4.23.1 Police as Civilians. In general, members of law enforcement agencies have civilian status. Furthermore, routine domestic law enforcement is part of the general protection of the civilian population and does not constitute “taking a direct part in hostilities” that would deprive police officers of their protection from being made the object of attack.

4.23.2 Police With a Military Role. Some States use police forces in a paramilitary capacity or use military forces in a police role. Members of the armed forces engaged in police roles are combatants.

The extent to which police officers are treated as combatants largely depends on whether the State decides to use them in that capacity. States may decide to make law enforcement agencies part of their armed forces. Members of these law enforcement agencies, like other members of those armed forces, receive combatant status by virtue of their membership in the armed forces. In addition, States may authorize members of the law enforcement agencies to accompany their armed forces without incorporating them into their armed forces. These persons have the legal status of persons authorized to accompany the armed forces.

4.23.3 Police in Non-International Armed Conflict. Police officers may play a larger role in armed conflicts between States and insurgent or terrorist groups because in such conflicts the State may treat all enemy persons’ participation in hostilities as criminal.

4.24 JOURNALISTS

In general, journalists are civilians. However, journalists may be members of the armed forces, persons authorized to accompany the armed forces, or unprivileged belligerents.

4.24.1 Military Journalists. Members of the armed forces may serve as journalists or in some other public affairs capacity. These persons have the same status as other members of the armed forces.

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464 Memorandum submitted in United States v. Shakur, 690 F. Supp. 1291 (S.D.N.Y. 1988), III CUMULATIVE DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1981-88 3436, 3450 (“Members of the civilian police force are not deemed to be legitimate objects of attack during international wars unless they are incorporated into the armed forces. The ‘status of police is generally that of civilians’ for purposes of the law of war.”).

465 Refer to § 5.9.3.2 (Examples of Acts Not Considered Taking a Direct in Hostilities).

466 For example, Belgium, Statement on Ratification of AP I, May 20, 1986, 1435 UNTS 367, 367-68 (“Considering paragraph 3 of article 43 (armed forces) and the special status of the Belgian gendarmerie, the Belgian Government has decided to notify the High Contracting Parties about the following duties which are entrusted to the Belgian gendarmerie during periods of armed conflict. It believes that this notification, in so far as is necessary, meets the requirements of article 43 in respect of the gendarmerie. (a) The Belgian gendarmerie, which was established to maintain order and enforce the law, is a public force which, under national legislation, constitutes one of the armed forces and which therefore corresponds to the concept of ‘armed forces of a party to a conflict’ within the meaning of article 43 of Protocol I. Thus, in times of international armed conflict the members of the gendarmerie have ‘combatant’ status within the meaning of that Protocol.”).

467 Refer to § 4.5 (Armed Forces of a State).

468 Refer to § 4.15 (Persons Authorized to Accompany the Armed Forces).

469 Refer to § 17.4.1 (Ability of a State to Use Its Domestic Law Against Non-State Armed Groups).
4.24.2 Other Journalists. In general, independent journalists and other media representatives are regarded as civilians, i.e., journalism does not constitute taking a direct part in hostilities such that such a person would be deprived of protection from being made the object of attack.

4.24.2.1 Journalists Authorized to Accompany the Armed Forces. Journalists authorized to accompany the armed forces have the status of such persons. For example, they are detained as POWs during international armed conflict. Such journalists are sometimes called “war correspondents.” DoD practice has been to embed journalists with units during military operations.

Journalists authorized to accompany the armed forces may be detained by opposing military forces. Since such personnel are liable to become POWs, they must be issued identification cards so that they may establish their entitlement to POW status upon capture by the enemy during international armed conflict.

4.24.3 General Rules for the Treatment of Civilian Journalists and Journalists Authorized to Accompany the Armed Forces.

4.24.3.1 Journalists - Risks in Areas of Military Operations. Journalists who enter areas of military operations assume a significant risk that they could be injured or killed

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470 Refer to § 4.4 (Rights, Duties, and Liabilities of Combatants).

471 See Hedges v. Obama, No. 12-3644, Reply Brief for Defendant-Appellant, 11 (2d Cir. Sept. 20, 2012) (“As an initial matter, it is an established law of war norm, which is reflected in Article 79 of Additional Protocol I to the Geneva Conventions, that ‘journalists’ are generally to be protected as ‘civilians.’ Although the United States is not a party to Additional Protocol I, it supports and respects this important principle.”). Consider AP I art. 79 (“MEASURES OF PROTECTION FOR JOURNALISTS. 1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1. 2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A (4) of the Third Convention.”).

