JOURNAL FOR SOCIAL SCIENCE STUDIES
*An International Peer-Reviewed Open Access Journal*

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

# DOCTRINAL ANALYSIS OF THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES AND ITS IMPLICATIONS ON INTERNATIONAL HUMANITARIAN LAW

**Abu Bakar Hashmi**

*Visiting Lecturer, Department of Law, University of the Punjab, Gujranwala Campus (PUGC), LL.M Scholar, School of Law, University of Gujrat.*

abubakarhashmi167167@gmail.com

**DOI:** https://doi.org/10.5281/zenodo.22276902

**Keywords**
*Civilians, Combatants, DPH, International Humanitarian Law (IHL), ICRC*

**Article History**

Received: 28 June 2026
Accepted: 15 August 2026
Published: 31 August 2026

*Copyright @Author*

**Corresponding Author: ***
**Abu Bakar Hashmi**

## Abstract

*Modern conflicts blur the distinction between civilians and combatants, making a universally accepted and comprehensive definition of direct participation in hostilities (DPH) increasingly necessary. States, however, may favor restrictive or expansive interpretations of DPH in accordance with their strategic interests and may shift between them as interests evolve. These competing approaches poses a significant challenge for policymakers seeking to reform the existing framework. Efforts to reform DPH are inherently difficult, as any modification to the existing framework carries the risk of harming the certain groups, without offering an obvious or universally acceptable resolution. A comprehensive reconsideration of DPH has therefore become necessary. This article first sets outlines the framework of the law of armed conflict before examining the strengths and strengths and limitations of the doctrine within the broader application of International Humanitarian Law (IHL) with particular attention to the interpretations advanced by the International Committee of the Red Cross (ICRC). The article concludes by exploring potential solutions to the interpretive challenges surrounding DPH from an interpretivist perspective.*

## INTRODUCTION

International Humanitarian Law (IHL), commonly referred to as the Law of War or the Law of Armed Conflict (LOAC), comprises a body of international rules and agreements designed to regulate the use of force during armed conflicts. However, the apparent precision of its rules does not always translate into clarity in their application. The doctrine of direct participation in hostilities (DPH) is illustrative of this difficulty. Under Article 51(3) of Additional Protocol I and Article 13(3) of Additional Protocol II to the Geneva Conventions, the concept provides that civilians in both international and non-international armed conflicts may not be targeted unless and for such time as they take direct part in hostilities. The ambiguity surrounding DPH allows non-State groups and as well as the States to adopt either narrow or broad interpretations of its elements. Taking a constricted approach sets a higher point for establishing direct participation in hostilities, thereby reducing the likelihood that civilians will be classified as direct participants and making the circumstances much difficult in which

JOURNAL FOR SOCIAL SCIENCE STUDIES
*An International Peer-Reviewed Open Access Journal*

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

they may be lawfully be targeted. However, such an interpretation of DPH could potentially lead the terrorists to conceal themselves within the civilian settings. A broad interpretation, by contrast, lowers the threshold, increasing the likelihood of civilians becoming directly involved in hostilities, thereby making the justification for targeting them more readily available. Meanwhile, this approach may strengthen the ability of states to respond to threats posed by civilian personnel and terrorist groups, who become involved in hostilities, an extended interpretation risks fading the distinction between combatants and the civilians and may stimulate civilians to change their behavior to avert any perception of being perceived as participating directly in hostilities.

