



AFTERMATH OF TERROR ATTACK ON THE CHRISTMAS MARKET IN BERLIN'S BREITSCHEID PLATZ: GERMANY'S SECURITY ARCHITECTURE AND PARLIAMENTARY INQUIRIES

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Cover Photo Credit: A light anomaly above the Maui Space Surveillance Complex. The Maui Space Surveillance Site (MSSS), located on top of Mt. Haleakala, HI includes three facilities for identifying man-made objects in orbit. The three systems includes the Air Force Maui Optical System (AMOS), The Maui Optical Tracking and Identification Facility (MOTIF), and a contiguous Ground-based Electro-Optical Deepspace Surveillance System (GEODSS) facility. (U.S. Air Force photo/Tech. Sgt. Bennie J. Davis III)

Aftermath of the Terror Attack on Breitscheid Platz Christmas Market: Germany's Security Architecture and Parliamentary Inquiries

By Sebastian von Münchow

Introduction

On December 19th 2016, Anis Amri, a Tunisian citizen, hijacked a truck and crashed into a Christmas market at Breitscheid Platz in Berlin. The Islamic State claimed responsibility for the attack, which resulted in twelve deaths and fifty additional casualties.¹ Amri escaped the crime scene and travelled through Germany, the Netherlands, Belgium, and France to Northern Italy where police officers killed him near Milan three days later.

This assault was the first major terrorist event in Germany for decades. Prior to this event, the most recent attacks were the Red Army Faction plots in the 1970s, the Olympics hostage-taking in 1972, and the right-wing motivated attack on Munich's Oktoberfest in 1980. This attack, in which a vehicle rammed into a crowded Christmas market in the center of Berlin, not only sparked a debate about Berlin's migration policy at large, but also focused the conversation on specific questions. How could Amri be seeking asylum in Germany despite his criminal record in Italy? How did he operate inside Germany using fourteen different identities? Did he rely on a network of supporters? How did he manage to travel through half of Europe before his life ended?²

Some political voices called for security-related reforms³ aimed at improving video surveillance, data exchange, and deportation processes, others also demanded a thorough parliamentary investigation of the plot.⁴

¹ "OSINT Summary: Vehicle impact attack on Berlin Christmas market highlights increasing adoption of tactic," *Jane's Terrorism & Insurgency Monitor*, 20 December 20, 2016, <http://janes.ihs.com/TerrorismInsurgencyCentre/Display/1791686>.

² "Berlin truck attack: Can the EU stop another Amri?," BBC News, January 6, 2017, <http://www.bbc.com/news/world-europe-38517768>. See also "The Berlin Vehicular Ramming Attack – What we know & Insights from ICT Experts," The International Institute for Counter-Terrorism, December 22, 2016, <https://www.ict.org.il/Article/1883/the-berlin-vehicular-ramming-attack>.

³ "Gegen Terrorismus hilft nur Besonnenheit," *Der Tagesspiegel*, February 2, 2017, <http://www.tagesspiegel.de/politik/gesetzentwurf-zu-fussfesseln-gegen-terrorismus-hilft-nur-besonnenheit/19335506.html>. Note the intention to introduce an early warning mechanism called RADAR "Neues System zur besseren Gefährder-Einschätzung," *Berliner Zeitung*, January 21, 2017, <http://www.berliner-zeitung.de/politik/neues-system-zur-besseren-gefaehrder-einschaetzung-25588238>. For more on NRW law enforcement reform plans, see "Was die Polizei in NRW verbessern will," *Spiegel*, February 13, 2017, <http://www.spiegel.de/politik/deutschland/anis-amri-was-die-polizei-in-nrw-nach-anschlag-in-berlin-verbessern-will-a-1134309.html>.

⁴ "Sicherheitsdebatte: Souverän gegen Terror," *FAZ*, January 11, 2017, <http://www.faz.net/aktuell/politik/inland/sicherheitsdebatte-souveraen-gegen-terror-14613401.html>. See also the statement of the Federal Minister for Internal Affairs, Thomas de Maizière, "Sicherheit als gemeinsame Verantwortung," *Bundesregierung*, January 28, 2017, <https://www.bundesregierung.de/Content/DE/Interview/2017/01/2017-01-28-de-maiziere-spiegel.html>.

This paper will briefly touch upon those parliamentary attempts on state and federal level to explore the plot. It will then revisit federal inquiries into matters related to the security architecture over the past twenty-seven years as well as the coverage of these inquiries in the media. Finally, this study will conclude with some thoughts about whether a federal parliamentary inquiry should have been used to investigate what happened before, during, and after the attack.

Germany's Federative Security Structure

Maintaining public order and security falls under the jurisdiction of Germany's sixteen states, *die Länder*. The standing committee on federal level, the Committee of Home Affairs, investigated the incident.⁵ In addition, the Parliament's standing oversight committee on intelligence matters appointed a team of four deputies to submit a report, without excluding the possibility of conducting an *ad hoc* inquiry in the future.⁶ At the end of March 2017, this task force presented a report⁷ that was only briefly debated.⁸ In parallel, the standing committee dealing with home affairs invited senior decision-makers in Germany's security architecture to present their findings on the case and discuss possible consequences.⁹

Due to its federal structure, Germany has sixteen separate departments of home affairs, sixteen law enforcement agencies, sixteen domestic intelligence services, sixteen judicial bodies, and sixteen different sets of laws governing public order.¹⁰ Hence, Berlin's Senator of Home Affairs and its State Police (the *Landeskriminalamt*, LKA) also have a responsibility to investigate the plot executed in their city. The attack is also subject to debate in Berlin's

⁵ Soon after the attack, the Committee of Home Affairs debated the incident in several special meetings. See press releases from January 18, 2017, at http://www.bundestag.de/presse/hib/2017_01/-/488960; January 25, 2017, at http://www.bundestag.de/presse/hib/2017_01/-/490442; and February 13, 2017, at http://www.bundestag.de/presse/hib/2017_02/-/493234.

