

# The legality of targeted killings in view of direct participation in hostilities

Josef Alkatout

(josef.alkatout@hotmail.com)

During the past years, the emergence of asymmetric warfare and the occurrence of targeted killings has been preoccupying politics, military and academia continuously. In general, it is illegal in armed conflicts to attack non-participating civilians. Targeted killings, however, are increasingly carried out against civilians who are alleged to have lost their immunity from attack because they take a direct part in the hostilities. The qualification of what precisely constitutes such participation is therefore of particular interest for the purposes of international humanitarian law and international criminal law. The definition which is proposed by this study is, on the one hand, a combination of existing definitions and of independent sources, and on the other hand, a supporting tool to the established case-by-case-approach.

Particular interest is drawn on the temporal aspect of direct participation, especially its ending. This includes the discussion of the customary character of the “for such time as” principle and the legal qualification of an individual’s return from combat, especially of one-off participants. The study also proposes ideas for the dilemma that the end of direct participation can often not be spotted and interpreted in a timely manner by the adversary.

In addition to the parameters concerning direct participation, the general framework of the law of armed conflicts is revisited under the scenario of asymmetric, non-international armed conflicts. The study outlines why the traditional distinction between international armed conflicts and those non-international armed conflicts that fall under the rule of international humanitarian law is not decisive when it comes to the analysis of targeted killings. The treaty requirements for the recognition of non-state actors (degree of collectivity) – especially in non-international armed conflicts – are addressed. The legal ethics of this general status-based approach of international humanitarian law (combatants/civilians) is opined on.

The study goes through the repertory of applicable legal texts and their translations, discloses existing incoherencies and analyzes their implementation into national legislation. It addresses another linguistic attainment concerning the denomination of the double-sided basic principle of distinction that has been discussed extensively but which has rarely been separated.

Graphs and figures are used for illustration and the document closes with the discussion of a fictional case study.