DPH is often considered as part of customary international law. From a conceptual perspective, there is prevailing view that civilians should not be targeted unless and until, they actively take part in hostilities. The primary challenge lies not in the basic principle but in defining what constitutes 'direct participation'. The lack of a universally accepted definition of DPH remains a major challenge. The International Committee of the Red Cross (ICRC) in association with the T.M.C. Asser institute, in effort to resolve this uncertainty, facilitated expert meetings to develop interpretive guidance on this concept. Nevertheless, an agreement remains lacking on several material questions about the doctrine. Although a precise definition which would be universally accepted will provide valuable legal certainty, an effort to reconcile limited and broad approaches through consensus language may simply reproduce the uncertainty of existing formulations. On the other hand, imposing a single universal interpretation may require states to make significant changes to their targeting practices and staffing structures in order to comply with the law of armed conflict. This tension lies at the juncture of the interpretive impediment about DPH. Like Alexander the Great's Gordian Knot, resolving it therefore requires a holistic approach capable of moving beyond the limitations of existing framework of interpretation. A revised modern perspective of DPH will likely depart from its traditional definition, but such a shift must resolve the concept's underlying difficulties rather than create new uncertainties. This article examines the interpretive challenges that make DPH particularly difficult tot apply. Part II outlines the relevant LOAC framework, focusing in the principles governing DPH. Part III assesses the Unite State's approach which adopts a narrow interpretation of DPH in relation to military and civilian personnel but a broader conception in counterterrorism targeting. The part concludes by considering the implications of this divergent approach. Part IV examines the recent decision of Israeli Supreme Court that adopts the broad interpretation of DPH in Gaza strip and considers the implications of that approach. Part V discusses the challenges faced by ICRC experts in developing an appropriate response to the issue. Part VI concludes by proposing possible solutions and their broader implications for the implications for the interpretation and application of DPH.

**Research Methodology**

This article adopts a doctrinal research methodology to critically examine the doctrine of Direct Participation in Hostilities (DPH) focusing on its constituent elements and the competing legal positions associated with its application. This article seeks to clarify and reconcile the ambiguities, through a systematic examination of legislative texts legal rules & judicial decisions, surrounding DPH with International Humanitarian Law (IHL). It further evaluates the nature and consequences of these ambiguities for the effective implementation and enforcement of IHL. The study particularly analyse the distinction between combatants and civilians and critically examines the legal characterization of DPH. It also address the lacunas within the contemporary IHL framework arising from the intermediate nature of DPH and considers how the expensive exercise of authority may compromise the constitutionalism and implicate the basic structure of the Constitution of Islamic Republic of Pakistan.

JOURNAL FOR SOCIAL SCIENCE STUDIES
An International Peer-Reviewed Open Access Journal
ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

**Scope & Significance of Study:**

This study critically examines through the principle of distinction about the complexities of Direct Participation in Hostilities (DPH), with the focus on how obligations are imposed on combatants and the criteria used to demarcate them from civilians. By analysing judicial precedents and the relevant case studies, it seeks to clarify existing uncertainties, provide practical recommendations for its application, and suggests a more coherent and precise understanding of International Humanitarian Law (IHL).

**International Humanitarian Law (IHL) & Direct Participation in Hostilities (DPH)**

The foremost and the basic principle of the IHL is that the civilians and their property must be demarcated from combatants and military targets, with the attacks directed at the latter and giving protection to the former. This principle serves as essential cornerstone for understanding the legal framework governing the Direct Participation in Hostilities (DPH). The Liber Code, 1863, which regulated the conduct of Union Army during the U.S. Civil War, served as the base of Just War Tradition and was its first codification. The principle seeks to limit or minimize the effects of warfare along with the prevention of indiscriminate expansion of hostilities and it applies in both international non-international armed conflicts. In contemporary warfare the application of this principle has become increasingly challenging, where the civilians & combatants, their activities and infrastructure frequently overlap. Within this framework, individuals are generally classified in any of two classes either civilians or combatants, although legal consequences of their conduct may differ consdierably depending on the circumstances. In international armed conflicts involving two or more High contracting parties to the Geneva Conventions, the, category of persons entitled to combatant status generally include members of the regular armed forces as well as certain members of militants and volunteer corps associated with a party to conflict. In order to qualify for such status, these irregular forces must satisfy following conditions: forces must operate under responsible command, possess a distinctive sign, carry their weapons openly, and conduct their operations in accordance with the laws and customs of war. In non-international armed conflicts, a significant distinction arises. Such conflicts typically involve government forces and organized armed groups within a single state, the members of organized armed groups do not acquire the legal status or entitlements of combatants under international armed conflicts. Resultantly, the rules governing combatant status in international armed conflicts should not be directly transposed to the non international conflicts.