⁶ "Vorerst kein Untersuchungsausschuss zu Anis Amri," *Der Tagesspiegel*, January 17, 2017, <http://www.tagesspiegel.de/politik/anschlag-in-berlin-vorerst-kein-untersuchungsausschuss-zu-anis-amri/19262348.html> and also "Geheimdienst-Kontrolleure setzen Ermittlergruppe im Fall Amri ein," *Handelsblatt* January 25, 2017, <http://www.handelsblatt.com/politik/deutschland/attentat-auf-weihnachtsmarkt-geheimdienst-kontrolleure-setzen-ermittlergruppe-im-fall-amri-ein/19305964.html>. For more about Parliamentary Control of the Intelligence Services, see Dietmar Peitsch and Christina Polzin, "Die parlamentarische Kontrolle der Nachrichtendienste," *Neue Zeitschrift für Verwaltungsrecht* (2000): 387–93.

⁷ The full report is available at <http://dip21.bundestag.de/dip21/btd/18/125/1812585.pdf>.

⁸ "Umgang mit potentiellen Attentätern: Den Menschen analysieren - nicht nur dessen Taten," *mdr Aktuell Nachrichten*, March 30, 2017, <http://www.mdr.de/nachrichten/politik/regional/neuer-umgang-mit-gefaehrdern-gefordert-100.html>.

⁹ See press release of the German Parliament from January 18, 2017, at http://www.bundestag.de/presse/hib/2017_01/-/488960 as well as the press release of February 13, 2017 at http://www.bundestag.de/presse/hib/2017_02/-/493234 and "Innenausschuss befragt am Montag Spitzen der Sicherheitsbehörden zu Fall Amri," *Zeit*, February 9, 2017, <http://www.zeit.de/news/2017-02/09/deutschland-innenausschuss-befragt-am-montag-spitzen-der-sicherheitsbehoerden-zu-fall-amri-09140404>.

¹⁰ "Terror sparks call to centralize German police powers," *Politico*, January 6, 2017, available at <http://www.politico.eu/article/terror-sparks-call-to-centralize-german-police-powers-berlin-isil-security/>.

assembly (*Abgeordnetenhaus*) and in the committee dealing with home affairs.¹¹ In April, 2017, this committee appointed a retired Public Prosecutor General of the Federal Court of Justice as a special investigator.¹² The Berlin Assembly also formed an ad hoc inquiry committee on the incident, which started its work on the 14th of July 2017.¹³

The case also involved another state in the west of Germany, North Rhine-Westphalia (NRW). Anis Amri was registered there and was also under the surveillance of Düsseldorf's security authorities,¹⁴ hence, institutions based in this state were also called upon to draft findings and to discuss governmental, judicial, and bureaucratic shortcomings in the NRW House of Deputies, the *Landtag*.¹⁵ Since the constitutions of these *Länder* allow the establishment of an *ad hoc* inquiry, a parliamentary investigation was soon on the table.¹⁶ Given that the inquiry would take place under two separate jurisdictions—that is, in two separate *Länder*—the parliamentarians would need to rely on a voluntary exchange of files between the entities in Berlin and NRW, as well as on the good will of other federal institutions. Hannelore Kraft, North Rhine-Westphalia's former Head of State, appointed a criminal law professor as Special Investigator.¹⁷ Although Kraft's Special Investigator was the first to submit draft

¹¹ "Berliner Anschlag: Verhaltete Warnungen aus Marokko," *Telepolis*, January 31, 2017) available at <https://www.heise.de/tp/news/Berliner-Anschlag-Verhaltete-Warnungen-aus-Marokko-3611242.html>. See also "Terroranschlag erneut einziges Thema im Innenausschuss," *Berliner Morgenpost*, January 22, 2017) available at <http://www.morgenpost.de/berlin/article209356113/Terroranschlag-erneut-einziges-Thema-im-Innenausschuss.html>. Since February 2017, the attack has been discussed in every one of the last seven meetings of the committee, as can be seen on the meeting's outline at <https://www.parlament-berlin.de/de/Dokumente/Sitzungsuebersicht>.

¹² "Ex-Bundesanwalt Jost wird Sonderermittler im Fall Amri," *BerlinOnline*, April 3, 2017, available at <https://www.berlinonline.de/aktuell/4811000-4015970-exbundesanwalt-jost-wird-sonderermittler.html> and "Amri-Sonderermittler klagt über Probleme bei der Akteneinsicht," *Der Tagesspiegel*, May 16, 2017, available at <http://www.tagesspiegel.de/berlin/polizei-justiz/attentat-am-breitscheidplatz-in-berlin-amri-sonderermittler-klagt-ueber-probleme-bei-der-akteneinsicht/19801570.html>. The special investigator's final report is expected in October 2017. He presented an interim report to the Committee of Home Affairs; the protocol, dated July 3, 2017, is available at <https://www.parlament-berlin.de/ados/18/InnSichO/protokoll/iso18-010-wp.pdf>.

¹³ See the Berlin Assembly press release of July 11, 2017 at <https://www.parlament-berlin.de/C1257B55002AD428/vwContentByKey/W2AP6F5Y454WEBSDE>.

¹⁴ "Amri, die Behörden und Kontaktmann VP-01," *Süddeutsche Zeitung*, January 16, 2017, <http://www.sueddeutsche.de/politik/attentaeter-von-berlin-amri-die-behoerden-und-kontaktmann-vp--1.3333579>.

¹⁵ "NRW-Ausschuss diskutiert Berliner Attentat: Anis Amri nutzte 14 Identitäten," *Der Spiegel*, January 5, 2017, <http://www.spiegel.de/politik/deutschland/anschlag-in-berlin-ralf-jaeger-aeussert-sich-zu-anis-amri-a-1128697.html>.

See also "Nach Anschlag in Berlin: Die Gefährlichkeit des Anis Amri," *FAZ*, January 5, 2017, <http://www.faz.net/aktuell/politik/rechtfertigung-von-innenminister-jaeger-wegen-anschlag-14606371.html> and "Tunis will Kontaktmann Amris anklagen," *Der Spiegel*, January 2, 2017, <http://www.spiegel.de/politik/ausland/anis-amri-tunesien-will-kontaktmann-anklagen-a-1132958.html>.

¹⁶ "Verfassungsschutz belastet Landeskriminalamt," *rbb24*, February 9, 2017, <http://www.rbb-online.de/politik/beitrag/2017/02/Verfassungsschutz-Palenda-schiebt-Schuld-im-Fall-Amri-von-sich.html>.

