

**THE ICRC'S CLARIFICATION PROCESS ON THE NOTION OF
DIRECT PARTICIPATION IN HOSTILITIES UNDER
INTERNATIONAL HUMANITARIAN LAW**

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1. Introduction

The issue of civilian participation in hostilities: The primary aim of international humanitarian law (IHL) is to protect the victims of armed conflict and to regulate the conduct of hostilities based on a balance between military necessity and humanity. At the heart of IHL lies the principle of distinction between combatants, who conduct the hostilities on behalf of the parties to an armed conflict, and civilians, who are presumed not to directly participate in hostilities and must be protected against the dangers arising from military operations. Throughout history, the civilian population has always contributed to the general war effort of parties to armed conflicts, for example through the production and supply of weapons, equipment, food, and shelter, or through economic, administrative, and political support. However, such activities typically remained distant from the battlefield and, traditionally, only a small minority of civilians became involved in actual combat.

Recent decades have seen this pattern change significantly. A continued shift of the battlefield into civilian population centres has led to an increased intermingling of civilians with armed actors and has facilitated their involvement in activities more closely related to military operations. Even more recently, the increased outsourcing of traditionally military functions has inserted numerous private contractors, civilian intelligence personnel, and other civilian government employees into the reality of armed conflict.

These aspects of contemporary warfare have given rise to confusion and uncertainty as to the distinction between legitimate military targets and persons protected against direct attacks. These difficulties are aggravated where armed actors do not distinguish themselves from the civilian population, for example during undercover military operations or when acting as farmers by day and fighters by night. As a result, civilians are more likely to fall victim to erroneous or arbitrary targeting, while armed forces - unable to properly identify their adversary - run an increased risk of being attacked by persons they cannot distinguish from the civilian population.

Resulting legal questions: This trend underlines the importance of distinguishing not only between civilians and the armed forces, but also between civilians who do and, respectively, do not directly participate in hostilities. In IHL, the notion of direct participation in hostilities refers to conduct which, if carried out by civilians, suspends their protection against the dangers arising from

military operations.¹ Most notably, for the duration of their direct participation in hostilities, civilians may be directly attacked as if they were combatants. Derived from Article 3 common to the Geneva Conventions of 1949, the notion of taking a direct or active part in hostilities is found in many provisions of IHL. Despite the serious legal consequences involved, however, treaty IHL does not provide a definition of direct participation in hostilities, nor can a clear interpretation of the notion be derived from State practice or international jurisprudence or from legal and military doctrine. This situation calls for the clarification of three questions under IHL applicable in both international and non-international armed conflict:

- *Who is a civilian for the purposes of the principle of distinction?* The answer to this question determines the circle of persons who are protected against direct attack unless and for such time as they directly participate in hostilities.
- *What conduct amounts to direct participation in hostilities?* The answer to this question determines the individual conduct that leads to the suspension of a civilian's protection against direct attack.
- *What modalities govern the loss of protection against direct attack?* The answer to this question will elucidate issues such as the duration of the loss of protection against direct attack, the precautions and presumptions in situations of doubt, the rules and principles governing the use of force against legitimate military targets, and the consequences of regaining protection against direct attack.

The ICRC's clarification process: It was with the aim of clarifying these three questions that the ICRC, in cooperation with the TMC Asser Institute, initiated an informal expert process in 2003. Five expert meetings were held in The Hague and in Geneva between 2003 and 2008, each meeting brought together 40 to 50 legal experts from military, governmental and academic circles, as well as from international and non-governmental organizations, all of whom attended in their personal capacity.² The process focused on interpreting the notion of direct participation in hostilities for the purposes of the conduct of hostilities only

¹ According to an undisputed rule of customary and treaty IHL, civilians must be protected against the dangers arising from military operations, and particularly against direct attack, "unless and for such time as they take a direct part in hostilities". See Arts 51(3) First Protocol Additional to the Geneva Conventions of 1949 [hereafter: API]; 13(3) Second Protocol Additional to the Geneva Conventions of 1949 [hereafter: AP II]. See also Henckaerts / Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge: CUP, 2005), Rule 6 [hereafter: *Customary IHL*].