The definition who is combatant is closely associated with who qualifies for prisoner of war (POW) status, under the law applicable to international armed conflicts. Civilians are generally defined negatively or residually as persons who do not fall within the categories of combatants or other persons entitled to combatant status. Although the U.S. Supreme Court recognized the term 'unlawful combatant' in *Ex parte Quirin,* the term does not constitute a formally recognized status under international law of treaties.

The distinction also applies to objects. Under Article 52(2) of the Additional Protocol I of Geneva Conventions, a military objective is an object which, by its nature, location, purpose or use, makes an effective contribution to military action and whose destruction, capture o, neutralization offers a definite military advantage in the circumstances prevailing at that tim. Objects that do not satisfy these criteria are regarded as civilian objects. The classification of persons and objects consequently determines the scope of protection afforded by international humanitarian law.

Combatants in international armed conflicts may lawfully participate in hostilities are not ordinarily be prosecuted for lawful acts of war. This protection does not extend to constituting war crimes or other violations of international humanitarian law. Combatants may ordinarily be

JOURNAL FOR SOCIAL SCIENCE STUDIES
*An International Peer-Reviewed Open Access Journal*

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

targeted during hostilities subject to protections applicable when they are *hors de combat* or otherwise protected (including medical and religious personnel) by IHL. Upon arrest, qualifying combatants are generally entitled to the status of Prisoners of War (POW). Meanwhile, civilians are protected against direct attack unless and until as they directly participate in hostilities. The absence of POW status for detained civilians does not deprive them for various guarantees and protection under International Humanitarian Law. This protection is basically grounded in the principle of distinction and other applicable rules governing the conduct of hostilities. In addition, the legality of an attack is governed by the principles of proportionality and military necessity. Thus, even when an attack is directed against a legitimate military objective, it remains prohibited where anticipated civilian harm would be excessive in relation to the concrete military advantage expected. This principle demonstrates that civilian immunity is although fundamental but not absolute in the context of attacks against legitimate military objectives. As proportionality assessments are inherently predictive & uncertain and must therefore be undertaken in good faith on the basis of information reasonably available prior to the attack. If an assessment subsequently proves to be faulty or wrong, its legality should be judged according to the circumstances known at that time rather than in retrospectively. The military necessity requires that attacks be directed only against the targets capable of providing a genuine military advantage. The anticipated advantage cannot rest on speculation, and commanders must employ only those means necessary to accomplish the legitimate military objective. Although determining military necessity involves an element of professional and operational judgement, the military value and urgency of a particular target may change as operational circumstances evolve.

**Direct Participation in Hostilities: An Analysis of the ICRC's Approach**

During the meeting in 2005, the experts recognized that no universally accepted definition of Direct Participation in Hostilities (DPH) existed, Nevertheless, they concluded that it was possible to develop interpretive guidance and explanatory commentary to clarify the scope of the concept. Although the experts did not reach an agreement, they identified several clear examples of conduct that would, or would not, constitute Direct Participation in Hostilities (DPH). For example, civilians who carry out attacks against were generally regarded as directly participating in hostilities, whereas civilians employed in the manufacture of ammunition were not. Disagreement arose in cases falling between these two extremes, particularly concerning the meaning of hostilities, casual proximity and hostile intent. The ICRC experts generally considered hostilities to occupy an intermediate position, broader than the concept of an attack, but narrower than the broader notion of armed conflict. In addition, most experts agreed that activities supporting the war effort, such as employment in an ammunition factory, do not in themselves constitute participation in hostilities. Some expert favored a narrow interpretation in order to ensure that civilians do not unnecessarily loss the protection provided to them against direct attack. Whereas broader interpretation of DPH, could arguably enhance civilian protection by discouraging individuals from engaging in activities connected with hostilities connected with hostilities. With respect to casual proximity, the experts were broadly of the view that Direct Participation in Hostilities (DPH) requires a direct and foreseeable connection between the individual's conduct and the harm likely to result, or a clear intention to bring about such harm. They rejected the proposition that a merely remote or attended casual connection would be sufficient. For instance, it was suggested that general training activities of soldiers may not qualify to constitute DPH, whereas training specifically for a particular operation fall within the scope of DPH. Lastly, the