¹⁷ "Kraft setzt Sonderermittler im Fall Amri ein," *Zeit*, January 25, 2017, <http://www.zeit.de/politik/deutschland/2017-01/nordrhein-westfalen-hannelore-kraft-anis-amri-berlin-attantaeter-sonderermittlung>. See also "Sonderermittler soll Fall Amri aufklären," *Handelsblatt*, January 25, 2017, <http://www.handelsblatt.com/politik/deutschland/nach-berlin-anschlag-sonderermittler-soll-fall-amri-aufklaeren/19301674.html>. For more on the ad hoc parliamentary inquiry, see "Politik Kompakt I," *Welt*, February 8, 2017, https://www.welt.de/print/die_welt/politik/article161895769/Politik-Kompakt-I.html and "Ausschuss in NRW soll Fall Amri untersuchen," *Zeit*, February 7, 2017, <http://www.zeit.de/politik/deutschland/2017-02/anschlag-breitscheidplatz-anis-amri-landtag-duesseldorf-untersuchungsausschuss>. For more on Kretschmer's controversial

findings, the conservative opposition initiated their own inquiry.¹⁸ In late spring 2017, this inquiry developed as the key arena to shed light on the plot. It quickly assessed the available documents, summoned home ministers, including Berlin's Federal Minister for Home Affairs Thomas de Maizière and submitted a report.¹⁹

Some voices argued that perhaps neither a Düsseldorf- nor a Berlin-based inquiry committee would be able to provide a full picture of the incident.²⁰ Indeed, the Breitscheid Platz attack may prove that some security-related questions go beyond interstate borders (*Ländergrenzen*). Moreover, a pure *Länder*-focused approach could overlook another facet: the plot has an international cross-border component due to Amri's criminal past in Italy and the path he chose while escaping to Milan. Since the sixteen states have limited authority to deal with foreign affairs, the international entanglement suggests the involvement of authorities on Germany's federal level.²¹ Additionally, the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF), which is under the auspices of the Minister of the Interior, could also play a role in the matter.²² Finally, the Federal Criminal Police Office (*Bundeskriminalamt*, BKA), the Federal Intelligence Service (*Bundesnachrichtendienst*, BND), the Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*, BfV) in conjunction with their sixteen counterparts from the *Länder*, are gathered in a fusion center called the Joint Counter Terrorism Center (*Gemeinsames Terrorismusabwehrzentrum*, GTAZ). Soon after the attack, media reports stated that Amri had appeared on the agenda of the GTAZ

report, see "Fall Amri: Grüne attackieren Krafts Gutachter," *Express*, March 30, 2017,

<http://www.express.de/news/politik-und-wirtschaft/fall-amri-gruene-attackieren-krafts-gutachter-26284776>.

¹⁸ "NRW beschließt Untersuchungsausschuss zum Fall Amri," *Der Tagesspiegel*, February 15, 2017,

<http://www.tagesspiegel.de/politik/berlin-attentaeter-nrw-beschliesst-untersuchungsausschuss-zum-fall-amri/19396466.html>.

¹⁹ The interim report is available at

<https://www.landtag.nrw.de/Dokumentenservice/portal/WWW/dokumentenarchiv/Dokument/MMD16-14550.pdf>.

²⁰ "Rufe nach Neuorganisation der Terrorabwehr," *Handelsblatt*, February 2, 2017,

<http://www.handelsblatt.com/politik/deutschland/berliner-terroranschlag-rufe-nach-neuorganisation-der-terrorabwehr/19269704.html>. See also "Fall Amri: Neue Antworten – neue Fragen," *Berliner Morgenpost*, February

3, 2017, <https://www.morgenpost.de/politik/article209485027/Fall-Amri-Neue-Antworten-neue-Fragen.html>. For

more on the Berlin/Düsseldorf blame game, see "NRW-Landesregierung muss sich kritische Fragen gefallen

lassen," *FAZ*, February 13, 2017,

<http://www.faz.net/aktuell/politik/kritik-an-nrw-innenminister-jaeger-fall-anis-amri-14876497.html>.

²¹ "Der Antiterrorkrampf," *Der Spiegel*, January 22, 2017,

<http://www.spiegel.de/spiegel/anis-amri-und-der-anschlag-von-berlin-ermittlungspannen-keine-aufklaerung-a-1131008.html>. See also "Polizei führte Anis Amri kurz vor der Tat als Terrorist," *Der Tagesspiegel*, January 16,

2017, <http://www.tagesspiegel.de/politik/attentat-auf-breitscheid-platz-polizei-fuehrte-anis-amri-kurz-vor-der-tat-als-terrorist/19259836.html> and "Italiens Behörden verschwiegen schwere Panne im Fall Amri," *Welt*, January 21,

2017, <https://www.welt.de/politik/deutschland/article161386891/Italiens-Behoerden-verschwiegen-schwere-Panne-im-Fall-Amri.html>.

²² "Flüchtlings-Bundesamt sieht keine eigenen Fehler," *FAZ*, January 8, 2017,

<http://www.faz.net/aktuell/politik/inland/fluechtlings-bundesamt-sieht-keine-eigenen-fehler-im-fall-amri-14867211.html>. See also "Auch das BAMF verpasste eine Chance, Anis Amri zu stoppen," *Welt*, February 13, 2017,

<https://www.welt.de/politik/deutschland/article162047928/Auch-das-BAMF-verpasste-eine-Chance-Anis-Amri-zu-stoppen.html>.

<https://www.welt.de/politik/deutschland/article162047928/Auch-das-BAMF-verpasste-eine-Chance-Anis-Amri-zu-stoppen.html>.

several times.²³ According to those reports, the officials working at GTAZ saw the Tunisian's engagement in Berlin's drug market as an indication that he would turn away from religious extremism and would thus no longer constitute a terrorist threat. These reports were later confirmed by the findings of the Parliament's standing oversight committee on intelligence matters, which listed every appearance of the name Anis Amri within the meetings of the GTAZ.²⁴

Hence, an *ad hoc* parliamentary committee of inquiry by the Federal Parliament, the *Bundestag*, would have been also conceivable. The Constitution foresees an inquiry committee to be set up upon the votes of one quarter of the MPs. It is the most effective and comprehensive constitutional tool that Germany's legislative bodies can utilize to foster public debate about the performance of state organs. *Ad hoc* committees are meant to find governmental misconduct or law violations by examining situations after the fact and providing recommendations to prevent future recurrences. The committee has far-reaching rights to examine even classified material and question staff members at all levels in the governmental hierarchy.²⁵ Inquiries usually take place in an open forum involving the press.²⁶ If significant violations or law breaking are discovered, the committee suggests how the broken part of the system could be repaired. The political parties involved in inquiries position themselves according to a recurring pattern: while the opposition interprets facts of cases and portrays them as scandalous, government coalitions try to comment on the proceedings as little as possible or to deflect the issues, minimizing or even dismissing the viewpoints of their political opponents as overblown and mere opinions. Inquiries are subject to the principle of discontinuity.²⁷ They last only as long as the legislative term in which they were initiated and end by submitting a report with recommendations to the Speaker of Parliament.

