

In Support of the Emergency Laws (May 15–16, 1968)

Abstract

Carl Otto Lenz, a member of the judiciary committee of the German Bundestag, recapitulates the history of the emergency laws and defends them from criticism. He argues that the emergency laws would protect the rule of law in Federal Republic in the event of domestic or foreign emergencies.

Source

Debate in the German Bundestag on the Emergency Laws, May 15–16, 1968

[...]

Dr. Lenz (Bergstraße) (CDU/CSU): Mr. President! Ladies and gentlemen! On behalf of the judiciary committee of this house, I have the pleasure of submitting to you the report on the draft bill submitted by the federal government to supplement the Basic Law and on the draft bill submitted by the FDP parliamentary group to safeguard the rule of law in the event that defense is necessary.

The bill was preceded by almost ten years of public debate on this issue and more than a year of discussion of the federal government's proposal. In November and December of last year, the responsible committees held five public information sessions lasting a total of 45 hours, during which they heard 42 statements by proponents and opponents of a contingency provision for a state of emergency. All aspects of this issue were discussed during these public hearings. The draft presented to you remains within the scope of those discussions.

In the weeks following the hearings, the legal committee gave top priority, above all other work, to consultations on the two bills and prepared the draft presented to you today over the course of fifteen sessions, some of which lasted a full day. The judiciary committee completed its substantive deliberations in early April, with the exception of the item "right to resist."

The report has been submitted within the stipulated time period. Under these circumstances, there is no basis for allegations of undue haste, let alone "pushing the report through as fast as possible."

(Applause from the parties of the government coalition.)

I would dare to claim that this house has rarely been as well prepared to debate and make a decision on a draft presented to it.

(Renewed applause from the government parties.)

I do not wish to provide a detailed description of the content of the bill at this time. I am sure that there will be ample opportunity to do so over the course of the day. I would just like to make a few clarifications that seem important to me at this moment.

It is not true that this draft paves **the way for dictatorship**. The parliamentary and constitutional aspects of the present draft will hold up in a comparison with any emergency provision anywhere in the world.

(Applause from the government parties.)

It is not true that this draft will destroy the foundation of **trade union rights**. On the contrary, the draft explicitly anchors the existing law on labor disputes in the constitution.

It is not true that this draft will do away with **civil liberties**. Freedom of opinion, freedom of the press, freedom of assembly and association will not be affected by it. Also, to the extent that freedom of movement, the right to choose one's occupation, and the right to own property are limited, these fundamental rights remain beyond the unilateral reach of the federal government.

It is not true that this bill lays the groundwork for a **civil war**. The judiciary committee endeavored, both in the formulation of the civil right to resist and with regard to the federal government's option to deploy troops against armed insurgents in an extreme emergency, to make clear that these measures are to be used only as the *ultima ratio*, the last resort, when all other means have failed.

It is also not true—and I have a pertinent reason for saying this—that this bill is a **weapon in the Cold War** or serves to exacerbate international tensions. The passing of the bill will demonstrate the will of the German people to defend themselves but nothing more. By making this clear, it mitigates the dangers that could arise from the misinterpretation of our position.

This draft, ladies and gentlemen, is not a *carte blanche* for adventures or unilateral actions.

("How true!" from the CDU/CSU.)

But it is also not a paper sword. It does not deny the parliament and the government the authority they need to preserve the liberal democratic and constitutional foundations of our republic.

This law is necessary in order to **terminate rights retained by the Allies**, on whose basis the Three Powers^[1] can still assume supreme governmental authority in the Federal Republic today.

This law is necessary to ensure **essential supplies** for the population and the armed forces and to protect the population in a situation in which defense is necessary, to the extent that this is even possible under the conditions of modern military conflicts.

This law is necessary to provide a legal basis for the **consolidation of aid** from the federal and state governments in the event of natural disasters and severe calamities.

This law is necessary to **ward off threats** to the democratic constitutional order of our Federal Republic **from within**, no matter from which side or by what means they come.

Ladies and gentlemen, for the second time, a second reading of an emergency constitution is taking place in the Bundestag. The first time around, the parliamentary groups of the CDU/CSU and the FDP approved the draft submitted at that time. The SPD parliamentary group largely agreed but withheld its approval because, in their opinion, a few questions had not been answered to satisfaction. These questions are being answered in the draft presented now, and this draft has also been approved by the SPD parliamentary group. The judiciary committee therefore hopes for the adoption of the bill it is presenting.

Ladies and gentlemen, if this bill is defeated, it does not mean that no precautions will be taken in the case of an emergency. It just means that there will be no legal foundation for them,

("How true!" from the CDU/CSU.)

and therefore no one will know what these precautions will look like.

(Applause by the government parties.)

In the hour of need, will the Allied forces exercise their special rights in accordance with Art. 5, Sec. 2 of the Germany Treaty? Will we, in turn, have to make preparations for such an eventuality? Ladies and gentlemen, we do not know.

Will the chancellor and the government have to invoke their oath of office, in which they swore to divert harm from our people? Will they derive from that oath the right and the obligation to do whatever is necessary to protect our people from harm? Will the regulations that will then **have to be** prepared in secret in a parliamentary committee be more effective and more constitutional than the ones we have prepared? We do not know.

Let us not put ourselves in a position where, for lack of timely foresight in an hour of need, we can decide nothing more than the old "*Videant consules, ne quid res publica detrimenti capiat*," ["May the government see that the fatherland suffers no harm"]. We should not put ourselves in that position.

(Applause by the government parties.)

This draft is—and in saying this, I do not believe I am revealing any new information to either side of the house—a **compromise**. That means: it is a framework of concessions and counter-concessions in which changes can only be made by common accord if the draft as a whole is not to be endangered. This also means, ladies and gentlemen, that the draft does not represent the ideal conception of state of emergency regulations for which some of us might have hoped. But based on the standards of effectiveness and constitutionality, the legal committee believes that this draft can stand its ground. So I would ask you to give your approval to our proposals.

(Applause by the government parties.)

[...]

NOTES

[1] Reference to the United States, Great Britain, and France—eds.

Source: Debate in the German Bundestag over the Emergency Laws, *Deutscher Bundestag – 5. Wahlperiode – 174. Sitzung*. Bonn, Wednesday, 15. May 1968, pp. 9313–9314 (available online at: <https://dserver.bundestag.de/btp/05/05174.pdf>); reprinted in Irmgard Wilharm, ed., *Deutsche Geschichte 1962–1983, Dokumente in zwei Bänden*, vol. 1. Frankfurt am Main, 1989, pp. 149–51.

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