JOURNAL FOR SOCIAL SCIENCE STUDIES
*An International Peer-Reviewed Open Access Journal*

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

experts unanimously rejected the hostile intent as a necessary element of DPH. Their reasoning was that soldiers cannot be reasonably be expected to make immediate and reliable assessments of an individuals subjective intentions. Instead, targeting decisions should be based primarily on observable and objective indicators of conduct. Although several issues remained unresolved, the discussions suggest that most experts supported a relatively narrow interpretation of DPH. While such an approach enhances the civilian protection by limiting the circumstances in which civilians lose their immunity against direct attack. At the same time, it may create difficulties in situation in which the members of the terrorist or other organized armed groups deliberately conceal themselves within civilian populations. The temporal dimension of DPH, along with the notion of proposed membership approach, emerged as one of the most contentious issues considered by experts. Several experts were critical of the idea of determining DPH solely on the basis of an individual's membership in an organized armed group, observing that proving a clear and voluntary withdrawal from such a group would be particularly difficult for individuals seeking to regain civilian protection. One expert asserted that Article 51(3) of Additional Protocol I of Geneva Convention is fundamentally conduct based rather than status based. Furthermore, another expert highlighted that the provision contains an explicit temporal limitation, suggesting that drafters were aware of and accepted the possibility of a 'revolving door' effect of losing the civilian protection.

The experts also disagreed on the matter whether civilians may be targeted while travelling to take part or engage in hostilities or while returning from them. Those who contended the membership approach generally argued the resolving uncertainty in favor of civilian protection, requiring military personnel to assume civilian status where participation could not be established with utmost certainty. Although no consensus was reached, it was recognized that adopting a membership based approach could provide greater certainty by resolving disputes concerning when an individual becomes and ceases to be a lawful target. Nevertheless, the opponents of the membership approach appeared willing to accept the resulting complexity because the higher threshold for establishing the participation provides the greater protection for civilians. Several important questions remained unresolved before the ICRC experts could finalise their report. Broad consensus had generally emerged on issues that were relatively uncontroversial from the outset, whereas the remaining disagreements largely reflected the competing merits of narrow and broad interpretations of Direct Participation in Hostilities (DPH). States have similarly adopted different and sometimes competing approaches to the concept. As the nature of armed conflict to evolve, states are likely to adapt their operational practices and corresponding interpretations of law of war and DPH. However, without a more fundamental reconsideration of the existing framework of DPH, any single interpretation is likely to face persistent legal, operational and humanitarian criticism.

**Conclusion**

The inherent tension within the concept of Direct Participation in Hostilities (DPH) makes any attempt at reinterpretation particularly difficult. A restrictive interpretation would limit the numbers of civilians who may lawfully be targeted and thereby strengthen the protection of civilians. At the same time, an excessively narrow interpretation may be exploited by terrorists or organized armed groups seeking to conceal themselves within the civilian populations. A broader interpretation would create an impetus for civilians to avoid any kind of associations with armed groups and participation in hostilities and will simultaneously expand the circumstances in which individuals may be lawfully targeted. The complexity of this matter is further complicated by the possibility that choosing one approach over the other between the competing approaches may affect the support of influential states, and will

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

potentially undermine the stability of International legal system.

**REFERENCES.**

Lindgren José A., "The Declaration of Human Rights in Postmodernity" Human Rights Quarterly, No. 2 (2000): 478-500. https://www.jstor.org/stable/4489286.

