



Questionnaire on Direct Participation in Hostilities

Preliminary Remarks:

The notion of "direct participation in hostilities" is a concept of the law on the conduct of hostilities, which is part of International Humanitarian Law (IHL). The examples provided in the questionnaire are understood to take place within a situation to which IHL is applicable, i.e. international armed conflicts within the meaning of common art. 2 of the Geneva Conventions, including occupation and - where applicable - conflicts covered by Additional Protocol I; or non-international armed conflicts in the sense of art. 3 common to the Geneva Conventions and - where applicable - those covered by Additional Protocol II.

While "direct participation in hostilities" entails various legal consequences for the person(s) involved, including the possibility of penal prosecution, the following questionnaire focuses exclusively on the two aspects directly relevant to the conduct of hostilities, namely on the definition of the notion itself, as well as on the ensuing loss of immunity from direct attack.

In that respect, it is irrelevant whether persons who represent military objectives regardless of their behaviour (primarily members of the armed forces) directly participate in the hostilities. Consequently, the examples provided in the questionnaire are understood as describing the behaviour of *persons who would otherwise be protected from direct attack*.

The questionnaire is divided into two parts:

- **The first part** contains 7 groups of situations. Unless the question specifies otherwise, please indicate for each of the proposed examples whether or not you consider the respective behaviour to represent "direct participation in hostilities" under IHL, justifying the lawful targeting of the concerned person. Please insert your answer [yes/no] in the space provided between brackets[].
- **The second part** consists of more general questions. We kindly request you to write your answers directly in the space between brackets [] provided after each question.

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PART I. Specific Situations:

Please consider the following examples as referring to situations of both international and non-international armed conflict.

Section 1: Direct application of means of destruction or injury for reasons related to an armed conflict:

- 1.1. Direct and immediate application of kinetic[], chemical[], biological[], electronic[] or any other[] means with the aim of diminishing the military capacity of an adversary.
 - Attacking the personnel[], equipment[] or installations[] of the adversary with conventional weapons.
 - Causing damage to[] or interfering with[] a computer network used by the adversary by way of a computer network attack (CNA).
 - Using a civilian means of transportation in order to collide it with a military objective[].
 - Poisoning the drinking water of a military base[]. Introducing lethal bacteria / viruses into military warehouses and stocks[].
 - Without weapons, physically assaulting military personnel on duty[] or on leave[].
 - Sabotaging weapons systems[], means of communication[], means and ways of transportation[], electricity networks[] used by the adversary for military operations.
- 1.2. Delayed, indirect or remote controlled application of kinetic[], chemical[], biological[], electronic[] or any other [] means with the aim of diminishing the military capacity of an adversary.
 - Placing of explosive devices, such as mines, booby-traps or road-side bombs[].
 - Remote controlling of weapons-carriers[] and weaponry[]. Remote detonating of explosive devices[].
 - Electronic interference with weapons systems[], means of communication[], means and ways of transportation[], electricity networks[] used by the adversary for military operations.
- 1.3. With regard to the examples above which you considered to constitute "direct participation in hostilities", could the following *related behaviour* also qualify as "direct participation"?
 - Threatening to carry out such activities[].
 - Immediate preparation of such activities with [] or without [] intent to personally participate in them.
 - Deployments to [] or return from [] the geographic location where such activities are going to take place or have taken place.
 - General (not immediate) planning[] or organizing[] of such activities (such as the establishment of general policies and capabilities in pursuance of such activities).
- 1.4. During violent demonstrations and riots against authorities in control of a territory:
 - Construction of roadblocks[], destruction (cars, shop-windows, fences etc.)[] or looting of property[].
 - Throwing of stones[], Molotov-cocktails or similar projectiles[], shooting firearms into the air[], individual and sporadic (but targeted) use of firearms [].

Section 2: Establishment and exercise of control over military personnel, objects and territory for reasons related to an armed conflict:

- 2.1. Capturing or otherwise seizing physical control over military personnel of an adversary[]; or their equipment[], or over buildings[] or territory controlled by them[].
- 2.2. Electronically seizing control over remotely guided weapons[], weapons carriers[] or computer networks[] used by the adversary.

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- 2.3. Electronically[] or physically[] depriving an adversary of access to his financial assets or resources by seizing control over bank accounts, cash reserves etc.
- 2.4. With regard to the examples above which you considered to constitute "direct participation in hostilities", could the following *related behaviour* also qualify as "direct participation"?
- Threatening to carry out such activities[].
 - Immediate preparation of such activities [].
 - Deployments to [] or return from [] the geographic location where such activities are going to take place or have taken place.
 - General (not immediate) planning[] or organizing[] of such activities (such as the establishment of general policies and capabilities in pursuance of such activities).

