable is Paul Krugman's endorsement of the trending hashtag on Twitter #thisisascoup on the night of the EU Council meeting of 12/13 July 2015. Germany dominated policy choices within the EU in an incredible way.

It seems important to note that *before* the Germany hegemony discourse shifted in more recent times to the much more positively connoted question of – or even quest for – a German *leadership* in Europe, especially in foreign policy, the hegemony discourse was essentially an *expression of discontent* of Germany's European partners. Whereas the notion of a *hegemon* comes with a negative spin, *leadership* conveys a positive take. Before German *leadership*, thus, there was German *hegemony* in Europe. So what caused this shift in perception?

The judgment on whether Germany is a hegemon or a leader seems to depend on the policy fields. There is a difference between the Eurozone-19 and the EU-28 arena, and it also depends on whether European countries conform with Germany's policy choices. In cases of disagreement (for example regarding euro management), Germany is a hegemon; in case of agreement (foreign policy, for example the management of the Ukraine conflict) Germany is a leader. Yet, Germany's systemic position of power within the EU remains the same. It is in both cases the predominant role of Germany in the EU's institutional

system, which causes the problem, and the most recent example is the European refugee crisis – where German *leadership* capacity is failing and German impotence to “fix” the refugee crisis leads to acute European disorder.

Germany had undoubtedly experienced an uncontested and largely unexpected gain of power within Europe over the past years. As a result, the three traditional patterns of German power in Europe before 1989 became less relevant. Franco-Germany relations have lost the old engine function. Germany is increasingly bypassing smaller EU countries, which are close to irrelevant in European external relations today. And lastly but most importantly, the change from community method to Union method announced in Angela Merkel’s speech at Brugge College in November 2010 shifted the systemic importance from the European Parliament and the European Commission away to the European Council. These three factors together contributed to a paradigm change in the decision making of the European Union and boosted the German position in Europe. Germany, in a way, changes European policy directions with the thumb up or down. Whether Greece leaves the EU or whether Dublin II is respected or not, is ultimately a German decision. Germany has the power to ask, for example, an Austrian Chancellor to negotiate a European “Schengen” in the refugee question; or it creates the formats in which it wants to discuss visa questions in the Balkans (Lippert 2015). In other words: Germany is beyond institutions in the EU – or *above* institutions. Or Germany *is* the instituted EU. This may work as long as there are policy results pleasing all other European partners – or most. If there aren’t, such a dominant position is a risk, and this is the case now. The ongoing refugee crisis is probably the turning point, where Germany’s role in Europe is shifting from hegemony to powerlessness, not to say impotence.

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### **The reactions of the European partners**

The changes in the German role did not remain unnoticed. All European countries had their specific reaction to the changing German role in Europe and Germany exerting hegemony in both the euro group and the foreign policy arena. These reactions all came with a certain delay. In sum, there are three types of reactions: the reactions of the big EU countries France, the United Kingdom and also Poland; the reaction of the European South; and the reaction of the smaller EU countries that surround Germany and are economically strongly dependent on it, such as Czech Republic, Slovenia, Austria and Finland.

Starting with the latter, this stance can be described as “cultural intimidation”. Being economically strongly dependent on Germany – euro countries such as Slovenia are *de facto* a sort of outsourced workbench of the German automobile industry – these countries decided to side with Germany on most policy questions. The situation of eco-

conomic dependence did not and does not really allow them to voice distinctively different or even opposite opinions in the EU Council, let alone to vote against Germany.

The Baltic countries, backed by the United States, had some leeway to make Germany reconsider its obvious complaisance towards Russia and forced a moderation of German '*Ostpolitik*'; yet, in essence, Germany was clearly in the driving seat in the Ukraine conflict, with respect to negotiations with Ukraine and the sanction policies towards Russia. Admittedly, Germany in this case was respectful not to neglect completely the fears of Baltic countries, and could establish itself as an appropriate mediator in both, intra-European tensions with respect to Russia and transatlantic tensions over the way to deal with Russia.

The southern European countries, being squeezed into German austerity policy with no option to reverse it, thus far reacted to the German power gain in an almost fatalistic way. In foreign policy – despite special relations of for example Italy with Libya – the southern flank of Europe is pretty much excluded from impact on the EU's external relations. The three core areas of EU's relations – United States, Russia and China – are ultimately clearly controlled by Germany. This exclusion from policy interests was further fuelled by the fact that Germany, for a long time, disrespected the interests of the southern countries in the refugee crisis: until the spring Council of 2015, Germany disregarded the Greek and Italian quest for help with the flood of refugees, insisting on Dublin II. Italy could not secure German support when launching Mare Nostrum and investing 90 million euro's to help refugees from drowning. The German U-turn in the refugees question only came in the summer of 2015, when the refugee crisis hit Germany itself. In this respect, Germany had previously displayed rather egoistic features in its policy and the most recent turn from Saul to Paul in the refugee crisis in the autumn of 2015 is a new one – but most likely bound to fail.

## **The refugee crisis and German impotence**

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The current refugee crisis is probably another turning point in Germany's dominance of the EU's external policy. Not only has Germany lost much support of nearly all its European partners for its policy welcoming refugees. In addition, the domestic situation in Germany, with populist vote increasing at the regional elections of March 2016,<sup>6</sup> has forced Angela Merkel to opt for a *de facto* closure of the Balkan route at the EU Summit of March 7. The most immediate consequence was the fact that some 15.000 refugees

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6 AfD raised to double digit results in the regional elections of March 13th 2016 in Rheinland-Pfalz & Baden-Württemberg, and to more than 20 per cent in Sachsen-Anhalt. The refugee crisis thus clearly cracked the German party system and established a right-wing party in Germany, on the right of CDU/CSU.

became blocked at the Greek-Macedonian border at Idomeni. Another *de facto* result will probably be that Greece might be turned into a sort of European Lebanon.<sup>7</sup> Greeks will get help to build refugee camps, yet the refugees are supposed to remain there. Also, the fact that Germany relies so strongly on Turkey for “solving” the refugee crisis has led to a string of protests, from human rights activists and the Green Party to the populist AfD, which is pointing to the ambivalence, if not failure, of the German approach.<sup>8</sup> Thirdly, the continued incapacity of Germany to provide leadership or to get to a “European solution” – which would be the distribution of refugees using a fair distribution key – has changed the equation within the EU’s external relations. Visegrad countries are openly revolting – and not implementing – EU Council decisions and resisting Germany-led European solutions. The rift even affects Franco-German and Austrian-German relations and has the potential to paralyze a routinized foreign policy toolbox of the EU, not to mention the political damage it can do.

Germany today seems isolated within Europe and is confronted with the ambivalent need to rely on Turkey to reduce the number of refugees flowing into the country, although Turkey is openly and deeply disrespecting European values. Be it shutting down the progressive newspaper *Zaman* or undertaking military action against the Kurds, Turkey is displaying undemocratic features in many respects. Still, Germany is clinging to Turkey as the salvation of the refugee crisis, because managing this crisis, in the sense of reducing the refugee flow, seems to become the most important topos in the forthcoming national elections in the fall of 2017 – as the populist AfD starts to considerably shake up the German party system. Merkel’s laudable ethical and moral positioning in the refugee crisis thus comes under clear electoral strain. The very fact that Germany comes close to trading domestic elections interests for cooperation with Turkey, points to the fact that, firstly, German hegemony in Europe has ended; and, secondly, that *realpolitik* in refugee issues has arrived in Germany too.

And lastly, this also might be a sign that handing over the leadership of Europe to Germany was never a good idea. There is a definite need for European solutions, but Germany cannot determine them – at least not in the way it tried in the past, be that internally or externally.

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7 Cf. Statement of the EU Heads of State or Government, 07/03/2016. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/>. The disputed sentence was: „*The Balkanroute is closed*“.

8 This article was written in the Spring of 2016. Therefore the potential impact of the failed coup d’etat in Turkey in July 2016 for the EU’s refugee agreement with Turkey are not discussed here.



## **German human rights policy in a multipolar world**

*Germany has rarely used public shaming to condemn human rights violations, and it refrains from using leverage vis-à-vis rising powers. We argue that as Germany continues to search for a clear strategy of human rights promotion in a multipolar world, confidential dialogue and cooperation will remain central to its human rights policy, regardless of whether it is dealing with an authoritarian or a democratic country.*

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### **Introduction**

Rising powers need not fear criticism of human rights abuses from Berlin, for trade trumps human rights in German foreign policy. This conventional wisdom is frequently invoked by human rights activists and journalists alike, but it is neither very informative nor entirely correct. While it is true that German decision-makers do not prioritize human rights concerns over other foreign policy considerations, including trade, this is hardly unique to an export nation like Germany. Governments rarely take potentially costly foreign policy decisions to further a moral objective, and Germany is no different. Nevertheless, German foreign policy does not invariably neglect human rights concerns in the country's relations with rising powers.

In this essay, we seek to elucidate German human rights policy vis-à-vis rising powers by examining policy documents and actual practice. Since we cannot do justice to all rising powers – countries of diverse characteristics and human rights conditions – we focus on Germany's relations with only two of them: China and India. Both countries are located in Asia. They are the two most populous countries in the world. Both are important trade partners of Germany, although the trade relationship between China and Germany is more developed than that between India and Germany. China is a one-party state, and India is a democracy – hence, the types of human rights violations differ between the two countries. Regardless of regime type, both countries are considered strategic partners by Berlin.

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1 The authors would like to thank Thorsten Benner, Julian Lehmann, Philipp Rotmann and Lars van Troost for their helpful comments on an earlier draft of this article, and Esther Yi for her edits.

In addition to explaining the German approach to human rights violations by rising powers, we critically examine the impact of Berlin's actions. What could Germany do differently to better promote and protect human rights in today's multipolar world?

### **Germany's offer to partner with rising powers**

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In February 2012, the German government explained its approach to rising powers in a strategy paper that guides Berlin's approach to this day. Instead of using hitherto common terms such as "BRICS", "emerging markets", or "newly industrializing countries", the German government introduced a neologism: *Gestaltungsmächte*, which roughly translates into "powers that shape [the world]". The German government deliberately chose this term to highlight its view of rising powers as "more than just emerging economies. They are new players with a voice in the conduct of world affairs" (Bundesregierung 2012a: 5). The paper is framed as an "offer" from Germany to rising powers, inviting them to "enter into dialogue and cooperate in a spirit of partnership and equality" (Bundesregierung 2012a: 6). Highlighting the universal validity of human rights, it states that Germany is "opposed to cultural relativism when defining human rights" (Bundesregierung 2012a: 27). At the same time, the paper reassures rising powers that do advance a relativist agenda, notably China and Russia, that the German government seeks "a dialogue-based approach" that aims "to improve our understanding of our partners' traditions and cultures" (Bundesregierung 2012a: 28) – a statement that weakens the aforementioned commitment to universality.

By explaining that Germany reaches out to "reform-minded forces in society and government", the strategy paper sketches a theory of change on human rights protection. Instead of raising the costs of violations by using sticks, such as public shaming, Germany prefers to use carrots, notably by offering cooperation and dialogue. Berlin hopes to persuade: "[Germany] would like to convince others of its values and interests" (Bundesregierung 2012a: 7), and it wants "to advertise the advantages of tried and tested German and/or European solutions and successes in building modern legal orders" (Bundesregierung 2012a: 28). Especially vis-à-vis rising powers, where German leverage is undoubtedly limited, engagement on the benefits of rule of law is a feasible policy option, but it is fallacious to trust in this kind of engagement where governments oppose human rights.

Rule of law and human rights are not identical. Human rights are extra-legal, inherent rights, and they are valid even when domestic laws violate them. Another unspoken quandary is that a fully developed rule of law, with an independent judiciary that checks state action and places limits on government power, is not in the interest of authoritarian

rulers. Authoritarian rulers may rule by law, but they do not want to be constrained by it. China is a case in point, where years of trade and of engagement on rule of law have not led to greater respect for human rights.

In democracies like India, human rights continue to be an important tool for constraining government power. But a functioning democracy has institutional checks and balances as well as regular elections that effectively limit government abuse. With this in mind, human rights are arguably most important for the marginalized and disenfranchised in India. Human rights are not only extra-legal, but also counter-majoritarian norms that support minorities even where positive law or socio-political traditions discriminate against them. The principle of non-discrimination empowers ostracized groups, such as the Dalits in India. To some extent, such groups can be supported through cooperation projects, but when violations are based on systematic discrimination and persistent ideologies of exclusion, domestic activists look for allies, not for human rights education.

One possible way for states to lend support to human rights struggles is to monitor a given situation and to publicly echo local criticisms of rights violations, in line with international conventions. German foreign policy makers, however, frequently describe such naming and shaming as unhelpful grandstanding that obstructs bilateral dialogue. According to this view, shaming spoils opportunities to convince those in power of necessary reforms.

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### **German policy debate on human rights violations by rising powers**

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As we examine the factors that shape Berlin's approach to international human rights promotion vis-à-vis rising powers, it is important to trace the ideas underpinning the German policy debate. We believe that it would be a mistake to point at only Germany's economic and strategic interests: values and international legal commitments also matter in Berlin's decision-making. All German foreign policy makers understand that the international codification of human rights was, to a large extent, a response to World War II and the Holocaust, imparting Germany with a sense of special responsibility. Notably, such historical references are often viewed with suspicion abroad, as pointed out by Markus Löning, the German government's former Commissioner for Human Rights (Löning 2014). At the same time, most of the German foreign policy establishment subscribes to modernization theory, or the prediction that economic growth will expand the middle class, which will eventually demand political liberalization. This, in turn, should engender human rights compliance. In German shorthand, this theory is called *Wandel durch Handel* ("change through trade"), suggesting a certain automatism that, critics argue, permits a passive response to human rights violations.

Proponents of *Wandel durch Handel* credit trade and engagement with the fall of the Iron Curtain and the Berlin Wall. But is it still an appropriate policy today? In recent years, leading German newspapers have repeatedly published debates on the place of human rights in external relations, but these debates rarely focus on specific human rights concerns and often exhaust themselves by creating abstract dichotomies between value- and interest-based approaches to foreign policy. The German Foreign Ministry echoes these debates in enigmatic statements such as “Germany’s foreign policy is value-oriented and interest-led” (Auswärtiges Amt 2013). Meanwhile, it remains unclear how values and interests should be balanced and how priorities are set. As Germany becomes more active on the world stage, with an ambition to shape globalization in collaboration with other nations, it can no longer afford such easy verbiage, nor will it be able to defend a foreign policy that focuses on trade and economic growth.<sup>2</sup>

Occasionally, human rights activists make more specific demands of the German Foreign Minister, such as to cancel trips or to publicly condemn human rights violations. For example, after the public executions of 47 people in Saudi Arabia in January 2016, activists called upon Foreign Minister Frank-Walter Steinmeier (Social Democratic Party, SPD) to cancel his participation in the Janadriyah Festival in Riyadh in early February. Steinmeier refused, explaining that it was the job of Germany’s top diplomat to continue talking with difficult partners. In response, Norbert Röttgen, chairman of the Committee on Foreign Affairs in the German parliament and a member of the Christian Democratic Union (CDU), said that the question was not whether Steinmeier should continue talking, but whether it was acceptable to stay quiet in public. Röttgen criticized the German tradition of silence in the face of human rights violations and demanded that German foreign policy take on a new tone (Röttgen 2016). While the balancing of different foreign policy priorities inevitably must be made on a case-by-case basis, notably vis-à-vis influential players such as rising powers, this episode shows that Germany is struggling to define a clear approach towards human rights – a debate, intensified in recent years, that is not neatly divided along party lines.

In a representative survey conducted in 2014, 66 per cent of German citizens said human rights promotion is a “very important” priority in foreign policy, and another 27 per cent said it is a “rather important” priority. Only 1 per cent found human rights to be “irrelevant,” and 6 per cent “not important” (Körber Stiftung 2014). These figures indicate a strong leaning towards human rights, but they say nothing about what Germans consider an effective strategy of human rights promotion. It is far from clear whether the German

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<sup>2</sup> See Braml, Merkel & Sandschneider 2014 for a collection of essays by German policymakers on how to deal with authoritarian powers.

population would welcome a more public stance on human rights violations if such a stance were to threaten trade relationships and, ultimately, German jobs and wealth.

The German parliament remains satisfied with hosting a formal debate on German human rights policy every two years only. What is more, this debate mixes international and domestic human rights challenges and does not go into detail on foreign policy. The German government's human rights strategy, action plan, and report to parliament (Auswärtiges Amt 2014a) all mix domestic and international challenges until it is difficult to tell which challenges belong to which sphere. German policymakers and even German human rights NGOs should stop mixing their own domestic human rights agendas with international human rights challenges. To improve Germany's human rights promotion in a multipolar world, the German human rights debate needs, first and foremost, a clear focus on human rights promotion abroad, including on how to approach violations by rising powers and how to respond to authoritarian learning and counter-strategies, including collaboration by which they shield themselves against criticism.

