

HUMBOLDT-UNIVERSITÄT ZU BERLIN



NETWORK EAST-WEST



6 - 19 August 2018

HUMBOLDT-UNIVERSITÄT ZU BERLIN

RUSSIAN-ARMENIAN UNIVERSITY YEREVAN

SPONSORS OF THE PROJECT

Paul-Mintz Gesellschaft e.V.

Meyer-Struckmann-
Stiftung

HUMBOLDT-UNIVERSITÄT ZU BERLIN



NETWORK EAST-WEST

Law Faculty of the Humboldt University Berlin
10099 Berlin

Project Supervisor: Prof. Dr. Martin Heger

This Journal was printed by the print office of the Humboldt University.

PREFACE



Liebe Studierende,

auch in diesem Jahr konnte das Netzwerk Ost-West mit seinen rechtsvergleichenden Seminaren in Osteuropa das breite Angebot der Humboldt-Universität zu Berlin um wichtige Lehrveranstaltungen bereichern. Zum zweiten Mal in Folge konnten wir Projekte mit sechs Universitäten in Mittel- und Osteuropa anbieten und damit insgesamt 60 Studierenden der Juristischen Fakultät die Gelegenheit bieten, sich wissenschaftlich zu betätigen, internationale Erfahrung zu sammeln und somit wichtige Impulse für ihren eigenen Werdegang zu setzen. Dass unsere Studierenden dabei zugleich den Gedanken der Völkerverständigung in praktischer Arbeit umsetzen, ist für uns Freude und Ansporn zugleich, an unseren Projekten festzuhalten und diese stetig zu verbessern.

Zu unseren Partnern zählten wie bereits im vergangenen Jahr sechs renommierte Hauptstadtuniversitäten in den Ländern Mittel- und Osteuropas: Dazu gehörten die Juristischen Fakultäten der Universität Lettlands in Riga, der Nationalen Taras Schewtschenko-Universität in Kiew, der Staatlichen Ivane Javakhishvili Universität in Tiflis, der Eötvös-Loránd-Universität in Budapest, der Karls-Universität in Prag sowie der Russisch-Armenischen Universität in Jerewan.

Die Projektphase verlief vom 06.-19. August 2018. Dabei fand erneut die erste Seminarwoche an einer unserer Partneruniversitäten statt. Während der zweiten Seminarwoche trafen sich alle Projekte an der Humboldt-Universität zu Berlin. Hier haben wir wieder intensiv darauf hingearbeitet, dass sich die einzelnen bilateralen Austauschprojekte zu einem internationalen Gesamtprojekt verbinden. Hierzu hatte es bereits in den vergangenen Jahren einige gemeinsame Veranstaltungen gegeben. Im Jahr 2018 wurde den einzelnen Projekten unter anderem die Gelegenheit gegeben, sich und ihre Arbeit den anderen Projekten vorzustellen, was auf sehr positive Resonanz gestoßen ist. Wie bereits in den Vorjahren haben wir alle Gruppen zu einer gemeinsamen Abendveranstaltung und einem Grillfest eingeladen. Hier wollen wir auch künftig Schwerpunkte setzen, mit dem Ziel, den Kontakt der einzelnen Delegationen zueinander zu fördern und weitere bi- und internationale Kooperationen herzustellen.

Auf eine erfreulich große Resonanz ist auch in diesem Jahr unser Abend für Alumnae und Alumni gestoßen. Viele unserer Ehemaligen sind inzwischen in ganz unterschiedlichen Positionen tätig, was den Abend auch für unsere aktuellen Projektstudierenden so interessant gemacht hat. Bei Bier und Bratwurst hatten die Teilnehmerinnen und Teilnehmer der Seminare die Gelegenheit, ganz ungezwungen mit Richtern, Staatsanwältinnen, Rechtsanwältinnen und Referenten des Bundesministeriums für Justiz und Verbraucherschutz ins Gespräch zu kommen.

Ich freue mich sehr, dass mit dem vorliegenden Projektjournal eine Publikation entstanden ist, die die Fachthemen des Seminars sowie die Veranstaltungen des Rahmenprogramms vorstellt und festhält. Dieses Journal sowie alle weiteren Projektjournale sind auch in digitaler Form auf unserer Homepage www.netzwerk-ost-west.de abrufbar. Den Autorinnen und Autoren des Journals danke ich für ihre Arbeit.

Die Seminare des Netzwerk Ost-West waren von Beginn an als studentische Initiativen ausgelegt und leben bis heute maßgeblich vom unermüdlichen Einsatz der ehrenamtlich tätigen Organisatorinnen und Organisatoren sowie Tutorinnen und Tutoren. Ihnen sei an dieser Stelle zuvorderst herzlich für ihren Einsatz im Projektjahr 2018 gedankt!

Einen besonderen Dank möchte ich an dieser Stelle auch allen Mitarbeiterinnen und Mitarbeitern der Humboldt-Universität und unserer Partneruniversitäten im Ausland aussprechen, die in der Planung und Durchführung der Seminare tätig waren. In Berlin sind dies insbesondere die Mitarbeiterinnen der Stabstelle Internationalisierung der Humboldt-Universität sowie die Koordinatorin Hannah Rainer und der

Koordinator Michael Jahn, die sich an meinem Lehrstuhl federführend um Projektanträge, Administration und Einsatz der Projektmittel sowie um den Fluss der gesamten organisatorischen Abwicklung und den Kontakt zu den Partneruniversitäten kümmern.

Wir blicken bereits zuversichtlich auf das Projektjahr 2019. Sowohl das Interesse an unseren Programmen als auch das Engagement bei der Planung und Durchführung sind ungebrochen. Erneut konnten aus dem Kreis der diesjährigen Teilnehmerinnen und Teilnehmer wieder engagierte Studierende für die Weiterführung der Projekte 2019 gewonnen werden. Ihnen wünsche ich viel Erfolg beim Meistern der größeren und kleineren Herausforderungen, die eine solche Projektorganisation – von der Auswahl der Beteiligten bis zur Abrechnung der Projektmittel – mit sich bringt.

Nicht zuletzt möchte ich an dieser Stelle hervorheben, dass unsere beliebten Austauschprojekte nicht ohne die wohlwollende und umfangreiche Förderung der Meyer-Struckmann-Stiftung zustande gekommen wären. Dies gilt außerdem für den Deutschen Akademischen Austauschdienst (DAAD), der seit 2016 im Rahmen der CENTRAL-Partnerschaften die Projekte Budapest und Prag ermöglicht.

Herzlichen Dank!



Prof. Dr. Martin Heger

Projektleiter

EDITORIAL

For the fourth time, Network East-West brought together students from the Russian-Armenian University in Yerevan and the Humboldt-Universität zu Berlin. We – law students from both universities – dealt with the topic

Exchanging Freedom for Security? The Expansion of State Powers in Public and Criminal Law

and compared, discussed and questioned the legal approaches of Armenia and Germany, with their differences and similarities.

When thinking of Armenia, many in Germany don't know much about this small country in the very eastern part of Europe. It was the same for many of the German participants. Except for this year's revolution in Armenia which we had heard of in the news, some historical facts we knew and things we researched in advance, it was a completely unknown country for us. And we realised this quite often.

It was not only the academic exchange and the things we learnt about both legal systems, but also the intercultural experience with people we met and their culture that was at many times surprising and new for us.

We all had an incredibly interesting and absolutely eventful time in Yerevan and in Berlin. In this Journal we want to share our knowledge about the legal systems with you, but also give you an insight in the intercultural exchange we happily were able to experience. We, the participants, are thankful for everyone who enabled us to be a part of this unique programme.

Please take some time and enjoy reading about our experiences, and for those who took part: Enjoy the memories!

