



## **'Direct Participation in Hostilities' under International Humanitarian Law**

### *Agenda of the Meeting*

**8: 45 am - 9: 00 am**

*Welcome and registration*

**9: 00 am - 9: 15 am**

**Opening remarks by:**

*Avril Mc Donald, Head, section IHL/ICL, T.M.C. Asser Institute  
Jean-Philippe Lavoyer, Head of the Legal Division, ICRC*

**PART I (9: 15 am - 12: 40 pm)**

**The notion of 'direct participation in hostilities' in IHL**

**Chair: Jean-Philippe Lavoyer, Head of the Legal Division, ICRC**

### **First session: Overview of applicable law**

*Based on the 1949 Geneva Conventions - where it was used for the first time - the notion of 'direct participation in hostilities' reappears frequently in the 1977 Additional Protocols to the Conventions. However, the treaties do not provide a definition of this legal concept. The aim of this session will be to examine the meaning of 'hostilities' and 'direct participation' and to identify the differences in their content in the context of international and non-international armed conflicts, based on concrete examples. The discussion would also focus on whether it is feasible or useful to lay down criteria for defining 'direct participation in hostilities' and, if so, what such criteria could be (types of activity, duration?). It would also address questions such as - is the notion of 'direct participation in hostilities' only applicable to individuals or can it also apply to armed groups? If a category of civilians who contribute to the military effort but do not directly participate in hostilities is mapped out, the session would then also examine which norms are applicable to this particular group.*

**9: 15 am - 9: 35 am**

### **Background Presentation**

*Horst Fischer, Academic Director of the Institute for International Law of Peace and Armed Conflict, Ruhr-*

*Universität, Germany; Professor of IHL, Leiden University, the Netherlands*

**9: 35 am - 9: 45 am**

**Commentator**

*Charles Garraway, Colonel, ALS 2, Directorate of Army Legal Services, United Kingdom*

**9: 45 am - 10: 45 am**

**Discussion**

*10: 45 am - 11: 00 am Coffee break*

**Second session: Current challenges: does the law correspond to reality?**

*Contemporary conflicts pose special challenges in relation to the notion of 'direct participation in hostilities'. Examples are the increased intermingling of armed groups with the civilian population, the lack of identification of those taking a 'direct part in hostilities', and questions related to measures that could be taken to ensure the protection of those who do not directly participate in hostilities. An additional issue is how to distinguish a police from a military operation and the rules governing use of force in these respective situations. Another current challenge is the so-called 'privatisation' of armed forces and how the rules apply to outsourced employees of private companies. The second session would focus on these and other current points of tension in the implementation of the notion of 'direct participation in hostilities', as well as on possible solutions.*

**11: 00 am - 11: 20 am**

**Background Presentation**

*Michael Schmitt, Professor of International Law, George C. Marshall European Center for Security Studies, Germany*

**11: 20 am - 11: 30 am**

**Commentator**

*Hans-Peter Gasser, former Legal Advisor, ICRC*

**11: 30 am - 12: 40 pm**

**Discussion**

*12: 40 pm - 14: 00 pm Lunch*

**PART II (14: 00 pm - 17: 30 pm)**

**The consequences of direct participation in hostilities**

**Chair: Maria Nybondas, Researcher, T.M.C. Asser Institute**

**Third session: Legal consequences of direct participation in hostilities**

*Civilians directly participating in hostilities are traditionally considered as having waived their immunity from attack, thus becoming legitimate targets of attack for the time of their participation, both in international and non-international armed conflict. In international armed conflict, what is the scope of protection enjoyed by individuals who directly participated in hostilities and fell into the power of the enemy: what is the applicability of the*

*fourth Geneva Convention and of the first Additional Protocol in such cases? What is the field of application of article 5 of the fourth Geneva Convention? Are individuals who participated in hostilities always subject to criminal prosecution? Finally, in non-international armed conflict, how does the absence of combatant status affect the treatment and protection of persons who have directly participated in hostilities and have fallen into enemy hands? What are the applicable norms? Are individuals who participated in hostilities always subject to criminal prosecution? Do the questions posed above need to be analysed from a different perspective? The third session of the Expert Meeting would be devoted to an examination of these and other issues.*

- 14: 00 pm - 14: 20 pm**      **Background Presentation**  
*Louise Doswald-Beck, Secretary-General, International Commission of Jurists*
- 14: 20 pm - 14: 30 pm**      **Commentator**  
*William K. Lietzau, Special Assistant to the General Counsel, U.S. Department of Defense*
- 14: 30 pm - 15: 45 pm**      **Discussion**

*15: 45 pm - 16: 15 pm Coffee break*

**Fourth session:**      **The future of the notion of direct participation in hostilities: is more law necessary?**

*The purpose of the last session would be to summarize the debate and, in particular, to determine what, if any, further steps are needed in order to clarify the notion of 'direct participation in hostilities'.*

- 16: 15 pm - 16: 30 pm**      **Summary of proceedings**  
*Avril Mc Donald, Head, section IHL/ICL, T.M.C. Asser Institute*
- 16: 30 pm - 16: 45 pm**      **Future steps**  
*Jelena Pejic, Legal Advisor, ICRC*
- 16: 45 pm - 17: 30 pm**      **Discussion**