Other states are arguably more alert to Berlin's human rights positions than domestic audiences are. In non-attributable conversations with one of the authors, German ambassadors reported that their interlocutors increasingly look to Berlin rather than Brussels to understand the European Union's red lines. Today, Germany cannot simply hide behind EU common positions. And while there exist EU country strategies on human rights promotion, these are consensus documents; as a result, they mention too many goals and thus fail to prioritize. Decisions in daily diplomatic practice are left to ambassadors. As the China case demonstrates, Germany is prepared to occasionally stick out its neck even when other European members stay quiet, but it continues to prefer a common European approach, not least because European unity limits the risk of negative repercussions. When human rights violations are condemned jointly by the EU, rather than bilaterally by individual member states, diplomatic or economic counter-measures are less likely. Therefore, even as German foreign policy may become more independent from Brussels in the future, it is in the long-term interest of Berlin to promote a common European approach to human rights. More often than not, however, the EU remains divided when it comes to the human rights violations of rising powers. The German Foreign Ministry could do more to steer the EU towards greater unity in human rights promotion, away from a low common denominator and towards clearer red lines.

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### **German human rights diplomacy vis-à-vis China**

Until the mid-2000s, Germany was at the forefront of downplaying human rights violations in the People's Republic of China (PRC) (Kinzelbach 2015: chapters 2–5). In 1995,

then Chancellor Helmut Kohl committed the taboo of visiting the People's Liberation Army (PLA) – the first Western head of state to do so since the Tiananmen massacre in 1989. Many German observers criticized the decision. Matthias Nass, China expert at the German weekly *Die ZEIT*, wrote: “Ever since the Tiananmen massacre, the people's liberation army is, for many Chinese, no longer an army of the people. It is not the task of the German Chancellor to rehabilitate it” (Nass 1995). Meanwhile, German correspondent Peter Seidlitz speculated about the economic interests behind Kohl's visit, which included “a big business delegation including the bosses of Siemens, Volkswagen, Krupp, Thyssen and Lufthansa” (Seidlitz 1995).

In 1996-97, Germany and a few other EU member states opposed the joint EU-United States sponsorship of a United Nations resolution on the human rights situation in China. Human rights activists perceived economic interests behind the decision (Human Rights Watch 1997).

In 1999, when the US asked the EU to support a UN resolution in response to the crackdown on the China Democracy Party and the persecution of Falun Gong followers, Germany opposed. In the seat of the rotating EU presidency, Berlin steered the EU away from the US proposal. Instead, then German Chancellor Gerhard Schröder initiated a Sino-German rule-of-law dialogue. Unlike the bilateral human rights dialogue, which is led by the German Commissioner for Human Rights Policy and Humanitarian Aid and supported by the Ministry of Foreign Affairs, the rule-of-law dialogue is led by the Ministry of Justice and focuses on a range of legal subjects, including commercial law. In a 2011 interview with a German daily newspaper, Zhang Sizhi, one of the PRC's oldest and most prominent lawyers, called the dialogue a waste of taxpayers' money: “This has been going on for more than ten years. But instead of improvements in our judicial system, it currently rather deteriorates” (Bartsch 2011).

The same holds true for the human rights dialogue between Germany and China. No detailed study on these talks exists, but we do know that they are structured similarly to the EU-China human rights dialogue, which has not proven itself an effective model. Confidential dialogues have actually helped the Chinese government keep criticism of its human rights violations out of the public domain, and they failed to engender specific human rights improvements (Kinzelbach 2015). A major impediment is the fact that the Chinese interlocutors – mainly from the Chinese Ministry of Foreign Affairs and Ministry of Justice – are overruled by the domestic security apparatus. By now, the German side knows full well that the Chinese party-state takes neither the human rights dialogue nor the rule-of-law dialogue seriously. But Berlin remains committed to the ritual, not least

for lack of a more compelling, alternative mechanism through which to express concerns and recommend human rights reforms.

While overall consistent, Germany's engagement with China has experienced some notable shifts. One such shift was the 2005 election of Angela Merkel (CDU) to the post of German Chancellor. Merkel has taken a more principled stance than her predecessors have. She has repeatedly raised human rights concerns with Chinese leaders and even met with the Dalai Lama. In a departure from the climate fostered by her predecessors, Helmut Kohl (CDU) and Gerhard Schröder (SPD), German diplomats can now credibly warn their Chinese interlocutors that human rights concerns will come up during official summits, in the event that they cannot be resolved at a lower level. This has occasionally led to greater cooperation from Chinese diplomats, who want to keep human rights concerns out of high-level talks.<sup>3</sup>

Another important shift is the German business sector's growing concern about developments in China. It is worried not only about the protracted economic slowdown in China, but also about the limits to rule of law and the lack of reform impulses. In June 2015, Jörg Wuttke, President of the European Union Chamber of Commerce and one of Germany's most experienced entrepreneurs in China, called the PRC National Security Law too broad and its definition of national security "so extensive in both wording and scope that we are in effect looking at a massive national security overreach" (European Union Chamber of Commerce in China 2015). In an interview with *The Washington Post*, Wuttke also stressed that China's proposed NGO law "doesn't fit in with the opening up of the economy" (Denyer 2015). While we do not want to imply that the German business sector has become a champion of human rights in China, it would be inaccurate to depict it as invariably negligent.

Germany's engagement policy entails not only trade and diplomatic talks, but also cooperation projects that are mostly implemented through Germany's political foundations, which are associated with Germany's political parties. The foundations are independent from the government, but funded through German taxes proportional to a given party's election results. China's new Overseas NGO Law would affect these foundations by subjecting their grantmaking to the supervision of Public Security Departments under China's State Council. Indeed, German foundations that fund human rights projects are increasingly alarmed by the shrinking space and concerned about the safety of their partners in China. For example, in April 2015, Guo Yushan and He Zhengjun from Transition Institute, a Chinese economic and social policy think tank, were arrested for alleged "illegal business activity". As part of the investigation, the Beijing Public Security Bureau

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3 Non-attributable interview with a German diplomat in October 2014.

publicly singled out the Heinrich Böll Foundation (affiliated with the Green Party) and the Friedrich Naumann Foundation for Freedom (affiliated with the Free Democratic Party, FDP) among the foreign funders of Transition Institute (Zeng 2015).

During her trip to China later that year, Merkel reportedly voiced concerns about the draft law in her conversations with Chinese leaders. Her messages, while important, are not enough. Given the increasingly repressive environment in China, Germany should reconsider its own regulations for providing financial assistance to civil society organizations abroad. Where an independent civil society is under threat, and official transfers no longer possible, Germany needs operating procedures that are more flexible – including, where this is the only option, undocumented cash transfers. German foundations should also make sure to only fund independent NGOs, and not those set up by the party-state as a Potemkin village. By working with government-sponsored institutions like the China Foundation for Human Rights Development (with which the SPD-associated Friedrich Ebert Foundation holds a regular human rights dialogue), Germany makes itself complicit in the marginalization of independent human rights organizations in China.

Berlin may have a long track record of opposing loud European responses to human rights violations in China, but today, it is conspicuously one of the very few EU member states willing to make public statements. On International Human Rights Day in 2015, for example, the German ambassador published a critical statement about China – in sharp contrast to the apologetic stance of the United Kingdom, which had announced a golden era in Sino-British relations a few weeks earlier. Notably, however, the German statement did not only criticize; it also acknowledged that Gao Yu, a journalist convicted for disclosing state secrets, had been permitted, on humanitarian grounds, to serve her sentence outside of jail. Christoph Strässer (SPD), the German government's Commissioner for Human Rights Policy and Humanitarian Aid, had made repeated efforts in this particular case because of Gao's affiliation with the German broadcaster *Deutsche Welle* (Deutsche Botschaft Peking 2015).

A month later, the German ambassador Michael Clauss issued another strongly worded statement. This time, Germany criticized the detention and public parading on TV of Swedish and British citizens in China who had been detained for different reasons: one had given support to Chinese human rights lawyers, and the others were associated with a Hong Kong publishing house that regularly publishes books on alleged scandals involving Chinese leaders. In a highly unusual move, the ambassador's statement insinuated that China had breached the Vienna Convention on Consular Relations and made clear that Germany sided with European partners that were directly affected. "Legal guarantees on due process such as the free choice of a defense lawyer, access to the detained

person by such a lawyer and a fair trial have to apply to our citizens as they must apply to any citizen of China,” Clauss said. “Violations of these principles, if confirmed, would mean a new quality” (Deutsche Botschaft Peking 2016).

Both of these statements were carefully worded to avoid hurting Germany’s relationship with China beyond repair. Nevertheless, they are strong indications that Germany no longer refrains from issuing public criticism. They also show that the German media can shape government action on individual cases, and confirm that Germany continues to see the value of a common European position.

Last but not least, it is important to understand what Germany is *not* prepared to do. German criticism of China’s human rights violations remains isolated from other policy fields, thereby limiting its impact on Beijing’s cost-benefit calculations. The arrests of some 300 Chinese *weiquan* (rights defence) lawyers since 9 July 2015 offer a case in point. On 13 July 2015, German Minister of Justice Heiko Maas (SPD) called for their immediate release in a Facebook post, which is a strikingly informal venue for such a call (Maas 2015). That same day, German Vice Chancellor and Minister of Economic Affairs Sigmar Gabriel (SPD) was scheduled to travel to China with a high-ranking business delegation – and he went ahead, despite the news of the arrests. Gabriel ended up voicing fairly abstract criticism in the Great Hall of the People, such as the idea that Chinese society needed “air to breathe” (Heide & Scheuer 2015).

German politicians and businesspeople never tire of stressing the importance of rule of law for flourishing trade and investments, but they do not make trade conditional on functioning rule of law, and they certainly are unprepared to incur the diplomatic or economic costs of demanding human rights compliance. Based on what could be observed, Gabriel did not consider postponing his trip or negotiating any releases. In effect, his official visit, conducted at the high point of the arrests, reassured Beijing that even the most flagrant of their persecutory behaviour will not put Sino-German relations at risk.

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### **German human rights diplomacy vis-à-vis India**

Unlike China, India is a democracy. Accordingly, the human rights situation differs significantly. Although democracy correlates highly with the protection of human rights, a democratic system does not guarantee their full realization, as the case of India demonstrates. The country has seen widespread violations of human rights (Beer & Mitchell 2006) as well as impunity in response to violence against minorities by the police and by armed forces, especially under legislation such as the Armed Forces (Special Powers) Act

(AFSPA). What is more, pervasive poverty and inequality critically undermine the rights of Indian citizens (Human Rights Watch 2015).

Germany pursues a “low key” approach to human rights violations in India, largely because of its democratic credentials, and because India has a vigilant media and civil society as well as a proactive judiciary. Germany does closely monitor some of the more sensitive human rights issues in India, but it prefers to work on issues identified by the Indian government as requiring technical support or capacity development assistance.<sup>4</sup>

There was no perceptible shift in Germany’s approach after the 2014 election of Prime Minister Narendra Modi, despite his controversial human rights record. Like many other international actors, Germany views the election of the Modi government – with its agenda of development and of attracting foreign investment – as an opportunity to strengthen ties with India. Moreover, there continues to be a strong sense in Berlin that stepping up pressure and shaming the Indian government on human rights violations would not be a suitable or effective course of action.

Human rights are not a priority in bilateral talks, but select issues do get consideration. These issues are typically those that “get the most coverage in German media and the public sphere,”<sup>5</sup> including child labour, violence against women, and freedom of religion (especially the rights of Christian minorities and, to a lesser extent, Muslim communities). For instance, the German embassy has been funding a campaign led by local NGOs against female foeticide and gender-based violence in India. While important, a focus on these issues comes at the expense of others that are more prominent within the Indian debate, such as caste-based discrimination, particularly against Dalits, and the violation of social and economic rights of communities displaced by large-scale development projects.<sup>6</sup> For instance, Dalit activists reportedly have been trying to lobby the German government to apply pressure and often have been denied support, since their case is considered a “domestic” issue. Instead of seeking to primarily address the priorities of German citizens, a more effective German human rights diplomacy would focus on human rights issues that have already mobilized Indian civil society, thereby acknowledging local demand and supporting domestic change agents. It also means that Indian human rights activists should more actively try to influence the debate within Germany – in the event that they consider German attention helpful for their cause.

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4 Confidential interviews with German officials in January 2016.

5 Interview with the speaker of the India co-group at the German Section of Amnesty International in January 2016.

6 Interviews with the speaker of the India co-group at the German Section of Amnesty International and Delhi-based NGOs in January 2016.

Some of the more controversial issues from the Indian debate were raised by the German government only at the multilateral level. Here, it occasionally uses mechanisms like the UN's Universal Periodic Review (UPR) to question the Indian government's legislation – for example, in May 2012, it tabled a question on the Armed Forces (Special Powers) Act and the Foreign Contributions Regulation Act (FCRA).<sup>7</sup> The first law deals with special powers given to the Armed Forces in areas facing insurgencies, such as Kashmir. The latter seeks to impose restrictions on foreign funding to NGOs in India, which would negatively impact German political foundations operating in the country. Although the UPR procedure at the UN in Geneva allows not only for the tabling of questions, but also for the formulation of specific recommendations, Germany refrained from doing so, forgoing an opportunity to take a clear stance on the shrinking space for domestic NGOs and their international partners in India.

In the UN Human Rights Council, Germany's collaboration with other democratic rising powers like Brazil has been fairly successful. India, on paper, would also make a good partner in this forum. Germany and India have declared themselves “natural partners” with common values and a common interest in an international order based on principles of democracy, human rights, peace, and security (Auswärtiges Amt 2000). However, since India emphasizes not only human rights, but also non-interference as the guiding principles of its democracy (Stephen 2015), it is reluctant to hold other states accountable – not least because the Indian government faces a number of human rights issues in the domestic arena. Germany perceives India's insistence on sovereignty and non-interference to be stronger than that of most other rising powers, and as far as we can ascertain, there are no efforts underway from either side to forge closer collaboration on human rights at the multilateral level.

Given the coordination of authoritarian governments and the declining influence of European states in UN human rights bodies, it is an opportune time to reconsider the notion that India's non-interference policy prohibits any collaboration. Berlin could start by exploring opportunities for joint sponsoring of thematic human rights resolutions, particularly on issues that align with Indian priorities. Given that the public discourse in India is overwhelmingly focused on internal affairs, international human rights issues with linkages to domestic politics – e.g., labour rights, the treatment of overseas diaspora, the freedom of the press – would be more conducive to getting New Delhi's cooperation. While Germany and India have thus far not developed strategic collaboration in UN human rights bodies,

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7 Office of the United Nations High Commissioner for Human Rights (OHCHR) (2012) 'Universal Periodic Review Second Cycle – India, Questions submitted in advance', UN Doc: A/HRC/WG.6/13/IND/1. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>.

their votes have coincided on some issues in the past – for instance, the right to water and sanitation, which is a priority for Germany. This relatively non-controversial issue, as well as common positions on other economic, social, and cultural rights, could be used as a foundation for greater cooperation. Moreover a change in India’s usual reluctance to take a stand was visible in its support for the Human Rights Council resolutions on Sri Lanka (Ganguly 2013) which might signal a change in policy that creates an opportunity for Germany to engage with the country at the multilateral level.

In India, German political foundations arguably play a greater role in human rights promotion than the German embassy (though the latter does regularly meet with human rights defenders, in line with EU guidelines). The foundations are important because they often take up issues deemed “too sensitive” by the German government.<sup>8</sup> For instance, the Heinrich Böll Foundation works on violations in the context of large-scale development projects, a realm where protestors have come under increasing pressure from the Indian government. And in 2008, the Friedrich Naumann Foundation supported the National People’s Tribunal on Torture, which exposed the widespread use of torture and impunity by the police and other law enforcement agencies in the country.

The foundations provide crucial support through funding and by addressing a wider range of issues than the German government, but their reach is limited. Not only are they limited in geographic and financial terms, but they are also impeded by the aforementioned Foreign Contributions Regulation Act. In interviews, staff members of German foundations working in India emphasized that it was impossible to support grassroots organizations in rural areas because these groups are usually not formally registered. Registration is required under the FCRA and is possible only after an organization has existed for more than three years; effectively, this means that grassroots organizations are off-limits as partners for German political foundations. Moreover, the foundations themselves had to reregister under the new rules, a time-consuming and ongoing process that involves the submission of extensive information on the foundations and their governing boards.

Although the shrinking space in India’s civil society sector is by no means comparable to the highly repressive situation in China, the German foundations that are active in India operate in a climate of uncertainty. At their request, the issue was raised at the German-Indian Intergovernmental Consultations in 2015, and the resulting joint statement acknowledged the important contributions made by Germany’s political foundations (German Missions in India 2015). While this official backing is encouraging, it remains unclear whether and how German political foundations – whose mandate is not limited to

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8 Non-attributable interviews with German officials and foundation staff in January 2016.

human rights promotion – will adjust their project portfolios in the future. While restrictions on foreign funding in India are not new, the more recent FCRA (2010) and the subsequent process of reregistration have placed additional limitations on the promotion of human rights through project-based cooperation. According to our assessment, German foundations have become more cautious and, in some cases, engage in self-censorship, rather than demonstrating steadfast determination to exhaust the written rules in support of Indian human rights defenders. In this context, it is important to stress that Germany's political foundations act independently of the German government. The foundations are proud of their independence and intent on maintaining it. In the specific case of India, there was even a debate among German foundation staff about whether they should ask for political backing ahead of the intergovernmental consultations in 2015. In the end, they decided to ask for support, and the German government responded in the affirmative. The operational cautiousness described above is not due to a lack of support from the German government. In our reading, it is the result of operational decisions within the foundations, and these are mostly day-to-day decisions taken in the country offices, rather than strategic choices made at foundations' headquarters back in Germany.