Friederike Handwerg

PARTICIPANTS OF THE PROJECT

| | Germany | Armenia |
|-------------------|--|--|
| Lecturers | Tanja Altunjan Sandra Lukosek | Anush Hakobyan John Hayrapetyan |
| Organisers | Julian Siefert Antonius Albert Achtner | Shushanna Aleksanyan |
| Students | Malena Weduwen Johannes Schwab Tarik Riedel Friederike Handweg Simon Ruhland Anile Tmava Martha Frittrang Julius Rupprecht Celin Mousa Elisabeth Ruyter | Roza Amirova Anzhelika Arushanyan Mikael Arshakyan Taron Asatryan Hovsep Kocharyan Anzhela Abrahamyan Anna Kocharyan Mane Avagyan Arman Piloyan Seda Minasian |



CONTENT OF THE JOURNAL

DAILY REPORTS

YEREVAN

| | | |
|------------|----------------|----------|
| Monday, | 6 August 2018 | Page: 1 |
| Tuesday, | 7 August 2018 | Page: 3 |
| Wednesday, | 8 August 2018 | Page: 5 |
| Thursday, | 9 August 2018 | Page: 7 |
| Friday, | 10 August 2018 | Page: 9 |
| Saturday, | 11 August 2018 | Page: 11 |
| Sunday, | 12 August 2018 | Page: 13 |

BERLIN

| | | |
|------------|----------------|----------|
| Monday, | 13 August 2018 | Page: 15 |
| Tuesday, | 14 August 2018 | Page: 17 |
| Wednesday, | 15 August 2018 | Page: 19 |
| Thursday, | 16 August 2018 | Page: 21 |
| Friday, | 17 August 2018 | Page: 23 |
| Saturday, | 18 August 2018 | Page: 25 |
| Sunday, | 19 August 2018 | Page: 25 |

ABSTRACTS

A new balance: Civil liberties after 9/11 in national and international law

By: Malena Weduwen ~ p. 29

Why so secret? The role of intelligence agencies in a free and democratic society

By: Johannes Schwab ~ p. 31

The role of police and national armies in the fight against terrorism

By: Tarik Riedel ~ p. 33

Current developments in European security and defense law

By: Friederike Handweg ~ p. 35

Fighting terror with war? The (il)legality of drone warfare and targeted killings under international law

By: Simon Ruhland ~ p. 37

A new battleground: cyberattacks as methods of war and terror

By: Anile Tmava ~ p. 39

The crime of terrorism: an international issue?

By: Martha Frittrang ~ p. 41

Terrorism and national criminal law in Germany and Armenia

By: Julius Rupprecht ~ p. 43

Surveillance in the digital age: legal requirements and limits of telecommunications surveillance

By: Celin Mousa ~ p. 45

Data retention in national and European law

By: Elisabeth Ruyter ~ p. 47

MONDAY, 6 AUGUST 2018

Sunday evening marked the beginning of our exchange program, when the German group gathered at the airport in Berlin for the long aspired departure to Yerevan. As several get togethers had already been organized in Berlin, we had already had the chance to meet and get to know the participants, organizers and tutors beforehand. Waiting for the flight we spent the remaining two hours listening to music, playing games and getting to know each other a little better. A little tired but still full of excitement we finally boarded the plane and before we knew it we arrived early in the morning with a two-hour time difference to Germany at the Zvartnots Airport in Yerevan.



At our hostel, we were warmly welcomed by the Armenian organizer and several participants. Early on, we experienced the Armenians' openness, helpfulness and hospitality. They immediately showed us around the neighborhood, accompanied us to banks and supermarkets and were happy to answer any questions we had.



After checking into the hostel and allocating the rooms we had a little bit of time to catch up on the lack of sleep and to get ready for lunch at the Russian-Armenian University (RAU). At lunch, it was the first time that all German and Armenian participants had gathered together to share a meal and get to know to each other a little better. Many seized the opportunity to introduce themselves to their exchange partners and exchanged host presents brought from their hometowns from either Germany or Armenia.

by: Celin Mousa

We were welcomed to RAU by Larisa Alaverdyan, Dean of the Law Faculty. Following the welcoming meeting our Armenian peers showed us around the University campus including the sport facilities and places for students to hang out like a beautiful garden covered with cherry trees. RAU offers a diverse range of undergraduate, graduate and postgraduate programs. The main language of instruction is Russian; however, courses in Armenian and English are also offered. Upon graduation, students receive two diplomas in Armenian and Russian. The University comprises 31 Departments and 8 Institutes: Institute of Mathematics and Informatics, Physics and Engineering, Biomedicine and Pharmacy, Economics and Business, Law and Politics, Humanities, Oriental Studies, Media, Advertising and Film Production.



Later in the afternoon our Armenian peers took us to the city center and showed us the Republic Square where in April and May 2018 tens of thousands of Armenians gathered to demonstrate against the former government of then Prime Minister Serzh Sargsyan, who had served as President prior to the constitutional reform establishing a parliamentary democracy, and demanded new political leadership. These demonstrations, known as the Velvet Revolution, were a big success, not only inducing a regime change by paving the way for Nikol Pashinyan, but also giving the Armenian society hope for a better future.



While strolling around the streets of Yerevan we started playing Armenian and German group games or, as we used to call them, “energizers”. In the evening we ate dinner at a traditional Armenian-Georgian restaurant. While indulging in new and exotic dishes, a live band playing traditional Armenian music intensified the cultural experience. Rounding off the night of a beautiful start in Yerevan we invited our Armenian friends to our hostel where we shared drinks and celebrated the birthday of one of our German participants.



TUESDAY, 7 AUGUST 2018

The next morning our day started at 9am with a delicious breakfast offered by our hostel. Ready to jump-start the day we first visited the Office of Human Rights Defenders of the Republic of Armenia, an ombudsman institution.

The Human Rights Defender is an independent institution which monitors state and local self-governing bodies and officials. In line with its constitutional mandate, the Human Rights Defender's



Office takes everyday actions to address alleged violations of human rights and freedoms and makes proposals for their elimination. Furthermore, it was explained to us how the Office and its subdivisions are structured and organized. The Office gives free legal consultations, especially through its hotline, and tries to raise awareness of its existence and the importance of the protection of human rights, especially children's rights.

After a long and very informative question and answer session, we went back to RAU for lunch. Afterwards we were given nearly two hours to work on our presentations together with our partners. For each topic, one German and one Armenian student were assigned to research the legal situation in their respective countries. During the group work we drew a comparison between both legal systems and their different approaches to tackle pressing legal issues of the modern age.



by: Celin Mousa

Later in the afternoon we spent our free time strolling around and exploring the streets of Yerevan a little further. Checking back into the hostel we got invited to watch a soccer game of the Yerevan team against Tel-Aviv. The soccer game was one of the striking examples that showed us how attached and proud their country and on how community spirit is that unites people was shouting and team. The atmosphere in the stadium was electric and one the strong bond of and the pride for their



Armenians are of strong the them. The mass of cheering for their rather small could really feel companionship country.



Even though the game ended in a tie, we didn't let that ruin our night so we went up to the Cascades enjoying the beautiful view of Yerevan at night and some food and drinks with our newly won friends.

WEDNESDAY, 8 AUGUST 2018

On Wednesday most of the sleep lost during our flight and stay in Moscow was retrieved and therefore, we were probably more awake than at any other day of our stay in Armenia. We spent the morning with another intense preparation session of our presentations. Parallely the first tutor talks took place where German participants received feedback for their seminar papers and advice for presentation and discussion. I, too, had an intense feedback conversation with my tutor (Sandra).



After lunch we took off to the Constitutional Court of Armenia. The building is located just a little down the road from the Assembly of Armenia which apparently emphasizes another aspect of separation of powers than in Germany or e.g. the neighbouring (also small and Caucasian) country Georgia, where a symbolic local separation is in place, namely that it is the court's daily task to supervise the parliament's work in close contact to it and its members.



In the court we talked to the head of the International Relations Department Armenak Minasyants who explained that international and especially a European exchange between constitutional courts is crucial for the courts of post-soviet states where constitutional jurisdiction did not exist in the past or was only equipped with far less competencies than today. He nevertheless pointed out that today, even in democratic societies, the independence of constitutional courts is endangered again.

Mr. Minasyants also mentioned that the revolution in April 2018 changed the attitude towards state institutions, which won more confidence within the Armenian society and that therefore a lot more work for the court is to be expect. He furthermore pointed out that the revolutionary government is not going to pass any short-term changes regarding Armenian foreign policy, as especially the close connection to Russia is still crucial for its military and resource security. According to Mr. Minasyants, only the cooperation with the neighbouring countries of Iran and Georgia is going to be intensified.



by: Julius Rupprecht

Subsequently, a representative of the Legal Advisory Department informed us about procedural changes of the court since the reform of the constitution in 2016. Apparently, now a lot more complaints are filed and there is the possibility of a chamber procedure similar to the German system, which made the court more efficient. Differently to the German Constitutional Court, in Armenia individuals are able to file a complaint directly against a law, whereas it is impossible to take legal action against a judgment at the constitutional court.