Seven months after the Christmas market attack, it became obvious that there was no appetite to investigate the case on Germany's federal level. Given that federal elections will take place late September an *ad hoc* parliamentary inquiry could not finish its work before the elections. In lieu of the previous inquiries on security matters of the past 27 years, it is dubious that the powerful tools to reveal shortcomings and loopholes at hand were not used in this

²³ "Attentäter von Berlin: Plötzlich 'Foreign Fighter,'" *Der Spiegel*, January 16, 2017, <http://www.spiegel.de/politik/deutschland/anschlag-in-berlin-anis-amri-ueberforderte-die-behoerden-a-1130210.html>. See also "Anis Amri: How a terror suspect eluded German authorities," *Deutsche Welle*, January 18, 2017, <http://www.dw.com/en/anis-amri-how-a-terror-suspect-eluded-german-authorities/a-37180968>.

²⁴ The report, published May 31, 2017, is available at <http://dip21.bundestag.de/dip21/btd/18/125/1812585.pdf>.

²⁵ Sebastian von Münchow, "Security Agencies and Parliamentary Committees of Inquiry in Germany: Transparency vs. Confidentiality," *Connections: The Quarterly Journal* 12 (4): 51-73.

²⁶ "Unionsfraktionschef Volker Kauder (CDU) ist mittlerweile bereit, die Vorwürfe im Fall Anis Amri von einem Untersuchungsausschuss des Bundestages klären zu lassen. Er will dies jetzt seinem sozialdemokratischen Kollegen Thomas Oppermann vorschlagen." "Anis Amri soll regelmäßig Drogen genommen haben," *Welt*, January 15, 2017, <https://www.welt.de/politik/deutschland/article161179412/Anis-Amri-nahm-regelmaessig-Ecstasy-und-Kokain.html>.

²⁷ *Ibid*, 71.

specific case. Even though inquiries could be revived after elections, it is unpredictable whether politicians would wish to revisit the Christmas market attack once a new *Bundestag* is established.

***Ad hoc* Committees of Inquiry since Germany's Reunification**

We shall now revisit the cases brought before committees of inquiry over the last seven legislative terms, covering a quarter of the past century, concentrating purely on inquiries on the federal level. This section provides insights into how security issues are debated by parliamentary oversight bodies and how allegations of misconduct by German security bodies are investigated. It will also examine the findings of the committees about each of these cases and discuss their political consequences.

The first time that a security policy issue became the subject of an inquiry was during the twelfth legislative term in post-Reunification Germany in 1991. It involved the BND and East Germany's Commercial Coordination ("Koko") department.²⁸ The Bundestag wanted to find out what sort of affiliation existed between the service and the former "Koko" Head Alexander Schalck-Golodkowski, whether he was promised immunity,²⁹ and how much had been known about "Koko's" international arms dealings. The inquiry ended in May 1994 when several volumes of reports were presented to the president of the Bundestag. The allegations, however, could not be substantiated. Eventually, the committee made recommendations for a new law called the "Law of Parliamentary Investigation Committees" (PUAG). Under this law, the rights of an inquiry committee were modeled along the criminal procedure code.

In the thirteenth legislative term, the Schalck-Golodkowski issue again became the subject of an inquiry, known as *DDR Sondervermögen* (GDR's Special Assets). The BND's refusal to hand over data diskettes to Parliament was one of the elements that drew special attention. In the end, the committee received the data, but it did not uncover any misconduct or breach of regulations.

In May 1995, another inquiry followed involving the *Bundesnachrichtendienst*, in which its role in what was called the "plutonium scandal" was investigated.³⁰ The committee's mandate was to find out to what extent institutions of the Federal Republic of Germany were involved in the planning of mock negotiations concerning the transport of nuclear material from Moscow to

²⁸ See the "Recommended Decision and Supplementary Report of the First Committee of Inquiry: Scrutiny of the role played by the 'Commercial Coordination' department and its head Alexander Schalck-Golodkowski in the SED leadership, state control and the economy of the GDR, and findings on who benefited or benefits to this day from the economic activities of this department," Bundestag print 12/8595 (2 November 1994), 39.

²⁹ *Straflosigkeit*.

³⁰ "Plutonium-Affäre: Die haben uns heiß gemacht," *Der Spiegel*, May 1, 1995, <http://www.spiegel.de/spiegel/print/d-9182701.html>.

Munich. They also investigated whether there had been breaches of the War Weapons Control Act since hazardous material was brought into German territory. The final report drafted by the government coalition at the time did not present any evidence that laws had been disregarded.³¹

The opposition, however, came to a different conclusion and published its own report, which largely repeated allegations made by the media at the beginning of the investigation. According to them, the intelligence service made serious errors by initiating a fake nuclear trade in order to illustrate that former Soviet arsenals were not safe.³² As a consequence of this investigation, the service tightened internal procedures to ensure that such incidents would not occur again.

In the beginning of 1998, an inquiry investigated right-wing extremist incidents in the German Armed Forces, including the role of civic education and dubious speeches held in military barracks. Since the Parliament is not allowed to investigate defense issues, the Defense Committee transformed itself into a committee of inquiry in accordance with the Constitution.³³ The official final report stressed that the German Armed Forces' leadership and the troops could rely on their internal procedures to deal with such incidents. There was no proof of any misconduct on the part of the Ministry of Defense or the intelligence services.³⁴ The *Bundeswehr* reacted to these incidents by taking immediate action prior to the publication of the committee's final report, disputing the opposition's fear that a right-wing-minded network had infiltrated the Forces.