Section 3: Intelligence activities for reasons related to an armed conflict:

- 3.1. By whatever means, providing, gathering, analysing and transmitting intelligence data.
- Providing information useful for military operations [].
 - Gathering intelligence as a lookout [] or through unauthorized access to a computer network used by an adversary [].
 - Analysing data provided by different sources, resulting in intelligence useful for military operations []. By whatever means, transmitting such intelligence data [].
 - Launching into orbit of navigation[] or reconnaissance[] satellites. Remote control from the ground[] or maintenance[] of such satellites once in orbit.
- 3.2. By whatever means, the transmission of operational military orders [].
- 3.3. By whatever means, the marking of likely targets on the ground[].
- 3.4. With regard to the examples above which you considered to constitute "direct participation in hostilities", could the following *related behaviour* also qualify as "direct participation"?
- Immediate preparation of such activities [].
 - Deployments to [] or return from [] the geographic location where such activities are going to take place or have taken place.
 - General (not immediate) planning[] or organizing[] of such activities (such as the establishment of general policies and capabilities in pursuance of such activities).

Section 4: Support activities for reasons related to an armed conflict:

- 4.1. Providing material such as weapons, ammunition, explosives, armoured vehicles, military computer programs etc. to armed forces or groups [].
- Working in scientific research on[], as well as in the development[], production[] and maintenance[] of such material.
 - Sale to [] or purchase for [] armed forces or groups of such material.
 - Logistical transport[], hiding[] or stockpiling[] of such material for armed forces or groups.
- 4.2. Providing general supplies and services needed for military operations (such as electricity, fuel, generators, construction material, finances and financial services) to armed forces or groups [].
- Working in the production of such supplies [].
 - Sale to [] or purchase for [] armed forces or groups of such supplies.
 - Working in commercial or financial institutions that directly (through financial transactions) support the military effort [].
 - Paying "war-taxes" to armed forces or groups [].
- 4.3. Providing non-medical life sustaining commodities (such as food, water, hygienic products, clothing, blankets) to armed forces or groups.
- Working in the agricultural[] or industrial[] production of such life sustaining commodities.

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- Working in depots and canteens providing food[] and clothing[] to armed forces or groups.
- Providing accommodation[], shelter[] or hiding places[] to armed forces or groups.
- Providing food[], water[], hygienic products[], clothing[], blankets[] to armed forces or groups.

4.4. As a civilian, through physical presence voluntarily shielding military objectives against attacks (voluntary human shield) [].

Section 5: Affiliation to armed forces or groups directly participating in an armed conflict:

5.1. In an international armed conflict, accompanying armed forces of a party to the conflict without otherwise participating in the hostilities [].

5.2. In an international armed conflict, regardless of personal behaviour, membership in an armed group not belonging to a "party" to the conflict[]. Accompanying such an armed group without otherwise participating in the hostilities [].

5.3. In a non-international armed conflict, does membership in *regular* [] or *dissident* [] *armed forces* render a person a permanent military target, regardless of personal behaviour? If yes, is this because he is *not a civilian* [], or because such membership *per se* represents "direct participation" thus *suspending* civilian protection []? Does accompanying such armed forces without otherwise participating in the hostilities constitute "direct participation"[]?

5.4. In a non-international armed conflict, does membership in an armed group *other than regular or dissident armed forces* render a person a permanent military target, regardless of personal behaviour []? If yes, is this because he is *not a civilian* [], or because such membership *per se* represents "direct participation" thus *suspending* civilian protection[]? Does accompanying such an armed group without otherwise participating in the hostilities constitute "direct participation"[]?

5.5. Political, moral and other support for armed forces or groups.

- Privately[] or publicly[] expressing sympathy for an adversary.
- Disseminating political[] or religious[] propaganda for an adversary.
- Recruiting[], training[] or inciting[] others to directly participate in hostilities.

5.6. As a civilian:

- Working as administrative[], law enforcement[] or intelligence[] personnel, performing exclusively civilian functions in domestic territory.
- Working as administrative[], law enforcement[] or intelligence[] personnel, performing exclusively civilian functions in enemy or occupied territory.
- Performing tasks of (re-) construction of civilian[], military[] or dual-use[] infrastructure in domestic territory.
- Performing tasks of (re-) construction of civilian[], military[] or dual-use[] infrastructure in enemy or occupied territory.
- Providing security for military personnel [] or objects [] against military operations of an adversary.
- Providing security for military personnel [] or objects [] against common crime unrelated to military operations.
- Providing security for civilian personnel [] - or for infrastructure with[] or without[] war-sustaining value - against military operations of an adversary.
- Providing security for civilian personnel [] - or for infrastructure with[] or without[] war-sustaining value - against crime, unrelated to military operations.
- Engaging in operations for the rescue of military personnel [] or civilians [].

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5.7. Leadership or responsibility for armed forces or groups.

- Political[], religious[] or military[] leaders deciding that their armed forces or groups will get actively engaged in an armed conflict (e.g. declaration of war, deployment of troops, general opening of hostilities).
- Political[], religious[] or military[] leaders deciding on specific methods of warfare to be used by their armed forces or groups (e.g. aerial bombing, invasion with ground troops, undercover operations, targeted killing etc.), but not on concrete operations or targets.
- Political[], religious[] or military[] leaders deciding on specific operations and targets for their armed forces or groups (e.g. the targeting of a certain building, installation, unit or individual, the capture of a specific location etc.).