Following to the interesting and exhausting court visit, we went by taxi (and partly with a lot of ice cream) to the Genocide Museum and Memorial complex Tsitsernakaberd, which is situated on one of the three biggest hills of Yerevan. It contains a garden of pine trees, each one



planted by a foreign dignitary to honour the victims. An incredible view over the whole city opened up in front of us and for short, we could for the first time, surmise the huge mountains surrounding it through the ubiquitous mist.

Tsitsernakaberd is dedicated to the approximately 1.5 million Armenian victims of the genocide which took place between 1914 and 1923, committed by the Ottoman government. The memorial itself consists of twelve slabs, positioned in a circle to represent the Armenian provinces lost to



Turkey. The museum explained the political and religious backgrounds of the genocide in a very detailed and drastic way. Therefore, it would have been instructive if we had been able to stay there for a moment longer in order to read all the text provided.

In the exhibition also, the responsibility of the German Empire was mentioned which not only consisted in knowing what was going on via reports of various envois but also in supply of weaponry. Interestingly, the direct support of the genocide by the German monarchy is not mentioned in the resolution of the German Bundestag.

In the evening, we celebrated Mane's birthday on the cascades and went to a small cellar club close by, in order to relax a bit from the heavy information gained throughout the day by dancing like crazy to chart hits.

THURSDAY, 9 AUGUST 2018

Our fourth day in Yerevan started for some of us with a round of morning yoga in the courtyard of the hostel, while others preferred to sleep longer. After the taxi drive to the RAU, we had two final hours with our partners to finish our presentations and hand them in to our tutors.

After lunch in the university cafeteria, we visited the National Assembly of Armenia, where we met Eduard Sharmazanov, the Vice President of the National Assembly. He is a member of the Republican Party, which deployed Serzh Sargsyan as Prime Minister of Armenia until the change of government in April 2018, also known as the Velvet Revolution. The party still holds the majority in the National Assembly; new elections will probably only take place towards the end of 2018. The meeting was held in a question & answer style. The controversial exchange between Sharmazanov and the Armenian students on the topic of the turbulent political situation was interesting to witness. The first Human Rights Defender of Armenia and Dean of RAU's law faculty, Larisa Alaverdyan, whom we had had the pleasure to meet on our first day in Yerevan and who saw the former government rather critical, also attended the meeting and shared her views.



by: Elisabeth Ruyter

This political program point was followed by a cultural one: the visit of the Ararat brandy factory. First we followed a guided tour, where we learned a lot about the production and the history of Ararat



brandy. The legend says that Stalin served an Ararat brandy at the Yalta conference in 1945 to Churchill, who immediately fell in love with it and therefore received 12 bottles from the USSR ambassador in London monthly. When the quality of the brandy decreased, Churchill approached Stalin about this problem, who, after a few investigations, freed the technical director of the manufacture from a non-voluntary stay in Siberia. After the tour, we tried different kinds of brandy ourselves, following every trick in the book including swinging the glass around and sniffing from different distances to catch the different aromas with more or less success.

After enjoying the brandy, we had some free time at the Republican square where we sat at the fountains and dipped our feet into the water. For dinner, we enjoyed typical Armenian food in high amounts. Afterwards, we spent some time at the Cascades and then went even further up the hill, until we finally reached Mother Armenia in the Victory Park. The Mother is a high stone statue (51 meters with its pedestal), which overviews the city with firm stare and sword in the hand in the direction of the Turkish border, surrounded by old military vehicles.



She replaced a Stalin statue in 1962 and symbolizes the protection of the city. From the hill, we had an astonishing view on the nightly Yerevan. While a part of the group went home by taxi, the rest of us descended by foot from the hill through the Cascades and the city.



FRIDAY, 10 AUGUST 2018

Friday was the last day of our academic program in Yerevan and the first day of presentations. The morning yoga group, motivated by our dear tutors Tanja and Sandra, was active again. During breakfast, the cats stubbornly kept company with us, then we went to the RAU by taxi.

The first presentation was held by Malena and Roza on the topic „A new balance: Civil liberties after 9/11 in national and international law“. It gave us an introduction into the abstract conflict and historical background of freedom and security and the security legislation in Germany and Armenia after the 9/11 attacks, where especially in Germany the possibilities for preventive measures were increased.



After a short break, Johannes and Anzhelika delivered a presentation on the topic „Why so secret? The role of intelligence agencies in a free and democratic society“. Particularly, they raised the issue whether secret services can be controlled effectively despite their secrecy and whether the usage of secret services can be legitimized when the suspected persons or groups have not even started to try to commit a crime. The controversial discussions continued during lunch in the cafeteria.

by: Elisabeth Ruyter

We then had a lecture about a quite delicate topic: the Artsakh Republic, whose ombudsman and Human Rights Defender Ruben Melikyan visited us at RAU. The Artsakh Republic in the region of Nagorno-Karabakh is an independent de-facto-regime inhabited mostly by Armenians, which is not recognized as a state by the majority of the international community and instead seen as a part of Azerbaijan. The conflict has led to the Nagorno-Karabakh war between 1988 and 1994, and until today there is the constant fear of a new eruption. Ruben Melikyan talked about the efforts to improve the relation with other states, about fundamental rights in Artsakh and the geopolitical situation from the Artsakh perspective. Particularly, he expressed his hope for more support by the European Union.



Afterwards, we went to the Matenadaran (which means „library“ in old Armenian), a museum for medieval manuscripts and books, where we enjoyed a guided tour. It was fascinating to see how colourful and artful scripts were produced in ancient times and how the colours were manufactured. We were also introduced to the Armenian alphabet, which has 36 letters and was created in 405 by the monk Mesrop Mashtots.

We had free time after visiting the Matenadaran, which some used to go to a flea market for clothes, others to a food market and a few went (accidentally) back to the hostel. The food market was in a big hall with a lot of stalls, where one could bargain for delicious Armenian sweets, dried fruits, fruits and vegetables and of course also the Armenian bread lavash.

For dinner, we went to a restaurant located on the 8th floor with amazing views over the city. The live music soon drove all of us to the dancefloor. The only problem was only the sudden thunderstorm, which soaked our chairs. But in the club Papparazzi, where we went after dinner, we could dance until late in the night.



SATURDAY, 11 AUGUST 2018

Earlier than we had all hoped, our time in Yerevan came to an end. Before we had to pack and rest for the trip home on Sunday, we wanted to get to know Armenia outside of its capital. Therefore, on Saturday morning a bus picked us up at RAU and took us on a tour to Lake Sevan. Sevan is the largest lake in Armenia and is located at an altitude of 1,900 metres above sea level. It is popular among Armenians who want to escape the hot summers of Yerevan, as the temperature in the region is usually more pleasant than it is in the capital and the lake itself offers plenty of opportunities to cool off.



Our first stop was the monastery of Sevanavank. The beautiful cloister complex was built on a peninsula overseeing the Northern part of the lake. While some indulged in the location's rich history – built in the 9th century it is one of Armenia's most famous historic sites – others simply relaxed in the sun and enjoyed the magnificent view of the lake.



by: Simon Ruhland

Our stay at the monastery was brief, the bus soon dropped us off at our next stop: a rustic Armenian restaurant, hidden at a lonely part of the lake's shore. While we were waiting for our food, we discovered the true highlight of the restaurant, a small sandy beach and a picturesque old swing right next to the water. Photos of both can now be admired on all our Instagram profiles. After our lunch – traditional Armenian food including fish so fresh we probably saw it swim in the water just minutes earlier – some of us decided to go for a swim, while the rest watched them shiver as they emerged again from the cold water.



Our next stop was a quaint local music festival. Or at least it should have been, as our departure was delayed by a couple of participants sneaking off to get tea and homemade Baclava. Returning twenty minutes late and in a very good mood, the group eventually arrived at the bus and we could all depart for the last stop of Sevan. When we local band present take on classics like after half an hour, blankets nor sipping any longer in the



the trip: the music festival in were finally there, we listened to a their latest creations and their own “I Shot the Sheriff”. However, neither wrapping ourselves in hot tea could motivate us to stay cold.

So, we made our journey back to Yerevan to spend the last full evening in Armenia. After having dinner at a very small and very cozy joint – the owner had never seen so many people in her bar! – we said goodbye to our Armenian friends who left to pack and spend to the last day with their families before joining us again in Berlin. The German group moved on to the hostel, where we overcame our tiredness from the long day with a glass of Ararat, staying in Julian's and Antonius' room until early in the morning.