² The expert meetings were held in The Hague on 2 June 2003, The Hague on 25 and 26 October 2004, Geneva from 23 to 25 October 2005, Geneva on 27 and 28 November 2006 and Geneva on 5 and 6 February 2008. A comprehensive overview of the discussions and of the wide variety of views expressed during the expert meetings is provided in separate expert meeting reports (see below N 3).

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and did not, or only very marginally, address the legal regime applicable in the event of capture or detention of persons having directly participated in hostilities. Also, while the process examined the above mentioned questions exclusively under IHL, the conclusions reached remain without prejudice to an analysis of questions raised by civilian participation in hostilities under other applicable branches of international law, such as human rights law or the UN Charter (*jus ad bellum*).

Based on the discussions held and the research conducted in the course of the expert process, the ICRC drafted its "Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL".³ This document does not necessarily reflect a unanimous or majority opinion of the participating experts on the questions addressed, but provides the ICRC's recommendations as to how IHL relating to the notion of direct participation in hostilities should be interpreted in light of the circumstances prevailing in contemporary armed conflicts.⁴ In doing so, the Interpretive Guidance does not endeavour to change or amend existing rules of IHL, but to ensure their coherent interpretation in line with the fundamental principles underlying IHL as a whole. While the Interpretive Guidance is not legally binding, it may be hoped that the careful and balanced analysis underlying its recommendations will be persuasive to States, non-State actors, practitioners and academics alike. While the following sections aim to provide a broad overview of the substantive conclusions reached in the Interpretive Guidance, they cannot replace a careful study of its full text.

2. Who is a civilian for the purposes of the principle of distinction?⁵

With regard to the question of who qualifies as a civilian during the conduct of hostilities, it is important to distinguish members of State armed forces or of organized armed groups (whose continuous function it is to conduct hostilities on behalf of a party to an armed conflict) from civilians (who do not directly participate in hostilities, or who do so on a merely spontaneous, sporadic, or unorganized basis). For the purposes of the principle of distinction, only the latter qualify as civilians entitled to protection against direct attack unless and for such time as they take a direct part in hostilities.

³ The ICRC's "Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law" (hereafter: "Interpretive Guidance"), along with the complete proceedings of the expert process, have been published in 2009 and are available online on the ICRC's website (www.icrc.org).

⁴ The ICRC's Interpretive Guidance consists of 10 recommendations (see Annex), each of which summarizes the ICRC's position on the interpretation of IHL on a particular legal question, and an accompanying commentary explaining the legal and argumentative bases of each recommendation (see the full text of the Interpretive Guidance, above N 3).

⁵ For the ICRC's position on this issue see: Interpretive Guidance, above N 3, Sections I to III.

International armed conflict: Treaty law governing international armed conflict defines civilians negatively as all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse*.⁶ The armed forces of a party to the conflict comprise all organized armed forces, groups and units that operate *de facto* under a command responsible to that party, regardless of their denomination in domestic law.⁷ Even members of irregular armed forces, such as organized resistance movements and other militia or volunteer corps whose conduct is attributable to a party to a conflict, are considered part of its armed forces. For the purposes of the conduct of hostilities they are not deemed civilians, but legitimate military targets, even if they do not distinguish themselves from the civilian population, or otherwise fail to fulfil the criteria required by IHL for combatant privilege and prisoner of war status.

Participants in a *levée en masse* are the inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces without having had time to form themselves into regular armed units, provided they carry arms openly and respect IHL. According to a longstanding rule of customary and treaty IHL, participants in a *levée en masse* are entitled to combatant privilege and prisoner of war status.⁸ They are the only armed actors who are not regarded as civilians although, by definition, they operate spontaneously and lack sufficient organization and command to qualify as members of the armed forces. All other persons who directly participate in hostilities on a merely spontaneous, sporadic or unorganized basis must be regarded as civilians.