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## Conclusion

Berlin's position on human rights violations by rising powers matters more than ever before. This relatively new development is the result of Germany's ability to shape common European positions as well as its own diplomatic and economic weight. Berlin's influence comes with not only greater responsibility, but also risks for its goal of expanding strategic partnerships with the "powers that shape [the world]". A public stance on abuses can backfire and burden bilateral relationships, for most governments of rising powers object to human rights monitoring as interference in domestic affairs. We argued that trade is only one factor determining Germany's guarded approach. Strategic partnerships with rising powers cover many policy fields, and Berlin views these partnerships as too important to risk creating conflict over differences on human rights.

In policy and practice, German politicians across party lines have long been hesitant to criticize human rights abuses in public, and many view public statements as unhelpful grandstanding. Particularly vis-à-vis democratic nations like India, public criticism is not considered an appropriate or effective course of action. And while some policymakers in Berlin recognize the ineffectiveness of the dialogue-rituals with China, they are nevertheless largely considered the best available option. In our assessment, Berlin's pronounced belief in the virtue of engagement has too often led to accommodative stances and to public silence. As the rising powers continue to rise, their domestic human rights ten-

sions are due to increase. Such a scenario will pose significant challenges to Germany's preference for confidential dialogue.

We also argued that Berlin's stance on human rights violations is significantly shaped by what catches the interest of the German public, rather than by civil society debates in rising powers. Thus far, Germany has faced little pressure and condemnation from international human rights NGOs, which have focused more on the European Union than on Germany. With Berlin's increased influence in Europe and, arguably, the world, however, its tradition of public silence in response to human rights violations will face increasing criticism. Nevertheless, we predict that in the absence of massive human rights crises in rising powers, the German government will continue to engage in non-conditional dialogue and technical cooperation, and it will be difficult to convince decision-makers in Berlin that public shaming, leverage, and issue-linking, as well as democracy promotion, are important tools for the protection of human rights.

The only actors that can push Germany towards a more outspoken stance on human rights violations are domestic civil society groups and dissidents in rising powers. To better understand how rising powers will shape the world, and whether or not they can be true "strategic partners", German foreign policy makers should take the domestic debates within rising powers – notably the civil society debates – more seriously. German cooperation projects should step up support for independent change agents, not for those in power. Where necessary, and with the required circumspection to avoid unintended harm, German political foundations should be allowed to use more flexible means to support small, unregistered grassroots organizations, especially in rural areas, as well as human rights organizations that are under pressure.

Although we are convinced it is critical to ensure that civil society actors from rising powers make their voices heard in Germany, we also believe that the German human rights community – and the international human rights community at large – could be more involved in German foreign policy debates and networks.

While German human rights NGOs are well-organized among themselves, such as in formal coalitions like the Forum Menschenrechte, their influence on foreign policy remains limited overall. Human rights NGOs have regular interactions with the Foreign Ministry – in particular, the human rights unit and the office of the human rights commissioner, in addition to occasional official meetings with the Foreign Minister. Such consultations are important, but informal contacts and discussions – including with diplomats who are not responsible for the human rights portfolio – matter even more. Unfortunately, human rights experts are hardly represented in Germany's foreign policy networks at the moment.

To overcome this divide, both communities need to open up. Only then can Germany meet the challenge of developing a principled and effective human rights policy in a multipolar world.



*Destabilisation and war in the neighbourhood and their impact on the European Union have started to shape Germany's foreign policy identity, making it a more assertive foreign policy power. Current developments around the refugee management crisis suggest that Germany is making a choice to prioritise a security approach to the detriment of its human rights record.*

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### **From ring of friends to ring of fire**

Through a German lens, the world post 1989 largely looked like one of opportunities rather than risks. The fall of the Berlin Wall, the collapse of the Soviet Union and the prospect of EU membership for Central and Eastern European countries made Germany embrace the shifting world order. The European Union became the umbrella under which the continent continued to unite both politically and economically, and Germany invested heavily into the European project. The country was well placed to play a major role in shaping European Union policies. In economic terms, the “German model” looked tailor-made for the era of globalization, and Germans benefitted greatly from liberalized markets and the euro currency.

But the wars in south-eastern Europe during the 1990s were an early wake-up call for Europe's trajectory being not only about peace and prosperity. German foreign and security policy went through the difficult evolution of supporting NATO in the war in Kosovo, a decision that came with huge domestic controversy over the legitimacy of the intervention, and of Germany engaging actively in the military campaign.

Ever since, German foreign and security policy has been going through a continued transition. While the opportunities of European integration and indeed globalization continued to shape large parts of Germany's outlook to the world, the overall environment started to shift. The old notion of war as one between states fundamentally changed, as did the demarcation between “internal” and “external” security. These past years have been particularly formative for German foreign and security policy. While Berlin had been challenged for many years by its Western allies for what was increasingly seen as

freeriding, that is benefitting from the security that others provided, the overall security environment around the European Union has shifted dramatically. The aspirations of an “Arab spring” leading to democracy in the Union’s southern and south-eastern neighbourhood – admired and supported by Germans still remembering their peaceful revolution of 1989 – has been dashed with ever more MENA countries sliding into conflict and war. The annexation of Crimea by the Russian Federation and the threat posed to the European political and security order made Berlin realize that the world surrounding it was getting more dangerous, and that the rules-based global order and proclaimed values of the EU and its members had come under threat. The current “ring of fire” as opposed to the “ring of friends” that the Union and its members wanted to help bring about only a little more than a decade ago, is a picture that resonates widely amongst the German foreign policy community at the moment.

### **A new sense of realism**

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Against the backdrop of a torn European Union still struggling to respond to the impact of the banking and financial crisis, the perception is that while the challenges surrounding the EU and Germany have grown ever larger, the instruments of the EU and the overall cohesion between EU member states is well beyond what is needed to defend the European model, including its proclaimed values of Article 2 of the Treaty on European Union: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and the rights of persons belonging to minorities.

The latest challenge of managing the needs of refugees and migrants coming to EU countries, with Germany among the most important destinations, has reinforced the sense that a neighbourhood sinking into chaos creates first and foremost a challenge to security. At the time of writing, early 2016, Germans are clearly feeling the link between what concerns them at home with what they see on the news, particularly in the Middle East. Every day, thousands of refugees looking for a better life make their way to Europe and many of them to Germany. While many Germans are ready to help and accommodate the needs of the newcomers, Germans have started to ask how many will ultimately be coming? The mainstream discourse is currently about “order”, “control”, “borders” and “internal security”. Much less attention is being paid to the rights of refugees according to the Geneva Convention, or the options and details of a joint approach of EU countries to a coherent asylum and migration policy.

This also goes back to the 2015 terrorist attacks in Paris. In the aftermath of the second wave of attacks, in November 2015, two of the most fundamental and highly controversial debates in Germany started to overlap.

The first debate is indeed about the refugees and about migration, and has been putting Chancellor Merkel, for more than a decade the unchallenged leader, under growing pressure within her own party, and her coalition government. The controversy concerns the ongoing arrival of refugees, many of them from war torn Syria, and the limitations of Germany's absorption capacity. Many have questioned whether the Chancellor has put the country's public order ("*öffentliche Ordnung*") at risk. In the aftermath of the Paris attacks, the fear of a "*Kontrollverlust*" (loss of control) over access to and movement within Germany has put the public on even greater alert, and the government under further stress.

The second debate is about Germany's role in European security. Is Berlin doing enough to provide European security, or is it mostly benefitting from a security order that others are willing to build and defend, even with human lives if it comes to it? There is a fundamental difference now to previous episodes in this debate. While in the past, German engagement in conflicts and wars was largely abstract for the German population ("Why should we defend our interests at the Hindu Kush?", to refer to the Afghanistan debate more than a decade ago), now the link to other parts of the world has become very tangible. People are fleeing war torn Syria and the horror of the Islamic State, and Germans feel the impact in their local communities, where the authorities, NGOs and indeed citizens are struggling to keep up with the numbers of refugees and to support the needs of newcomers.

The horror of Paris has meant that both migration and security policy are now connected in the perception of many citizens. The French and the German people feel the impact of a country and region sinking into chaos, but in very different ways: France became a victim of terrorism, Germany has seen large numbers of refugees arriving hoping for safety and a better life. While Berlin's lens compared to the debates in France is perhaps wider, there is nevertheless the tendency to increasingly come up with responses that are about security. For example, driven by a strong impetus to give a joint response to the attacks and to fighting the Islamic State, the German Bundestag voted in support of the military campaign in Syria – a step that a few years ago would have created much greater controversy in the country.

There is a new sense of realism in the air that is already having an impact on policy. The government's push to declare Algeria, Morocco and Tunisia countries of safe origin (as well as other provisions that are part of the so-called "Second Asylum Package" (Federal Government 2016a)) has entered into force without much of a public debate about implications on human rights. The negotiations with Turkey over the joint EU-Turkey action plan (Federal Government 2016b) on the refugees arriving in the EU via Turkey, have shown a remarkable sense of realism on the side of the German government lately; but one

that does not remain unchallenged. Cem Özdemir, the leader of Germany's Green Party (*Die Grünen*), criticized the planned deal with Turkey in an interview with *Frankfurter Allgemeine Zeitung* in March 2016 (Georgi & Holl 2016) for not finding the right balance between accepting Turkey's help and maintaining a strong stance on Turkey's domestic developments. "So far, Merkel's Turkey policy has been a complete disaster," he said. Also in March, Alexander Graf Lambsdorff, Vice President of the European Parliament and leader of the German Free Democratic Party (FDP), said that the EU should not let Turkey "drag it through the arena on a nose ring" (Deutschlandfunk 2016). Leading NGOs have for many months voiced strong criticism regarding Germany's negotiations with Turkey. The question of whether the deal negotiated with Ankara violates Germany's commitment to international law and the Geneva Convention is also resonating among the foreign policy community in the Bundestag.

However, the mainstream discourse focusing on security seems to be set, making it difficult for messages asking for the protection of human rights to resonate among the wider public. This leaves a bleak picture for those advocating not to link security and migration policies. The question with regard to Germany is whether the current phase of realism is driven by immediate pressure on the coalition government and will be rebalanced once there is again a sense of "control" in the public over what has been branded the "refugee crisis".

## **Impatience in Berlin**

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But there is another question that is worth looking at, and this is much bigger: it is about Germany's overall EU orientation. Germany's leading EU role as well as Berlin's ability to leverage its power through the EU has seriously diminished over the past years marked by crises of the euro and of refugee management. At the same time, the stakes for Berlin have risen. Despite its structural power at EU level, Berlin has failed to come up with a sound response to two of its vital interests: sustainable reform of the eurozone is pending, and Angela Merkel's government has become isolated when it comes to the refugee question. Both of these issues determine the country's future, but if Berlin continues to fail at delivering EU level solutions to these major questions, what will that mean for Germany's EU orientation?

Both the euro and migration are major areas of policy, the overall direction of which will affect Germany's economic future, and the prosperity and social cohesion of German society. For months, domestic tensions have been building up on the refugee question, and the aftermath of the events in Köln on New Year's Eve 2015 and the latest rise of the xenophobic *Alternative für Deutschland* party have further complicated the domestic con-

versation. The difficult and rocky path to social integration of refugees that experts have pointed to for quite some time, has become tangible for Germans in many ways.

The confluence of both challenges, the euro and migration, might ultimately turn out to be too much for even Angela Merkel's chancellorship. However, the more important question centres on how policymakers (if they think beyond the logic of their own political survival) assess the potential impact on Germany's prosperity and social cohesion, if these issues cannot be firmly resolved through their own interventions at EU level. Successive Merkel governments have invested deeply in the EU project, but in the current political climate, where many seem to feel frustrated that "the EU does not deliver", the temptation to think beyond the EU is stronger than ever.

Such thinking is not a new phenomenon, with similar concerns and temptations having already been kindled (though mostly by outside commentators) during the peak of the eurozone crisis. In Germany the vast majority felt that such thoughts seemed misplaced or misguided. Who would seriously dare thinking about tearing down what has been part of Germany's DNA since the Second World War? The *Europakonsens*, the traditional commitment to building an ever closer Union, and to accept compromises when the time came to it, seemed to be holding strong. But that is no longer the case, it seems. Weighed against both global opportunities and threats, European unity for Berlin seems no longer to be an objective in and of itself. Over the past few years, the overall assessment among Berlin's political elites seems to have moved on. The current climate of opinion in Berlin is shaped by the feeling that Germany has spent years investing time and resources into keeping the Union together, despite frustration over the Union's failure to deliver, by the experience of being surrounded by an increasing number of internal and external conflicts, and indeed by mounting domestic pressure. For how long will Germany be able to maintain the consensus that it is still worth investing in joint EU solutions, and at what cost? There is an increasing sense of impatience lacing conversations in Berlin, and a common view that if only others were to take joint ownership, Germany would not be forced into going it alone.

Let's leave aside the important questions of who and what is to blame for the EU's dire state. No doubt Berlin has to take part of the responsibility for failing to compromise on the reform of the eurozone, but how far can Berlin's tolerance level with the EU system stretch? What if the perceived and *de facto* weakness of common EU solutions amongst the eurozone and Schengen members makes Berlin fundamentally reassess its EU commitment? And why is this relevant to the overall discourse and policy on security and migration, and to the future of human rights in foreign policy?

Clearly, we have seen signs lately that Berlin is willing to engage bilaterally if it feels the EU as a whole does not deliver. Relations with Turkey have become vital again against the backdrop of the refugee crisis, and while Berlin attempts to portray the recent rapprochement with Ankara as part of a joint EU approach embedded in the enlargement framework, it seems increasingly clear that this relationship is essentially bilateral and driven by security concerns. What does this mean for the EU's Turkey policy, and for enlargement policy too? Clearly, Germany is too big not to have an impact on overall European policy if it moves, if only bilaterally.

There is also an increasing sense of opportunism vis-à-vis the European Commission, especially in relation to its role in the refugee crisis. The Commission can be helpful to bring in other EU countries and help Germany look "European" in its approach to the refugee crisis. But to what extent is Germany still willing to make the case for a strong and independent Commission as a motor of integration and consensus for the whole Union, when it works on coalitions of the willing at the same time? Isn't Berlin fundamentally changing the role of the Commission? Finally, there is the view that ultimately, Europeans working together can mean different things. Angela Merkel called it the "union method" in her 2010 Bruges speech. Her point of view is that it is no less European to work based on a logic of intergovernmentalism and of coalitions of member states. In this sense, Germany's *Europapolitik* has also become *Realpolitik* over the past few years. Where does this leave the Union? Not surprisingly, this issue is raised in Berlin on a regular basis by visitors from other European states.

## Conclusion

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There has been a strong consensus so far on Germany's commitment to European integration, to its values and institutions. It is too early to conclude that this consensus no longer exists. However, there are signs that it is starting to crumble as the Union is no longer able to deliver on the powerful promise that has kept Germany committed and engaged in the EU project for the past decades. Germany has not wavered in its beliefs that the EU is ultimately much more than the sum of its parts, that the key to peace, prosperity and security for Germany, and indeed all countries in Europe, is found in European integration and supranational institutions, and that the EU is the way to keep the "German question" under control. At least until now.

The perceived dangers and risks in the immediate neighbourhood of the Union as well as globally have started to shape Germany's view of the world as one where opportunities are no longer an easy grab, and where the risks of globalization can reach the doorstep of individual Germans. This experience has already started to change the country's foreign

and security policy. It has brought about a greater determination to make use of military force as well as a securitization of the migration discourse. It is too early to tell whether this will be an ongoing trend, but let's assume for the sake of the argument that it is: if the country that has been investing heavily in the EU so far while at the same time balancing the security approach of the other two big players, France and the UK, is increasingly finding its own ways – where does this leave the European Union?

What these past years have shown is that neither for Germany, nor for the EU as a whole, the normative agreement on the fact that human rights are worth protecting is being abandoned. Indeed, it is common sense among mainstream political parties in Germany that it is more important than ever to stand up for European values, which have come increasingly under attack both from outside and inside the Union. Having said that, the overall regional and global environment has started to demonstrate to Europeans that their aspiration to set the terms for countries and societies living together in peace comes no longer unchallenged. Europeans have lost ground in defending their values – and the cost of defending them has risen. The refugee management crisis has made many Germans argue that protecting human rights finds its limitations in the overall value of cohesion and security of German society. This has become a middle of the road argument and its underlying assumption is that numbers have exceeded Germany's ability to integrate the newcomers. Chancellor Angela Merkel has been praised for nevertheless sticking to a liberal refugee and asylum policy, even against heavy domestic and European pressure. But Angela Merkel is also the one who engineered the recent deal with Turkey, which clearly puts a question mark to Europe's human rights standards. How do these two images of Germany fit together? They are both part of a reality of a country whose growing role in foreign and security policy has put it on the spot more than ever over the past seventy years. We are not seeing a clear picture yet, but the current developments suggest that Germany is making a clear choice to prioritize a security-led approach to the detriment of its human rights record.