SUNDAY, 12 AUGUST 2018

On our last day in Armenia we rented a bus to explore the surroundings of Yerevan.

Our first stop led us to what is considered to be the oldest cathedral in the world, Etchmiadzin Cathedral. The complex surrounding the cathedral is called Mother See of Holy Echmiadzin, the equivalent to the Catholic Vatican for the Armenian Apostolic Church. Here, the head of the church, the Catholicos of all Armenians, has his seat.



After a short stop for ice cream we headed to the monastery Khor Virap. It is said that Saint Gregory the Illuminated was imprisoned there by King Trdat the 3rd for 12 years because of his religion. For that, the king was punished with madness until being healed by his prisoner Saint Gregory. Following that, he converted to Christianity and Armenia became the first country to have been declared as a Christian nation.



by: Martha Frittrang

From the monastery on the foot of Mount Ararat, we had a beautiful view of the mountain which is still a national symbol of Armenia, even though it is today located on the other side of the closed border to Turkey. We ate our picnic in the shade of the trees as it was again a very hot day. Freshly



energized by the food and some energizer games we walked up to the monastery. We were not alone: Khor Virap is an important Armenian pilgrim center and thus very crowded. In addition to that, the blessing of the grapes was celebrated on the day of our visit in honor of the religious holiday of the Assumption of Mary, which explained why so many people walked around the monastery with grapes in their hands.

In groups we climbed down to the well where Gregory is said to have been imprisoned, or a little bit higher up the mountain to enjoy the clear view of Mount Ararat. While some used the bus journey on the way back to practice for a Mamma Mia karaoke performance in Berlin, most of the group showed signs of the lack of sleep built up over the last week.



Back in Yerevan and after a short rest in the hostel we headed back to our favorite place in the city, the Cascades, where we spent the rest of the evening eating pizza and enjoying the view of illuminated Yerevan before we finally had to pack and head to the airport. But no reason to be sad: another great week lay ahead of us, only in another setting.

MONDAY, 13 AUGUST 2018

Right after heading back from the Cascades where we spent our last evening in Yerevan together, the German group left the hostel at 3 am. All of us were tired and sad about leaving Armenia. However, everyone was excited for the following days in Germany. After a short layover in Moscow we finally arrived in Berlin at 11 am.



Most of the Germans and Armenians used the rest of that Monday at home or at the hostel to get some rest. Two Armenians used the time together with the German organisers to visit Charlottenburg and got a first insight in the differences between Berlin and Yerevan.



For dinner our two groups met again and we finally welcomed our Armenian guests personally. We ate in Berlin Kreuzberg at the 'Hühnerhaus'. We exchanged first impressions of Berlin and some of us received welcome gifts from the Armenian participants again.



It was a lovely get-together, but all were ready to get some sleep and recover from the long journey.

TUESDAY, 14 AUGUST 2018

It was the first official day in Germany and it was full of academic sessions, culture, entertainment and of course new impressions overall. In the morning our professor for criminal law and head of the Network East-West Prof. Dr. Heger welcomed all participants of this year's projects from Latvia,



Ukraine, Georgia, Hungary, Czech Republic, Armenia and Germany. Each project gave an insight about their first week abroad and shortly presented their plans for the second project week in Berlin. We learnt about the sights and institutions the other projects visited and what they, in the light of our law-studies, learned about the foreign country.

After this introduction we quickly showed our exchange partners around in the law faculty of the 'Humboldt-Universität zu Berlin' before we headed to our cafeteria for lunch. It was a difficult decision for the Armenians what to get, as there were so many ways to combine possible dishes. Also, we struggled with translation for the first time and so we decided to simply show them the food that was served that day. Finally, everyone got something to eat and recharged energy for our first presentation of the seminar papers in Germany.

The presentation held by Mikael and Tarik gave us an insight about Police and Army from an Armenian and German perspective. They explained the distribution of competencies of the police and the army for ensuring security, especially with facing terrorism as a main threat. In Armenia, the army is only responsible for border defence and state safety. In Germany, military actions are defined by the constitution and their extent depend on the interpretation of the relevant constitutional provisions. Problems in defining the extent of military competencies arise especially due to a missing definition of terrorism. The controversial discussion that evolved out of the presentation dealt with the question if the capacities of the police are sufficient for fighting terrorism or if the competencies



of the army shall be reformed and extended. At this point, we especially discussed the psychological effect a more frequent appearance of the military in our daily life would have on the population.

The next point on today's schedule was the visit of the former Stasi prison in Hohenschönhausen. After the introduction video we had a guided tour through the prison. Starting with the old part called 'U-Boot' (submarine) we saw the rare equipment in the cells, where usually four prisoners had to stay at the same time under the hardest circumstances. This part of the prison got its name, because there was no daylight or air incoming. Then, the tour guide took us to the new building. This one had single cells including a table, toilet and sink. In this building, there were almost as many interrogation rooms as cells and we further got to know the well-developed system that made sure no prisoner will ever see another prisoner on the floor while moving between the cell and interrogation rooms. It was interesting for both, Germans and Armenians, to learn about the methods of manipulation and circumstances in the former prison.



After this insight in German history, we went to a restaurant offering typical German dishes in Prenzlauer Berg and thus, discovered another new district of Berlin for the Armenian group. In the style of an Armenian dinner we got a great variety of different meals in the middle of the table and shared everything. The Armenians really liked it and it was also something rather special to eat for the Germans as we realised that traditional German food is not very present in our eating plan. After dinner most of us went to the Wasserturm near Kollwitzplatz to spend the rest of the evening together. While listening to music interesting conversations started again and everyone enjoyed their time together.



WEDNESDAY, 15 AUGUST 2018

Day 3 in Berlin started with three academic presentations in our well-aired classroom in the Kommode.

The first one was on current developments in European Security and Defence Law introducing multilateral security organizations like Interpol. Friederike and Taron highlighted main similarities of security and defence laws in Armenia and Germany. The Armenian perspective also discussed the collaboration between Armenia and Iran concerning national security questions. The presentation led to a vivid discussion on the idea of a European Army covering both Germany's inside and Armenia's outside perspective.



Presentation number two focussed on the legality of drone warfare in international law. Because this was the first topic on a solely international question, Simon and Sarkis started off with a short introduction of international law and its principles. The presenters then discussed new possibilities offered by these modern weapons and their legal consequences.

After lunch Anzhela and Anile gave a presentation on cyber warfare in international law. It began with illustrating possible cyber attacks and then continued by debating how cyber operations can constitute attacks that trigger the right to self-defence or the application of international humanitarian law.

In the afternoon the group walked down Unter den Linden to the Reichstag building. After several selfie-stops we arrived and had a guided tour through the building with a political scientist. He explained the history of the Reichstag and the architectural ideas behind the reconstruction of the building in light of this history. The Armenian students also got a comprehensive explanation of the political life in the Bundestag.



by: Anile Tmava

The very interesting tour was followed by a one-hour long discussion with Cem Özdemir, a German Member of Parliament who was the leading voice of the resolution on the Armenian Genocide, which was passed in the German Bundestag in 2016. Already in 2015, which marked the centennial of the Armenian Genocide, Özdemir had spoken up about Turkey's continued denial of the 1915 genocide



as well as Germany's role in the events. He explained his motivation to push for the resolution, also considering his Turkish descent, and spoke about the effects his engagement had on his personal and political life. Cem Özdemir definitely left a lasting impression on our group.



After the talk we had some time to visit the glass dome on the Reichstag before returning to the Faculty for a barbecue of the Network East-West. There we had the opportunity to meet other participants from all the other projects conducted in Eastern Europe. We all enjoyed our company and had a great evening.

THURSDAY, 16 AUGUST 2018

The Berlin Thursday started with two more academic sessions in our seminar room.

First, the topic of “terrorism – an international issue?” was presented by Anna and Martha. The focus lay on the various attempts that have been made by international organizations and communities to define the term of terrorism. After giving a general overview, the advantages and disadvantages of a binding, international definition of terrorism were outlined. It was very absorbing to learn about the dangers that could arise from a single, binding definition. The speakers impressively stated that each state faces different security challenges and therefore, has to rely on specified definitions. In the discussion, the students concluded that the further development of an international definition and cooperation attempts strongly depend on the general cooperation between states and the influence of international law.



