Preface

The author's first—academic—contact with the armed conflict in Afghanistan began shortly after the conflict had started in late 2001. Together with other legal academics in Germany, he signed a public letter which called upon the German Federal Parliament to not authorise a German engagement in the military attack that was about to be launched against Afghanistan, as there was no legal basis for such intervention.¹ About ten years later, on 2 April 2011, his friend and former colleague Joakim Dungel was murdered while serving in the United Nations Assistance Mission in Afghanistan (UNAMA).

This chapter will outline a number of legal and factual issues related to the military involvement of Germany and other foreign troops in the armed conflict in Afghanistan. It will start with a general introduction into the current situation of German and other nations' military presence in Afghanistan. It will then address the legal basis for Germany's operations in this country, as well as the law applicable during these operations. Subsequently, three legal proceedings will be presented which involved acts of German soldiers in the context of the armed conflict in Afghanistan (and Iraq). This will be followed by an attempt to show which lessons should be learned from those cases. In so doing, this chapter aims at demonstrating what has been done—and what has yet to be done—to prevent civilians from being victimised in the armed conflict in Afghanistan and elsewhere.

In particular, this chapter emphasises the need for proper training of military personnel and civilians alike in international humanitarian law and international criminal law. While this is merely one element to reduce the number of civilian victims, it is an indispensable factor in any effort to strengthen the protection of civilians.

2 Situation in Afghanistan

2.1 General

On 11 September 2001, two hijacked civilian planes destroyed the World Trade Center, and a third plane caused severe damage to the Pentagon. Already on the following day, the United Nations Security Council unequivocally condemned ‘in strongest terms’ these ‘horrifying terrorist attacks’ in its Resolution 1368 (2001), which was unanimously adopted. The Security Council members expressed their ‘readiness to take all necessary steps to respond to the attacks’ and ‘held that any act of international terrorism was a threat to international peace and security’. The Permanent Representative of the United States of America to the United Nations stated ‘that no distinction would be made between those who committed those acts and those who harboured the criminals’.

Within less than four weeks, the United States started military attacks on Afghanistan which was considered to provide shelter for those responsible for the 11 September attacks. On 7 October 2001, the United States and the United Kingdom commenced the so-called Operation Enduring Freedom (OEF) in Afghanistan, using military force in self-defence and in accordance with Article 51 of the UN Charter, which recognises ‘the inherent right of individual or collective self-defence’. In an effort to justify the aerial attacks, the United States notified the United Nations that ‘they ha[d] obtained clear and compelling information that the Al-Qaida organisation, which is supported by the Taliban regime in Afghanistan, had a central role in the attacks on 11 September 2001.

Shortly after these events, and in addition to OEF, yet another international military mission was established in Afghanistan: the International Security Assistance Force in Afghanistan (ISAF), in operation since December 2001.

---

4 Ibid.