**Foreign policy, development  
assistance/international cooperation and  
human rights**

*Judging by speeches and programmes, human rights are an established objective of German foreign policy.<sup>1</sup> A whole subchapter in the current coalition agreement between Christian Democrats (CDU/CSU) and Social Democrats (SPD) is dedicated to the consistent and coherent “promotion and protection of human rights” in foreign policy (CDU 2013). A strong policy commitment to human rights is still part of the sine qua non in German foreign policy. This is a legacy of the past. While in the United Kingdom, a Foreign Office top official publicly said that human rights are no longer a priority in the country’s foreign policy, the German government still pursues initiatives in order to be perceived as a constructive human rights actor and declares to hold on to the assumption that sustainable peace and development ultimately cannot be furthered without human rights.*

**Human rights in German foreign policy between self-perception and economic interests**

Looking at Germany’s actions abroad, one might wonder which human rights criteria underpin foreign policy decisions in practice. Germany pursues a permanent seat on the United Nations Security Council, but abstains from voting on a resolution to establish a no-fly zone in Libya (Spiegel 2011). It claims to support the Arab Spring, while it exported various types of arms to Saudi Arabia in 2014 and 2015 (Deutscher Bundestag 2015), notwithstanding Saudi Arabia’s involvement in Yemen and in Bahrain. Among the ten main recipients of German development assistance (hereafter ODA) are many BRICS countries – not exactly those in dire need of financial resources for poverty reduction. Similarly, in the SDG (Sustainable Development Goals) process, Germany presented itself internationally as a forerunner on accountability and participation with regard to the domestic process on the SDGs. However, seen from the national level, consultation consisted of conferences and no particular effort seems to have been made to reach out beyond those working on development and environment.

This gap between claim and reality is reflected in the debate about the place of human rights in German foreign policy, which engages foreign policy experts as well as the

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1 Here used as including diplomatic, economic, development, security policy.

broader public. The pursuit of “values” – often equated with human rights – is usually juxtaposed to the pursuit of “interests” (Berliner Zeitung 2011; Zeit 2013a; Zeit 2013b). Against a background of changing geopolitical power relations, a recurrent question in the debate is whether and to which degree Germany should include human rights as a (major) criterion in its foreign and development policy. Past and present Ministers for Economic Cooperation and Development have often declared that interests and values can be combined. Which is another allusion to Germany’s past, the policy of “change through rapprochement” towards former East Germany: economic cooperation will lead to political change in the long run. Both foreign and development personnel often declare that Germany acts behind the scenes in order to achieve human rights progress without forcing partners to lose face. For those working on holding Germany to account for its development policy and implementation, it is a challenge to pierce this argumentation in order to verify whether Germany has acted in good faith – or if it simply served its own interests.

The ongoing debate about the direction and strategy of German foreign policy is driven by several dominant factors. First, Germany has been facing increasing demands from the international community to take on a more active role in international politics, most evident in the area of security policy. While this has been building up since the early 1990s, Germany seems to have woken up to this rather recently (Spiegel 2014). Its reluctance to assume such a role might be attributed, on the one hand, to a desire to demonstrate its reliability to its partners and not undertake unilateral coercive measures, on the other to domestic, in particular economic, interests. In security policy, Germany has been rather the paymaster in the background, which prevented it from facing casualties from robust peacekeeping missions (Kundnani 2014). A 2014 foreign policy review, initiated by the German Foreign Office, resonates with this debate. It also cites a range of institutional preconditions which need to be put into place for an effective foreign policy, in particular the need for more space for strategic reflection and capacities for quick reaction (Auswärtiges Amt 2014b).

Second, the German economy relies to a large extent on export (OECD 2015; Speciale 2015) and thus on good relations with other countries, irrespective of their political system or human rights situation. Unsurprisingly, areas of development cooperation, where Germany can conceptually integrate both values and interests, such as climate change adaptation and mitigation, technology exchange and cooperation with the private sector, have been on the agenda of the last Ministers even across administrations. Last but not least, Germany, due to its history as well as to its middle power status, articulates multilateralism as a cornerstone of its foreign policy. However, while development Ministers usually emphasize the need for cooperation and partnership, at a closer look, they do

not always invest the necessary resources in understanding and influencing multilateral decision-making within existing multilateral institutions.

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### **Development policy – the impact of institutions and processes**

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Germany has, next to a Foreign Office, also a fully-fledged ministry dealing explicitly with development cooperation, the 'Ministry for Economic Cooperation and Development', (Ministerium für wirtschaftliche Zusammenarbeit und Entwicklung, BMZ).<sup>2</sup> The Minister and the heads of department usually change with each new administration. Most incoming Ministers are new to the issue and pursue their own agendas (Development and Cooperation 2015), thus changing the direction of the Ministry every four to eight years.

The Foreign Office has the lead when it comes to human rights in foreign policies. It deals with key human rights processes, eg. the UN procedures in Geneva, and has a coordinating function with regard to how other ministries are consulted in certain matters of relevance to them. BMZ is lead responsible for developing and implementing bilateral and multilateral cooperation policy and can shape it accordingly (eg. on the World Bank Executive Director's office, European Instrument for Democracy and Human Rights, UN Working Group on the Right to Development).

Within BMZ, one division<sup>3</sup> currently situated in the department for "Global Issues – sector policies and programmes" deals with "Human rights; freedom of religion; gender equality; culture and development; inclusion of persons with disabilities". This human rights division covers both bilateral as well as multilateral processes of BMZ, but, with the exception of very few processes, doesn't lead on any. In other words, it can only contribute to and advise on the work of other divisions, particularly the country divisions and desks in the ministry. To what extent those other desks are receptive to the suggestions of the human rights division, depends on many aspects: the degree to which the leadership of the ministry pursues, or is perceived as pursuing, a human rights agenda, and how its leadership operationalizes this agenda within the ministry and seeks compliance. It also depends on whether human rights are being perceived as furthering or hindering the country desk officers' agenda, and on their degree of knowledge about human rights and human rights-based approaches, amongst other things.

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2 See Federal Ministry for Economic Cooperation and Development (BMZ). Available at: <http://www.bmz.de/en/>.

3 Currently division 302, see Federal Ministry for Economic Cooperation and Development (BMZ)(2004) *Organisational Chart*. Available at: [http://www.bmz.de/en/ministry/structure/orgplan\\_en.pdf](http://www.bmz.de/en/ministry/structure/orgplan_en.pdf).

For the implementation of bilateral development cooperation with (predominantly) state institutions in partner countries, BMZ uses four state implementation agencies which sometimes also take on contracts with other countries directly or from other German ministries: the Gesellschaft für Internationale Zusammenarbeit (GIZ) for technical cooperation, and KfW Entwicklungsbank (KfW development bank, here: KfW) for financial cooperation.<sup>4</sup> The – smaller – Bundesanstalt für Geowissenschaften und Rohstoffe (BGR) works on natural resources, and the Physikalisch-Technische Bundesanstalt (PTB) on norm-setting. The Deutsche Investitions- und Entwicklungsgesellschaft (DEG) is supervised by several ministries and is responsible for financial cooperation with the private sector. While the definition and political steering of the contents of development cooperation is supposed to be carried out by BMZ, in practice the implementing agencies yield quite some influence. The instruments employed by German development cooperation consist of both technical cooperation, like sending advisers, as well as financial cooperation with both state and private sector institutions.

In 2004, against the background of human rights mainstreaming in the United Nations and upon an individual's initiative within BMZ, BMZ published its first Human Rights Action Plan. It was followed by a second in 2007.<sup>5</sup> In 2011, the action plan was replaced by a – binding – human rights strategy.<sup>6</sup> The strategy's core message is that human rights and development are strongly interlinked and sets human rights as an objective, not a precondition – or conditionality – of development cooperation. It also follows a dual track approach of direct support for human rights work as well as mainstreaming human rights into development sectors such as education, water & sanitation, health etc. The strategy had been consulted with civil society organizations (CSOs) and is generally hailed by the German and international human rights and development community as a model which should be kept. The current administration, headed by Minister Müller (CSU), has started to revise the human rights strategy to adapt it to its own priorities. The process is currently underway and is envisaged to be finished by the end of 2016.

In 2013, the human rights strategy was complemented by guidelines for assessing human rights in bilateral programmes and in country strategies. The implementing agencies are required to integrate these 2013 guidelines into their own procedures for programme appraisal, monitoring, assessment and evaluation (Federal Ministry for Economic Cooperation and Development 2013).

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4 KfW Entwicklungsbank (development bank) is one part of German state development bank KfW.

5 Both action plans aren't available online anymore. On file with the author.

6 [https://www.bmz.de/en/publications/archiv/type\\_of\\_publication/strategies/Strategiepapier305\\_04\\_2011.pdf](https://www.bmz.de/en/publications/archiv/type_of_publication/strategies/Strategiepapier305_04_2011.pdf).

No evaluation of the 2004 and 2007 human rights action plans, nor of the 2011 strategy have been published or are known by the present author to exist. To what extent the implementing agencies GIZ and KfW have integrated the 2013 guidelines into their internal procedures is not public either. Policy conflicts between human rights and other objectives are decided on a case-by-base basis and depend largely on the economic importance of the country concerned for Germany, the initiative of the respective unit in the ministry and the agenda of the ministry's leadership or are left to the implementing agencies. With BMZ as the institution politically responsible, however, the implementing agencies are used to refer to BMZ for any question on development policy and implementation.

The German parliament, the Bundestag, has, next to a human rights committee, also a committee for economic cooperation and development (Ausschuss für wirtschaftliche Zusammenarbeit – AwZ). On the whole, the AwZ doesn't assume a monitoring function of the ministry's work, but works mostly on ad hoc issues and individual country cases. The Budget Committee of the Bundestag was required by the German Court of Auditors to approve decisions on budget support, an instrument whose practical relevance is diminished.

The German Ministry for Development Cooperation only manages about 50 per cent of Germany's official ODA and its share is falling (BMZ 2015). Other main actors are the Foreign Office with about 10 per cent (mostly humanitarian aid) and the Ministry for Environment with about 2 per cent. The Ministry for the Interior is another actor in the area of internal security cooperation. The funding does not account for a large share of ODA, but is repeatedly being questioned in parliament for its human rights implications. Cooperation with the private sector contributes about 3 to 4 per cent over the last years. None of the other actors have a human rights profile, nor do they report in conformity with OECD standards.<sup>7</sup>

With regard to the non-profit sector, BMZ provides an instrument for funding CSOs abroad, which requires those CSOs to partner with a German CSO. Most of the embassies have a small budget for direct support in small grants to CSOs in the countries they are located in and/or cover.

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7 The BMZ is the only German ODA-spending ministry so far which reports and is being assessed according to the criteria of the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, whose objective is to ensure results. Both constitute the reference framework for development cooperation for OECD member countries. BRICS are not OECD members. Criteria are ownership, alignment, harmonization, focus on results, and mutual accountability. The Accra Agenda for Action refers to human rights in articles 3 and 13c. See OECD. *Paris Declaration and Accra Agenda for Action*. Available at: <http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>.

Recently, BMZ has established an independent institute for evaluations (Deutsches Evaluierungsinstitut – DEval). It will implement sector as well as horizontal evaluations.

### **What does the institutional set-up mean for human rights policy and implementation in development cooperation?**

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The set-up does not encourage leadership with a broad international perspective, nor strategic thinking and follow-up of policy decisions.

Due to coalition arithmetic, there is an order in decision-making. First, the position of the Development Cooperation Minister is allocated to a coalition party and then, within that party, to someone with relevant experience or to someone who merits a higher position, irrespective of inclination or experience. Minister and leading political staff often seem to gear their actions towards domestic interests rather than a broader global agenda, as it is on the domestic level where they see their political future. This can result in a ‘light-house’ approach, in which some actions are highlighted, with the rest of the ministry’s operations lying in darkness rather than ensuring follow-up of policy decisions through the hierarchy. While BMZ is politically responsible for designing and implementing its human rights strategy, its leadership often lacks the will and/or capacity to formulate a coherent strategy and, in particular, to design implementation tools in order to follow up on human rights in the ministry and thus translate their policy into actions. The implementing agencies have the necessary intelligence for identifying windows of opportunity in politically sensitive situations, but might be tempted to offer this information to BMZ as suits their own interests.

With regard to civil society support, the separation between the Foreign Office and BMZ means that there is no structured approach on how to address arising issues like ‘shrinking space’,<sup>8</sup> neither strategically nor funding-wise. While the Foreign Office is lead responsible for human rights issues, they have only minor funds to support civil society and refer to BMZ for funding. BMZ however, points out that it furthers development: its CSO-funding mechanism, operated through Engagement Global, furthers service delivery which has to be sustainable in the long run, aka be self-sufficient without foreign funding. Two criteria which are hardly met by human rights advocacy on accountability.

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<sup>8</sup> Used to describe restrictions on the legal and public space CSOs operate in, such as NGO registration and funding laws.

## **Trends in human rights conditionality, or the domestic twist in foreign affairs**

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The term 'conditionality' is used to refer to different things in German foreign policy discourse:

- I. the transfer of money only when a certain condition is met prior to or during implementation,
- II. the ex-post aid cut when serious human rights violations occur suddenly,
- III. sanctions, that is additional economic or political measures in the latter case, which go beyond development cooperation.

Regarding the first meaning of conditionality, already since the 1980s, BMZ declared to use a "catalogue of criteria" (Kriterienkatalog) to guide its programming.<sup>9</sup> Countries are assessed according to criteria from five areas, one of which is human rights. The criteria catalogue establishes human rights as a factor for decision-making in programming, but not as a conditionality: the results of the assessment would influence the choice of instruments, e.g. cooperation with state institutions or with civil society, project-based or programme-based etc. In practice, this would require that the assessment according to the criteria catalogue needs to be effected before the annual framework planning in the ministry starts. There is no report available on whether this is being done in practice. The contracts and protocols of bilateral development/governmental negotiations are not made public. Yet they harbour a great potential for another kind of conditional aid – either the decision with which countries and in which sectors Germany chooses to cooperate at all, or which focus areas Germany chooses. Again, transparency, or the lack thereof, impedes both a public or even ministry-wide discussion, thus favouring a case-by-case approach.

As for aid cuts in deteriorating human rights situations, the most prominent are cases of violations of LGBTI rights in Malawi and Uganda, under the former administration. However, looking at the level of human rights violations in Uganda as opposed to countries which allow the death penalty for "homosexual behaviour", the main reasons for the leadership of BMZ to consider aid cuts can't have been the level of human rights violations – or the level of human rights protection to be achieved – but were probably motivated by domestic concerns, such as not being perceived by the electorate as spending money on "bad" countries, or providing a quick-fix solution. Once the leadership of the ministry familiarized itself with the demands from African civil society not to call for aid cuts solely based on LGBTI human rights violations, the rhetoric changed.

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<sup>9</sup> Programming is used to encompass the decision-making process in which BMZ decides, with its partner countries, in which country, with which institutions or actors, in which sector, with which instruments (funds, advisers etc) it will engage.

Currently, ministers of the German government other than Mr Müller from BMZ call for aid cuts to countries that do not take back asylum seekers whose request for asylum has been denied. While Mr Müller so far has not given in to that, it remains to be seen how the discussion evolves. Currently, as of May 2016, both the Ministry of Interior and BMZ seem to have coordinated their actions and rather offered incentives to countries of origin, e.g. when it comes to sending rejected asylum seekers back to Morocco, Tunisia and Algeria.

As for sanctions (the third meaning of ‘conditionality’) these are usually dealt with by the Foreign Office on a case-by-case basis or at the EU level, e.g. recently in the case of Russia/Ukraine.

To cut a long story short, there aren’t any public signs of a coherent thinking about aid cuts, sanctions, and conditional aid. They are usually domestically motivated and used on a case-by-case basis, depend on the level of economic importance of the country in question, or serve individual political agendas. In addition, conditionality is not a preferred objective or means of German human rights policy. Germany as an economic power is rather looking for cooperation or economic arguments.

### **Structural cooperation with emerging powers**

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Over the last decade, Germany’s relations with emerging powers have changed, most notably with India and China. Initially focused on common trade and economic interests, relations with both countries now extend to global environmental issues as well as security policy and thus beyond the realm of classic development cooperation (Heiduk 2015). Human rights and rule of law dialogues are part of the package, but do not play a prominent role. At the same time, despite the economic level of China and India, both are, respectively, the number one and two recipients of gross ODA from Germany, followed by Afghanistan, despite BMZ having stopped traditional development cooperation with China in 2009 (Tableau 2014). Economic interests play a dominant role, illustrated recently by Germany’s speedy accession to the Asian Infrastructure Investment Bank.

In 2012, the German government published its “Gestaltungsmächtekonzept” (transformative or shaping power concept) which aimed at setting an agenda and framework for cooperation with emerging powers (Bundesregierung 2012b). The document attempts to cope with the realization that former “development partners” have grown into equally powerful actors on the international stage and that in an increasingly multipolar world, global issues such as terrorism and climate change cannot be dealt with with European partners and the United States alone. Observers have criticized the fact that the concept is heavy on rhetoric, but in practice has yielded few to no new initiatives between

Germany and emerging powers. They attribute this mostly to unresolved or even asymmetrical policy differences between them, plus a lack of coordination among German ministries (Heiduk 2015; Erler 2012). In public statements by German politicians, China and India are both referred to as competitors as well as partners, with the marked difference that India “as the largest democracy” is portrayed as sharing similar values, as opposed to China, but is considered less important on the global scene (Heiduk 2015).