The Federal Criminal Police Office and the Federal Intelligence Service were also marginally involved in the "visa scandal" during the fifteenth legislative term.³⁵ The aim of the investigation was to find out whether members of the Federal Government had indirectly promoted criminal human trafficking through a careless handling of visa issuances in Kyiv and other embassies. When elections were held in 1998, the "Visa" committee of inquiry stopped its investigation due to the discontinuity principle. It did not formulate any recommendations.

The sixteenth legislative term saw the most intense parliamentary scrutiny of Germany's Federal Intelligence Service. The committee of inquiry investigated several cases of extraordinary renditions in the War on Terror as well as the activities of servicemen in Baghdad

³¹ "Recommended Decision and Report of the First Committee of Inquiry: Findings on the Munich Plutonium Incident and issues related to this and other incidents, with a focus on the responsibility of the federal government and the personnel of federal agencies," Bundestag print 13/10800 (28 May 2008), 45.

³² *Ibid.*

³³ See Section 34, Paragraph 4 of the Committee of Inquiry Act; according to Article 45(a), Paragraph 3 of the Basic Law, no committee of inquiry can be established for defense issues, nor can the Defense Committee be given an inquiry mandate.

³⁴ "Gutes Zeugnis für die Truppe: Der Verteidigungsminister vor dem Untersuchungsausschuß in Bonn zur Affäre Roeder. Auszüge aus dem Protokoll Von Josef Hrycyk," March 12, 1998, http://www.zeit.de/1998/12/Gutes_Zeugnis_fuer_die_Truppe.

³⁵ "Recommended Decision and Report of the Second Committee of Inquiry: Findings on whether members of the federal government or other government officials have in any way compromised or endangered the security of the Federal Republic of Germany or of other Schengen countries as of October 1998 when implementing immigration law through decrees, instructions or otherwise, in particular through the issuance of visas at German diplomatic missions, in particular in Moscow, Kiev, Tirana and Pristina," Bundestag print 15/5975 (2 September 2005), 285.

during the 2003 Iraqi War.³⁶ In 2008, the BND's surveillance of German journalists was included within the scope of the investigation.³⁷ The mandate of the committee was to clarify various issues, *inter alia*: whether terrorism suspects were transported through German territory and whether intelligence information exchange violated instructions of the Federal Government or any other norm of national or international law. It took more than three years to hear the testimony of 141 witnesses during 124 sessions for 489 hours.

The final report presented by the government coalition concluded that the service had not broken any laws or crossed any "red lines."³⁸ It stated, however, that basic rights had been violated in the fight against terrorism by other states. The members of the opposition did not approve and continued to draw a link between extraordinary renditions, so-called "black sites" and alleged BND support. Both sides agreed that deficiencies in the exchange of intelligence had become evident. All parties agreed that German services appeared somewhat clumsy in their attempts to gain valuable intelligence information without considering how the information was obtained. This applied especially to cases where service staff was granted access to terrorism suspects held under questionable circumstances. As a consequence, a recommendation was made to enhance parliamentary oversight by granting the committee better access to information and increasing its scope for action. The Law on the Parliamentary Control of Intelligence Services was amended to that effect in July 2009.

During the same legislative term, the Defense Committee assumed the role of a committee of inquiry. For about a year, it investigated the circumstances of Bremen-born Murat Kurnaz's detention in Afghanistan, which involved *Bundeswehr* soldiers.³⁹ The question at stake was about the exchange of intelligence information. The final report could not confirm whether or not the soldiers had displayed disrespectful behavior vis-à-vis Mr. Kurnaz. The committee came to the conclusion that there was no breach of the law by the armed forces or the

³⁶ "Grüne, FDP und Linkspartei beschließen Untersuchungsausschuss zur BND-Affäre," *Der Spiegel*, January 17, 2006,

<http://www.spiegel.de/politik/deutschland/bundestag-gruene-fdp-und-linkspartei-beschliessen-untersuchungsausschuss-zur-bnd-affaere-a-395748.html>. See also "BND-Ausschuss," *Die Zeit*, April 12, 2006, <http://www.zeit.de/online/2006/15/BND>. See also Dana Priest, "CIA Holds Terror Suspects in Secret Prisons," *Washington Post*, November 2, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>.

³⁷ "Kritik an Ermittlungen gegen Journalisten," *Stern*, August 3, 2007, <http://www.stern.de/politik/deutschland/bnd-untersuchungsausschuss-kritik-an-ermittlungen-gegen-journalisten-594417.html>. See also "Ermittlungen gegen Journalisten wegen Geheimnisverrats," *FAZ* online (2 August 2007); available at <http://www.faz.net/aktuell/politik/inland/medien-ermittlungen-gegen-journalisten-wegen-geheimnisverrats-1459900.html>.

³⁸ "Recommended Decision and Report of the First Committee of Inquiry: Open questions concerning incidents in relation to the war in Iraq and the fight against international terrorism," Bundestag print 16/13400 (18 June 2009), 353–418.

³⁹ "Fall Kurnaz: Heikle Begegnung in Kandahar," *Der Spiegel*, October 18, 2006, <http://www.spiegel.de/politik/deutschland/fall-kurnaz-heikle-begegnung-in-kandahar-a-443313.html>. See also "Bundeswehr: Die Nacht von Kandahar," *Der Spiegel*, September 3, 2007, <http://www.spiegel.de/spiegel/print/d-52809283.html>.

intelligence services concerning the transfer of information. It recommended that German Special Forces abstain from long-term deployments because their units had not been designed for such missions.

In January 2010, the seventeenth legislative term, the Defense Committee investigated the legality of an air attack against two hijacked fuel tanks near the *Bundeswehr* base in Kunduz in September 2009. The focus was once again on the collection and exchange of information and whether the BND had played a role in the air strike.⁴⁰ The committee wanted to find out how well informed the decision-makers in the Ministry of Defense had been and what their information policy at the time had been. The files presented to the committee as well as the testimonies of witnesses proved that BND operatives in Kunduz were sleeping at the time of the airstrike. The opposition parties expressed their doubts in dissenting opinions about the role of the intelligence service that night. The final recommendations called for clearer rules of engagement.

The first NSU (“National Socialist Underground”) committee of inquiry was set up during the seventeenth legislative term. At the end of 2011, it became known that a group of right-wing extremists had killed nine citizens with foreign backgrounds (*Migrationshintergrund*) and one German police officer between 2000 and 2007.⁴¹ The group committed other crimes such as bomb attacks and bank robberies. Overall, it managed to remain undetected for more than a decade. As of late 2011, six additional investigatory committees were established at the level of the federal states. The mandate of the federal committee was to find out where federal agencies failed detecting this group, what role informants had played, and if informants were under sufficient control.

