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A GOOD KILL: FIXING THE RULES OF ENGAGEMENT

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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31 Oct 2008

ABSTRACT

The environment of modern warfare has changed in the past twenty years. This change is well manifested in the shift from international armed conflict to non-international armed conflict, and recently, to a new form of conflict, a trans-national conflict, between States and non-state entities. There exists a wide body of discourse and dissent regarding the status, protections and even definitions of those involved in this new form of warfare. United States Standing Rules of Engagement (United States SROE) provide guidance and boundaries for the identification and determination of a person's status, with regard to applications of force, targeting and self-defense.² This paper will argue that there exists a conflict between United States SROE and current international law and some customary international law. This conflict could be mitigated if United States SROE modified or changed the reference to identification of hostile forces from civilians to unprotected combatants or belligerents.

² United States Joint Chiefs of Staff. Standing Rules Of Engagement/Standing Rules For The Use Of Force For Us Forces (U), CJCSI 3121.01B, Washington, D.C. June 2005

A GOOD KILL: FIXING THE RULES OF ENGAGEMENT

Thesis Statement: The reference, in the US Standing Rules of engagement, that identifies civilians as a declared hostile force is in direct conflict with international law and should be modified or changed to either unprotected belligerents or unlawful combatants.

“It is not just the fighters with weapons
in their hands that pose a threat”³
BG Kenneth Watkin,
JAG for Canadian Armed Forces

The environment of modern warfare has changed in the past twenty years. This change is well manifested in the shift from international armed conflict to non-international armed conflict, and recently, to a new form of conflict, a trans-national conflict, between States, ‘High Contract Parties,’ in the parlance of international law and non-state entities, with “non-state actors” being the most accepted term. International law and the laws of armed conflict were developed in far more simpler times, with concerns of State on State, and a modicum of concerns for the non-international armed conflict. There exists a wide body of discourse and dissent regarding the status, protections and even definitions of those involved in this new form of warfare. United States Standing Rules of Engagement (United States SROE) provide guidance and boundaries for the identification and determination of a person’s status, with regard to applications of force, targeting and self-defense.⁴ This paper will argue that the conflict between United States SROE and current international law and some customary international law could be mitigated if United States SROE modified or changed the reference to identification of hostile forces from civilians to unprotected combatants or belligerents.

How has the battlefield changed or evolved? The focus here is through the lens of international humanitarian law and those international laws governing conflict. According to Dr. Nils Melzer, of the International Committee of the Red Cross (ICRC), warfare has evolved in a

series of areas that have impacted not only how conflict is conducted but who is party to the conflict and who are the innocent by-standers. First, and foremost, warfare is moving toward a more predominantly non-international armed conflict.⁵ There have been fewer instances of State on State conflict, and that trend seems to continue, with occasional anomalies like the Russian invasion of Georgia. But, by and large, the majority of recent conflict has been non-international or purely internal. Second, the battlefield has shifted to population centers.⁶ Sarajevo, Mogadishu or Baghdad are examples of recent conflict with a high proportion of violence in the cities. This has resulted in the increased intermingling of civilians and armed actors, be they legitimate combatants or others taking an active role on the battlefield. More often than not, those armed actors are not uniformed but appear to resemble the civilian populace they are interspersed with.⁷ All of these combined factors have sufficiently confused the battlefield, and in the arena of international law and law of armed conflict, they have directly confused the distinction between the legitimate target and the protected person.

United States operations in the Global War on Terror fall victim to these confusions. While operations in Afghanistan and Iraq were initially executed as international armed conflicts, they have both migrated to something altogether different. Once sovereign governments were re-established in both countries, the United States was no longer engaged in international conflict, which is armed conflict with another State. The United States is engaged in conflict with Al Qaeda as the principal adversary in this conflict. Where do we conduct operations against Al Qaeda? Not just Iraq and Afghanistan, but globally. International law, the Geneva Conventions, for example, do not have provisions for such conflict; they focus on a State's conduct. Al Qaeda is a terrorist organization, whose actions are against domestic laws in the United States and a majority of States worldwide.⁸ Terrorist actions are illegal in terms of

international law⁹ and denounced and condemned by the United Nations.¹⁰ So what kind of war is this?

