

German army given green light to kill civilians in Afghanistan

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The German government has now reclassified its military mission in Afghanistan as intervening in a civil war or, as they say in legal jargon, a “non-international armed conflict.” This was announced by Foreign Minister Guido Westerwelle (Free Democratic Party—FDP) on Wednesday in a government statement to the Bundestag (parliament). Previously, the government had described the Afghan intervention as a stabilization operation to assist with peacekeeping.

The recasting of the mission has far-reaching legal consequences. In a civil war, international criminal law applies and not, as hitherto, the German criminal code and police law. Before the reclassifying of the conflict, German soldiers could, in theory, only make use of firearms in exceptional circumstances, such as in self-defence. International criminal law is much more lenient, and even tolerates the killing of uninvolved civilians if this is proportionate to the expected “military advantage.”

Now, German soldiers who shoot Afghan civilians must no longer reckon with an automatic investigation by the state prosecutor. The latter only needs to be involved if the killing is “disproportionate,” although this term is defined very vaguely. Although this reclassification does not give the Bundeswehr carte blanche to kill civilians indiscriminately, the threshold has been significantly lowered. The risk that a soldier could be held criminally responsible for killing an innocent bystander is now much lower.

Since September 4 last year—when up to 142 Afghans were killed, including many civilians, in an airstrike ordered by army colonel Georg Klein in Kunduz—military leaders have systematically argued for such a reclassification of the Afghanistan mission. At the forefront of this campaign was Defence Minister Karl-Theodor zu Guttenberg (Christian Social

Union—CSU), who shortly after the massacre in Kunduz started speaking about a “non-international armed conflict.” Now the German government has officially accepted this position.

The call for a reassessment was based on the argument that soldiers needed “legal certainty.” Even Foreign Minister Westerwelle told the Bundestag, “We are responsible to those that face the dangers on the ground to call things by their proper name.” In fact, the reclassification is bound up with a massive escalation of the war, which confronts German soldiers in Afghanistan with far greater risks and dangers than was previously the case.

Skirmishes between German soldiers and insurgents have increased steadily in recent months. The period in which the north of the country, for which the Bundeswehr is responsible, was regarded as relatively calm is long gone. As part of the increase in troop numbers decided upon by the US government, 5,000 American soldiers are being moved into the north, and will then conduct military operations alongside German forces.

Through the investigations into the Kunduz massacre it has also become known that German elite troops are used systematically to hunt down the leaders of the insurgents. It is now clear that the lethal airstrike called in by Colonel Klein on September 4 came from the command post of “Task Force 47.”

The activities of this 200-strong elite force are subject to strict secrecy. Half of its members consist of soldiers from Germany’s Special Forces Command (KSK), which has its own independent structure. Their task consists in identifying and pursuing leading insurgents, on whom NATO maintains a so-called “Joint Effects Priority List.” Anyone on that list is virtually fair game, and can be arrested or killed by foreign soldiers at any

time.

On the night of the deadly attack in Kunduz, Colonel Klein was advised by several members of Task Force 47. According to recent information, also in the command post were two members of Germany's foreign intelligence service, the BND, dressed in civilian clothes. There are strong indications that Klein gave the order to attack so as to eliminate leading insurgents who were suspected by the special forces and intelligence operatives of being in the vicinity of the hijacked petrol tankers, which were then bombed by the US planes. This was in the full knowledge the attack would result in the deaths of dozens of civilians.

According to a recent report by *Spiegel Online*, based on secret NATO documents, on the same day Task Force 47 planned the arrest of Mullah Shamsuddin, considered to be one of the leading Taliban commanders in the Kunduz region. But the operation was called off at the request of British elite units, who were involved in freeing the kidnapped *Times* reporter Stephen Farrell just 50 meters away from Shamsuddin's hideout.

The "delicate question" is now posed, whether following the hijacking of the two petrol tankers, "the KSK special forces spontaneously saw the opportunity to use the authorization by Colonel Klein to eliminate Taliban leaders that were in the vicinity of the tankers," concludes *Spiegel Online*.

The reclassifying of the Afghanistan mission by the German government is meant to make the concealment of such operations from the public more effective and to give them a legal cover. Experts consider that Colonel Klein is likely to benefit directly from this revaluation. The federal prosecutor is currently examining whether to charge Klein with any offences in relation to the Kunduz massacre. If the operation is now regarded as an armed conflict and is considered under international criminal law, then Klein will probably go unpunished. He would face little more than a disciplinary penalty for breaching NATO's rules of engagement.

On the same day Foreign Minister Westerwelle delivered his government statement, Klein was giving evidence for five hours before the Bundestag Defence Committee, which is investigating the Kunduz massacre. Originally, it was expected that the colonel would invoke his right to silence. But he decided to go

on the offensive. According to his lawyer, he defended the bombing as a military necessity and a lawful action. The committee meets in secret, so that details have not been disclosed.

The reclassifying of the Afghanistan mission means the German government has taken a further step in transforming the Bundeswehr into an imperialist military intervention force. Since July 12, 1994, when the Supreme Court surprisingly ruled that armed Bundeswehr missions on behalf of the United Nations or NATO were covered by the German constitution, this transformation has been pushed forward step by step—mostly away over the heads of parliament and public opinion.

Even now, the Bundestag serves merely as a cover for a decision taken by the government without any public debate and which is rejected by the vast majority of the population. According to a recent opinion poll, 76 percent of respondents doubted the success of the Bundeswehr mission in Afghanistan, and 65 percent opposed the recent decision to increase troop numbers.



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