The committee of inquiry accused the Office for the Protection of the Constitution of failing to collect and analyze the available information. The official report of the investigation suggested that the domestic intelligence service had failed to do its job, however, suspicions that German officials had secretly approved or participated in crimes turned out to be unfounded. The first NSU investigation committee made several recommendations to law enforcement bodies and the BfV. There was no agreement among the deputies about what other consequences the case should have. The most radical of these demands called for the abolishment of a domestic intelligence service. One of the final recommendations suggested that data on right-wing extremist violence should be centrally collected and analyzed in the future. Hence, the GTAZ-like *Gemeinsames Extremismus- und Terrorismusabwehrzentrum* (GETZ) for countering right-wing extremism/terrorism, left-wing extremism/terrorism, acts of extremism/terrorism committed by foreigners, and espionage/proliferation was established.

⁴⁰ “Recommended Decision and Report of the Defense Committee of the First Committee of Inquiry: Inquiry into the command issued by the military leader of the provincial reconstruction team (PRT) in Kunduz/Afghanistan to carry out an air strike against two gas trucks on 3 and 4 September 2009, into the reconnaissance and information policy of the federal government, as well as into the compatibility of the chosen courses of action with national and multinational political, legal and military guidelines for the mission in Afghanistan” (“Kunduz”), Bundestag print 17/7400 (25 October 2011), 29, 169.

⁴¹ “Wir wissen buchstäblich nichts,” *Süddeutsche Zeitung*, September 14, 2012, <http://www.sueddeutsche.de/politik/pannen-bei-nsu-ermittlungen-wir-wissen-buchstaeblich-nichts-1.1467718>.

Media coverage about the ten murders did not abate at the end of the legislative term. This led to the establishment of the NSU II committee of inquiry after parliamentary elections for the Bundestag were held in fall 2013. According to its mandate, this committee was intended

[to] deal with those issues that had been neglected before due to lack of time or with regard to the fact that the main trial [against the only surviving NSU-member] before the Munich Higher Court had not started, as well as with issues that could not be sufficiently clarified before, but should be examined again on the basis of new findings or new evidence.⁴²

Before the NSU II committee started its investigations in the eighteenth legislative term, the “Snowden Leaks” triggered a scandal on wiretapping and data collection. In March 2014, another inquiry committee was established to clarify whether German authorities had been collaborating with like-minded partner agencies. The committee’s intent was to find out to what extent the federal government, the intelligence services, and the Federal Office for Information Security knew about the activities of the so-called “Five Eyes” states. This group allegedly collected data in and on Germany. The delegates wanted to investigate whether German agencies participated in those activities and whether they have used the data to their own advantage. The work of this committee of inquiry was completed in June 2017.⁴³

Another committee that was set up during the eighteenth legislative term touched upon the work of security agencies. Child pornography was found in the possession of Member of Parliament Mr. Sebastian Edathy, the former chairman of the NSU I committee of inquiry. Questions arose about whether case-related information was exchanged between the top level of the Federal Criminal Police Office, BKA, and politicians in Berlin. Another issue that had to be clarified was the BKA’s involvement in the Canadian operation “Spade,” a police investigation into child pornography. Before the work of this committee of inquiry and a related court case ended, Mr. Edathy stepped down from all positions and left Germany.⁴⁴

Media Coverage

Media portrayal of the inquiries has been intense ever since the early 1990s. During the investigation by the “KoKo” committee, there were suspicions that the BND protected the former East-German “KoKo” Head, Schalck-Golodkowski, because he had too much sensitive information on West-German politicians. The BND and its supervising body, the Federal Chancellery, were accused of hiding information to prevent Schalck-Golodkowski from

⁴² “Untersuchungsausschuss zum NSU eingesetzt,” Deutscher Bundestag, available at <https://www.bundestag.de/dokumente/textarchiv/2015/kw46-de-nsu/395022>.

⁴³ For more on the disputed question of whether to summon Edward Snowden at the parliamentary inquiry committee, see “Snowden im Bundestag: Opposition spricht von Rechtsbruch,” *Süddeutsche Zeitung*, November 24, 2016, <http://www.sueddeutsche.de/politik/nsa-ausschuss-snowden-im-bundestag-opposition-spricht-von-rechtsbruch-1.3265104>.

⁴⁴ See summary from the Deutscher Bundestag, “Abschließende Debatte zum ‘Fall Edathy,’” available at <https://www.bundestag.de/dokumente/textarchiv/2015/kw49-ak-2ua/397702>.

broadcasting his insights.⁴⁵ During the plutonium scandal, the intelligence service was accused of suppressing the investigation⁴⁶ and faced charges that its operation could have caused the plutonium to escape its cask. Newspapers and TV stations commented on incidents in the armed forces at the end of the 1990s, insinuating that the *Bundeswehr* was full of characters promoting neo-Nazi ideas.⁴⁷

The most thorough coverage took place during the BND committee's inquiry, which ran from 2006 until 2009. Countless lead stories, magazine covers, and TV reports suggested that the authorities had broken the law.⁴⁸ This was especially the case after copies of classified files that the security agencies had handed over to the Bundestag leaked to editorial offices. The BND's attempt to get access to information from detained terrorism suspects was portrayed as tacit consent to the circumstances of the detention and for the doubtful interrogation techniques. Public perception grew that the agencies' actions in the "War on Terror" were politically unwise, at a minimum. The media coverage of the committee which investigated the arrest of Mr. Kurnaz came to the conclusion that oversight over the secret services and the Special Forces Command left much to be desired.⁴⁹ Related to the "Kunduz" committee's work, a regional newspaper first reported speculation about the BND's involvement on the night the air strike at the command post was ordered.⁵⁰ In the immediate aftermath, other media voices chimed in. Media coverage slowed down when the Public Prosecutor General closed its investigation against the German Commander. The allegation that the colonel had violated humanitarian and German law by ordering the air strike was not proven.⁵¹

⁴⁵ "Gezielt und dosiert," *Der Spiegel*, December 2, 1991, <http://www.spiegel.de/spiegel/print/d-13490844.html> and "Das Kanzleramt als Kontaktbüro," *Zeit*, August 30, 1991, <http://www.zeit.de/1991/36/das-kanzleramt-als-kontaktbuero>. See also "Im dunkeln," *Der Spiegel*, September 16, 1991, <http://www.spiegel.de/spiegel/print/d-13491698.html>. For a review of the case after 12 years, see "Wer schützt Honeckers Devisenbeschaffer?" *Welt*, July 3, 2012, <https://www.welt.de/kultur/history/article107704935/Wer-schuetzt-Honeckers-Devisenbeschaffer.html>.