Daes Erica Irene, "The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms Article 29 of the Universal Declaration of Human Rights: a contribution to the freedom of the individual under law" UN Doc. E/CN.4/Sub.2/432/Rev.2, 82.XIV.1 (1983): 1-214.

Barak Aharon, Proportionality. Constitutional Rights and their Limitations. Cambridge: Cambridge University Press, 2012.

Bobbio Norberto, The Age of Human Rights. Cambridge: Polity, 1996. Boerefijn Ineke, The Reporting Procedure under the Covenant on Civil and Political Rights. Practice and Procedures of the Human Rights Committee.

AntwerpenOxford: Intersentia-Hart, 1999. Buzan Barry, Lene Hansen, The Evolution of International Security Studies. Cambridge Core: Cambridge University Press, 2009. Chowdhury Subrata Roy, Rule of Law in A State of Emergency: The Paris Minimum Standards of Human Rights Norms in a Sstate of Emergency. London: Pinter 1989.

Fitzpatrick Joan, The International System for Protecting Rights During States of Emergency. Philadelphia: University of Pennsylvania Press, 1994. Gewirth Alan, "Are there any Absolute Rights?" The Philosophical Quarterly, Vol. XXXI (1981): 1-16. Doi: 10.2307/2218674.

Ghandhi Sandy, The Human Rights Committee and The Right of Individual Communication. Law and Practice, Ashgate-Dartmouth: Taylor&Francis, 1998; reissued: London: Routledge, 2018.

Hafner-Burton Emilie M., Laurence R. Helfer, Christopher J. Fariss, "Emergency and Escape: Explaining Derogations from Human Rights Treaties" International Organization, No. 4 (2011): 673-707. Doi: 10.1017/S00208183110002IX Hare Ivan, "Social Rights as Foundational Human Rights," [in:] Social and Labour Rights in Global Context, ed. Bob Hepple. 153-181 Cambridge: Cambridge University Press, 2002. Hathaway Oona, "Do Human Rights Treaties Make a Difference?" Yale Law Journal, No. 8 (2002): 1934-2042.

Hill Daniel W. Jr., "Estimating the Effects of Human Rights Treaties on State Behavior" The Journal of Politics, No. 4 (2010): 1161-1174. https://doi.org/10.1017/s0022381610000599. Hopkins Carol A., "Basic Principles of Modern International Law By V.S. Mani and The United Nations and the Principles of International Law.

Essays in Memory of Michael Akehurst" British Yearbook of International Law, No. 1 (1995): 465-467, https://doi.org/10.1093/bybil/66.1.465.

Jasper Helen, Keegan James, Marco Guzman; Arturo J. Carrillo, "He who Dares not Offend Cannot be Honest: United Nations Human Rights Committee Jurisprudence and Defamation Laws Under the ICCPR" GW Law Faculty Publications & Other Works, 1679 (2023): 1-13. https://ssrn.com/abstract=4441859.

Jasudowicz Tadeusz, "Czas a prawa człowieka. Garść refleksji" Prawo i Więź, No. 1 (2013): 7-25. Sur Serge, International Law, Power, Security and Justice: Essays on International Law and Relations: Oxford-Portland: Hart Publishing, 2010.

Traisbach Knut, "International Law (Introduction)", [in:] International Relations, ed. Stephen McGlinchey. 55-70. Bristol: e-International Relations Publishing, 2017.

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 4 • August 2026

Warbrick Colin, "The Principles of the European Convention on Human Rights and the Response of States to Terrorism" European Human Rights Law Review, No. 3 (2002): 287-314.

Wąsikowski Adam, "Prawa i wolności obywatelskie w warunkach epidemii COVID-19" Zbliżenia Cywilizacyjne, No. 1 (2021): 11-32. Doi: 10.21784/ZC.2021.002.

Wayne Martin, Sándor Gurbai, "Surveying the Geneva Impasse: Coercive Care and Human Rights" International Journal of Law and Psychiatry, Vol. LXIV (2019): 117-128. Doi: 10.1016/j.ijlp.2019.03.001.