Non-international armed conflict: Treaty IHL governing non-international armed conflict uses the terms civilian, armed forces and organized armed group without defining them. It is generally recognized, however, that members of State armed forces do not qualify as civilians,⁹ and the wording and logic of Article 3 GC I-IV and Additional Protocol II suggest that the same applies to members of organized armed groups. In non-international armed conflict, organized armed groups constitute the armed forces (i.e. the military wing) of a non-State party to the conflict and must not be confused with the party itself (e.g. an insurgency as a whole, including its political or administrative wing) or with other supportive segments of the civilian population. Civilians may support a non-State party to an armed conflict in many different ways and may even take a direct part in hostilities on a spontaneous, sporadic or unorganized basis. However, for the

⁶ See Art. 50 (1) AP I and *Customary IHL*, above N 1, Rule 5. See also Sandoz *et al.* (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC, 1987), §§ 1916 f. [hereafter: *Commentary AP*] and ICTY, *Prosecutor v. Blaskic*, Case No. IT-95-14-T, Judgment of 3 March 2000, § 180.

⁷ See Art. 43 (1) AP I; *Customary IHL*, above N 1, Rule 4.

⁸ Art. 2 of the 1907 Hague Regulations; Art. 4 (6) GC III, referred to also in Art. 50 (1) AP I.

⁹ See *Customary IHL*, above N 1, Vol. I, p. 19.

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purposes of the principle of distinction, they cannot be regarded as members of an organized armed group unless they assume a continuous combat function (i.e. a continuous function involving their direct participation in hostilities) for a non-State party to the conflict. Continuous combat function does not imply entitlement to combatant privilege, prisoner of war status, or any other form of immunity from domestic prosecution for lawful acts of war. Rather, it makes a strictly functional distinction between members of the organized fighting forces and the civilian population. In sum, in non-international armed conflict, civilians are all persons who are neither members of State armed forces, nor members of organized armed groups (i.e. persons assuming a continuous combat function), belonging to a party to the conflict.¹⁰

3. What conduct amounts to direct participation in hostilities?¹¹

In situations of armed conflict, all persons qualifying as civilians are entitled to protection against direct attack unless and for such time as they directly participate in hostilities. In view of the serious consequences for those involved, it is of utmost importance, as far as possible, to clarify what conduct amounts to direct participation in hostilities. In essence, the notion of direct participation in hostilities comprises two basic components; that of "hostilities" and that of "direct participation" therein. While the concept of "hostilities" refers to the collective resort by parties to an armed conflict to means and methods of warfare,¹² "participation" in hostilities refers to the individual involvement of a person in these hostilities.¹³ Depending on the quality and degree of such involvement, individual participation in hostilities may be described as "direct" or "indirect".¹⁴ While direct participation refers to specific hostile acts carried out as part of the conduct of hostilities between parties to an armed conflict and leads to loss of protection against direct attack, indirect participation may contribute to the general war effort, but does not directly harm the enemy and, therefore, does not entail loss of protection against direct attacks.

According to the ICRC's Interpretive Guidance, the notion of direct participation in hostilities should be interpreted to refer to specific acts, which are

¹⁰ For the ICRC's position on this issue see: Interpretive Guidance, above N 3, Section II. See also ICTY, *Prosecutor v. Martić*, Case No. IT-95-11-A, Judgment of 8 October 2008, §§ 300-302.

¹¹ For the ICRC's position on this issue see: Interpretive Guidance, above N 3, Sections IV to VI.

¹² See Art. 35(1) AP I and, similarly, Art. 22 Hague Regulations (1907).

¹³ See Arts 43(2) AP I; 45(1) and (3) AP I; 51(3) AP I; 67(1)(e) AP I; 13(3) AP II.