Al Qaeda has launched armed conflicts against the United States and many others.¹¹ Interestingly, under international law, as Al Qaeda is not a state, they are not entitled to launch such attacks.¹² The fact is that those attacks, however unlawful, are considered armed attacks under UN Charter article 51¹³ and the injured parties, such as States, are fully justified in their response of self-defense. Additionally, because the States have responded appropriately does not afford any legitimacy to the Al Qaeda movement, or importantly, does not confer on the members of Al Qaeda any legal rights such as the rights of parties to international conflict or the rights of combatants in such conflict.¹⁴ Anthony Dworkin, web editor of the Crimes of War Project, suggests, as a dissenting opinion, that the conflict between the United States and Al Qaeda is, in fact, non-international armed conflict, though “one that is being fought not within a single country but on a worldwide battlefield.”¹⁵ There is no right answer at this point. What is important about this debate is how it attempts to define the applicable international laws that pertain to civilians. When dealing with non-international armed conflict, George Aldrich argues that the principal reference is Common Article 3 of the Geneva Convention and Article 3 of Additional Protocol II (AP II) of 1977.¹⁶ Both were structured to avoid giving any legitimacy to anyone other than a State, and Article 3 of AP II clearly states “the rights of the state to defend its sovereign and territorial integrity, while recognizing no right of non-state parties to engage in hostilities against a state.”¹⁷ Interestingly, there is still debate as to what kind of conflict is being conducted.

The Global War on Terror as a conflict has raised much debate and discussion. As a policy, it is clearly understood. But the challenge of understanding what kind of conflict this is

at the operational level can be seen in its name. For the United States, it is a trans-national conflict against global terrorists who threatened and attacked the United States and its allies. It means something altogether different in different scholarly camps. Francis Fukuyama, a prominent former neoconservative, has made the crucial point that "The term 'war on terrorism' is a misnomer, resulting in distorted ideas of the main threat facing Americans today. Terrorism is only a means to an end; in this respect, a 'war on terror' makes no more sense than a war on submarines."¹⁸ Dr. David Kilcullen asserts that "we must distinguish Al Qaeda and the broader militant movements it symbolizes – entities that use terrorism – from the tactic of terrorism itself. In practice, as will be demonstrated, the 'War on Terrorism' is a defensive war against a world-wide Islamist jihad, a diverse confederation of movements that uses terrorism as its principal, but not its sole tactic."¹⁹ This debate is interesting, but beyond the scope of this paper.

Who are the players on this new battlefield? Fortunately, that has little changed since the Geneva Conventions were signed. Combatants, non-combatants and civilians are the predominant persons on the battlefield. Keeping in mind the evolution of warfare, the movement of violence towards the cities and the intermingling of armed actors and the civilian populace, has it become hard to tell combatants and civilians apart?²⁰ The pervasive change is in the distinction of status, or in layman's terms, how does the operational commander differentiate between a combatant and a civilian – one that you may target and one you may not target.

Who are the combatants on the battlefield, as established in international law and the law of armed conflict? Article 4 of the Geneva Convention III provides the baseline definition of the combatant:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:
 - a. that of being commanded by a person responsible for his subordinates;
 - b. that of having a fixed distinctive sign recognizable at a distance;
 - c. that of carrying arms openly;
 - d. that of conducting their operations in accordance with the laws and customs of war.
 - e. members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.²¹

This is a clear definition and is well grounded in international law. Article 43 of the Additional Protocol I (AP I) provides a further definition: “the armed forces of a Party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if the Party is represented by a government or authority not recognized by the adverse Party.”²² Finally, combatants are entitled to combatant immunity, which means they cannot be prosecuted for their lawful military actions.²³ Non-combatants are those members of the armed forces who do not take direct part in hostilities because of their status as medical personnel or chaplains.²⁴

Civilians, as defined in the Geneva Convention, are defined in the negative, as simply those persons who are not members of organized armed forces.²⁵ It is really the converse of the combatant definition, with the qualifier of “not assuming a continuous combat function involving directly participating in hostilities.” According to Article 50, civilians are any persons who do

not belong to a number of groups or descriptive lists that define combatants.²⁶ The principal protection enjoyed by civilians in article 51 of Additional Protocol I is the protection from direct attack.²⁷ The bottom line in these protections is that the civilian population or an individual civilian may not be the target or the military objective.²⁸ It addresses the “direct participation in hostilities” as the means by which a civilian loses this protection and is thus targetable by direct attack. This paper will delve more into the concept of ‘direct participation in hostilities’, as it is a root issue of this analysis.

