

The Military Evacuation from Afghanistan by the German Armed Forces: A Change in Germany's Legal Position?

FELIX SCHOTT*

I. Introduction

The twenty-year war in Afghanistan ended in the summer of 2021, when the Taliban eventually recaptured the whole country, including the capital Kabul. The takeover forced foreign States to hastily organise a chaotic military evacuation operation. From 16–26 August 2021, Germany participated in this operation with several military planes and helicopters as well as up to 600 armed soldiers.¹ In its largest evacuation mission to date, the German Armed Forces (*Bundeswehr*) evacuated a total of 5,347 persons, including German and Afghan citizens as well as nationals of third States.² The evacuation operation was remarkable not only in terms of its size and the dramatic circumstances surrounding it, but also from a legal point of view: In its explanatory memorandum accompanying the draft mandate for the operation, the Federal Government (*Bundesregierung*) for the first time explicitly relied on ‘the customarily recognised right [of a State] to evacuate its citizens [abroad]’³ as one of two legal bases to justify its use of force under international law.

This contribution begins by tracing the evolution of the German legal position concerning military evacuations abroad up to the 2021 operation (II.). Following this, I will analyse the legal justification for the Afghanistan operation and argue that it in fact constitutes a new element of German practice and *opinio juris* (III.). Against

* Doctoral Candidate and Research and Teaching Fellow at Freie Universität Berlin, Department of Law. I would like to thank Helmut Aust, Prisca Feihle, and Richard Schmidt for comments and criticism on an earlier draft. Any errors or misconceptions are mine. All websites were last accessed on 24 October 2022.

¹ German Armed Forces (*Bundeswehr*), *Evakuierung aus Afghanistan 2021* (2022), available at <https://www.bundeswehr.de/de/aktuelles/meldungen/evakuierung-afghanistan>.

² *Ibid.*

³ German Parliament (*Bundestag*), Einsatz bewaffneter deutscher Streitkräfte zur militärischen Evakuierung aus Afghanistan, 18 August 2021, *Bundestagsdrucksachen* (BT-Drs.) 19/32022, available at <https://dserver.bundestag.de/btd/19/320/1932022.pdf>, at 1–2.