¹⁴ As evidenced by the consistent use of the term "participant directement" in the equally authentic French versions of the relevant treaty texts, the terms "active" (Art. 3 GC I-IV) and "direct" (Arts 51(3), 43(2), 67(1)(e) AP I; 13(3) AP II) used in the English treaty texts refer to the same quality and degree of individual participation in hostilities. See also: ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, § 629.

designed to support a party to an armed conflict by directly harming its enemy, either by directly causing military harm or, alternatively, by directly inflicting death, injury or destruction on persons or objects protected against direct attack. In other words, in order to qualify as direct participation in hostilities, a specific act must meet three cumulative requirements: First, the harm likely to result from the act must reach a certain threshold (threshold of harm). Second, there must be a direct causal relation between the act and the expected harm (direct causation). Third, there must be close relation between the act and the hostilities occurring between parties to an armed conflict (belligerent nexus).

Threshold of harm: For a specific act to qualify as direct participation in hostilities, the harm likely to result from it must attain a certain threshold. This threshold is reached, most notably, whenever the military operations or capacity of a party to an armed conflict are adversely affected, for example through the use of weapons against the armed forces, or by impeding their military operations, deployments or supplies. Where no military harm is caused, the required threshold of harm can also be reached by inflicting death, injury, or destruction on persons or objects protected against direct attack. For example, the shelling or bombardment of civilian residential areas, sniping against civilians or armed raids against refugee camps may constitute part to the hostilities even though they would not necessarily cause a direct military harm to the enemy. Direct participation in hostilities does not require the actual materialization of harm but merely the objective likelihood that the conduct in question will result in such harm. Therefore, the relevant threshold determination must be based on "likely" harm, that is to say, harm which may reasonably be expected to result from an act in the prevailing circumstances.

Direct causation: Not every conduct likely to cause the required threshold of harm necessarily amounts to direct participation in hostilities. Throughout history, the civilian population has always contributed to the general war effort, whether through the production and supply of weapons, equipment, food, and shelter, or through financial, administrative, and political support.¹⁵ In order to qualify as "direct" rather than "indirect" participation in hostilities, however, there must be a direct causal relation between the act in question and the resulting harm.¹⁶ In this context, direct causation should be interpreted to mean that the harm is brought about in one causal step. Accordingly, acts that merely build or maintain the capacity of a party to harm its adversary in unspecified future operations do not amount to "direct" participation in hostilities, even if they are connected to the resulting harm through an uninterrupted chain of events and may even be indispensable to its causation, such as the production of weapons and ammunition or general recruiting and training of personnel. The notion of direct participation in hostilities can also include acts which cause harm only in conjunction with other acts, namely where the act in question is an integral part of a coordinated

¹⁵ See also *Commentary AP*, above N 6, §§ 1679; 1945. Affirmative also ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgment of 17 July 2008, §§ 175-176.

¹⁶ See also *Commentary AP*, above N 6, §§ 1679; 1944; 4787.

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tactical operation that directly causes the required threshold of harm. In addition, measures preparatory to the execution of a specific act of direct participation in hostilities, as well as the deployment to and the return from the location of its execution, constitute an integral part of that act.

Belligerent nexus: In order to amount to direct participation in hostilities, the conduct of a civilian must not only be objectively likely to inflict harm meeting the first two criteria, but it must also be specifically designed to do so in support of a party to an armed conflict and to the detriment of another (belligerent nexus).¹⁷ Belligerent nexus relates to the objective purpose and design of an act or operation as part of the conduct of hostilities and does not necessarily have to reflect the subjective desires or intent of every participating individual. Quite obviously, armed violence which is not designed to harm a party to an armed conflict, or which is not designed to do so in support of another party, cannot amount to "participation" in hostilities taking place between these parties. For example, as a general rule, civilian violence remains of non-belligerent nature if it is used: (a) in exercise of authority over persons or territory having fallen into the power of a party to the conflict (e.g. the use of force against prisoners), (b) as part of civil unrest against such authority (e.g. violent demonstrations or riots), (c) in individual self-defence against violence prohibited by IHL¹⁸ (e.g. civilians defending themselves against marauding soldiers), (d) during inter-civilian violence (e.g. uncontrolled looting due to breakdown of law and order), or (e) for reasons otherwise unrelated to the conduct of hostilities (e.g. murder, arson or other violent crimes carried out for private motives). Where armed violence lacks belligerent nexus, it remains an issue of law and order, even if it occurs in the wider context of an armed conflict. Therefore, any resort to force in response to such violence must comply with international standards governing law enforcement operations.