Several major references to international law have been previously mentioned and cited. It is important to provide a very brief background on the major aspects of the rules that govern the battlefield, with regard to civilian protections and ‘direct participation in hostilities.’ Briefly, I will address some of the pertinent major international humanitarian law, law of armed conflict, and will discuss the divergent view between the United States’ interpretation and the international law interpretation of direct participation in hostilities.

The bulk of international law pertinent to this discussion is principally found in the major international treaties and conventions. Starting with the Hague Convention of 1907, it first outlined who was a belligerent and thus, who was targetable.²⁹ It provides the baseline criteria for determination of combatant status; under command, with fixed and distinctive emblem, openly carrying arms and conducting operations in accordance with the laws and customs of war.³⁰ The multiple Geneva Conventions and their Additional Protocols provide the rules of conflicts, both international and non-international armed conflicts, definitions and importantly, the provisions of the protections enjoyed by both combatants and civilians. The conditions and treatments of prisoners of war are specifically covered in Geneva Convention III.³¹ The treatments and protections of civilians in time of war are provided in Geneva Convention IV.³²

Since the global war on terror is neither international armed conflict – conflict is not between two or more high contract parties (States), nor is it noninternational armed conflict – it is international or transnational in character, what law applies? United States policy directs United States service members to comply with the laws of armed conflict during all armed conflict, regardless of its character.³³

The Law of Armed Conflict or law of war is defined as “that part of international law that regulates the conduct of armed hostilities.”³⁴ Why a law of war? Law of war exists to minimize unnecessary suffering and destruction by controlling and mitigating the effects of such hostilities through standards of protection that are afforded to combatants, noncombatants, civilians and civilian property.³⁵ To accomplish this, law of war is based on four principles. As provided in NWP 1-14M, these principles (military necessity, distinction, proportionality, and unnecessary suffering), are considered collectively, as they interrelate with each other.³⁶ For United States armed forces, principal to the law of armed conflict are the standing rules of engagement, the basic tenets for the application of deadly force and self-defense. Current SROE provides definitions for persons declared hostile, as well as hostile intent and hostile acts.³⁷ The definitions changed in June 2005, with clarifications to all three categories. This paper focuses on the changes in the definition of “designated hostile forces”, which replaced the category of “hostile forces.” Hostile forces was previously defined as “any civilian, paramilitary or military force of terrorist(s), with or without national designation, that has committed a hostile act, exhibited hostile intent, or has been declared hostile by appropriate United States authority.”³⁸ It was changed to “Declared Hostile Forces,” which consists of “any civilian, paramilitary or military force or terrorist(s) that have been declared hostile by appropriate United States authority.”³⁹ The challenge faced, in light of international law, is the use of “civilian” as a

declared hostile force. This runs counter to international humanitarian law, as articulated in Article 51.2, Additional Protocol I, “the civilian population...as well as individual civilians shall not be the subject of attack.”⁴⁰ However, I will argue, the argument should be that the civilians that have been declared hostile have taken actions which change their distinction. They are no longer civilians, but some form of unprotected belligerent or unlawful combatant, and thus clearly targetable.

What does a civilian have to do in order to lose his protections and distinction? The operative term is “direct participation in hostilities.” The vast debate on what, when, and for how long encompasses “direct participation” is beyond the scope of this paper, but I will provide some background into some aspects of the debate, as it is important for my thesis to understand the differing viewpoints and arguments. As the United States regards itself at war with Al Qaeda, its members are considered combatants engaged in that war. Does this membership extend beyond the leaders and planners to the rank and file members, who may not be engaged at all time? Israel holds the position that enemy leaders are always legitimate targets, whenever and wherever they may be found. Further, Israel includes not just the leadership and planners, but those who recruit other persons to carry out acts of terror and those who develop and operate crucial funding operations.⁴¹ The principle of distinction is crucial to understanding the arguments. The views of the United States and that of international humanitarian law diverge in this aspect. Put simply, the United States’ approach to distinction incorporates the totality of the circumstances.⁴² Using a familiar model, the United States’ approach includes functions associated with combat, combat support and combat service support activities that are typically performed by United States military personnel. It also includes those persons who plan and implement military or terrorist operations. Also, it is presumed that civilians lose their

