

OUTLOOK ON GERMAN-ISRAELI RELATIONS

German *Staatsraison* and Netanyahu's Coalition Contentious 'Judicial Reform'

The current Spotlight explores different interpretations of Germany's *Staatsraison* – or *raison d'état* – which emphasize Germany's commitment to defending Israel's national security. This component has played a crucial role in German-Israeli relations to date. The recent attempts (January–June 2023) by Benjamin Netanyahu's right-wing government to overhaul the Supreme Court have left Israeli society facing extreme tension and have shaken the country's sense of national unity. Since 1965 and especially in the post Cold War period, German *Staatsraison* has meant defending Israel's security – but with the assault on Israel's democracy, can it continue with the same purpose in the future? This Spotlight discusses how this development might impact German-Israeli relations.



Israeli Prime Minister Benjamin Netanyahu and German Chancellor Olaf Scholz attend a memorial event commemorating deportation of Jews during World War II at the Platform 17 Memorial at Grunewald railway station in Berlin, Germany, 16 March 2023. © picture alliance / EPA | FILIP SINGER.

Eldad Ben Aharon

Israel's so-called judicial reform was launched by Prime Minister Benjamin Netanyahu's right-wing government in January 2023.¹ The "reform" is underpinned by proposed legislation that could alter the composition, powers, and independence of the judiciary. These proposed changes sparked large-scale protests and riots in Israel which were still ongoing at the time of writing (June 2023). The Israeli Declaration of Independence (May 1948) states that a constitution

will be legislated by October 1948.² However, due to narrow political considerations and the need to maintain stability within Israel's coalitions over the years, a constitution has never been established.³ Thus, for the past few decades, the Israeli Supreme Court has served as the primary defender of civil rights, individual rights, and the rights of minorities, including the lesbian, gay, bisexual, transgender (LGBT) community and Palestinians.⁴ The proposed "judicial reform" also has the potential to further escalate the Israeli–Palestinian conflict, because, since the late 1980s, the Israeli Supreme Court has played a critical role as a protector of the human rights of Palestinians living in East Jerusalem and the West Bank.⁵

While, as mentioned above, critics argue that the proposed measures would have detrimental effects, the reforms could be of great personal benefit to Netanyahu, who is facing a series of corruption allegations and a lengthy legal process that could end with his conviction. The charges against Netanyahu include bribery, fraud, and breach of trust, and his indictment represents a pivotal moment in Israeli politics with potential ramifications for the country's governance and international standing.⁶

Moreover, some of Netanyahu's coalition partners could also greatly benefit from the "reform" of the Israeli Supreme Court. For example, *Haredi of the* (ultra-Orthodox) *United Torah Judaism* (UTJ) party is determined to undermine the Supreme Court's long-standing position on Haredi enlistment in the Israel Defense Forces (IDF).⁷ For many years, ultra-Orthodox men have enjoyed a near-blanket exemption from national military service, instead preferring to devote themselves

to religious study (although a small percentage do choose to enlist). However, in 2012, the Supreme Court declared the law allowing this arrangement discriminatory and struck it down.⁸ Moshe Gafni, chair of the UTJ party, expressed his satisfaction with the expected passage of the judicial reform legislation with the words: “34 years since I was elected to the Parliament, I have been waiting to take down the Supreme Court’s power. There is no area where it did not hurt us.”⁹

Meanwhile, the president of Israel, Isaac Herzog, has been pressuring the parties to engage in a dialogue about the main features of the reform since March.¹⁰ The president of Israel holds an apolitical position and is elected by the members of the Israeli parliament every seven years.¹¹ As tension was rising and civil violence had erupted, Herzog stepped in and called for the judicial reform legislation to be paused, emphasizing the need for national unity and political dialogue.¹²

When massive demonstrations escalated into further violence, at the end of March 2023, Netanyahu responded to Herzog’s invitation, announced that the coalition agreed to pause the contested new legislation.¹³ Netanyahu stated that this provided an opportunity to start a dialogue on the so-called reforms with the opposition.¹⁴ The discussions about the main features of the contested reform, which involved members of the coalition and opposition, took place at President Herzog’s residence. While the negotiations are officially ongoing (as of June 2023), there has been no meaningful breakthrough.