Applied in conjunction, the above-described requirements of threshold of harm, direct causation and belligerent nexus permit a reliable distinction between activities amounting to direct participation in hostilities and activities which, although occurring in the context of an armed conflict, are not part of the conduct of hostilities between parties to that conflict and, therefore, do not entail loss of protection against direct attack within the meaning of IHL.

¹⁷ The requirement of belligerent nexus refers to the relation between an act and the conduct of hostilities between the parties to an armed conflict and, therefore, is conceived more narrowly than the general nexus requirement developed in the jurisprudence of the ICTY and the ICTR as a precondition for the qualification of an act as a war crime, which refers to the relation between an act and a situation of armed conflict as a whole.

¹⁸ Direct attacks against persons and objects protected against direct attack are prohibited under IHL. The use of force by civilians not exceeding what is necessary and proportionate to defend themselves or others against such unlawful attacks lacks belligerent nexus and, therefore, does not amount to direct participation in hostilities.

4. What modalities govern the loss of protection against direct attack?¹⁹

Once it has been determined that a person has lost civilian protection against direct attack, guidance is needed as to the precise modalities that govern such loss of protection, including a) the duration of the loss of protection, b) the precautions and presumptions to be applied in situations of doubt, c) the rules and principles governing the use of force against legitimate military targets, and d) the consequences of regaining protection against direct attack.

Temporal scope of loss of protection: Civilians lose protection against direct attack for the duration of each specific act amounting to direct participation in hostilities. Where preparatory measures and geographical deployments or withdrawals constitute an integral part of a specific hostile act, they extend the beginning and end of such act beyond the phase of its immediate execution. This temporary loss of protection, which is designed to respond to spontaneous, sporadic or unorganized hostile acts carried out by civilians, must be distinguished from the continuous loss of protection entailed by membership in State armed forces or organized armed groups belonging to the parties to an armed conflict. Members of such forces or groups lose protection for as long as their membership lasts, regardless of whether membership must be determined based on formal (regular State armed forces) or functional (organized armed groups) criteria.

Precautions and presumptions in situations of doubt: In practice, civilian direct participation in hostilities is likely to entail significant confusion and uncertainty in the implementation of the principle of distinction. In order to avoid erroneous or arbitrary targeting of civilians entitled to protection against direct attack, it is of particular importance that all feasible precautions be taken in determining whether a person is a civilian and, if so, whether he or she is directly participating in hostilities. In case of doubt, the person in question must be presumed to be protected against direct attack.

Restraints on the use of force against legitimate military targets: Loss of protection against direct attack, whether due to direct participation in hostilities (civilians) or continuous combat function (members of organized armed groups), does not mean that the persons concerned fall outside the protection of the law. It is a fundamental principle of customary and treaty IHL that "the right of belligerents to adopt means of injuring the enemy is not unlimited".²⁰ Indeed, even direct attacks against legitimate military targets are subject to legal constraints, whether based on specific provisions of IHL, on the principles underlying IHL as a whole, or on other applicable branches of international law, such as human rights law or the UN Charter (*jus ad bellum*).

¹⁹ For the ICRC's position on this issue see: Interpretive Guidance, above N 3, Sections VII to X.

²⁰ See Article 22 Hague Regulations (1907); Article 35 AP I.

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Most importantly, any military operation carried out in an armed conflict must comply with the provisions of IHL governing the conduct of hostilities, which prohibit or restrict certain means and methods of warfare. Moreover, in conjunction, considerations of military necessity and humanity require that no more death, injury, or destruction be caused than is actually necessary for the accomplishment of a legitimate military purpose in the prevailing circumstances. Thus, while operating forces can hardly be required to take additional risks for themselves or the civilian population in order to capture an armed adversary alive, it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity to surrender where the circumstances are such that there manifestly is no necessity for the use of lethal force.²¹