After the first presentation, Mane and Julius presented their topic of “Terrorism and National Criminal Law in Germany and Armenia”. Mane and Julius showed how the Armenian and German lawmaker deal with terrorism in the respective criminal codes and preventive police laws. The central difference between Germany and Armenia can be seen with Armenia having a specific law that defines terrorism. In Germany, the lawmaker has not opted for a general definition, but for numerous offences that can be summarised as anti-terrorism criminal law, e.g. founding terrorist organizations. Furthermore, the speaker laid a special emphasis on the constitutional challenges that inevitably accompany the criminalization of certain behavior, such as the problem of forward displacement of criminal liability, the principle of guilt or the principle of legal certainty. After the presentation, an active discussion took place, in which mainly the tense relation between a state’s possibility to defend itself effectively and citizens’ basic rights was discussed.

Both topics lead to intensive and controversial discussions that revealed strong differences in the participants’ convictions.

BERLIN

by: Tarik Riedel

After lunch, we headed to Mercedesplatz, a spot by the East-side-gallery in a newly emerged quarter of the city. On our way there, sunscreen had to be purchased, as the hottest day of the summer had been picked for the boat cruise. The cruise ship was entered, which took us for an hour cruise on the river Spree through the heart of Berlin. This was not only entertaining for our Armenian friends, who got to see all the impressive buildings of the government quarter in Berlin Mitte, but also for the Berliners, who got a completely new perspective of their home city.



After the boat cruise, the second part of the afternoon program began. We were guests at the Berlin Kammergericht in Schöneberg. A judge

showed us around the impressive building, especially a criminal and civil court room were visited. It was surprisingly calm in court, which hopefully is a sign for efficient jurisdiction of the highest Berlin court. It was very informative to also learn about the dark history of the court, which had been used as Volksgericht/ Special Court by the Nazis to try precedent cases of their dealing with politically unwanted voices. As a reminder, the biggest court room, in which more than 100 Hitler-opponents were sentenced to death, is not used as a civil or criminal court any more.



In the evening, delicious Arabic food was ordered from a little deli in Neukölln and taken to Monbijoupark in Berlin Mitte. From there, a pleasant evening full of joy, laughter and great memories began ...

FRIDAY, 17 AUGUST 2018



Friday started off with the last two presentations and thus, with the end of the academic part. First, Arman and Celin gave a presentation on surveillance measures in the digital age. After that, we heard the last presentation of the program which was held by Elisabeth and Seda: They spoke about data retention, which was followed by a controversial discussion comparing the German and the Armenian situation.

After the last presentation and discussion had ended, we did a final feedback round, in which both sides, the Germans and Armenians once again stated how much everyone enjoyed the exchange. The academic part ended with the tutors handing out the certificates to all the participants in the program and one last group picture in front of the law faculty.



The afternoon was spent individually as the schedule provided some free time. Some took time to nap and recover from the tight schedule and program, some went shopping, others discovered the city by bike, which was quite adventurous as well. Especially for the Armenians it was exciting to discover the big city, as Berlin is several times bigger than Yerevan. This was also shown as some got lost and only found their way back to the group later on. Luckily, everyone showed up again sooner or later.



We finally met up in the late afternoon in Wedding and everyone was ready to leave the over ground world: This time we went to the museum “Berliner Unterwelten”, which is located in a former bunker from World War II inside the underground station Berlin-Gesundbrunnen. We enjoyed a really interesting and informative guided tour through the underground bunker. Throughout the tour, we learned more about the use of the air-raid shelter and got an introduction to the circumstances of life in the era of National Socialism. Since we had not taken a closer look at this period of time in German history in the seminar before, this introduction was especially interesting for the Armenian students, but also the Germans were able to learn something new. National Socialism had also been part of a few of the discussions the days before as an important aspect to understand the partly critical attitude towards security legislation in Germany.



After finishing the tour and finding our way back into daylight, we went to an Asian restaurant in Mitte. As many of our guests had never tried Vietnamese food, especially not the vegan version with Tofu and Seitan, it was quite an experience for some. After a satisfying dinner, most of the group went home or to the hostel to prepare for a proper Berlin Friday night. We gathered at the hostel later and then went to the famous club “SO36” all together to go to an 80ies party. There, everyone enjoyed a cheerful night of fun and dancing, some even stayed until the program continued the next morning...

SATURDAY AND SUNDAY, 18 AND 19 AUGUST 2018



After a long 80's night throwing us back a few decades we faced a morning leading us back centuries. First of all, we visited Neues Palais in Potsdam, a castle quite similar to Buckingham Palace. During the following guided tour (by a lovely old lady) through the castle and the garden Sanssouci we learned about the unique historical paintings, furniture and of the ceilings inside the impressive building, including various stories about its builder, Frederic the Second, King of Prussia. Afterwards we had the possibility to explore the wonderful outer part of this cultural heritage while having a walk through the artfully drafted and implemented garden of Sanssouci. Our morning spent in Brandenburg ended in a restaurant close to the park.



The free afternoon was mainly spent at the lake Schlachtensee with swimming, water melon and various Armenian and German games. In the evening we met again close to Görlitzer Park, at the Italian restaurant Trattori, for our farewell dinner. The pizzas with a diameter of more than a meter brought us a last sharing experience.

BERLIN

by: Johannes Schwab

We spent the subsequent final night together with various song performances at a karaoke bar in Prenzlauer Berg. Abba, Katy Perry, Lady Gaga, High School Musical, Peter Fox and even Wolfgang Petry accompanied us until the morning hours, that ended with a hard farewell with us lost in Berlin.



Sunday, 19th August 2018

On Sunday, the Armenian group left divided into two parts – the first part left in the morning from Schönefeld Airport, the second in the evening from Tegel Airport. Everyone arrived safely home and fell asleep, in both countries, reflecting and enjoying the experiences of the past two weeks.







A NEW BALANCE: CIVIL LIBERTIES AFTER 9/11 IN NATIONAL AND INTERNATIONAL LAW

BY: MALENA WEDUWEN

When looking at the discussion about security and civil liberties one very basic and thereby challenging problem is that there is no clear definition of the term security, although there are different attempts to define it: First of all, there is the historical definition of security, which is very state-centered, meaning that security was strongly connected to borders and the existence of the state itself. The object of reference shifted from the state towards the individual in the 1990s as the concept of human security appeared. This concept focuses on factors like economy, food, health, environment, community and politics. According to this concept, insecurity rather emerges in people's daily lives. Currently, especially in the field of political sciences there is a new and broader attempt to define security: the extended concept of security. This also considers new scenarios like terrorism, failed states and environmental disasters as security issues and hereby combines the dimensions of individual and state security. One thing that all definitions have in common is that security never is a given factor but rather a goal definition that individuals and states aim for.

Many discussions in the field of new security legislation come down to the conflicting goods of security and freedom. This leads to the necessity of taking a closer look at the relationship of the two and the question whether they inevitably contradict each other. This traces back to the basics of constitutional theory: While Thomas Hobbes saw the legitimacy of the state in providing security and creating an assertive monopoly without any boundaries, John Locke constructed the civil liberties as a protection against the state. So historically, one major question was whether the state's legitimacy is based on providing security or providing civil liberties. Nowadays in the political debate, security and freedom are often seen as opponents. However, there is no such thing as absolute security in a constitutional state, so it has to be clear that the fundamental values of our society and state - the right to liberty and the constitution - have to be the standards to every security measure and that the core of these values can never be touched by any measure. Only in this way it

can be ensured that constitutional liberty is maintained and freedom and security are brought into a healthy proportion.

In Germany, there has been a clear legislative reaction to the terror attacks in the United States on September 11th, 2001. There are several security laws that have been adopted in the follow-up of 9/11 that largely extended the competencies of German intelligence services, intensified visa procedures, border monitoring and identification methods, to only name the most important changes. There is a clear tendency towards an intensification and expansion of security measures, which lead to an increased scientific interest in the field of jurisprudence. As many of the new laws contain unspecified and broad terms and lead to shifts in competencies and thus, blurring boundaries between different institutions, the new laws have come under criticism a lot, also questioning their constitutionality.

Constitutional guarantees and civil liberties that potentially interfere with the new legislation are the core area of a person's private life, the right to informational self-determination, the right to the guarantee of the confidentiality and integrity of information technology systems, the secrecy of telecommunications and the inviolability of the home. The Federal Constitutional Court in Germany has not only held some of the new laws to be unconstitutional based on existing civil liberties, such as the law on data retention. It also derived new guarantees from the constitution in its decisions, for example the right to informational self-determination. Thus, the Federal Constitutional Court can be called a counterbalance to the legislator in the field of security legislation since 9/11.