protections for the duration of each attack, which brings about an additional temporal aspect to the determination, that the specific act which amounts to “direct participation” also includes the concrete preparatory measures, the deployment to and from the location of execution. Finally, as benefit of the doubt always presumes the person is civilian, all feasible precautions must be taken to determine that distinction.⁴³ It can be argued that members of armed groups who had already been involved in hostilities could be assumed to be directly participating in the hostilities until they did something to disengage from the group.”⁴⁴ International Humanitarian Law employs three cumulative elements in determining “direct participation in hostilities.”⁴⁵ First, the threshold of harm indicates that the act must be likely to adversely affect the military operations or military capacity of the party to the conflict, or inflict death, injury or destruction on persons or objects not under effective control. Second, there must be a direct causal link between the act in question and the harm likely to result; either from that act, or from a concrete and coordinated military operation on which the act constitutes an integral part. Finally, the act must demonstrate a belligerent nexus or be specifically designed to support one party to the conflict by harming the other. Additionally, there are some basic concepts that bear upon the issue. International humanitarian law differentiates between direct and indirect participation in hostilities, urging that there may be varying degrees of intensity and degrees of individual involvement.⁴⁶

Civilians who have lost their protections, their distinction as protected persons, because of their actions should be called what? Currently, the favored term is unlawful combatant, but that term is arguably not accurate in terms of international law. International law does not prohibit the participation of civilians in hostilities; it merely provides that they have lost those civilian protections.⁴⁷ Domestic laws may certainly prohibit such activities by civilians, but that is a domestic determination. Since combatants enjoy the privilege of immunity from prosecution

for legal wartime activities, a soldier can kill a legitimate target in battle with no fear of prosecution, while a civilian acting similarly could be charged with murder; the civilian who participates in hostilities does so without any protection or privilege of immunity, thus would be an ‘unprotected or unprivileged’ combatant. They may look and act like civilians, but as combatants of some kind, they are targetable.

There is a concept of operations that requires complete understanding of these distinctions to successfully be executed, namely, the targeted killing. Gary Solis defines targeted killing as “the intentional killing of a specific civilian who cannot reasonably be apprehended, and who is taking a direct part in hostilities, the targeting done at the direction and authorization of the state in context of an international or non-international armed conflict.”⁴⁸ Why is this applicable to the present discussion? It is central to the argument of distinction. Who can a state, specifically the United States, direct its armed forces to kill is a question vital to pursuing combat operations and executing self-defense, be it preemptive or reactive. Two states have the documented cases of targeted killings and the criteria of executing: the United States and Israel. First, in the United States, it is important to establish first and foremost, that targeted killing is not contrary to United States law.⁴⁹ According to Solis, so long as targeted killing remains related to the continuing threat against United States forces in Iraq, or are focused on those involved in the 9/11 attack or on those who supported them, or is intended to prevent future acts of terrorism against the United States, it does not violate domestic law and is in accord with Congress’s authorizations of force.⁵⁰ But targeted killing is not and should not be an easy decision. First, it must meet the military commander’s consideration for military necessity and collateral damage.⁵¹ In accordance with the laws of armed conflict and for such laws to be applicable, there must be armed conflict, of any character.⁵² The intended target must be a

specific person, selected by reason of their activities in relation to the armed conflict in progress, one who is an ‘unlawful or unprotected or unprivileged’ combatant.⁵³ He must be an individual civilian, with exception to groups, whose membership as a whole is dedicated to active engagement of unlawful combatancy, like Al Qaeda, for example.⁵⁴ That individual must be beyond possible arrest by the targeting state.⁵⁵ The law enforcement model is a key counterargument against targeted killing, presuming these ‘criminals’ should be arrested and tried, thus provided their full due process. The weakness of the law enforcement argument is in the fundamental premise that the suspect is within the jurisdiction of the law enforcement authorities of the targeting state, so that the arrest can be made. The state of armed conflict, of any character, employs not police or judicial but military means to target combatants, civilian, unprotected, unlawful combatants.⁵⁶ Finally, the decision and authority to order and approve a targeted killing rests with the senior military commander, as a representative of the targeting state.⁵⁷ How do our allies look at targeted killing?

