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Civilians with skin in the game : the law of war manual's rejection of the ICRC guidance on direct participation in hostilities / Cynthia Marshall

Document type:	Article
Title:	Civilians with skin in the game : the law of war manual's rejection of the ICRC guidance on direct participation in hostilities
Host item entries:	Military law review,
Author zone:	Cynthia Marshall
General Note:	Photocopies
Language(s):	eng
Abstract:	Civilians in and around contemporary armed conflicts present a problem to the fundamental principle of international humanitarian law requiring warring parties to distinguish between combatants and civilians, as the former are lawful military targets and the latter are immune from direct attack. Civilians forfeit this targeting immunity if they directly participate in hostilities (DPH), but DPH is not defined by treaty IHL, nor does State practice or international jurisprudence provide clear instruction on the term's meaning. To resolve this situation, in 2003 the ICRC launched an informal expert process to research and discuss the interpretation of DPH, resulting in the 2009 publication of the Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law. On June 12 2015, the American Department of Defense expressly rejected the Guidance and gave its own instruction on what constitutes DPH in the Law of War Manual. This article analyses those two diverging positions on the definition of DPH and explores the implications of the Manual's rejection of the Guidance.
Keyword in French:	DIH CONFLIT ARME CONDUITE DES HOSTILITES DISTINCTION CIVIL-COMBATTANT CIVIL CHANGEMENT DE STATUT STATUT DE COMBATTANT CICR ETATS-UNIS PARTICIPATION
Keyword in English:	IHL (INTERNATIONAL HUMANITARIAN LAW) ARMED CONFLICT CONDUCT OF HOSTILITIES DISTINCTION BETWEEN CIVILIAN AND COMBATANT CIVILIAN CHANGE OF STATUS COMBATANT STATUS ICRC UNITED STATES PARTICIPATION
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Call number	Disposability / Due date
345.25/380 (Br.)	Available