As security is often seen as a counterpart to fundamental rights and civil liberties it has to be asked whether there also is a fundamental right to security as a potential justification for intensified security laws. This approach was introduced by Josef Isensee in 1982 and ever since erupts in the public debate when it comes to new security legislation in Germany. This conception dates back to the teaching of the social contract by Thomas Hobbes. According to Hobbes, providing security to its citizens is the first and basic legitimacy of the state. Supporters of this conception claim that the fundamental right to security could be derived from the constitution as a synopsis of all fundamental rights. Right now, the right to security rather seems like an excuse for ever increasing security measures than like a needed constitutional principle. However, it remains to be seen what further jurisdiction on this topic will clarify.

WHY SO SECRET? THE ROLE OF INTELLIGENCE AGENCIES IN A FREE AND DEMOCRATIC SOCIETY

BY: JOHANNES SCHWAB

Various scandals, especially the Neo-Nazi murder series of the terror group NSU evoked criticism against the German Intelligence Agencies, particularly against the Federal Office for the Protection of the Constitution (*BfV*).

The German security structure consists mainly of police, intelligence agencies and the military, guaranteeing inner and outer security, hence, security through the state. The various legal bases e.g. lay down several surveillance competencies for intelligence agencies and police. The collected information is exchanged between intelligence agencies and police through various instruments. Most relevant are the Antiterrordatei, a common central standard data base, and the Common Counterterrorism Centre (*GTAZ*), a central situation and analysis centre for international terrorism.

This development questions the rule of the separation (*Trennungsgebot*) between intelligence agencies and police. Although it is implemented through spatial and content wise separation, restricted data access and finally independently executed measures, it is factually abandoned through the systematic connection of separate collected data pushing the legally restricted administrative assistance ad absurdum. The ineffective control of the *GTAZ* and the outdated legal bases in relation to technological development increase the problem.

Consequently, this issue demands an effective control of the intelligence agencies. Most relevant is the parliamentary control, mainly carried out by the Parliamentary Control Panel (*Parlamentarisches Kontrollgremium*). Through an information gap between the Panel and the Federal Government, missing minority rights within the organ and overloaded members the control is currently insufficient. The members of the Panel should be allowed to inspect the work of the intelligence agencies announcedly. Rights of the Panel, like suing the Federal Government for information or consulting in public should underlie an one-third-quorum.

The work of intelligence agencies leads to further fundamental problems regarding democracy and democratic legitimation. First, intelligence agencies interfere with basic rights without any criminal misconduct of the concerned. Second, the indeterminacy of legal terms increases the danger of abuse of the agencies competencies. Third and finally, the political surveillance through the BfV is carried out based on a highly controversial political theory, the extremism theory. In this way the BfV becomes a political instrument with steering effect. Therefore, it is necessary to abandon the political surveillance through the BfV and replace it with an independent centre of democracy. This centre protects democracy more comprehensively, as it identifies more threats, empowers the basis of the democracy, the citizens through strengthened civic commitment and less political surveillance. In this way it contributes to a progressive development of the state to a modern participative-orientated democracy. The constitution is protected through the facilitation of participation, not through problematic means .

The German intelligence agencies are rightly criticized as a danger for freedom and democracy. All intelligence agencies interfere in (basic) rights to self-determination and hence question the core of the liberal-humanistic human image. Secret state activity and the transparent democracy are in an antagonistic relation. This contradiction must be balanced out through effective control and a critical public awareness. Both exists insufficiently. The imbalance increases through a continuous maceration of the Trennungsgebot.

POLICE AND ARMY COMPETENCIES IN THE FIGHT AGAINST TERRORISM – EFFICIENTLY ALLOCATED?

BY: TARIK RIEDEL

Terrorist attacks remain a realistic threat for the German state and people. The overall number of attacks, foiled or executed, is still significant. The question of how the powers of police and army in the fight against terrorism are allocated is of high relevance.

From the state police basic responsibilities, it can be gathered that state-scale, politically motivated and possibly terrorist crimes can be dealt with by the state police agencies only. The Federal Police (Bundespolizei) plays a central role in the practical dealings with terrorist cases, as they provide powerful combat and arrest-resources and as they can operate on a federal level.

The Federal Criminal Police Office (Bundeskriminalamt, BKA) is directly responsible for the prosecution of internationally organized and illegal weaponry trade, money laundering and the investigation of internationally organized crimes such as the founding of a terrorist organization. In 2008, the BKA became an agency that could proactively apply police measures that are aimed at the averting and preventing terrorist dangers. Consequently, the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) decided that most of the BKA investigatory powers were in general consistent with German fundamental rights. However, specific competencies were too far-fetched concerning their reach into basic constitutional rights and therefore declared unconstitutional.

Concerning the separation of powers, there is no clear assignment of every single competency. Keeping the principles of norm clarity and clearly assigned powers in mind, this situation could be deemed constitutionally unsatisfying. In Germany however, a country of 80 million people, one single agency responsible for the fight against terror might almost

inevitably struggle with coordination and overview of an issue as complex as terrorism. State agencies often have better resources and knowledge of the happenings in their state than one federal agency. The question of effectiveness concerning the separation of state and federal police powers must therefore refer to whether the mechanisms that guarantee a quick cooperation, the transfers of information and responsibility shifts, are effective.

The German Constitution, which is called Grundgesetz, regulates the application of the armed forces in Germany. Military actions are, according to Article 87a, only legal for the purpose of defence. The quality of attacks that could trigger Art. 87a has been the subject of ongoing legal controversy. Prominent voices have demanded the additional application of Bundeswehr forces in terrorist attack situations, like currently possible in France. However, the terrorist attacks in European countries were mostly committed by single, rampaging and psychologically ill individuals. None of these would have justified any military actions according to the present provisions of the Grundgesetz. It is also questionable, if an attack is possible at all that matches the conditions, given that there are no separatist, extremist or terrorist movements in Germany or neighbouring countries that could significantly threaten state and society. For an extension of army application cases, the Grundgesetz would undoubtedly have to be changed.

One must therefore ask whether an enabling of the Bundeswehr to take over a more active role is even necessary. The Aviation Security Act (Luftsicherheitsgesetz), one simple law that regulates army competencies in plane hijacking situations, has gained lots of scrutiny from the public and the BVerfG in recent years. In the case of an airplane hijacking, the Bundeswehr forces could be applied to push away the plane, with the shooting of the hijackers and passengers remaining illegal.

Given the current outlook of terrorist dangers, it can be concluded that the allocation of powers between Bundeswehr and police agencies allows an effective combat of modern day terrorism, with challenges lying in the cooperation of police agencies and police task execution itself.

CURRENT DEVELOPMENTS IN EUROPEAN SECURITY AND DEFENSE LAW

BY: FRIEDERIKE HANDWERG

"We want a European defence based on a European industrial system, on European technologies, on a European defence market. We want our member states to invest together, decide together and act together" said the EU high representative Federica Mogherini.

In recent times, the European Union plays a big role in ensuring peace and cooperation between the Member States. However, strategies for a European security have changed and change over time. They adapt to the current wars, crises and conflicts occurring in the world, most importantly on terrorism in current times. The legal basis of crisis management operation in the European Union is Article 42 of the Treaty of the European Union, where it is stated that 'common security and defence policy shall be an integral part of the common foreign and security policy' and operations 'shall be undertaken using capabilities provided by the Member States'.

Fighting together against wars and conflicts proved to be efficient and therefore, lead to the agreement on common policies and treaties between many European countries. One is the intergovernmental Common Security and Defence Policy (CSDP), as the main part of the foreign policy systems of the European Union. The CSDP tries to build up military and civilian stabilisation and reconstruction with its operations abroad. But yet, the limited resources for the operations are weakening the success of the CSDP. Additionally, those missions must be in accordance with provisions of the United Nations Charter. Chapter VI of the UN Charter urges its members to settle conflicts with peaceful measures and therefore, prevents peace and international security from being pushed apart. It is questionable, if those international laws interfere with coexisting and intervening national foreign policies.