Next to BMZ, other ministries are considerably involved in the cooperation with emerging powers. Beyond the inclusion of BRICS, the concept is applied flexibly and can include on a case-by-case basis countries like Vietnam, Indonesia, Mexico and Malaysia. While BMZ focuses on global issues, such as poverty-related aspects of climate change and extreme poverty, the Ministry for Economy and Energy focuses on export promotion and energy cooperation, the Ministry for Nutrition and Agriculture focuses on food security and agricultural reform, the Ministry for the Environment on its International Climate Initiative (Binding & Kudlimay 2013). Among them, BMZ is the only ministry so far with an explicit human rights strategy. While the Ministries for Environment and for Nutrition and Agriculture have been open to human rights-based considerations such as self-subsistence farming, protection of indigenous peoples in climate change initiatives etc, the Ministry for Economy and Energy is known as fending off both human rights critique or suggestions from civil society and even other state institutions. This could be evidenced in the recent process on the National Action Plan on Business and Human Rights, or national reporting on the SDGs and their indicators. Therefore, while cooperation beyond classic development cooperation with emerging powers will likely increase, it will be harder to place human rights issues on the agenda, partly because of a lack of familiarity, or even because of resistance of these other ministries to human rights, and partly because of a lack of coordination among them, and between Germany and emerging powers.

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### **Initiatives on the European level**

Germany's commitment to the European Union has been reaffirmed in the 2014 Foreign Office policy review and is seen as the result of “hard learnt lessons about Germany's hard-nosed national interests” (see Kappel 2014: 341-352). While this institutional orientation is almost canonical on the rhetorical level for both domestic and foreign policy, its implementation varies among policy areas and depends on interests – and upon the incumbent minister. In a recent consultation with civil society on his development policy, the Minister of BMZ implied that EU development cooperation is no arena he would engage in as Germany does not have a Commissioner there and in the European Development Fund you have 26 other countries who also want to have a say. Major EU policy initiatives have been triggered outside classic development cooperation, such as

combatting root causes of flight in response to the recent refugee influx through The Valletta Action Plan and the Khartoum Process.

Policy initiatives regarding human rights in EU development policy and assistance have come from the working level rather than the policy level. BMZ's human rights division has been working towards the adoption of a human rights-based approach at the European level, currently contributing through technical input and secondment of a German development practitioner to the European Commission's development cooperation directorate DEVCO, which is responsible for the implementation of the EU's rights-based approach adopted in 2015. Apart from that, BMZ's human rights division follows up on the ongoing development of the European Instrument for Democracy and Human Rights (EIDHR). Regarding human rights conditionality, Germany in its bilateral cooperation has only scarcely reduced aid and only regarding 'unimportant' countries. In the EU context, it will probably follow the Cotonou procedures, but not necessarily pushing for them.<sup>10</sup>

Suffice to mention that in German development cooperation, the share going to multilateral development cooperation is usually being reduced in favour of bilateral cooperation.

Informal international fora such as the G-summits seem to offer more flexibility and influence than multilateral institutions with set procedures and voting shares. Under the current administration, Germany announced major policy initiatives at the G7 summit in Elmau in 2015, such as economic empowerment of women, risk management in supply chains, decarbonization etc. The EU is a forum which might be used to follow up on these policy initiatives, but not an end in itself. Germany's G20 presidency in 2017 provides another opportunity for activists to engage.

## **Germany's foreign and development policy: out of the comfort zone – but where to?**

Germany's foreign – diplomatic, economic, development, security – policy is currently undergoing a transition in several respects:

- historically embedded in a Western multilateral framework of EU, OSCE and NATO, it is increasingly opening politically and economically towards other regions, especially Asia;

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<sup>10</sup> The EU-ACP partnership is known as the Cotonou agreement. Art. 96 provides for consultation procedures and appropriate measures in case of human rights concerns, see: European Commission. *ACP The Cotonou Agreement*. Available at: [https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index\\_en.htm](https://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm). And the consolidated text at EUR-Lex. *Partnership Agreement*. Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000A1215\(01\)-20140620&qid=1462255334544&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000A1215(01)-20140620&qid=1462255334544&from=EN)

- historically being able to keep out of direct conflict and being asked to share the bill, it is increasingly asked to take over leadership on the global scene, including in fragile contexts and crises;
- development cooperation is increasingly spread across several ministries, thus requiring new modes of coordination and policy formulation inside the German government.

While policy initiatives in development policy depend on each minister and his political party background, some underlying factors will likely remain constant:

- Germany defines itself as a civilian and an economic power; civilian in the sense that it uses multilateral institutions or fora to further international norms, and economic in the sense that it has economic interests and a desire for global stability, and uses economic rather than military means to achieve its foreign policy goals;
- Germany will attempt to pursue economic interests as well as preserve its image as a human rights actor.

For human rights advocates, this has implications for the choice of topics, actors and instruments.

Regarding their choice of topics, advocates will have to assess BMZ's direction with each new leadership in the ministry to identify entry points and points of critique. Germany's development policy will likely continue to focus, out of its own interests, on climate change adaptation and mitigation, and on private sector cooperation. Human rights advocates should monitor the way Germany strikes a balance between economic interests of technology transfer and the interests of the marginalized in partner countries: which countries receive ODA and how much? What is the money being spent on and, in the case of big infrastructural projects, who is the beneficiary? Regarding the refugee situation, "combatting root causes of flight" is an old and new mantra of German development policy. The question to what extent Germany and the EU will translate this into positive sustainable development impacts or just into a securitization of development policy, will likely be an ongoing area for engagement.

As for the choice of actors, recent impulses and changes in development policy and cooperation have been taking place in areas outside 'traditional development cooperation': climate change, migration management, private sector cooperation. The relevant German ministries – environment, interior, economy – pursue their own agenda and will not let themselves be coordinated by BMZ. Human rights advocates should focus on, or at least include, those other ministries in their work. While BMZ's doors are usually wider open than those of other ministries, advocates should not mistake open doors with influence on the policy areas. This is particularly true for any cooperation related to the BRICS countries.

On the multilateral level, the G-summit diplomacy is likely to continue to be a pacesetter. Multilateral institutions might then be used to implement those decisions. As multilateral institutions – compared to informal fora such as the G-summits – provide a minimum set of rules, transparency and accountability, also between the Global North, South and East, advocates should work for their inclusion and further development and monitor to what extent Germany lives up to its self-perception. As for the German parliament: while there is no systematic monitoring, requests from parliamentarians usually trigger attention in the ministry and might make it onto the agenda.

One of the instruments which human rights advocates should focus on, is transparency. In order to assess whether Germany walks its talk, advocates should ask for more information in order to be able to look beyond policy papers at implementation. The International Aid Transparency Initiative (IATI) is a starting point, as is coalition-building with actors outside classic human rights and or development work.

Furthermore, advocates should ask for evidence: evaluations, impact assessments according to the 2013 guidelines, decision-making according to the catalogue of criteria. They can also turn to complaint mechanisms. Both DEG and the state development agencies GIZ and KfW have introduced, as of 2015/2016, grievance mechanisms through which persons who claim to have suffered harm from development projects supported by Germany, can submit complaints.<sup>11</sup> While the mechanisms from GIZ and KfW are far from complying with the eight criteria for non-judicial grievance mechanisms established by article 31 of John Ruggie's *UN Guiding Principles on Business and Human Rights*, they nevertheless provide an instruments through which concrete cases can be brought to the attention of the implementing agencies, as well as BMZ.

Lastly, the instrument of evaluations can be turned to. Only KfW publishes evaluations of its programmes funded by BMZ.<sup>12</sup> While the institute for evaluation, DEval, is officially independent in setting its agenda, topics requested by parliament and/or BMZ might make it onto the work plan. The evaluations are supposed to be carried out independently, and might be useful in shedding light on a particular sector.

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<sup>11</sup> GIZ. *Human Rights*. Available at: <https://giz.de/en/aboutgiz/37500.html>. KfW. *Online complaint form*. Available at: <https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/KfW-Development-Finance-Complaint-form.html> KfW DEG. Independent complaint mechanism (ICM). Available at: <https://www.deginvest.de/International-financing/DEG/Die-DEG/Verantwortung/Beschwerdemanagement/>.

<sup>12</sup> KfW. *Standard evaluations*. Available at: <https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Evaluations/Results/>.

## **The future of Germany's support to the Responsibility to Protect**

*Thus far, Germany's contribution to the Responsibility to Protect has mostly been limited to rhetorical support and has not involved concrete efforts to prevent mass atrocities. Though Germany's recent trend towards greater foreign policy engagement may not be motivated primarily by the protection of civilians, it nevertheless offers opportunities to strengthen Berlin's role in the implementation of R2P.*

One morning in July 2015, Caroline Spreitzer, a 34-year-old mother of three in the German city of Passau, close to the Austrian border, looked out onto her driveway and saw seventeen Syrian refugees. After providing them with water and sandwiches, she called the police, as the refugees had requested. The police eventually arrived to pick them up for registration. The next day, Spreitzer wrote on her Facebook page that she “understood for the first time that we are seeing the beginning of a humanitarian catastrophe” (Coen & Sußebach 2015).

Since the summer of 2015, stories like Spreitzer's, which was reported in the German weekly *Die ZEIT*, have been multiplying. Prior to the refugee crisis, many Germans were able to view wars and atrocities unfolding in faraway places as being irrelevant to their lives. But the refugee crisis has overturned this perception. As aptly described by German Chancellor Angela Merkel, while speaking with unusual candour about foreign policy challenges in the fall of 2015: “In many regions, war and terror prevail. States disintegrate. For many years we have read about this. We have heard about it. We have seen it on TV. But we had not yet sufficiently understood that what happens in Aleppo and Mosul can affect Essen or Stuttgart. We have to face that now” (Vick & Shuster 2015).

Since the unprecedented influx of migrants to Germany in the summer and fall of 2015, every German politician, from Berlin to Bavaria, has stated that fighting the causes of migration flows is a key priority for Germany. Given that these causes have much to do with the atrocities and terror from which civilians are fleeing on a daily basis, one would expect German policymakers to pay more attention to the protection of civilians from mass atrocities. However, as I will argue in this essay, German foreign policy makers have

yet to translate their desire to take greater action into a stronger policy regarding the implementation of the Responsibility to Protect (R2P).

First, I will review the key tenants of the German position on the Responsibility to Protect over the last decade. Then, I will outline three areas in which increased German foreign policy activity will be likely: the strengthening of early warning and prevention tools; the instrument of military operations; and the engagement of emerging powers in crisis prevention and reaction. I will argue that the trends towards greater engagement in these areas are not caused primarily by the desire to increase the German contribution to R2P, and that they alone will not guarantee a stronger German policy on atrocity prevention. But if the German government adds a lens of atrocity prevention to its policies, and if German civil society pressures it to do so, these trends can provide an opportunity to strengthen Berlin's role in the implementation of R2P.

### **Past record shows weak German support for R2P implementation**

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Ever since world leaders endorsed the “responsibility to protect” people from genocide, war crimes, ethnic cleansing and crimes against humanity, Germany's support for the principle has been characterized more by a sense of duty than by enthusiasm. Despite the fact that Klaus Naumann, a retired German general, was part of the International Commission on Intervention and State Sovereignty (ICISS), which devised the concept of R2P in 2001, there was no policymaker in Germany closely following R2P's development or impact during its first few years. From 2005 to 2011, German policymakers treated the concept as a legal “norm in the making” that required German support at the level of the European Union and the United Nations, mostly in the sense of including the words “responsibility to protect” in statements and resolutions (see Brockmeier, Kurtz & Junk 2014: 448-49).

In 2011, Germany's controversial abstention on a resolution authorizing an intervention in Libya triggered greater debate on R2P in Germany. Mainstream newspapers published editorials on R2P's origin and purpose, and parties in the Bundestag voiced their support for R2P in party motions. In this context, German policymakers began to see R2P as not only an international law in the making, but also a moral principle and a practical commitment that needs operationalization. In the fall of 2012, the German Foreign Office named the deputy director of its UN division the “R2P focal point”. However, successive focal points have mostly viewed themselves as the German representative at international focal point meetings organized by the Global Centre for the Responsibility to Protect. None of the German focal points have considered themselves responsible for

looking inward and examining how the German government could improve its coordination and improve its tools for atrocity prevention.

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### **R2P and civilian crisis prevention**

As R2P was not seen as a concept that needed translation into practical action, discussions on the German contribution to crisis prevention have been mostly separate from discussions on R2P. Despite this disconnect between conflict prevention and R2P, developments in the former have had implications for the implementation of R2P. When it comes to conflict or crisis prevention, German policymakers have pointed at the 2004 Action Plan on Civilian Crisis Prevention as progress towards greater preventive action. The Action Plan established a number of smaller institutions whose contributions have tended to be long-term and structural, such as the German Institute for Human Rights and the Center for International Peace Operations (the latter trains civilian personnel for deployment in peace operations). Over the last ten years, the German government has increased its funding to and support for rule-of-law initiatives and mediation work, and has strongly supported the functioning of the International Criminal Court. The Action Plan also created an Interministerial Steering Group (*Ressortkreis*) and an advisory board of civil society representatives on civilian crisis prevention. Nevertheless, the Action Plan has failed to significantly impact the policymaking of established ministries.

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### **Germany and the use of force**

German policymakers have been largely reluctant when it comes to making military contributions and supporting UN peacekeeping with police forces and civilian experts. Over the past twenty years, German troops have been deployed to Bosnia, Kosovo and – for more than ten years now – Afghanistan, among other places. The debates on these interventions consistently reveal Germany's uneasy relationship with the use of force.

This was powerfully demonstrated on 17 March 2011, when Germany, a non-permanent member of the UN Security Council at the time, abstained on Resolution 1973, which authorized military intervention in Libya. The resolution was a milestone for the Responsibility to Protect: for the first time, the Security Council authorized the use of military force against a functioning state with the explicit goal of protecting civilians. While France and Britain argued forcefully for military intervention, German policymakers and the German public were sceptical of the mission's chances of success. Guido Westerwelle, German Foreign Minister at the time, was an especial proponent of a German "culture of military restraint" (Auswärtiges Amt 2011).

Just two days before the passage of Resolution 1973, German policymakers felt that their position had support from United States officials who argued that a no-fly zone would make a difference on the ground. But the US administration changed course on 15 March, supporting “all necessary measures” to protect civilians in Libya. The 36 hours remaining until the vote were not enough time for German policymakers to consult with members of the Bundestag. Unlike policymakers in Paris or London, they had to obtain strong support from parliament in order to get involved in a military intervention. As I argue in another essay, the reaction of German parliamentarians and the public debate in Germany after the intervention suggest that the government might have voted yes, had it been given more time to deliberate with the Bundestag: even though most parliamentarians shared the German government’s reluctance to approve of the use of military force, the majority of them would have preferred not to isolate Germany so blatantly from its main international allies. Even if the German government had voted “yes” on the resolution, however, it still would likely have refused to participate with its own force in the intervention (Brockmeier 2013), given the widely shared scepticism in Germany towards the use of force.

The German public supported this preference for non-intervention. According to a poll published in the German magazine *Stern* on 16 March 2011, the day before the vote on Resolution 1973, 88 per cent of Germans opposed involving their country’s troops in an intervention in Libya (Stern 2011).

The lacklustre support of the German public and government for the implementation of R2P has been linked to relatively low pressure from society at large and to relatively little civil society advocacy on atrocity prevention. The only advocacy organization working specifically on atrocity prevention is a small and mostly volunteer-based NGO called Genocide Alert.<sup>1</sup> In contrast to the US, Germany does not have larger campaigns pressuring the government to take action on particular country cases or to improve its tools of atrocity prevention.

### **Three trends that could benefit German R2P policy**

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Until 2014, this description of German foreign policy engagement and R2P would have ended here. In the last two years, however, there has been a significant increase in Berlin’s involvement in world affairs. During the Munich Security Conference in early 2014, President Joachim Gauck, Foreign Minister Frank-Walter Steinmeier and Defence Minister Ursula von der Leyen urged Germany to take greater global responsibility. They

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<sup>1</sup> The author was a board member of Genocide Alert from 2010 to 2015. More information on Genocide Alert’s work can be found at [www.genocide-alert.de](http://www.genocide-alert.de).

could not have predicted the crises soon to follow that would force Berlin to heed their call. The escalation of international crises – from the Ukraine conflict and the rise of the Islamic State (ISIS), to Syria and the influx of refugees to Europe – has compelled German politicians to take greater action.

Polls show that Germans support this approach. For example, the Center for Military History and Social Sciences of the German Armed Forces found in late 2015 that 66 per cent of Germans supported actively addressing the “problems, crises and conflicts” of the world – the highest number recorded since the centre’s first polls in 2000 (Wiegold 2015).

In an unfortunate paradox, though genocide and mass atrocities, including those perpetrated by ISIS, are an important reason for the high number of refugees coming to Germany, R2P and the protection of civilians have yet to play an important role in discussions on increasing German foreign and security policy engagement. The lack of focus on the fate of civilians and the absence of specific tools of atrocity prevention could very well continue over the next few years. But I believe there are three trends in German foreign policy that could benefit R2P – some of them simply as side effects of reforms implemented by the government, and others only on the condition that policymakers and civil society make a concerted effort to use the opportunity posed by these trends.

### **Better early warning, coordination on early response and stronger mediation efforts**

In 2014, the German Foreign Office conducted a year-long review process, publicly and internally, that ended with a clear call for greater engagement in early warning and prevention. Consequently, the Foreign Office created a new directorate-general on “Crisis prevention, stabilization and post-conflict reconstruction”. The directorate features a new division dedicated to “early warning and scenario planning”, a division for crisis prevention and a division that is responsible for R2P, among other areas. Reflecting a trend towards greater engagement in foreign policy, the Foreign Office’s budget was increased by € 700 million, or 18 per cent, in 2015 (Braun 2015).