Since 2000, Israel has employed a policy and practice of state-directed targeted killing in its ongoing war on terror. In 2006, two organizations; Public Committee against Torture in Israel and the Palestinian Society for the Protection of Human Rights and the Environment (PCATI) sued the Israeli government, claiming that their targeted killing policy violated both international and domestic (Israeli) law.⁵⁸

PCATI argued a familiar argument, that the legal system applicable to the armed conflict between Israel and the terrorist organizations is not the law of war, but rather the legal system dealing with law enforcement in occupied territories.⁵⁹ They also asserted that targeted killing violates the law of war because there was no intermediate classification of unlawful combatant between combatant and civilian, and civilians are immune from direct attack. Further, in

recognizing the Additional Protocol I, Article 51.3 window of “direct participation”, they urged a narrow interpretation that would make a civilian who directly participated in hostilities immune excepting that immediate time when he was taking the action.⁶⁰

The Supreme Court of Israel rejected the previous position, of narrow interpretation of the Article 51.3 definition, stating “it is no longer controversial that a state is permitted to respond with military force to a terrorist attack.”⁶¹ The court also rejected the Israeli argument in favor of the third category of person – the unlawful combatant – stating there were insufficient grounds for a third category of persons to be recognized.⁶² The Court approached the case pursuant to ‘the customary international laws dealing with the status of civilians who constitute unlawful combatants.’⁶³ It agreed that civilians who take a direct part in hostilities forfeit their immunity from targeting, but could not agree on the temporal aspect of “direct part.” The Court concluded that the “direct character of the part taken should not be narrowed merely to the person committing the physical attack. Those who have sent him, as well, take a ‘direct part.’ The same goes for the person who decided upon the act and the person who planned it.”⁶⁴ They cited the Additional Protocol I Commentaries, noting the ICRC editors’ observation, that “it was possible to take part in hostilities without using weapons at all.”⁶⁵

The Court provided four considerations that were deemed relevant to deciding a lawful course of action in such a gray area. Those were: well based information in order to characterize a civilian as a type of combatant; capture is preferable to killing, if possible; proportionality of force; and the thorough investigation regarding the identification and circumstances be conducted retroactively.⁶⁶ The court’s final opinion stated:

It cannot be determined in advance that every targeted killing is prohibited, according to customary international law, just as it cannot be determined in advance that every targeted killing is permissible according to customary international law. The law of

targeted killing is determined in the customary international law, and the legality of each individual act must be determined in light of it.⁶⁷

To return to protections under international law: the Geneva Conventions provide the combatant and the civilian specific protections and privileges in armed conflict. The literal reader would see no gap in distinction. You are either a combatant or a civilian. But there is historical record of recognition of the “gap.” In the Official Record of the Diplomatic Conference of the Geneva Convention of 1949, the ICRC (strong proponent for humanitarian law) delegate, Rene Wilhelm stated “although the two Conventions [Geneva III and Geneva IV] might appear to cover all of the categories concerned, irregular combatants were not actually protected” and that “it was an open question whether it was desirable to give protection to persons who did not conform to the laws and customs of war.”⁶⁸ If the ‘unlawful combatant’ or ‘unprivileged combatant’ is not a combatant under the provisions of Article 4 of Geneva Convention III or article 43 of Additional Protocol I, then they are civilians. “For such time, as they participate in hostilities” they are lawful targets, but they regain that protection upon cessation of direct participation. This argument insists that civilians that have, at some time, directly participated in hostilities do not lose their protections for all time, just for the time of participation. Solis calls this argument ‘the revolving door’ theory.⁶⁹ “If we accept this narrow interpretation, terrorists enjoy the best of both worlds – they can remain civilians most of the time and only endanger their protection as civilians while actually in the process of carrying out a terrorist act.”⁷⁰

A series of experts participating in the Asser Expert Meetings on Direct Participation in Hostilities in International Law “warned that the ‘revolving door’ of protection should not be misconstrued. The intention was not to protect persons who were involved in armed combat, but

to protect those who were not. If people were allowed to jump in and out of hostilities whenever they liked, this would end up eroding the humanitarian shield enjoyed by the civilian population.”⁷¹ During the Third Meeting of Experts for Direct Participation in Hostilities, a compelling argument, in light of the evolving non-international armed conflict, was presented that recommended no members of organized armed groups and armed forces should ever be referred to as “civilians,” removing the doubts as to who was protected from direct attack and thus clarify the distinction.⁷² Common Article 3 to the Geneva Conventions and to Additional Protocol II were based on the assumption that in conflict, there are opposing forces fighting each other and civilians who are not part of either opposing forces, are thus protected. Any civilian who subsequently joins one of the armed groups party to the conflict is no longer a civilian, thus no longer enjoys those protections.⁷³