In the financial realm, analysts from Fitch Ratings and J.P. Morgan, among others, made a worrying announcement on February 23 regarding Israel’s judicial reforms,

suggesting a downside risk for the country’s credit rating.¹⁵ Drawing a parallel with Poland, which underwent similar reforms, J.P. Morgan’s research teams pointed out that Netanyahu’s “reform”, including the potential undermining of checks and balances, has raised concerns about its impact on the rule of law and governance in Israel.¹⁶ J.P. Morgan’s analysts highlight that these so-called reforms could weaken the country’s institutional framework and create uncertainty regarding the protection of property rights and contract enforcement. Such developments may undermine investor confidence and have implications for Israel’s creditworthiness. However, given Netanyahu’s personal promise to Fitch Ratings analysts that the current legislation will not continue, Israel’s rating has remained stable for now, subject to successful negotiations on the reforms.¹⁷

Besides the domestic protests against Netanyahu’s proposed legislation, the reforms in question have also raised concerns about the country’s democratic tradition and the impact on its foreign relations with its closest allies, especially Germany. However, these recent events have led to a more critical position on Israel in German foreign policy and the “special ties” between the two countries have increasingly been called into question.

Germany’s approach toward Israel is multifaceted and guided by various factors, including its own national interests and considerations. One of these factors is, for example, Russia’s war on Ukraine.¹⁸ The conflict has prompted Germany to reevaluate its previous security policies and make adjustments to its long-term security strategy, including taking a fresh perspective on the security needs of the European Union (EU).¹⁹ Under Olaf Scholz, Germany is more focused on its own security requirements, and as a result, the security of Israel may be a lower priority than before, particularly considering the plan to overhaul the Supreme Court proposed by Netanyahu’s government.²⁰

Israel’s National Security and German *Staatsraison*

Staatsraison is the German term for *raison d’état* or reason of state. Specifically, it depicts Germany’s commitment to Israel’s safety and national security and is based on the German sense of responsibility and guilt regarding the Holocaust. Thus, Israel’s survival as a Jewish and democratic nation has been a central tenet of post-war (West) Germany’s *Staatsraison*. Germany’s national security commitment to ensuring Israel’s safety has been focused on countering external threats through arms trading, accessing innovative technology, exchanging knowledge, and sharing intelligence. Additionally, Germany has advocated Israel’s right to exist as a Jewish and democratic state in international forums.²¹ This new situation has



On the morning of September 10, 1952, the German-Israeli Reparations Agreement was signed by German Chancellor Konrad Adenauer and Israeli Foreign Minister Moshe Sharett in the small reception room of the Luxembourg Town Hall. © picture-alliance / dpa | dpa.

given rise to the threat of internal conflicts – possibly even a civil war – and arguably Israel’s self-sabotage when it comes to the country’s democratic status. This presents significant – and very new – challenges for Germany, not least the need to preserve the health of Israel’s democracy.

It is important to note that the Reparations Agreement (*Wiedergutmachungsabkommen* in German; *Heskem HaShillumim* in Hebrew), signed in September 1952 between Israel and the Federal Republic of Germany (FRG), was a key factor in the survival of Israel in its first decade of nationhood.²² The *Wiedergutmachungsabkommen* helped build the economy and the healthcare system and was crucial to establishing Israel’s security and a modern military. The FRG provided compensation and restitution to survivors of the Holocaust, both through direct payments to Israel and through the efforts of the Conference on Jewish Material Claims against Germany.²³

However, in the German Democratic Republic (GDR), the Reparations Agreement faced strong opposition. The GDR’s political elite contended that the most appropriate and morally just compensation they could provide would be to eradicate all remnants of the Nazi regime and German fascism.²⁴

Moreover, the reparations were a key factor in the polarization of the Arab–Israeli conflict and the arms race in the Middle East.²⁵ This was because the reparations were very much coloured by the polarized nature of Cold War loyalties at the time, in which the Soviet Union and, by extension, also the GDR sided with the Arab nations of the Middle East, and the US and its allies principally sympathized with Israel.²⁶

The unification of Germany in 1990 marked a significant turning point in German history. It should be noted that post-unification German foreign policy and the FRG’s *Staatsraison* are influenced by Germany’s acknowledgment of the Holocaust, the Reparations Agreement, Holocaust education, and reconciliation with Israel and the American Jews and the “special” nature of German-Israeli relations.²⁷