Section 6: Acts related to an armed conflict against protected persons and objects:

6.1. Looting[] or unlawful destruction[] of civilian property.

6.2. Deliberate killing[], injury[], unlawful deprivation of liberty[], or humiliating and degrading treatment [].

6.3. Interfering with a civilian computer network (e.g. of a hospital, an electricity, heating or water distribution system, a public transport system or flight traffic control) resulting in harm to the civilian population [].

6.4. With regard to the examples above which you considered to constitute "direct participation in hostilities", could the following *related behaviour* also qualify as "direct participation"?

- Threatening to carry out such activities[].
- Immediate preparation of such activities [].
- Deployments to [] or return from [] the geographic location where such activities are going to take place or have taken place.
- General (not immediate) planning[] or organizing[] of such activities (such as establishing of general policies and capabilities in pursuance of such activities).

Section 7: Additional Questions:

With regard to acts, which you have concluded constitute "direct participation in hostilities" if carried out for reasons related to an armed conflict:

7.1. Committing the same acts without any nexus to the surrounding situation of armed conflict (e.g. individual self-defence[], common crime[]).

7.2. Committing the same acts involuntarily, e.g. under threat[], force[] or upon requisition[].

7.3. Committing these acts from a location in proximity[] of or very remote[] from the geographic zone of hostilities (assuming that the consequences remain the same).

7.4. Do such acts have to be part of collective operations [] or can they also be individual and spontaneous acts []?

7.5. Please list any other important examples you would situate:

- clearly within the scope of "direct participation in hostilities" []
- clearly outside the scope of "direct participation in hostilities" []
- in the grey-zone in between, which needs to be further clarified []

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PART II. General questions

A. The Notion of "Direct Participation in Hostilities":

1. **Defining elements:** In order for a certain behaviour to qualify as "direct participation in hostilities":

1.1. Nexus: Does such behaviour have to have a "nexus" to a situation of armed conflict including occupation []? If yes, how can such a "nexus" be defined / identified in practical terms (in order to distinguish e.g. direct participation from common crime)?

[Answer: ...]

1.2. Hostile intent: Does such behaviour have to display "hostile intent" []? If yes, how can such "hostile intent" be identified in practical terms? Is there a qualitative or quantitative threshold requirement?

[Answer: ...]

1.3. Causality: Does such behaviour have to "directly cause" harmful consequences (immediate or delayed) to the enemy or the civilian population []? If yes, do such harmful consequences of such behaviour have to reach a certain threshold in terms of "quality" or "quantity"?

[Answer: ...]

1.4. Value for war effort: Is the "added value to the war effort" of such behaviour sufficient to constitute "direct participation" []? If yes, is there a qualitative or quantitative threshold requirement of such added value?

[Answer: ...]

1.5. Other criteria? Do you have any other criteria to suggest?

[Answer: ...]

1.6. Please indicate whether the above criteria apply cumulatively or alternatively:

[Answer: ...]

2. **International and non-international armed conflict:** Is it possible to have a single definition of direct participation in hostilities applicable to both international and non-international armed conflict, or would it be necessary or opportune to envisage a separate definition for each context?

[Answer: ...]

3. **"Direct participation" vs. "individual self defense" and "common crime":** Does the exercise of mere self-defense by a civilian (who is not directly participating in the hostilities) against an unlawful attack lead to the loss of immunity against direct attack? If not, how can "individual self-defense" be distinguished from "direct participation in hostilities"? Can the employees of private companies, performing a variety of security activities for the military or for civilian companies claim individual self defense when attacked? If yes, why? If not, why not?

[Answer: ...]

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B. The Loss of Immunity From Attack:

1. **Temporal scope:** How can the "temporal scope" of the loss of immunity from attack due to direct participation in hostilities be determined in practical terms? In other words: how can the beginning and – especially – the end of "direct participation" be determined in practical terms?
[Answer: ...]
2. **Membership:** If you consider membership in an armed group to constitute *per se* "direct participation in hostilities" (Section 5, Part I) and thereby to justify the loss of immunity against attack for the duration of such membership, how could such membership be defined and how could its beginning and (particularly) end be determined in practical terms?
[Answer: ...]
3. **Revolving Door:** In order to ensure the effective protection of persons who are not or are no longer directly participating in the hostilities while at the same time avoiding the "revolving door" scenario ("farmer by day, fighter by night"):
 - a. **Objective criteria:** Could the definition of "direct participation" (and thereby the loss of immunity against attack) be restricted to behaviour that is sufficiently visible and obvious to leave no room for doubt (maximum avoidance of erroneous targeting of persons protected against attack)?
[Answer: ...]
 - b. **Precautions:** On the other hand, could the risks posed by a more extensive interpretation of "direct participation in hostilities" be balanced by a more strict interpretation of the obligation to take all "feasible precautions" in the identification of legitimate targets and in the planning and deciding upon attacks?
[Answer: ...]
 - c. **Necessity:** Could the risks posed by a more extensive interpretation of "direct participation in hostilities" be balanced by a more strict interpretation of the principle of "necessity" in the use of force against legitimate targets?
[Answer: ...]