Clearly, the debate over international humanitarian law and the law of armed conflict, with respect to civilians, combatants and those occupying that gray space between, is a massive undertaking. The resolution of those questions is well beyond the scope of this paper, but is key to understanding the issue presented in my thesis; the United States’ SROE conflict with international humanitarian law, and its resolution. The term “civilian” in the United States Standing Rules of Engagement as a “Declared Hostile Force” should be replaced with a more accurate term, either the current United States-accepted “unlawful combatant” or the more technically and legally correct “unprotected combatant.” So long as the United States declares civilians hostile, an act that is in direct conflict with several articles of the Geneva Convention and accepted customary international law, there will exist troubling issues of doubt and distinction. The operational commander, who must train his forces and execute missions, should

be properly armed with legally correct rules of engagement in order to remain clearly on the right side of the laws of armed conflict.

The United States SROE should clarify the intended targets using another descriptor, possible “unlawful combatants” rather than “civilians.” Maybe our whole issue is merely semantics, but it could just be a matter of time before there is a media interview with the Chairman of the Joint Chiefs and the journalist places Geneva Article 51.2 – “the civilian population as such, as well as individual civilians, shall not be the object of attack,”⁷⁴ – next to the US definition of Hostile force and the Chairman is forced to say, “that depends on what the definition of civilian is.” The United States does not desire to kill civilians, if at all possible. We have long supported and often been the apparatus that provides and enforces those protections for civilians subject to a conflict. However, in the course of conflict, operational commanders require the latitude to target all manner of combatants and other non-protected persons who are party to our conflict. To change the terminology to the more accurate “unlawful or unprotected” combatant does not decrease the protections to those civilians who are not pursuing activities that threaten their protected status, but potentially affords clarity in the understanding of who is targetable. This might go some length in reducing an adversary’s use of the revolving door of protection, while not diminishing the protections enjoyed by ‘peaceful’ civilians.

³ Watkin, Kenneth. “Humans in the Crosshairs: Targeting and Assassination in Contemporary Armed Conflicts.” In *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*. Ed. Wippman, David and Evangelista, Matthew. *Transnational*. Ardsley, NY. 2005. P. 137.

⁴ United States Joint Chiefs of Staff. *Standing Rules Of Engagement/Standing Rules For The Use Of Force For Us Forces (U)*, CJCSI 3121.01B, Washington, D.C. June 2005.

⁵ Jackson, Dick. Special Assistant for Law of War Matters, and Melzer, Dr Nils. Legal Advisor, ICRC “Direct Participation in Hostilities.” Undated PowerPoint.

⁶ Jackson, Dick. Special Assistant for Law of War Matters, and Melzer, Dr Nils. Legal Advisor, ICRC “Direct Participation in Hostilities.” Undated PowerPoint.

⁷ Jackson, Dick. Special Assistant for Law of War Matters, and Melzer, Dr Nils. Legal Advisor, ICRC “Direct Participation in Hostilities.” Undated PowerPoint.

⁸ Aldrich, George H. “New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts.” *Review of the American Journal of International Law*. 100, No. 2. April, 2006. 495-499. 496.

⁹ Art. 51.2 Of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, which states: Art 51. - Protection of the civilian population: 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

¹⁰ United Nations. Security Council. “Threats to international peace and security caused by terrorist acts,” S/Res/1368, 2001, <http://daccessdds.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement> (accessed 24 Oct 2008).

¹¹ , George H. “New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts.” *Review of the American Journal of International Law*. 100, No. 2. April, 2006. p. 495-499. At 496.

¹² Aldrich, George H. “New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts.” *Review of the American Journal of International Law*. 100, No. 2. April, 2006. p. 495-499. At 496.

¹³ United Nations. “Charter of the United Nations,” 1945, <http://www.un.org/aboutun/charter/> (accessed 24 Oct 2008) Article 51 which states: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

¹⁴ Aldrich, George H. “New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts.” *Review of the American Journal of International Law*. 100, No. 2. April, 2006. P. 495-499. At 496.

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