⁴⁶ For more on the "plutonium scandal," see "Die Abgründe der Operation "Hades," *Zeit*, December 22, 1995, available at <http://www.zeit.de/1995/52/Die-Abgruende-der-Operation-Hades> and "Am Plutonium verbrannt," *Zeit*, January 26, 1996, <http://www.zeit.de/1996/05/Am-Plutonium-verbrannt>.

⁴⁷ "Gutes Zeugnis für die Truppe."

⁴⁸ "BND-Untersuchungsausschuss: Union wirft Steinmeier 'doppeltes Spiel' vor," *Der Spiegel*, June 19, 2009, <http://www.spiegel.de/politik/deutschland/bnd-untersuchungsausschuss-union-wirft-steinmeier-doppeltes-spiel-vor-a-631501.html>. See also "Was dürfen deutsche Geheimdienstler? Verhören verboten," *Tagesschau*, August 26, 2007, <https://www.tagesschau.de/inland/meldung144956.html>.

⁴⁹ "Geheimdienst-Gremium: Abgeordnete ließen Regierung im Fall Kurnaz freie Bahn," *Der Spiegel*, January 31, 2007, <http://www.spiegel.de/politik/deutschland/heimdienst-gremium-abgeordnete-liessen-regierung-im-fall-kurnaz-freie-bahn-a-463567.html>. See also "KSK: Drastisches Votum der Opposition," *Der Spiegel*, May 10, 2008, <http://www.spiegel.de/spiegel/print/d-56898789.html>.

⁵⁰ "Opposition dringt auf Aufklärung in Kundus-Affäre," *Focus*, December 10, 2009, http://www.focus.de/politik/deutschland/konflikte-opposition-dringt-auf-aufklaerung-in-kundus-affaere_aid_461765.html. See also "Luftangriff bei Kundus: 'Unvereinbar mit dem Mandat,'" *Süddeutsche Zeitung*, May 17, 2010, <http://www.sueddeutsche.de/politik/luftangriff-bei-kundus-unvereinbar-mit-dem-mandat-1.149989>.

⁵¹ "Kunduz-Affäre: Bundeswehr feiert Oberst Kleins Entlastung," *Spiegel*, April 20, 2010, <http://www.spiegel.de/politik/ausland/kunduz-affaere-bundeswehr-feiert-oberst-kleins-entlastung-a-689957.html>.

During the investigation of the NSU complex, domestic intelligence authorities were widely criticized. Before a final conclusion was reached, rumors abounded that the Office for the Protection of the Constitution or other aligned agencies were somehow involved in the killings.⁵²

The work of the “NSA committee” again drew much public attention.⁵³ This was particularly the case after reports hinted in fall 2013 that the chancellor’s mobile phone had been wiretapped. Later the interest in NSA activities and their impact on the transatlantic relationship died down. The focus shifted back to the BND after it was accused of collecting data without any legal basis. In 2014, the service had difficulties explaining which key words it had been sharing with partners in joint electronic reconnaissance operations. There was a growing number of allegations that the BND, too, had the capability to gain access to the data of allies.

In sum, media portrayal of all the incidents investigated in this paper differs from the dry and voluminous final reports by the committee. While the official reports submitted by coalition drafters do reveal misconduct and even thoughtless decision-making on behalf of security sector protagonists, the dissenting opinions by the opposition continue to stress doubt, discomfort, and allegations of willful violations of law and incompetent authorities. It is the latter view that framed the public’s perspective on the security sector’s work. Hence, the public portrayal of the committees’ findings did not seem to have led to a balanced discussion on how to improve performance. Of course, inquiries need to be equally understood as arenas for heated political debates between opposition and government parties. Nevertheless the overall tone suggest a shift toward disapproval or negative perceptions of the security architecture.

Lessons Learned

First, *ad hoc* inquiries are good tools to expose wrongdoing. The committees of inquiry have uncovered severe deficiencies and cases of misconduct over the past twenty-seven years. They have certainly encouraged decision-makers to think about political implications before launching sensitive operations. That in itself proves that parliamentary oversight is essential. In most cases, however, the inquiry reports suggest that shortcomings did not constitute any breaches of national or even international law.

⁵² “Die NSU-Untersuchungsausschüsse der Parlamente,” *Telepolis*, December 14, 2016, <https://www.heise.de/tp/features/Die-NSU-Untersuchungsausschuesse-der-Parlamente-3342014.html>. For more on shredded case files, see Toralf Staud, “Die Geheimnisse des Lothar Lingen,” *Zeit*, January 19, 2017, <http://www.zeit.de/2017/04/verfassungsschutz-lothar-lingen-akten-nsu-umfeld-vernichtung/komplettansicht>. For more information linking the case of a victim in Kassel with the general phenomenon of young neo-Nazi groups, see “Machtrausch des Verfassungsschutzes,” *FAZ*, March 3, 2015, <http://www.faz.net/aktuell/rhein-main/kritik-am-verfassungsschutz-nach-nsu-mord-in-kassel-13459998.html>. For further allegations, see “Eine SMS setzt den Verfassungsschutz unter Druck,” *Süddeutsche Zeitung*, November 16, 2016, <http://www.sueddeutsche.de/politik/nsu-prozess-eine-sms-setzt-den-verfassungsschutz-unter-druck-1.3252992>.

⁵³ See “Die deutsche Heuchelei,” *Spiegel*, November 11, 2015, <http://www.spiegel.de/politik/deutschland/bnd-soll-deutschen-diplomaten-und-frankreichs-aussenminister-ausgespaecht-haben-a-1062241.html>. See also Kay Biermann, “Geheimdienstkontrolle verliert gegen Staatswohl,” *Zeit*, November 15, 2016, <http://www.zeit.de/digital/2016-11/bundesverfassungsgericht-nsa-selektoren-bundesregierung-herausgabe>.

