

Julia Geneuss: Criminal Responsibility for the 2009 Kunduz Airstrike: The German Code of Crimes Against International Law and International (Humanitarian) Law

On 4 September 2009 German Colonel Klein ordered the airstrike of two fuel tankers that had been hijacked by the Taliban near Kunduz and later got stuck in the mud of a dry riverbed. The airstrike killed up to 142 people, most of them civilians. This paper will discuss the legal consequences of the Kunduz airstrike, i.e. the criminal investigations for alleged war crimes that were conducted by Germany's Federal Prosecutor General. In a first step, the legal basis for the Prosecutor's investigations will be presented: The German Code of Crimes Against International Law, which implements the "core" international crimes into the German legal order. Second, the Prosecutor's legal arguments that ultimately lead to the termination of the criminal investigations will critically be discussed. And finally, the paper will present the argument made by some commentators that Colonel Klein should have been held responsible not for war crimes, but for negligent manslaughter under the "ordinary" German Penal Code for his breach of rules of conduct under international humanitarian law designed to minimize civilian casualties.