CHAPTER 2

Three Illustrative Cases – Facts and Questions

2.1 Introduction

This chapter describes three situations taken from NATO operations in Kosovo and Afghanistan. The cases are introduced at the beginning of the book, because their intent is to illustrate the relevance of the research into the responsibility of NATO and to provide practical examples of that responsibility, which are then used throughout the rest of the book. Moreover, the practical examples make all that is discussed throughout the book more concrete.

While other cases were also available and could have been relevant, the selection of the three cases has been made based upon three criteria. First, for obvious reasons, the cases must relate to a NATO operation as this research deals with the responsibility of NATO during its operations. More specifically, the three cases relate to those NATO operations in which the international norms governing the justification to use force and the conduct of warfare are applicable. As mentioned in the previous chapter, NATO operations typically take place in situations of crisis or of armed conflict and in which personnel is authorised to use force. Given these characteristics IHL and IHRL are of particular relevance.

Second, each case covers several topics that will be examined throughout the book. The “Kunduz” incident (Afghanistan), covers the aspect of binding obligations to NATO as well as attribution of conduct to either NATO or the member State. The case is also relevant to the role of NATO towards criminal conduct of its personnel. The case relating to the transfer of detainees in Afghanistan deals primarily with the issue of attribution of conduct to several Troop Contributing Nations and NATO as well as a breach of an international obligation under the Convention against Torture and Other Cruel, Inhuman

1 In particular, articles 52 and 57 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, 1125 UNTS 3, 8 June 1977.

2 The alleged indiscriminate attack on the fuel truck in Kunduz may be considered a crime under national host nation law (Afghanistan) and under German law, as well as an international crime under article 8 of the Rome Statute of the International Criminal Court, 2002, 2187 UNTS 90, 1 July 2002.
or Degrading Treatment or Punishment.\textsuperscript{3} The case on human trafficking that allegedly has occurred in Kosovo by kfor members is relevant, primarily, to the question on the role that NATO plays regarding criminal conduct of its personnel as well to the issue of attribution to either the contingents involved or to the Alliance.

The third criteria for the selection of the cases is that the incidents have led to inquiries, e.g. by non-governmental organizations, judicial institutions, national parliaments, or international organizations, such as the UN Human Rights Council. This gives insight in how responsibility of NATO is viewed by others.

The cases are presented in a structure consisting of three parts. The first part explains the legal basis of the mission, the command structure and the status of mission personnel. The second part deals with the factual background of the incident that has occurred during the mission and which is relevant to this research. Finally, the third part describes the reaction by NATO and Troop Contributing Nation or third parties to these incidents.

\section*{2.2 Case 1: Human Trafficking and Forced Prostitution in Kosovo}

\subsection*{2.2.1 Background, Legal Framework of the Operation and Command Relationships}

Following the NATO air-campaign “Operation Allied Force” in Kosovo in 1999,\textsuperscript{4} representatives of the European Union and the Russian Federation presented a peace plan to the United Nations, which resulted in the conclusion of a Military Technical Agreement (MTA) between the Federal Republic of Yugoslavia and NATO establishing the cessation of NATO air strikes upon the condition that Yugoslav forces would withdraw from the territory of Kosovo.\textsuperscript{5}

The MTA anticipated that the United Nations Security Council would authorize an international security presence to be deployed in order to establish and maintain a secure environment in Kosovo.\textsuperscript{6} Pending this authorization, the

\begin{itemize}
\item \textsuperscript{3} Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, 1465 unts 85, 26 June 1987.
\item \textsuperscript{4} Operation Allied Force, 24 March–20 June 1999.
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