Second, parliamentary control was enhanced over the last two decades. Several new control mechanisms were introduced. Amongst them are the Law of Parliamentary Investigation Committees, the amendment of the Law on the Parliamentary Control of Intelligence Services, the introduction of new service regulations, and several reforms. In 2016, the Bundestag appointed an Ombudsman for the intelligence services. These reforms and the many intra-agency restrictions were criticized for having immobilized the security sector's capabilities to a critical degree in the past decades. In addition, austerity measures scaled down the staff of military, police, and intelligence, putting further pressure on this sector capacity-wise. This downsizing was not done solely in order to meet fiscal stability criteria, but also as a result of the misplaced belief of the 1990s that no external or internal adversaries could threaten Germany's peace and stability.

Third, when analyzing *ad hoc* committees of inquiry on security matters over the past quarter of a century, one fact that is often overlooked is that the overall ratio between the above-described topics related to the security sector far outweigh investigations related to other policy fields. These were an inquiry investigating the privatization agency's (*Treuhandanstalt*) role after the German reunification; the committee examining HIV infections caused by insufficient safety measures (both 1993 and 1994); an inquiry on illegal party financing (1999 – 2002); the so-called "Election Fraud" committee on the fiscal situation before the 2002 campaign (2003); the "Hypo Real Estate" inquiry on the responsibility for the disastrous condition of the HRE Holding plc. (2009); and the "Gorleben" committee on permanent storage sites for nuclear waste (2009 – 2013).

Doing the math, these six investigations into such diverse areas as energy safety, political party financing, wide-spread diseases, and bad bank scandals only formed one-third of the total number of *ad hoc* parliamentary inquiries. The other twelve consisted solely of inquiries corresponding to security issues. This clearly illustrates that security matters are twice as often investigated than non-security issues.

This ratio could suggest that the security agencies themselves constitute the biggest threat to Germany and its citizens. Whether this spin had or has an impact on security agencies' personnel remains a matter of speculation. Staff members would most likely welcome revelations of shortcomings and misconduct. Still, it might be depressing that the occupational profile has been tainted by twenty-seven years of largely negative portrayal. German security sector decision-makers and political protagonists have only recently developed a counter-narrative. Hans-Georg Maaßen, President of the Office for the Protection of the Constitution, said,⁵⁴ "Some consider the intelligence services to be the real enemies of freedom [...]. The picture presented to the public [...] is biased, as if my staff members [...] were constantly breaking the law."

⁵⁴ See "Der Geheimdienstchef mahnt zu Wachsamkeit," *Aachener Zeitung*, February 20, 2015, <http://www.aachener-zeitung.de/news/politik/der-geheimdienstchef-mahnt-zu-wachsamkeit-1.1032085>.

The overall public image even caused senior politicians to intervene. In the context of the attack at the headquarters of the satirical magazine Charlie Hebdo on 7 January 2015 and the recurring debate in Germany on data protection and the work of the intelligence services, Minister of Finance Schäuble stated,

If we treat the police, the Office for the Protection of the Constitution, and the intelligence agencies like a bunch of fools whom we fear for undermining our rights, we should not be surprised that they are actually unable to protect us the way they are supposed to...⁵⁵

After the Breitscheid Platz attack, German Interior Minister de Maizière added, “The state is not the adversary of a free society but its instrument [...] The democratic state doesn’t threaten freedom; it protects it.”⁵⁶

Conclusion

Taken the above stated into account, it is incomprehensible that the Amri case was not investigated by an *ad hoc* parliamentary inquiry on the federal level and was instead left to state level inquiries enjoying little national media attention. Certainly, the Christmas market attack differs from most of the circumstances that led to previous inquiries on the federal level. Most of the subjects had not dealt with casualties, but rather with ill-advised intelligence activities concerning data exchange and similar subjects. The Kunduz case differs because it was about a German-initiated air strike during a NATO mission that killed citizens in a foreign country. The case of Anis Amri is about a foreigner in Germany who killed twelve people in Berlin.

If the Breitscheid Platz plot is at all comparable to any of the above-described affairs, it would be comparable to the NSU case. In both cases, the menace hid inside Germany, random victims were chosen to suit the terrorist intentions, and authorities misjudged the perpetrator’s potential. The NSU killings and the terrorist strike in Berlin differ in the complexity of the details. While the NSU case revealed that informant arrangements needed a thorough review, investigations of the vehicular ramming attack have focused on who failed to arrest Amri and deport him to Tunisia before he was able to act. This particularity may have presented the biggest concern because it might not be detachable from the entire legislative and administrative establishment that allowed the jihadist to invent several identities while seeking asylum in several German towns.

For an outside observer, security architecture bashing seems to have been the *Leitmotiv* of inquiries for more than a quarter of a century. The Berlin attack still had the potential to become a game changer. Following a number of foiled terrorist plots in 2016 and early 2017, public

⁵⁵ “Schäuble fordert Vorratsdatenspeicherung,” *Handelsblatt*, January 9, 2015, <http://www.handelsblatt.com/politik/deutschland/nach-attentat-von-paris-schaeuble-fordert-vorratsdatenspeicherung/11210454.html>.

⁵⁶ “Terror sparks call to centralize German police powers,” *Politico*.

reaction to this attack was a call for a more robust security architecture.⁵⁷ Hence, a potential committee of inquiry on the federal level after the September 2017 elections would need to be viewed through different lenses than previous investigations. The instruments of a parliamentary *ad hoc* inquiry at hand proved to be excellent. For now, it seems that the *Bundestag* missed its chance to use the power to assess files, to summon witnesses at all levels of government hierarchy and thus to ascertain why public security could not be maintained on the evening of December 19th in Berlin. Hence, an ad hoc federal inquiry into the Breitscheid Platz plot, handled with a sober tone and without spin, could have eventually best serve to prevent similar attacks and pay tribute to the Polish, Italian, Israeli, Czech, Ukrainian, and German victims.

⁵⁷ Emphasizing the common interest of all parties in Bundestag to abstain from a thorough investigation for political agenda reasons: “In der Flüchtlingsdebatte fehlt es an Realismus,” *Welt*, February 9, 2017, <https://www.welt.de/debatte/kommentare/article161925183/In-der-Fluechtlingsdebatte-fehlt-es-an-Realismus.html>.

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