

A contemporary examination of the principle of distinction in international humanitarian law

Abstract

This thesis is discussing current problematic topics on the application of rule of distinction, which are related to a civilianization of armed conflicts.

One of these issues is a system of dichotomy between combatants and civilians established by the Geneva Conventions and their Additional protocols. The professional society is currently divided regarding the possibility of introducing a new third category of so-called unlawful combatants. This thesis introduces different views on this issue, on the legal status of persons belonging to this category and brings a debate on the necessity of abandoning the established conservative approach of dichotomy.

One of the other fundamental problems currently complicating the application of the rule of distinction is the issue of direct participation in hostilities by civilians, which leads to loss of their otherwise guaranteed immunity against targeted attacks. Norms of codified international humanitarian law however regard this topic superficially. The ICRC in its efforts to facilitate an interpretation of these norms published an “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law”, which was however subjected to a heavy criticism by other experts. This thesis is theoretically and through hypothetical examples analysing and comparing the system proposed by the ICRC, especially the principle of the revolving door with alternative approaches proposed by the critics of the ICRC Interpretive Guidance.

In connection with the theoretical questions mentioned above, the final segment of this thesis is dedicated to the legal analysis of real-world issue, which have arisen in the context of armed conflict in Ukraine, started by the invasion of Russian Federation in the February of 2022.

The above-mentioned issue is a legal assessment of the legal status of persons who are using an ePPO mobile application, which allows civilians to submit reports on the location of Russian military aerial objects directly to the Ukrainian armed forces. This legal analysis concludes that this behaviour is considered a direct participation in hostilities, which creates uncertainties concerning the legal status of persons using the application as well as the period for which they might lose their otherwise guaranteed immunity against targeted attacks. However, there is no clear answer for either one of those questions currently agreed upon by the international professional community. Therefore, this thesis appeals in favour of the amendment of the codified international humanitarian law to address the issues discussed in this paper.

Key words: principle of distinction, unlawful combatants, direct participation on hostilities