472 Refer to § 5.9.3.2 (Examples of Acts Not Considered Taking a Direct in Hostilities).

473 Refer to § 4.15 (Persons Authorized to Accompany the Armed Forces).

474 See GPW art. 4A(4) (defining “prisoners of war, in the sense of the present Convention” to include “[p]ersons who accompany the armed forces without actually being members thereof, such as … war correspondents, … provided that they have received authorization from the armed forces which they accompany,” who have fallen into the power of the enemy); HAGUE IV REG. art. 13 (“Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, … who fall into the enemy’s hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.”).

475 GPW art. 4A(4); AP I art. 79(2).

476 DEPARTMENT OF THE ARMY FIELD MANUAL 46-1, Public Affairs Operations, 25-26 (May 30, 1997) (“PAOs should seek out those members of the media who are willing to spend extended periods of time with soldiers during an operation, embedding them into the unit they cover. Embedding is the act of assigning a reporter to a unit as a member of the unit. The reporter eats, sleeps, and moves with the unit. The reporter is authorized open access to all sections of the unit and is not escorted by public affairs personnel. Rather, the unit is the reporter’s escort.”).

477 Refer to § 9.4.3 (Issue of Identification Cards to Persons Liable to Become POWs).
incidental to an enemy attack or from other dangers.\textsuperscript{478} To minimize the risk that they will be made the object of attack, journalists should seek to distinguish themselves from military forces. Moreover, in some cases, the relaying of information (such as providing information of immediate use in combat operations) could constitute taking a direct part in hostilities.\textsuperscript{479} Civilian journalists and journalists authorized to accompany the armed forces should not participate in the fighting between the belligerents in this or other ways if they wish to retain protection from being made the object of attack.\textsuperscript{480} Like other civilians, civilian journalists who engage in hostilities against a State may be punished by that State after a fair trial.

4.24.4 Journalists and Spying. Reporting on military operations can be very similar to collecting intelligence or even spying.\textsuperscript{481} A journalist who acts as a spy may be subject to security measures and punished if captured.\textsuperscript{482} To avoid being mistaken for spies, journalists should act openly and with the permission of relevant authorities. Presenting identification documents, such as the identification card issued to authorized war correspondents or other appropriate identification, may help journalists avoid being mistaken as spies.\textsuperscript{483}

4.24.5 Security Precautions and Journalists. States may need to censor journalists’ work or take other security measures so that journalists do not reveal sensitive information to the enemy. Under the law of war, there is no special right for journalists to enter a State’s territory without its consent or to access areas of military operations without the consent of the State conducting those operations.\textsuperscript{484}

4.25 DELEGATES OR REPRESENTATIVES OF THE PROTECTING POWERS

4.25.1 Appointment of Delegates of the Protecting Powers. The Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from among their own nationals or the nationals of other neutral Powers to carry out its duties under the GPW and the GC.\textsuperscript{485}

\textsuperscript{478} For example, Ernie Pyle Is Killed on Ie Island; Foe Fired when All Seemed Safe, THE NEW YORK TIMES, Apr. 19, 1945 (“GUAM, April 18—Ernie Pyle died today on Ie Island, just west of Okinawa, like so many of the doughboys he had written about. The nationally known war correspondent was killed instantly by Japanese machine-gun fire. The slight, graying newspaper man, chronicler of the average American soldier’s daily round, in and out of foxholes in many war theatres, had gone forward early this morning to observe the advance of a well-known division of the Twenty-fourth Army Corps.”). Refer to § 4.15.2.3 (Increased Risk of Incidental Harm).

\textsuperscript{479} Refer to § 5.9.3.1 (Examples of Taking a Direct Part in Hostilities).

\textsuperscript{480} Consider AP I art. 79 (“Journalists engaged in dangerous professional missions in areas of armed conflict” shall be protected as civilians from attack “provided that they take no action adversely affecting their status as civilians.”).

\textsuperscript{481} Refer to § 4.17.2 (Spies).

\textsuperscript{482} Refer to § 4.19.3.3 (Necessary Security Measures); § 4.19.4 (Unprivileged Belligerents – Liability for Participation in Hostilities).

\textsuperscript{483} Consider AP I art. 79(3) (journalists “may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.”).

\textsuperscript{484} Compare § 4.26.2 (Consent of the Parties to the Conflict Concerned).

\textsuperscript{485} GPW art. 8 (“For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers.”); GC art. 9 (same).