Given this new unit and political will in the Foreign Office, the German government will likely become better at predicting crises before they escalate. It is also likely to work towards more systematic ways of ensuring that information is acted upon and brought to a higher level of decision-making, and of mobilizing a response from the foreign office and the government as a whole. These developments would not be driven primarily by the German government’s desire to prevent mass atrocities. But they would have the potential to do just that, if the government integrates into its new systems an understanding of

the risk factors for mass atrocities. So far, the German government has not treated “atrocities prevention” as a separate category from “conflict prevention”. This means that there is a danger of overlooking the organized character of mass atrocities that can also occur outside of armed conflict (Hofmann 2013: 8). But as the responsibility for R2P has moved into this stabilization directorate that is more operational, there is a chance that the Foreign Office will increasingly treat atrocity prevention as a separate category and translate R2P into more concrete prevention projects. In this regard, Germany and its European partners could learn from the more systematic efforts in early prevention that the US has been conducting through the Atrocities Prevention Board since 2015.

The German government has also been seeking to improve the tools available when responding to warnings. For example, it has stepped up its engagement in preventive diplomacy in recent years. Parallel to its leadership role in the Ukraine crisis and its participation in the Iran negotiations, the German Foreign Office has been mediating between Libyan leaders and has even organized a high-level conference in Berlin on conflict mediation. There is a realistic possibility that Germany will push for initiatives on preventive diplomacy and mediation during its next term as a non-permanent member of the Security Council in 2019-2020.

Better early warning and early preventive diplomacy efforts will never be enough. It is important to note, for example, that early warning or attention was unlikely to change the course of the Syrian crisis. But this is no reason not to invest further in the prevention of future crises – something that the German government has come to realize.

### **Making military contributions to the protection of civilians**

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Over the past two years, there has been a trend of increased German military contributions. In 2014, the German government armed the Kurdish Peshmerga fighting ISIS, marking the government's first arms delivery to an active conflict party since the end of the Cold War. Germany has been training around 4,000 of the Kurdish fighters in the use of German weapons. After the Paris terror attacks in November 2015, the Bundestag waved through a German contribution of 1,200 soldiers in the international campaign against ISIS in Syria. A majority of Germans (58 per cent) supported this military contribution (infratest dimap 2015). That fall, the German government also announced that it would dispatch up to 600 soldiers to the UN peacekeeping mission in Mali. This would nearly triple German participation in peacekeeping, which was thus far limited to contributions to the UN Interim Force in Lebanon and to a few soldiers each in South Sudan, Darfur and Liberia, among other places.

These military contributions are borne out of a logic of alliance and antiterrorism. The German government presents its participation in Mali not as a contribution to strengthening the UN peacekeeping system and the protection of civilians, but as a contribution to the fight against terrorism. Similarly, the government sent troops to Syria because France, as an ally, requested help in its fight against ISIS.

Nevertheless, these contributions demonstrate the increased willingness of German politicians to consider military force as a foreign policy tool as well as greater support by the German public for such contributions. In May 2014, a survey by the Koerber Foundation found not only that 87 per cent of Germans would support the use of military force if there was a direct threat to peace and security in Europe, but also that 82 per cent would support the use of force “to prevent acts of genocide” (Koerber Foundation 2014).

German policymakers could build on this trend to strengthen the German contribution to UN peacekeeping. While they have many flaws, UN peace operations in places like South Sudan, the Central African Republic or the Democratic Republic of the Congo play a key role in protecting civilians from atrocity crimes. By contributing more personnel, modern technology and air assets to more peacekeeping missions, Germany and other European countries could contribute to the protection of civilians and help prevent a return to conflict and atrocities in troubled nations.

On a more conceptual level, the German military and its European partners should start thinking about the tactical and operational requirements of interventions that aim to protect civilians. A possible model is the US army's handbook on “mass atrocity response operations” (MAROs), which works through operational scenarios aimed at the protection of civilians. The handbook was based on the assumption that such interventions bring specific tactical, operational and moral challenges, and thus require specific preparation. Thinking ahead with a stronger focus on preventing atrocities would require Germany and Europe to start planning for such scenarios. The process of developing a new white paper on security policy in 2016 offers a unique opportunity for German policymakers to plan for a stronger role of the German armed forces in peacekeeping and to examine the operational challenges of protecting civilians.

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### **Supporting dialogue on the Responsibility while Protecting**

A third trend that might be beneficial to the German contribution to R2P is increased engagement with emerging powers. In early 2012, Berlin published a strategy paper on increasing German engagement with new global powers, including Brazil, India and South Africa (Auswärtiges Amt 2012). The German government has since been emphasizing the

importance of including emerging powers in debates on world order and strengthening relations with them. (See also the essay by Kinzelbach and Mohan elsewhere in this volume.)

An area where this trend of greater engagement with emerging powers could translate into stronger German support for R2P is the discussions on the Brazilian proposal of Responsibility while Protecting (RwP). Brazil proposed the idea in late 2011, frustrated with how the Libya intervention had turned into regime change with no checks by the UN Security Council, the body that had authorized the use of force in the first place. Wanting to be on the same side as its European allies shortly after the abstention on the Libya vote, Germany joined France and Britain in their scepticism of RwP. A few months later, however, Berlin changed course. Upon reviewing the Brazilian proposal in detail, senior diplomats in Berlin realized that many of the ideas aligned with German positions and that rejecting RwP would contradict the spirit of the recently published strategy paper calling for greater engagement with countries like Brazil (Brockmeier, Kurtz & Junk 2014). But Germany's conciliatory approach came too late, and RwP fell off of the agenda.

Open support from countries like Germany would have helped the Brazilians keep the discussions on RwP alive. Four years later, this remains an area in which German foreign policy makers could take on a leadership role and build on increased public support for the nation's engagement abroad. RwP focused on two areas that are of continued interest to Germany: the criteria for the use of force to protect civilians, and the creation of accountability mechanisms for the use of force.

Given the controversies surrounding Resolution 1973, it is unlikely that the Security Council will ever again pass a resolution to protect civilians with "all necessary means" without installing checks or regulations that give the Council more control over an intervention. If Germany has a serious interest in furthering discussions on R2P, it could help restart these discussions in New York. In light of its campaign for another term as a non-permanent member of the Security Council, Germany has the possibility of making a real contribution to the international discussions on R2P by working with Brazil and other partners to discuss what monitoring and reporting systems for states implementing UN-mandated missions could look like (Benner et al. 2015).

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## **Conclusion: Germany should help R2P work in practice**

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It is telling that Caroline Spreitzer's Facebook post heralded "the beginning" of a humanitarian catastrophe. The fact is, when the Syrians arrived on her driveway, the humanitarian catastrophe in Syria had been going on for four years. Not surprisingly, many Germans

realize the extent of a catastrophe only when it is reported in the media – or when refugees show up at their doorsteps. But the government can set up systems and use foreign policy tools to improve its response before crises reach the stage of landing on the evening news.

In recent years, a multitude of international crises have compelled Germany towards a foreign policy of far greater engagement. This engagement will likely continue to increase. While it is unlikely to be motivated primarily by the desire to protect civilians, the trends towards better early warning and preventive diplomacy, more military contributions and stronger engagement with emerging powers provide an opportunity to increase the German contribution to R2P. German policymakers and civil society should push for adding the lens of atrocity prevention to this intensified foreign policy engagement. This could mean, firstly, making sure that new early warning tools in the Foreign Office include indicators that are specific to mass atrocities. Second, the German white paper on security policy in 2016 could be used as an opportunity to plan for future military contributions to peacekeeping – with the motivation of not only fighting terrorism, but also supporting the protection of civilians. Third, in the context of its efforts to strengthen global order and engage with emerging powers, Germany could support an initiative to revive discussions on key aspects of the Brazilian proposal of Responsibility while Protecting. The likelihood of implementation of these policy reforms depends, naturally, on the level of political sensitivity. The rather bureaucratic reform of adding atrocity prevention indicators to the Foreign Office's early warning tools is very likely to be implemented. In contrast, politically more sensitive plans to increase German contributions to protection of civilians through peacekeeping or debates with emerging powers are unlikely to happen without political pressure by civil society organizations. International and national human rights NGOs should therefore call on the German government to make the protection of civilians a priority in its foreign policy making. They should pressure both parliamentarians and government officials to understand the protection of civilians as a national interest in itself – not just as a by-product of the increased use of diplomatic or military tools to fight terrorism or show solidarity to allies. To increase public pressure on the government, national advocacy organizations can help by furthering public discourse on Germany's role in preventing conflict and atrocities: the refugee crisis means that more Germans are ready to learn about and debate the tools available to the government to protect civilians.

In a recent essay reviewing the first ten years of the Responsibility to Protect, former R2P Special Advisor Edward Luck wrote: “the world needs R2P or, more accurately, an R2P that works in practice” (Luck 2015: 501). Germany's role in the world has changed dramatically in the past two decades and grown significantly in the past few years alone. Germans now have an increased responsibility to make R2P work in practice.



*Wolfgang Büttner*

**Shaping the German foreign policy  
(and human rights) debate:  
actors, influencers and agendas in Berlin**

*Germany's external human rights policy is influenced by a number of different actors who go beyond the traditional foreign policy community. NGOs, companies and think tanks have increasingly tried to set the government's foreign policy agenda. How does this happen? Which actors are involved?*

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**A warm welcome in Berlin**

In June 2015, the German government rolled out the red carpet for Egyptian President, Abdel Fattah al-Sisi. The German Federal President, Joachim Gauck, Chancellor Angela Merkel and Foreign Minister Frank-Walter Steinmeier all received Al-Sisi, despite knowing that he is responsible for grave human rights. They must have also been well aware that for Al-Sisi, this was a way of gaining exactly the kind of recognition he needs in order to divert attention from his crimes and establish himself as an international statesman. However, the President of the Bundestag, Norbert Lammert, refused to meet Al-Sisi and sharply criticized Egypt's political leadership. In a letter to the Egyptian ambassador in Berlin, Lammert denounced the situation in Egypt, saying that instead of announcing a date for the long-awaited parliamentary elections, the authorities had been persecuting opposition groups for months by means of mass arrests, long prison sentences and a staggering number of death sentences (Mada Masr 2015).

Why, then, was Al-Sisi received with the highest honours? Who made sure that human rights were not given greater consideration in the decision to invite Al-Sisi to Berlin? Within the federal government itself, those seeking normalization at all costs had evidently won the upper hand. A stable Egypt, so the argument went, would help resolve regional conflicts, reign in Islamist terror and crack down on human traffickers. Even before Al-Sisi's visit to Berlin, the German Federal Ministry of the Interior had re-established its counterterrorism collaboration with the Egyptian intelligence service, the agency in Egypt responsible for the enforced disappearance of scores of government critics (Bundesministerium des Innern 2015). The German government also harboured hopes that the visit might contribute towards enabling German foundations obtain the necessary approval to work in Egypt and lead to quashing of the convictions of two German

employees of the Konrad-Adenauer-Stiftung. However, these hopes did not come to fruition (Moremi 2015).

It is possible that Chancellor Merkel was significantly influenced by fellow CDU member and parliamentary group leader Volker Kauder, who had met with Al-Sisi several times before, calling the Egyptian President a credible partner for democratization and giving him credit for protecting Coptic Christians in Egypt (Spiegel 2015). And naturally, German companies were also heavily involved when it came to closing business deals – especially Siemens, which signed a contract in Berlin worth billions of euros. Moreover, a large number of jobs depend on whether Egypt will order submarines from a German shipyard.

Considering these numerous interests on the part of German government and industry representatives, civil society, foreign policy experts and the media struggled to make the dire human rights situation in Egypt a central part of the discussion. National and international human rights organizations urged Chancellor Merkel to openly discuss the cases of torture, enforced disappearance and arbitrary detention in Egypt, and to make any offer of closer relations conditional on an improved human rights situation in the country. The media coverage of Al-Sisi's visit was also extremely critical. However, there was a certain symbolism in receiving the Egyptian President with the highest honours. Hence, the Chancellor's public criticism of the death sentences handed down in Egypt was a mere drop in the ocean – an ocean in which civil society appeals were drowned out.

## Civil society's mixed results

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The difficulties faced by civil society in trying to influence the government's human rights policy from the outside, especially when there are groups within the administration with a different agenda, have been thrown into sharp relief in the recent debate around the international Safe Schools Declaration.<sup>1</sup> As a non-permanent member of the UN Security Council, Germany strongly advocated better protection of schools in times of war and contributed to a groundbreaking resolution in this regard. However, shortly afterwards, Germany stepped back from its leadership role and refused to support international guidelines which had been initiated by a group of international NGOs – the Global Coalition to Protect Education from Attack<sup>2</sup> – and championed by the Norwegian government. Why did it do so?

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1 Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict. Available at:

[http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf).

2 Global Coalition to Protect Education from Attack. Available at:  
<http://www.protectingeducation.org/>.

The international law departments at the Federal Ministry of Defence and the Foreign Office in particular argued that schools were sufficiently protected against military use under the existing provisions of international humanitarian law. What they ignored, however, was the fact that in practice, countless children are unable to go to school and are put in danger precisely because these provisions are violated, and that having an additional international declaration in place would therefore be beneficial. Dissenting voices, in particular in the Foreign Office, could not gain the upper hand. A petition by one of the two small opposition parties which called on the German government to sign the declaration was not successful, and MPs of the government's grand coalition parties, including from the Human Rights Committee, did not pick up the topic and pressure their Ministries in the Foreign Office and the Ministry of Defence. Representatives from the UN and NGOs as well as policy advisors from think tanks were also unsuccessful in recommending the German government support the guidelines (Sheppard 2014). What might have made a difference, would have been a stronger involvement of national NGOs and a cohesive push on their part directed at MPs and the government to secure Germany's support for the declaration.

Developments in another policy field, the ban on surveillance technology exports, have shown how the government's agenda can be influenced by national and international NGOs in Germany when they work together. An increasing number of repressive states such as Iran, Bahrain and Ethiopia were buying technologies from Germany and other European countries that are subsequently used to wiretap, arrest and try human rights defenders, journalists and bloggers.

In an effort to halt the export of such technologies to authoritarian states, the international coalition CAUSE was formed (Coalition Against Unlawful Surveillance Exports).<sup>3</sup> In talks with the Foreign Office and especially the Ministry for Economic Affairs, CAUSE urged the government to promptly put in place effective controls on German surveillance technology exports. These demands were boosted by the fact that the parties to the Wassenaar Arrangement, including Germany, had agreed as far back as 2013 – not least because of pressure from civil society – to enforce stricter controls on surveillance technologies. In July 2015, the Federal Minister for Economic Affairs closed these loopholes and Germany could present itself as a leader in the very much contested field of export control (Bundesministerium für Wirtschaft und Technologie 2015). This achievement is certainly also attributable to lobbying work by CAUSE. On the other hand, business associations and German companies selling surveillance technology could not stop the new regulation, maybe also because of their limited significance for the German job market.

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3 Coalition Against Unlawful Surveillance Exports. Available at: <http://www.globalcause.net/>.

Civil society's crucial role in the human rights agenda becomes particularly apparent when it comes to protecting human rights defenders who have been arrested, tortured or intimidated. If civil society would not speak up for them, their fate would hardly ever make it on the agenda of bilateral discussions. And the German government is in some cases more willing to pick up individual cases in their bilateral relations with autocratic governments, as it need not be connected with advocating for broader human rights reforms and is regarded as a humanitarian effort.

Human rights defender Leyla Yunus was arrested in July 2014 by the Azerbaijani authorities. Her arrest took place against the backdrop of a severe government crackdown on critical civil society voices in the country – bloggers, activists and journalists alike were thrown in prison. On learning about Leyla Yunus' arrest, the German Foreign Office initially acted with some surprise at the news that one of the most prominent Azerbaijani human rights defenders was now behind bars. International and national NGOs such as Human Rights Watch, Amnesty International, Reporters without Borders and Bread for the World were among the organizations that repeatedly called on the German government, collectively as well as in one-on-one meetings, to speak up for Leyla Yunus and other jailed critics. The case was also raised with the German Olympic Sports Confederation (*Deutscher Olympischer Sportbund – DOSB*), whose CEO was a member of the executive committee of the European Games due to take place in Azerbaijan, and, frequently, the media reported on Leyla Yunus' imprisonment and on the conditions for human rights defenders in Azerbaijan.

In the end, the office of the German Commissioner for Human Rights and the German embassy in Baku called for access to medical treatment for Leyla Yunus and for her release. Facilitated by a German member of the European Parliament, a German doctor was regularly visiting Leyla Yunus in jail. In addition, the German parliament adopted a resolution calling for the release of jailed activists which was also requested by MPs from other Western Parliaments and governments. In December 2015, Leyla Yunus was released on a five-year suspended sentence and was later allowed to leave the country on humanitarian grounds to seek medical treatment. We may never know exactly what factors ultimately drove this decision. But international pressure, also from Germany, did surely help.

## **Actors shaping external human rights policies**

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Which institutions are responsible for ensuring that human rights considerations are included in German foreign policy? The institutional framework for human rights protection in Germany's foreign policy is sophisticated; also, human rights issues are addressed

by the government and MPs quite often compared with other countries' foreign policy approach. Yet, what is still missing is a commitment to mainstreaming human rights protection in all foreign policy related areas, and the institutional framework is only effective if the appointees use their authority effectively.

The Foreign Office certainly remains an important player in making human rights a central element of German foreign policy. The post of Federal Commissioner for Human Rights Policy and Humanitarian Aid, which was created within the Foreign Office, is a political position particularly concerned with the protection of human rights. However, because the Commissioner has no means of exerting political pressure, his or her public statements remain opinions that lack political implications. The position's effectiveness depends heavily on how the Commissioner interprets the mandate, whether he or she has regard for political sensitivities or decides to openly advocate for human rights defenders.