In order to understand and deal with conflicts, an institution for the analysis of ongoing

processes in terms of security, politics and economy is essential. Therefore the European Strategic Intelligence and Security Center (ESISC) is producing reports in which they criticize human rights abuse and corruption, e.g. in Azerbaijan, Turkey and Russia or as a recent example the present Armenia-Iran-Relation, including improvement of political and economic cooperation. In Brussels, it is the only center that provides studies about terrorism, supplying their addressees with all information needed for decisions when operating in conflict environments. In Armenia, the ESISC researches matters related to terrorism, intelligence and strategy and works as a consulting group.

Keeping in mind the weak points of the CSDP, the EU might consider a stronger security and defence integration. Especially for eliminating the problem of different foreign policies and share capacities, one could think about creating a European Army. Germany's foreign policy supports the plans of the CSDP to continue the European Security Strategy (ESS) by implementing concrete actions in international operations. Adding to the quote at the beginning of the abstract, in November 2017 most of the EU countries agreed on a Permanent Structured Cooperation (PESCO) about integrating their defence forces, joint projects and increasing their defence spending. Within this unity, the EU wants to ensure a more coherent role in international crises and wants to provide a financial fund for defence research. Jean-Claude Juncker, president of the European Commission, also supports the idea of establishing a European army and hopes it can help to overcome conflicts with other countries and to convey European values more efficient. Thinking of a realistic implementation of a European army, the one part the EU could possibly overtake would be supranational control of the funds and troops contributed by the Member States. However, the key to a successful transposition from national to a European army will be transparency, shared understanding of impacts and possibilities and efficient analysis of strategies. Reaching these preconditions will take a certain time and therefore the question if a European Army might be the future path of European Security and Defence stays open for now.

FIGHTING TERROR WITH WAR? THE (IL)LEGALITY OF DRONE WARFARE AND TARGETED KILLINGS UNDER INTERNATIONAL LAW

BY: SIMON RUHLAND

This paper follows the legal questions arising from United States drone strikes in Pakistan. In the first part, it examines the *jus ad bellum*, i.e. the United States' right to launch a military campaign against terrorist organisations in Pakistan. This right is often thought to derive from the right to self-defence. The paper finds that although self-defence against non-state actors is generally possible, there is no imminent attack against the United States in this case. Anticipatory self-defence, however, is not covered by applicable international law.

The second part of the paper deals with issues of international humanitarian law. It considers the conflict in Pakistan a non-international armed conflict. The paper then continues to distinguish between personality strikes and signature strikes, which are attacks against confirmed terrorists and strikes against individuals based on their behavioural patterns, respectively. It finds the former not to be in an inherent violation of international humanitarian law, while the latter breach the principle of distinction and possibly the principle of proportionality.

The final part asks about implications of international human rights law and about a possible European perspective. This paper chose an integrative approach to human rights and international humanitarian law, finding that a violation of international humanitarian law includes a human rights violation in the case of targeted killings. Although some voices argue for the applicability and even a violation of rights guaranteed by the European Convention on Human Rights, this notion is to be rejected. The European Court of Human Rights allows the application of the European Convention on Human Rights abroad only in instances where a member state exerts effective control over the alleged violation.

This, however, is not the case when European countries merely assist the United States in their drone program.

In conclusion, the paper demonstrates that United States drone strikes violate the prohibition of the use of force and, in some cases, international humanitarian and international human rights law.

A NEW BATTLEGROUND: CYBERATTACKS AS METHODS OF WAR AND TERROR

BY: ANILE TMAVA

In 2010 Iranian authorities confirmed that Iran's nuclear program had been attacked by cyber worms clandestinely sabotaging the function of centrifuges in a nuclear facility. The "Stuxnet" virus was later called the first cyber weapon utilised by a state since its level of sophistication and the target suggest a political motivation. This example illustrates that cyber threats are becoming increasingly relevant and will revolutionise warfare. They offer relatively cheap and fast measures to attack an enemy and inverse the traditional balance of power – the most developed countries are also the most vulnerable to cyber attacks. The paper deals with how the law can regulate this threat because there is no legal regime of cyber space yet.

A cyber attack consists of an action taken by a technological device to undermine the function of a computer network for a political purpose. This definition excludes actions not altering the function of the targeted network like espionage and other crimes conducted for non-political purposes.

The paper highlights key problems arising with regard to jus ad bellum and jus in bello. Article 51 of the UN Charter allows for self-defence measures against "armed attacks". The paper argues that if cyber attacks reach analogous effects as kinetic weapons would (like death, injury, physical damage) that must constitute an "armed attack" triggering the right to self-defence. Since modern society is highly dependent on these services the paper further argues that disabling critical infrastructure virtually qualifies as an "armed attack" yielding for the right to self-defence. With regard to how penetrated states may counteract these attacks, the law makes no restrictions as to which weapons may be used.

In order for jus in bello to apply, cyber attacks must be qualified as international or non-international armed conflicts. However, anonymity in cyber space is the rule and even if one

can trace back an attack one can never be certain that this information is not again planted by a virus. Therefore, attributing an action to a state and thus rendering an attack “international” becomes factually difficult. This problem demands for new approaches to constructing legal presumptions of responsibility that are not yet known to the existing framework of international law. If cyber attacks fall under international humanitarian law states must abide by its principles when utilising cyber weapons, which poses various problems. The principle of distinction, for instance, is questioned by cyber operations in two dimensions: first, cyber weapons cannot differentiate between civil and military use targets – they harm computers no matter their purpose. Second, cyber space itself is not distinct, rather civilians and the military both use the same internet where viruses spread. This means that an attack directed at a military server can spread into civilian systems too, rendering the attack illegal under international humanitarian law.

The paper reveals gaps in existing law which demonstrate that international law is not prepared for the legal challenges posed by cyber threats. It follows that a comprehensive legal framework is needed to provide for cyber-related legal issues.

THE CRIME OF TERRORISM: AN INTERNATIONAL ISSUE?

BY: MARTHA FRITTRANG

The term ‘terrorism’ is not unfamiliar to us – it appears in the newspaper, on television, politicians and the general public use it. Even though it may seem as if the meaning of the term is clear when the world talks about terrorism, the international community has yet to agree on a general definition of this phenomenon while already criminalizing it through different approaches.

The United Nations (UN) Security Council and the European Union (EU) adopted several resolutions in order to fight terrorism. The most recent ones are the UN Security Council Resolution 2178 of 2014 and the EU Directive 541 of 2017. They both share the same aims, namely to unify the counter terrorism legislation amongst their member states concerning terrorist acts and to improve the cooperation in the fight against terrorism between them in order to ensure a more efficient prosecution of terrorist acts.

While the EU Directive provides the outline of a very wide definition of a crime of terrorism, the UN Security Council Resolution employs the terms “terrorism”, “terrorist” and “terrorist acts” without ever defining them. Criminalizing an act without or by only broadly defining it entails the risk of misinterpretation or even abuse. States are obliged under these instruments to criminalize certain criminal acts as terrorism, but the definition is left to their discretion. If no guidelines at all are set to limit the definition, states might arbitrarily define actions such as anti-governmental journalistic writing or the participation in any form of demonstration, violent or peaceful, as terrorist acts – and justify this with UN Security Council Resolution 2178.

A more concrete approach was taken by the UN General Assembly which, in contrast to the Security Council and the EU, did not aim to criminalize terrorism in all its forms, but rather certain violent acts that they considered to be of a terrorist nature.

The objective was to ensure the criminalization in domestic jurisdictions and to facilitate cooperation between states. Through anti-terrorism-treaties such as the 1999 Terrorist Bombing Convention, gaps in the criminal legal systems could be closed without having to agree on a general definition of terrorism and thus avoiding the risk of abuse.

The Special Tribunal of Lebanon went a step further by asserting that terrorism constituted a crime under international law, thus involving direct individual criminal responsibility under international law. The judges concluded that a common definition of a crime of terrorism had indeed emerged in customary international law. That decision was met with harsh criticism. Not only did the Special Tribunal for Lebanon lack sufficient justification for its claim that a definition of a crime of terrorism already existed in customary international law, but the definition they developed is also extremely wide, thus leaving room for possible abuse and over-criminalization. Furthermore, the question arises whether the criminalization of terrorism as an independent crime under international law is necessary. Many forms of ‘terrorist acts’ could already fall under the definition of other crimes under international law such as crimes against humanity or war crimes.