In March 2008, German chancellor Angela Merkel addressed Israel’s parliament (the *Knesset*) in German and Hebrew. She said that she bowed in shame to Holocaust victims. Merkel also spoke of the legacy of German *Staatsraison* and the danger of a nuclear Iran: “Together with its partners, Germany is setting its sights on a diplomatic solution. But if Iran does not come around, the German government will remain fully committed to sanctions. [...] While we speak here today, thousands of people are living in fear and dread of missile attacks and acts of terror by Hamas.” Merkel also noted that, “the threats directed against Israel and the Jewish people by the Iranian President are without doubt a particular cause for concern.”²⁸



Demonstration against Netanyahu’s plans to suppress the Supreme Court. 15 April 2023. © Oren Rozen, https://commons.wikimedia.org/wiki/File:Demonstrating_against_judicial_reform_150423_15.jpg, license CC BY-SA 4.0.

German *Staatsraison* toward Israel: The Uncertain Future of the “Judicial Reform” and the “Special Ties”

Evidence of the possible shift in German foreign policy and change in the direction of the country’s *Staatsraison* toward Israel, can be found in Merkel’s remarks during her visit to Jerusalem in October 2021.²⁹ She noted: “It is a mistake to base relations between Israel and Germany only on the memory of the Holocaust.”³⁰ This statement is open to different interpretations, one of which suggests that Merkel was referring to Israel’s heavy reliance on German *Staatsraison*, particularly the “special ties” that stem from the shared values of Holocaust education and protecting Israel’s security. However, it would be a mistake to view this trend of discord between Israel and Germany as something entirely new. It has been brewing since Netanyahu first returned as prime minister in 2009, and his brand of hard-line politics has also strained relations with the EU.³¹

In the last decade, Netanyahu has developed close ties with populist, far-right, and illiberal Eurosceptic leaders, such as those of Poland and Hungary, who harbor hostility toward the EU and Germany. Another factor contributing to the tension is that Hungary (2010) and Poland (2015) have revised their judicial systems, resulting in the undermining of their democratic checks and balances. Clearly, the successful overhaul of the judicial system by Poland’s and Hungary’s illiberal governments has served as inspiration for Netanyahu’s coalition.³² Germany and the European

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Commission have the authority to impose sanctions on Orbán's Hungary due to systemic deficiencies related to the rule of law that pose a threat to the EU's financial interests.³³

In the case of Israel, such sanctions are not an option. However, an insight into German *Staatsraison* toward Israel can be found in a recent visit by Netanyahu to Berlin. A statement made by German chancellor Olaf Scholz offers an important clue as to Germany's complex position on Israel's proposed "judicial reforms" and how the issue might ultimately significantly strain the "special relationship" between Israel and Germany. On March 17, 2023, Netanyahu and Scholz stood side by side at Platform 17, a memorial at a Berlin train station commemorating the thousands of Jews deported from the city to their deaths by the Nazis.³⁴ In his short address, Olaf Scholz predictably stated: "The security of Israel is our *raison d'état*" On the subject of Netanyahu's judicial reforms, he commented: "As partners who share democratic values and as a close friend of Israel, we are following this debate very closely, and

I won't deny, with much concern."³⁵ This mixed message further illustrates the tension surrounding the varied interpretations of German *Staatsraison* concerning Israel.

Despite the similarities between the "judicial reforms" of Israel, Poland, and Hungary, Germany's approach toward Israel, driven by *Staatsraison*, is currently developing a less critical tone. However, it is important to acknowledge that this situation could change in the foreseeable future, particularly in the context of Russia's war on Ukraine, which has seen Germany reevaluate its previous security policies since February 2022. In the current political atmosphere, politicians such as Olaf Scholz and Annalena Baerbock could potentially adopt a more critical stance toward Israel, particularly regarding the conflict with the Palestinians, the possibility of introducing the death penalty for Palestinian terrorists, and the construction of more settlements in the West Bank. These issues may prompt a further reassessment of Germany's "special ties" with Israel and lead to a more nuanced approach in the future.

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References and further reading:
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DOI: 10.48809/prifspot0623