The Foreign Office also has a human rights department that is responsible for international human rights protection. A lot of its effectiveness also depends on how diplomats interpret their roles. For example, the department has started leading efforts to include human rights training in the training provided to attachés. And there are embassy positions aimed at strengthening human rights protection.

But other government agencies and the President's Office also play an important role in protecting human rights, notably the Office of the Federal Chancellor, where the Chancellor's foreign policy guidelines are determined and her state visits are planned. There is no particular human rights official to advise the Chancellor, which is why the staff members' personal stance is of great importance – something that is true of most other ministries as well. The only exception to this is the Ministry for Development, which does have a human rights scheme in place, and a corresponding department fighting for its implementation. Whenever human rights are not institutionally established within a ministerial department, everything hinges on the strength of the political leadership – as demonstrated by the surveillance technology export ban imposed by the Federal Minister for Economic Affairs.

Although there is a broad consensus amongst the current parties in parliament that human rights in foreign policy matter, in order to get it onto the agenda in the Bundestag, individual people's actions are key: the refusal of Norbert Lammert, President of the Bundestag, to meet with Egyptian President Al-Sisi, sent a strong signal. It was concerned members of parliament who demanded the release of Leyla Yunus from prison. And had it not been for the critical questions of Bundestag members from one of the

opposition parties, the public might never have learned about the Ministry of the Interior's cooperation with the Egyptian intelligence service.

The Committee for Human Rights Policy and Humanitarian Aid is the parliamentary body in charge of human rights issues. Its role is strengthened whenever parliamentary groups appoint members to it who use it as a platform for worldwide human rights protection. However, parliamentary activities concerning foreign policy predominantly involve the Committee on Foreign Affairs, the Defence Committee and the Committee on Economic Cooperation and Development, which means their respective members and, in particular, the Chairs of the Committees are also crucial points of contact when it comes to human rights issues – bearing in mind that there is always a danger of these issues being foisted on the Human Rights Committee.

### *Non-state actors*

However, human rights policy is not decided exclusively by the federal government or parliament. Civil society and the media can also influence the role human rights play in Germany's foreign policy.

Especially notable in this regard are human rights organizations, which raise issues and build up public pressure, either individually or by forming national or international coalitions, depending on which route is most likely to lead to success. Forum Menschenrechte, an umbrella organization of numerous German human rights organizations, plays a particularly important part. Individual NGOs often form short-term alliances to work on a specific issue. And then there is the German Institute for Human Rights, which is an independent national human rights body serving as a bridge between government and civil society.

The CAUSE coalition is one example of how alliances can be successful, in its case even more so because the issue was about the implementation of an agreement which had already been signed by Germany. However, such coalitions can also experience a great deal of resistance, as the experience of those seeking to promote the international guidelines for protecting schools demonstrates.

The influence of the media on human rights policy is not clear-cut and therefore difficult to substantiate. Critical articles, for example about the German Interior Ministry's collaboration with the Egyptian intelligence service, as well as commentaries about Germany's role in protecting schools during armed conflicts or indeed reports about the fate of Leyla Yunus, do raise public awareness and will get noticed by policymakers. And statements

by government representatives or members of parliament – like the President of the Bundestag refusing to meet with Al-Sisi – generate publicity if picked up by the media.

In addition, political think tanks such as the German Institute for International and Security Affairs<sup>4</sup> as well as the German Council on Foreign Relations<sup>5</sup> advise the government and parliamentarians on foreign policy issues. They are complemented by political foundations which give expertise to their parties' foreign policy and human rights experts. On Egypt, researchers from the German Institute for International and Security Affairs sharply criticized the government's approach; on the Safe School Declaration, the institute acted as a facilitator for discussions (Brozus & Roll 2015).

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### **Which direction? New actors?**

In March 2015, in a speech given before the US think tank Center for Strategic and International Studies, German Foreign Minister Steinmeier talked about Germany's future foreign policy responsibility. He stressed the German government's ambition of becoming "Chief Facilitating Officer" in Europe, and taking on the role of an honest broker (Federal Foreign Office 2015).

In September 2015, German Chancellor Merkel and her Austrian counterpart Werner Faymann decided to open their countries' borders to refugees, sending – unfortunately only for a few months – a strong signal in favour of policy measures that prioritize the protection of the rights of refugees (Deutsche Welle 2015).

What role can we legitimately see Germany's foreign policy actors playing: one of human rights champion or "Chief Facilitating Officer"? Is it possible for German foreign policy actors to champion human rights without at the same time losing sight of the power-political pitfalls of the international policy arena?

The Federal Government should clearly meet its obligations under international human rights treaties. At the same time, this is also about recognizing that consistent human rights policies are in the country's own interest. Systematic and widespread human rights violations are often the precursor to serious violence, uprisings and civil wars. Where there is torture, forcible displacement and enforced disappearance, opposition usually follows. Violence, discrimination, a lack of jobs and food shortages are known causes of refugee movements. Countries that focus on the human rights situation in different parts

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4 German Institute for International and Security Affairs. Available at: <http://www.swp-berlin.org/en/start-en.html>.

5 German Council on Foreign Relations. Available at: <https://dgap.org/>.

of the world and work to improve this situation serve their own long-term interests: doing so is a form of Realpolitik. This notion is put on the agenda and supported by some politicians and diplomats, such as by Joachim Rucker, the former German ambassador to Geneva and President of the Human Rights Council (Rucker 2015). Yet, as the visit of the Egyptian President in Berlin has underlined, the linkage between human rights protection, political stability and national interest is questioned, also because it is heavily contested by geopolitically powerful countries such as China, Russia and Egypt, and their unwillingness to accept any human rights conditionality in their foreign relations.

Raising awareness for this issue, this is the responsibility of institutions like the Human Rights Commissioner, the competent ministerial departments and the Committee for Human Rights Policy in the Bundestag. However, getting support across all ministries and in parliament will only be possible if the protection of human rights is regarded as a cross-cutting task relevant to all policy areas and by having people in governmental, ministerial and parliamentary departments who are committed to this aim.

Information gathered and presented by civil society organizations and the pressure exerted by the media will continue to play a crucial role in ensuring human rights are placed high on the German government's agenda. The risk of growing xenophobia domestically due to the migration crisis and mounting pressure from authoritarian governments which publicly attack human rights standards as being against "traditional values" will be challenges for human rights organizations in the near future. To confront them effectively, wide public campaigning is needed.

Other non-state bodies such as sports associations and private companies are now engaging more strongly with human rights issues. They are increasingly responsive to critical media coverage and commonly draw on information sourced from NGOs. Human rights organizations have extensively documented how major sporting events can lead to grave human rights violations if such events are awarded to states with autocratic governments, and NGOs should engage more with international and national sports associations to raise awareness and trigger change. Over the past few years, the International Olympic Committee and the German Olympic Sports Confederation have made increased efforts to face up to their responsibilities as enshrined in the Olympic Charter – there were tentative signs of this at the European Games in Azerbaijan. However, more sports associations should be encouraged to do so and to start a critical dialogue with government representatives in order to ensure that human rights do not suffer in the run-up to, during, or after sporting events.

There is also a growing awareness amongst international corporations that they bear responsibility for human rights violations occurring in connection with their business activities. This has been achieved in recent years thanks to public pressure as well as the UN Guiding Principles on Business and Human Rights and corresponding National Action Plans for their implementation. But the deal between Siemens and the Egyptian government has shown that companies still strongly prioritize their business interests. However, the higher the cost to reputational damage due to activities associated with human rights violations, and the higher the risk of being legally held to account for such behaviour, the more importance German companies are likely to attach to upholding human rights in their international business dealings. A legally binding National Action Plan in Germany which obliges companies to exercise human rights due diligence and for which NGOs are advocating, would be an essential step in this direction and would have considerable international impact.



## **The challenging inconsistencies of German external human rights policy**

*Given Germany's growing aspirations in foreign policy, the authors reflect on the common findings of this volume and assess their implications for Berlin's human rights policy. Characterized by inconsistencies and handled mostly as an isolated field, this policy falls short of its own claim, but also behind its potential and its global responsibility. Policy-makers should pursue a more consistent, credible and human rights-based foreign policy, starting by handling human rights as what they are: binding international norms with political obligations. Assuming international leadership needs to incorporate a steadfast commitment to human rights, including the political means to deliver.*

During the yearly “family get together for the foreign and security policy community” (Steinmeier 2014), the Munich Security Conference (MSC), one could witness a curious unity in Germany's political elite in early 2014. Federal Foreign Minister Frank-Walter Steinmeier, federal Defence Minister Ursula von der Leyen and President Joachim Gauck in unison proclaimed the need for “earlier, more decisive and more substantive engagement in the foreign and security policy sphere” (Steinmeier 2014). While Steinmeier assessed Germany to be “too big merely to comment on world affairs from the sidelines”, Von der Leyen underlined Germany's obligation and responsibility to engage, resulting from its means and capabilities and from a “strong interest in international peace and stability” (Von der Leyen 2014). The federal government, she added, “is prepared to enhance our international responsibility”. Finally, President Gauck reminded the audience that Germany as an export nation with close ties to the rest of the world has benefited greatly from the open global order and is very vulnerable to disruptions of the system. “For this reason, the consequences of inaction can be just as serious, if not worse than the consequences of taking action”, he warned (Gauck 2014). In his opinion, too, Germany needs to bear more responsibility and “make a more substantial contribution [to crisis prevention]”.

What we were witnessing two years ago, was the prelude to no less than the general public and political debate about Germany's future role in the world. While united in the call for more involvement and more responsibility, following the conference there was a lot of discussion on what this meant exactly. As many interpreted this as a herald to the

militarization of Germany's foreign policy and voiced their concern, others – including the three politicians – stressed that the consideration of military force as a foreign policy tool is only one part of what they wanted to achieve by starting the debate. “What we must do first and foremost”, Steinmeier clarified, is “think harder and more creatively about how our diplomatic toolbox could be improved and utilized for productive initiatives.” And as Ulrike Guérot put it earlier in this volume: “Politics and budget followed.”

Unfortunately, yet symptomatically for the discourse on the German foreign and security policy, hardly anyone posed the question what Germany's new aspirations in the world could mean for the future of German human rights policy, how the toolbox could be improved for human rights promotion and whether this could also impact European Union policies and strategies. This comes as no surprise. While the German government stays committed to the promotion and implementation of human rights in general (see Michael Krennerich's essay in this volume), their human rights policy and strategy remains mostly isolated from other policy fields, as is elegantly illustrated by Katrin Kinzelbach and Garima Mohan in their contribution to this volume.

While the relevant ministries went on to meet in conclave for a few months – the Ministry for Economic Cooperation and Development reached out to develop what they called the “Charta for the Future – One world, our responsibility”,<sup>1</sup> the Ministry of Foreign Affairs ambitiously lined up to rethink its foreign policy all together in the process called “Review2014 – a fresh look at German foreign policy”<sup>2</sup> while the Ministry of Defence drew up a new white paper on security policy<sup>3</sup> – the world did not wait for them. As many of the authors in this volume stress, the political context changed fundamentally in the last years and Germany's willingness to engage more substantially was put to the test more dramatically than probably anticipated – and Germany adapted. So what does this mean for Germany's human rights policy and where do we go from here?

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1 The results of this process are published in the document *Zukunftscharta* (2014) *Charta for the Future*. Available at: [https://www.zukunftscharta.de/files/upload/daten\\_bilder\\_zukunftscharta/Zukunftscharta-en.pdf](https://www.zukunftscharta.de/files/upload/daten_bilder_zukunftscharta/Zukunftscharta-en.pdf).

2 The Ministry of Foreign Affairs launched a comprehensive process rethinking German foreign policy called the Review 2014 – A Fresh Look at German Foreign Policy. Human rights were considered in this process, but didn't play a big role in the outcome. (See Krennerich's contribution to this volume, the archived website *Review 2014* (2014) *Außenpolitik Weiter Denken*. Available at: <http://www.aussenpolitik-weiter-denken.de/de/themen.html>, and *Crisis – Order – Europe*, the final report from the year-long project.

3 It was published during writing in July 2016.

### **Common findings on Germany's human rights policy**

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In the first essay in this volume, Michael Krennerich argues that despite its commitment to human rights, the German government does not take a consistent human rights-based approach that also encompasses the various areas of policy. He shows that the demands of the human rights policy are still not applied consistently in many areas such as security or refugee policy. Krennerich emphasizes the need for a strong political will and effective coordination in order to establish human rights in Germany as a comprehensive inter-ministerial policy.

His arguments are confirmed by Andrea Kämpf in her chapter on Germany's development cooperation. She elaborates on the fact that only the Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, BMZ) has a human rights strategy (at least on paper) while other ministries involved in bilateral cooperation do not. And even in the BMZ the implementation of the human rights strategy seems to be rather driven by individual decisions and agendas. Germany has hardly ever used conditional aid or cuts in development aid to improve human rights standards in a partner country. Evaluations or reports of the ministry's human rights action plan and human rights strategy have not been made public. The author argues that human rights advocates should start to focus not only on the Ministry for Economic Cooperation and Development but on other ministries as well to strengthen a coherent human rights approach and to call for more transparency and evidence on how human rights policies are actually implemented.

According to Krennerich, one of the key problematic issues with German human rights foreign policy is the overvaluation of stability to the detriment of human rights. Germany has a disreputable history cooperating with authoritarian regimes such as those of Saudi Arabia, China or Kazakhstan for the sake of economic interest and/or supposed stability. However, this may have consequences for the 'agreements' with other authoritarian regimes running counter to the effective implementation of human rights. Krennerich concludes that in practice demands for human rights are rather seen as an extra burden and are not an integrated cross-cutting issue in German foreign policy.

Many of these arguments also appear in the contribution by Katrin Kinzelbach and Garima Mohan. They shed light on Germany's relation with China and India and the importance of these partnerships to Berlin. However, human rights do not play a central role in both relations, and what is more worrying: they are sidelined in ritual-like rule of law or human rights dialogues that have not been effective over the years. Kinzelbach and Mohan underline that Germany should use its economic leverage to demand human rights compliance.

Furthermore, the authors criticize Berlin's approach to focus on rights topics that seem to be relevant for the German audience instead of supporting local grassroots and human rights organizations and the topics they are prioritizing.

Almut Möller also emphasizes that Germany seems to prioritize a security-led approach over human rights issues. She analyses Germany's new role within the European Union especially with regard to migration policy. Human rights are at stake when refugees, risks of globalization, and crises are not problems abroad but rather affecting the daily life of individual Germans. In Möller's view these developments have had two consequences: greater determination to make use of military force and securitization of the migration discourse. Human rights (of refugees) are hardly part of the debate on new asylum legislation in Germany.

Ulrike Guérot in her chapter broaches the issue of the metamorphosis of Germany from an unimportant player to an international player of the highest importance, and even the most important actor in European foreign policy. In recent years this was complemented by a change in attitude towards military interventions and engagement in global affairs. Guérot then argues that this development leads to the new old question of Germany being a hegemon or a leader in Europe, concluding that Germany has been taking a rather dominant position even above EU institutions.

Sarah Brockmeier in turn outlines that the refugee crisis has the potential to strengthen Germany's role in the implementation of the concept of Responsibility to Protect (R2P). The fact that ordinary Germans now start to see the direct link between atrocities abroad and the number of refugees arriving in their country may help implementing R2P work in practice. She emphasizes the need for a stronger connection between conflict prevention and R2P and examines three trends that could benefit German R2P policy. One is investing in the prevention of crises *and* atrocities, since atrocities also occur outside of armed conflicts. Secondly, Germany and its partners should start thinking about military contributions that aim to protect civilians. Thirdly, Germany should reconsider supporting the idea of Responsibility while Protecting (RwP) to make sure military interventions have a monitoring and accountability mechanism attached to them. She calls on human rights NGOs to use the window of opportunity and urge the German government to make the protection of civilians a priority in its foreign policy.

NGOs and NGO coalitions are important stakeholders that shape Germany's human rights foreign policy. Against the background of some recent events and initiatives, Wolfgang Büttner in his article analyses why they sometimes fail and sometimes work with great success. Furthermore, he carefully outlines the diverging trends or groups within relevant ministries and the lacking commitment to mainstream human rights protection in all for-

eign policy related areas. He mentions the institutional weakness of the position of the Federal Commissioner for Human Rights Policy and Humanitarian Aid and the lack of a special human rights advisor to the chancellor. Büttner criticizes the fact that the effectiveness of human rights implementation far too often depends on the individual approach of diplomats or ministry staff and calls for a comprehensive human rights policy across governmental, ministerial and parliamentary departments. Here the circle closes to the first article in this volume.

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### **So far and further**

Where do the various findings in this volume lead us and what conclusions can we draw? There is no doubt: the German government is pursuing an active human rights policy. Yet, while constantly attesting to the high aspiration to implement human rights as a coherent and cross-sectorial task, the realization falls behind exactly that claim. Human rights policy is mostly being handled exclusively within the existing human rights framework and by human rights specialists. One might wonder why this should be a problem. Indeed, the professionalism of human rights in German foreign policy is not a problem in general; au contraire. What becomes a problem though: firstly, the existing human rights mechanisms do not have the necessary power to ensure the consideration of human rights aspects in classical foreign policy issues; this way they are prone to become fig leaves. Secondly, they are being pushed aside by alleged Realpolitik 'inevitableities' as long as foreign policy experts do not understand that human rights are an integral part of foreign policy and not an isolated policy field. Thirdly, the isolation opens the door for inconsistencies, double-standards and lack of credibility, which undermines the core principles of human rights. And last but not least: Germany falls short of its own claim, but also behind its potential and its global responsibility. So let's look at these points more closely.