The paper argues that terrorism is no discrete crime but rather a phenomenon that can appear in various forms. As such, it is impossible to find a clear-cut definition of a general crime of terrorism. Instead, the international community should focus on the approach of the UN General Assembly, identifying and criminalizing certain forms of violent acts as ‘terrorism’, and enhance international cooperation.

TERRORISM AND NATIONAL CRIMINAL LAW IN GERMANY AND ARMENIA

BY: JULIUS RUPPRECHT

Terrorism and the fear of it not only determine many or even most of political debates nowadays, they also left their traces in the German Criminal Code (StGB). The seminar paper tries to unravel, explain and discuss some of the relevant legislative outcomes which accompanied this development. It draws a line from the status quo of police competencies and anti-terrorism criminal law to current trends and developments in that sector, attempting to evaluate and interpret the current development and trends.

Objects of research in this seminar paper were sections 89a-c, 91 StGB on severe subversive acts of violence and sections 129a, 129b StGB on the foundation of terrorist organisations. These sections are facing heavy criticism by juridical literature because of their supposed lack of compliance with existing principles of constitutional and criminal law. Main points of criticism are their wide forward displacement of criminal liability as e.g. even the attempt of contacting a terrorist organisation with a certain intent is criminalised and the many indefinite terms contained. Furthermore, German terrorism criminal law is accused of being enemy and attitude based as well as being ineffective and symbolic. Having the declared goal of preventing terrorism by expanding the possibilities for the police taking action, it also commingles repressive criminal and preventive police law.

However, not only repressive police competencies are expanded by adding sections to the Criminal Code, also the police laws of many states are reformed to create more competencies for the police to act preventively. The reform of the Bavarian law on police duty (PAG), which gives more intrusive competencies to the Bavarian police, than any public authority in Germany had before since the foundation of the federal republic, is just the tip of this development.

The author tries to bring order into the complex juridical debate and to distinguish between the question of constitutionality and the one of usefulness in regard to many in the debate intermingling both. However, only very few debate stakeholders question the necessity of competency expansion and the combatting of terrorism by all means at all, even if they mention the comprehensive fundamental rights intrusions coming along with it. In big parts, the juridical debate furthermore ignores the fact that putting possible terrorists into custody as soon as possible might not be the only way of preventing terrorist attacks, again even among critics.

The examination also showed how far apart both federal and state legislation in Germany are from debates within juridical literature. Especially the traditional principles of criminal law, such as the impunity of preparation acts and the general repressive role of the Code are mostly ignored or shrugged off with arguments of impracticability.

All in all, it is to demand both from legislation and jurisdiction to clarify undetermined terms as soon as possible, provide satisfactory justifications for the comprehensive forward displacement of criminal liability and the basing on attitude of the offences and if this is impossible, revoke the affected acts. Furthermore, if legislative power wants to continue the process of creating more and more offences criminalising preparation acts, a totally new dogmatic has to be established as well within criminal law.

SURVEILLANCE IN THE DIGITAL AGE: LEGAL REQUIREMENTS AND LIMITS OF TELECOMMUNICATIONS SURVEILLANCE

BY: CELIN MOUSA

With new technological developments and data protection measures it has become increasingly difficult to monitor suspected offenders in cases of serious crime through telecommunications surveillance as a part of law enforcement. For this reason, the German Bundestag adopted a law in 2017 which creates the legal basis for police and state authorities to use malware to spy on mobile phones, chat groups and internet accounts, among others. The new legislation allows police investigators to use a so-called “state trojan” that can hack into a suspect’s mobile device, tablet or computer and gain full access to his or her private data.

The legal basis for online searches in Germany is the new section § 100b of the Code of Criminal Procedure (StPO). Besides § 100b StPO, §§ 20k and 20l of the Federal Criminal Police Act (BKAG) form the legal basis in cases of averting the dangers of international terrorism. Further provisions can be found in some of the German states’ police laws. The online search using trojans can thus be carried out by state investigating authorities (e.g. the Federal Criminal Police Office or the respective state Criminal police offices) with the purpose of increasing security and combating terrorism. Thus, the application of state trojans can either be of repressive or preventive nature.

It is controversial whether such online searches are a legitimate means of surveillance or whether they constitute an inappropriate interference into fundamental rights of the person. In a 2008 judgment, the Federal Constitutional Court held that the basic right to ensure the confidentiality and integrity of information technology systems provided for in Article 2 in connection with Article 1 of the German Constitution is affected by such an online search. However, the Court also stated that this does not mean that every online search is

incompatible with the Basic Law. The secret infiltration of an information technology system is for example allowed if there are actual indications of a concrete danger for a predominantly important legally protected good, if it is subject to a court order and if it is clearly regulated by law.

Following the guidelines of the Federal Constitutional Court, the Bundestag redefined §§ 100a ff. Code of Criminal Procedure (StPO). According to § 100a StPO, the monitoring and recording of telecommunications is possible by intervening with technical means into the information technology systems used by the data subject in order to monitor and record telecommunications activities at their source. § 100b StPO regulates the access to IT systems of the data subject and the collection of data from this system (online search).

All in all, one can see that the usage of malware poses a serious encroachment on fundamental rights. For this reason, one has to question to what extent the restriction of fundamental rights is justifiable for the purpose of criminal prosecution. In times of international terrorism and cyber-attacks there is a clear necessity to combat these threats with any possible technical means. The Federal Constitutional Court has also acknowledged the massive infringement of fundamental rights and therefore laid out clear and strict conditions that have to be met before any unconventional investigative measure can be taken. In view of the massive invasion of privacy, spying on personal data of a suspected offender through online searches can only be justified if the state's fundamental security interests are threatened. Restricting the personal right of confidentiality and integrity of information technology systems in the face of national security seems to be an appropriate measure to ensure the interest of the greater good. The use of state malware according to §100 ff. StPO is, however, not restricted to terrorism-related cases, but also includes cases involving tax evasion, drug trafficking, and sports betting fraud. In these cases, the infringement on the person's right to the confidentiality and integrity of information technology systems cannot be constitutionally justified.

In the end, one can clearly see the dilemma of whether giving up freedom for more security is the most effective way to tackle the problems of the digital age or if there is an increasing possibility to lose both, freedom as well as security.

DATA RETENTION IN NATIONAL AND EUROPEAN LAW

BY: ELISABETH RUYTER

Data retention is a much-discussed topic in Germany with a short but eventful history. It means that the state obliges telecommunication providers to retain traffic and location data of its consumers and to allow state authorities access to the data to prevent or prosecute criminal acts under certain conditions. From a data protection perspective, this could be seen as the first step towards a surveillance state, but one could also argue that it is necessary in a digitalized world, where criminal activities are effectively coordinated through the use of technology.

The German legislator is still searching for the right balance between freedom and security in a data retention regulation. The first approach from 2008, which was mandatory pursuant to the EU Data Retention Directive of 2004, was declared unconstitutional by the German Constitutional Court (BVerfG) in 2010 due to an inappropriate interference into Article 10 of the German Constitution, the right to secrecy of telecommunications. The provisions concerning data security, effective legal protection, transparency and the period of storage were not precise and restrictive enough.

The second approach from 2015 is currently under scrutiny by the BVerfG, with a judgment expected in 2018. Although there currently exists no obligation on EU member states to regulate data retention, as the European Court of Justice (ECJ) declared the 2004 Data Retention Directive invalid due to its incompatibility with the Charter of Fundamental Rights, the German regulation still has to be compatible with EU law. According to a 2017 judgment by the Higher Administrative Court Münster, this is not the case. As a result, the data retention obligation is currently not executed in Germany, subject to the expected judgment by the BVerfG.

The paper argues that the current German data retention regulation is unconstitutional and incompatible with EU law. Although §§ 113a-g TKG and § 100g StPO adhere to many of the requirements set by the ECJ and the BVerfG, the regulation still stipulates an obligation to indiscriminately retain data. This is a broad encroachment into fundamental rights, both through storage by providers and through access by state authorities, particularly into the right to secrecy of telecommunications in Article 10 of the German Constitution, which also protects the circumstances of telecommunication. The paper shows that the encroachment is disproportionate, since it puts citizens under a general suspicion and may create mistrust between the state and its citizens. It gives the state the possibility to gain a profound picture of person, of his or her habits and social relations. Additionally, the effectivity of data retention in investigations has not been proven. A possible alternative to indiscriminate data retention is the quick-freeze method, where data is only retained when a person is suspected of criminal activities.

HUMBOLDT-UNIVERSITÄT ZU BERLIN



THANK YOU!