Consequences of regaining protection against direct attack: IHL neither prohibits nor privileges civilian direct participation in hostilities. In the absence of such prohibition, civilian direct participation in hostilities does not, in and of itself, constitute a war crime. However, in the absence of combatant privilege as granted to members of State armed forces in international armed conflicts, civilians having directly participated in hostilities remain subject to prosecution for any crime under domestic law, which they may have committed during their participation. Thus, when civilians cease to directly participate in hostilities, or when members of organized armed groups belonging to a non-State party to an armed conflict cease to assume their continuous combat function, they regain full civilian protection against direct attack. This does not rule out that necessary and proportionate force may be used against them in accordance with law enforcement standards.

5. Conclusion

The "Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law" provides the ICRC's interpretative recommendations with a view to strengthening the implementation of the principle of distinction and, thereby, enhancing the protection of the civilian population in times of armed conflict. In examining the questions of who is considered a civilian for the purposes of the principle of distinction, what conduct amounts to direct participation in hostilities and what modalities govern the ensuing loss of protection against direct attack, the Interpretive Guidance tackles some of the most difficult, but as yet unresolved issues of IHL.

Today, more than ever, it is of the utmost importance that all feasible measures be taken to prevent the exposure of the civilian population to erroneous or arbitrary targeting based, among other things, on reliable guidance as to how to the principle of distinction should be implemented in the challenging and complex

²¹ For concrete examples illustrating the relevance of considerations of military necessity and humanity in determining the kind and degree of permissible force against legitimate military targets see: Interpretive Guidance, above N 3, Section IX.2.

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circumstances of contemporary warfare. Thus, although the Interpretive Guidance is not and cannot be legally binding, it may be hoped that its conclusions and recommendations will contribute to ensuring that those who do not take a direct part in hostilities receive the humanitarian protection they are entitled to under IHL.

Annex:

Recommendations of the ICRC concerning the interpretation of international humanitarian law relating to the notion of direct participation in hostilities

I. The concept of civilian in international armed conflict

For the purposes of the principle of distinction in international armed conflict, all persons who are neither members of the armed forces of a party to the conflict nor participants in a levée en masse are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities.

II. The concept of civilian in non-international armed conflict

For the purposes of the principle of distinction in non-international armed conflict, all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. In non-international armed conflict, organized armed groups constitute the armed forces of a non-State party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities ("continuous combat function").

III. Private contractors and civilian employees

Private contractors and employees of a party to an armed conflict who are civilians (see above I and II) are entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. Their activities or location may, however, expose them to an increased risk of incidental death or injury even if they do not take a direct part in hostilities.

IV. Direct participation in hostilities as a specific act

The notion of direct participation in hostilities refers to specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.

V. Constitutive elements of direct participation in hostilities

In order to qualify as direct participation in hostilities, a specific act must meet the following cumulative criteria:

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1. The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and
2. there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and
3. the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).

VI. Beginning and end of direct participation in hostilities

Measures preparatory to the execution of a specific act of direct participation in hostilities, as well as the deployment to and the return from the location of its execution, constitute an integral part of that act.

VII. Temporal scope of the loss of protection

Civilians lose protection against direct attack for the duration of each specific act amounting to direct participation in hostilities, whereas members of organized armed groups belonging to a non-State party to an armed conflict cease to be civilians (see above II), and lose protection against direct attack, for as long as they assume their continuous combat function.

VIII. Precautions and presumptions in situations of doubt

All feasible precautions must be taken in determining whether a person is a civilian and, if so, whether that civilian is directly participating in hostilities. In case of doubt, the person must be presumed to be protected against direct attack.

IX. Restraints on the use of force in direct attack

In addition to the restraints imposed by international humanitarian law on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law, the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.

X. Consequences of regaining civilian protection

International humanitarian law neither prohibits nor privileges civilian direct participation in hostilities. When civilians cease to directly participate in hostilities, or when members of organized armed groups belonging to a non-State party to an armed conflict cease to assume their continuous combat function, they regain full civilian protection against direct attack, but are not exempted from prosecution for violations of domestic and international law they may have committed.