#### *Isolated experts*

Confronted with human rights concerns, German politicians in the field of foreign affairs mostly refer to the responsibility of human rights departments, the parliamentary Committee for Human Rights etc. – as if this was none of their concern. As an intern at Amnesty International a few years ago, one of the authors was told by her supervisor: the Committee on Foreign Affairs points to the Committee for Human Rights, the Foreign Minister points to the Office of the Commissioner for Human Rights, the country desks will point to the human rights department and all of them will point to Brussels, the European External Action Service (EEAS) and even to several infamous human rights dialogues which, due to their non-transparent and closed nature, we don't know much about, apart from the fact that apparently they do exist even though they do not seem to lead to suc-

cessful outcomes. While this is clearly a bit of a pointed and cynical summary, there is some truth in there, especially if the issue at hand is controversial. And that didn't change much in the last years.

When former Commissioner for Human Rights Policy and Humanitarian Aid Christoph Strässer resigned in February 2016, he criticized in an interview with SWR the fact that the notion to view the Office of the Commissioner as kind of an alibi, "is noticeable in many cases".<sup>4</sup> His disappointment is understandable as the Commissioners warnings, statements and concerns were all too often trailing away. It is vital that human rights are understood as an integral part of foreign policy instead of an isolated policy field. Pointing to work of the Office of the Commissioner for Human Rights, the human rights department within the Ministry of Foreign Affairs, or to ineffective German or EU human rights dialogues, respectively, alone just doesn't make for a credible human rights policy.<sup>5</sup>

This is even more true as said German human rights mechanisms are neither equipped with the necessary resources, nor armed with extensive powers to consequently and effectively assure the consideration of human rights within decision-making processes, government policies or programmes by themselves. Human rights politics remains one of the few areas of politics without any inherent sanction potential, and as long as that is true, any critical statement on behalf of human rights, when not backed up, simply isn't very credible or much of a warning.

### *It's time for Realpolitik to face reality*

Secondly, we have to realize that human rights or their implementation, respectively, are viewed as an extra burden rather than as a political or legal obligation. Foreign and security policy experts frame human rights issues under the phrase "wertegeleitete Außenpolitik" (value-oriented foreign policy).<sup>6</sup> This is also reflected in official government documents. The Foreign Ministry currently states: "Germany's foreign policy is

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4 Translation by the authors. Original quote in German: "Die Neigung, das Amt des Menschenrechtsbeauftragten als eine Art Alibi-Rolle zu betrachten, sei 'vielfach spürbar', sagte Strässer." See: SW2 (2016) *Regierungsbeauftragter Strässer: Gegen Alibirolle ankämpfen*. Available at: <http://www.swr.de/swr2/programm/sendungen/tagesgesprach/christoph-straesser-spd-gegen-alibirolle-ankaempfen/-/id=660264/did=16805266/nid=660264/t9kurv/index.html>.

5 See the essay by Kinzelbach and Mohan for more on German human rights policy towards China.

6 See recent examples here: Sandschneider, E. (2014) *Werte und Interessen gehen zusammen*. Available at: <http://www.aussenpolitik-weiter-denken.de/de/aussensicht/show/article/werte-und-interessen-gehen-zusammen.html>, and here: Youngs, R. (2016) *EU Global Strategy: How to Balance Interests and Values*. Available at: <http://carnegieeurope.eu/2016/01/15/eu-global-strategy-how-to-balance-interests-and-values/it0q>.

value-oriented and interest-led.”<sup>7</sup> In the dichotomy of interests and values human rights are always put on the value side. What at first glance might sound like a terminology battle for political scientists has real life consequences: by treating human rights as values pitted against interests, and by framing their implementation and promotion as moral questions instead of what they are: binding norms with legal consequences which should translate to political obligations, foreign policy strategy easily sidelines human rights as “desirable, but not necessarily enforceable”.<sup>8</sup>

This delusive dichotomy is also very problematic for another reason. As autocracies are trying to undermine human rights by telling the myth of ‘Western values’ not being compatible with national or regional values and culture, we play right in their hands by calling and treating human rights as (Western) values, too. This undermines the core principles of human rights: universality and indivisibility. Yet, human rights are not an expression of Western values. By standing up against oppression, violence, discrimination and injustice, human rights defenders and activists all over the world confirm that human rights are not an import from the West but, instead, that they are understood and recognized around the globe.

The implementation of human rights is also in Germany’s long-term interest. Security, stability and economic success – so called ‘hard interests’ – will only be able to be obtained in Germany in the long run, when people worldwide are able to demand their rights, without fear of life. In his speech to the UN Human Rights Council, Foreign Minister Steinmeier stressed that “we must never forget that our work for human rights is inextricably linked with our work for peace and security. We cannot have human rights without peace and conflict resolution. But the reverse also holds true: peace can never be assured without respect for human rights!” (Steinmeier 2015). So instead of sacrificing human rights for Realpolitik, their implementation should be an inclusive goal of German foreign policy. Once the implementation of human rights becomes a national interest, human rights policy will immanently be part of Realpolitik. Of course, upholding human rights as leading principles is challenging, and needs smart political measures. But that shouldn’t mean that we don’t even try. Human rights violations, crimes against humanity and war crimes belong to the toughest realities we can document in the world. It’s time for Realpolitik to face this reality.

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7 Federal Foreign Office (2013) *Germany’s foreign policy parameters*. Available at: [http://www.auswaertiges-amt.de/EN/Aussenpolitik/Schwerpunkte\\_Aussenpolitik\\_node.Html](http://www.auswaertiges-amt.de/EN/Aussenpolitik/Schwerpunkte_Aussenpolitik_node.Html).

8 High-ranking member of the Ministry of Foreign Affairs during a non-attributable conversation with one of the authors. Yet, similar phrases were repeated during several occasions e.g. the Annual Foreign Policy Conference of the Böll Foundation and during roundtable discussions between the Forum Menschenrechte and the ministry. They seem to be also part of the predominant thinking within leading foreign policy think tanks.

### *Challenging inconsistencies*

Human rights policy is often characterized by a high level of inconsistency, which in reality inevitably gives rise to double standards. Yet, to achieve the ambition of becoming the “Chief Facilitating Officer in Europe” and taking the role of an honest broker, as Steinmeier put it, it should be in Germany’s interest to be perceived as a credible and reliable actor. However, as foreign policy is never monothematic it makes it very hard to get rid of inconsistencies.

In democracies, in which politicians are accountable to the people, it is understandable that they are striving to serve many competing interests at the same time. Sometimes they might even favour the benefit of their own population over others (e.g. ‘saving jobs back home’ etc). While this behaviour leads to double standards, it is following the logic of serving one’s own people. So for the sake of argument, let’s call them positive double standards. They are really difficult to avoid. On the other hand, we see states favouring their strategic partners and friendly states. When this happens in human rights policy, for example by not criticizing human rights violations of partners while they would openly criticize the same violations in another state, it becomes problematic as it makes credible engagement for the universal enforcement of human rights impossible. The same is true for Germany’s restraint vis-à-vis democracies.<sup>9</sup> Let’s call those negative double standards. Negative double standards in human rights are easily avoidable, and looking at Berlins’ efforts to condemn and fight for the worldwide abolition of capital punishment it is clear that Germany already knows how to do so. No matter who uses it, Germany categorically speaks out against the death penalty and frequently tries to intervene in case of imminent execution. In the case of capital punishment, Germany drew a red line and it sticks to it.

A credible human rights policy needs to call out cases of human rights violations, no matter who is responsible. Everything else undermines the core principles of human rights and opens the door for the ‘whataboutisms’ which autocracies and other states like to use in hopes of undermining any criticism of their human rights record or to defame any resolution underway. It is even more crucial to be credible when a partnership is claimed to be based on shared values and interests, which is the case with the EU and the United States. Yet, Washington clearly doesn’t have to worry about too many critical words from Berlin. If Germany tries to engage rising powers through dialogue and mutual understanding in hopes of convincing them to respect human rights, how likely is this strategy to be successful when it can’t even ensure these rights in partnerships which openly claim human rights as part of their common foundation?

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9 See Krennerich’s essay in this volume.

So how can Germany fulfil its potential and responsibility when it comes down to human rights?

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**A more consistent, credible and human rights-based foreign policy is needed**

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Germany is very hesitant to openly criticize other countries and to call them out for human rights violations. This is also reflected in the fact that they rarely sponsor country resolutions at the UN Human Rights Council. And while public statements are not always the right tool to use, sometimes they are. And sometimes they are the best possible tool, even if it comes with a price. Germany can't hail human rights on the one hand and then back down when defence of those rights is needed.

When they choose to speak out, high-ranking politicians shouldn't hesitate to use clear language either. As UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein reminded us in a speech to the Human Rights Council (High Commissioner for Human Rights 2015):

*“Somehow the naming is, or has become, the very shame itself. This is a disfigurement of the truth, which we must now reset. The shame comes not from the naming: it comes from the actions themselves, the conduct or violations, alleged with supporting evidence or proven. The greatest factory of shame is the blanket denial of human rights. The denial of the right to life shames unreservedly. Killing on a massive scale, shames stunningly, and inexhaustibly. The denial of the right to development also shames. The denial of human dignity shames. Torture shames. Arbitrary arrests shame. Rape shames. We name; the shame of States, where it exists, has already been self-inflicted.”*

Germany should be brave enough to follow this example of reframing counter narratives – especially now as it is aspiring greater responsibility. There is a lot of power in the truth! Germany, of course, has no monopoly over the truth. But if human rights violations are corroborated with facts, they need to be called what they are. If done consistently, such a policy will provide Germany with much legitimacy and credibility to lead by example as a champion of human rights.

Also, Germany needs to rethink its engagement strategy towards authoritarian regimes. Instead of trying to convince them to fulfil their human rights obligations, Germany should hold perpetrators accountable. Always! It is not in the interest of authoritarian regimes to be constrained by human rights. If Germany wants to be successful in changing their behaviour, it needs to try to change their cost calculation by aiming at their interest.

As the multitude of international crises and conflicts, the challenges posed by more and more refugees coming to Europe and the rise of right wing populism within many European countries have challenged German policy makers during a time of reflection and compelled it towards a foreign policy of far greater engagement, it is essential to critically assess what this means for its human rights policy. As Germany's engagement will likely continue to increase, Amnesty International is calling for a more consistent, credible and adaptable human rights policy. Human rights must be the primary guiding principle of political action. They are essential to protect human dignity and should not be implemented in a value-orientated way, but in a way that is standards orientated. A human rights-led policy places people and their rights at its heart, upholds these consistently, and demands this in equal measure from all state actors. It is transparent and inclusive, and includes a full commitment to human rights obligations which is reflected in all policy areas. Also it gives a self-critical account of its measures in Germany, Europe and the rest of the world.

For this to work it will need both: engaged and driven human rights experts and politicians, knowing how to play their cards right in Geneva, monitoring human rights developments, intervening in critical developments, raising their voices for human rights defenders at risk, advising and/or controlling the government, respectively. We need them to analyse human rights situations, to adapt strategies according to country and situation and to advise on the best tools and instruments to achieve respective goals. But they can't do it alone. We also need foreign and security politicians who listen to them and who understand that while foreign policy is never monothematic, human rights violations need to be the red line. Human rights are norms, not values, and their implementation is in the national interest. Germany's policies therefore need to be coherent and inclusive, because human rights politics currently remain one of the few political areas where there is no natural potential to apply sanctions. At the very least policy-makers shouldn't undermine the work of human rights specialists and follow the minimum claim: do no harm!

When the EU High Representative for Foreign Affairs and Security Policy presented the new EU Global Strategy on Foreign and Security Policy (EUGS) to the European Council in June 2016, German Foreign Minister Steinmeier welcomed in his statement (Auswärtiges Amt 2016) that key elements of German peace policy are reflected in the strategy – active advocacy for rules-based international order and the necessity of stabilization when dealing with crises and conflicts.<sup>10</sup> He did not mention the role of human rights as a primary

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<sup>10</sup> Steinmeier: "Ich freue mich, dass sich auch Kernelemente der deutschen Friedenspolitik wiederfinden: Das aktive Eintreten für eine regelbasierte internationale Ordnung und die Notwendigkeit von Stabilisierung im Umgang mit Krisen und Konflikten."

objective of EU foreign policy and did not call for a stronger focus on human rights in the next steps following the strategy.

The EUGS includes a few statements on human rights including an explicit statement on the importance of mainstreaming human rights: “Finally, we will systematically mainstream human rights and gender issues across policy sectors and institutions, as well as foster closer coordination regarding digital matters (European Union 2016).” Yet, it seems that human rights are being considered as derivative rather than the primary point of departure (i.e. the EU will be working on good governance, sustainable development etc. and therefore on human rights).

Little recognition is being given to the commitments in the Strategic Framework and Action Plan, and existing EU human rights guidelines, nor to how they can be better realized. Looking through a very security-focused lens, the Global Strategy is setting up a false dichotomy between the EU’s ‘interests’ and ‘values’ and repositioning human rights not as legal commitments but merely as values, which a more pragmatic EU should refrain from promoting too widely in today’s global context. This poses a clear risk to the principles of universality and indivisibility, and risks undermining, rather than reaffirming, a rules-based international order and its multilateral institutions.

Thus, the new Global Strategy is reiterating a similar discourse as that in Germany. By taking a more principled stance on human rights in its bilateral relations and pushing for the full implementation of the EU’s existing human rights policy framework, Germany could also serve as a role model and advocate within the EU to demonstrate that defending international human rights law is in each countries’ very own interest.

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### **And where do we fit in?**

In the context of its current strategic plan, the German section of Amnesty International is working to implement this approach and to engage with politicians, other rights groups and the general public to bring this change about.

More concrete, Amnesty is calling on the German government to undertake a number of key steps, including to:

- I. give the office of the German government’s Commissioner for Human Rights Policy and Humanitarian Aid within the German Federal Foreign Office a cabinet-level position and provide the Commissioner with the necessary resources and capabilities;

- II. grant this Commissioner the opportunity to be heard in the German Federal Security Council to ensure that greater consideration is paid to human rights implications in security policy decision-making processes;
- III. reform the German Federal Security Act with the aim of establishing transparency and parliamentary control in relation to arms exports; and
- IV. ensure, through cross-departmental processes which are anchored at an institutional level, that international collaboration is aligned coherently with human rights objectives by appointing the Commissioner for Human Rights Policy and Humanitarian Aid at the rank of a State Minister in the German Federal Chancellery.

In addition, Amnesty International encourages the German Bundestag to address human rights in the plenary session, as well as in the preparatory committee work sessions in particular, and not only in the Human Rights Committee. To this end, the committees should routinely invite experts to advise on the human rights implications of the political plan, process or objective in the respective policy area.

As a matter of course, the Committee on Foreign Affairs should routinely invite the German government's Commissioner for Human Rights Policy and Humanitarian Aid to its sessions and listen to the Commissioner's concerns.

We also appeal to parliamentarians and foreign affairs politicians to stand up for human rights defenders at risk whenever and wherever they can. Even if big human reforms won't happen overnight, there is always a way to advocate for individual cases.<sup>11</sup>

The upcoming parliamentary elections in Germany in autumn 2017 provide a good opportunity for rights groups to push for the better anchoring of human rights in various fields of policy and decision-making processes. Amnesty will be campaigning for the inclusion of its key human rights demands in the respective party programmes. The commitment to a coherent human rights policy must be anchored in the position papers and policies of the new governments as an important cross-cutting issue.

As Germany is striving for greater engagement, prepared to enhance international responsibility and committed to human rights, it is time to rethink its human rights strategy. As was outlined in this volume, the world is changing and we live in dire times for human rights. With Europe's neighbourhood turning into a "ring of fire" characterized

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<sup>11</sup> For inspiration on how this can be done see Kinzelbach, K., & C. Wolf (2015) 'Politische Gefangene befreien', GPPi. Available at: [http://www.gppi.net/fileadmin/user\\_upload/media/pub/2015/Kinzelbach\\_Wolf\\_2015\\_Seit\\_Political\\_Prisoners\\_Free.pdf](http://www.gppi.net/fileadmin/user_upload/media/pub/2015/Kinzelbach_Wolf_2015_Seit_Political_Prisoners_Free.pdf).

eminently by crises and conflicts, with the rules-based order and the proclaimed values of the EU under threat from outside and within,<sup>12</sup> with a growing number of countries that massively violate and undermine human rights while referring to domestic order, regional culture or to their efforts for stability and security, and with growing numbers of systematic approaches and strategies to shrink civil society spaces within many countries, the struggle for the implementation of human rights becomes even more challenging, but also even more important.

Therefore it is evident that Germany's aspiration to take on more global responsibility must include a steadfast commitment to human rights. Germany needs to be determined – even, or even more so, if the issue is controversial. It will be difficult and challenging. But Germany shouldn't back down from these challenges. As President Gauck said back in Munich in 2014: sometimes “the consequences of inaction can be just as serious, if not worse than the consequences of taking action”. It's time to act and stand up for human rights.

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12 See Almut Möller's essay in this volume.



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