

XVIII

Concluding Remarks: LOAC and Attempts to Abuse or Subvert It

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This has been another intellectually stimulating conference. By now, there is a high level of expectations as regards each and every Newport conference. The series of annual gatherings has become *de rigueur* for any serious military lawyer or academic specializing in the *jus ad bellum*, the *jus in bello* or the law of the sea. The topics explored in the Newport conferences vary from one year to another. A decade ago, all eyes were focused on the air campaign in Kosovo. After 9/11, the “war on terrorism” and its innumerable corollaries loomed large. Then came the hostilities in Afghanistan and Iraq, and their aftermath. But, while no two Newport conferences are alike, “it’s the same always different.” What is the same is the road that we are all traveling on together. What is different—over a stretch of time—pertains to the particular bumps on that road, the new detours caused by fallen rocks and construction in progress, not to mention the need to constantly watch out for slippery conditions.

As a “recidivist” concluding speaker in the Newport conferences, I usually choose a number of diverse themes emerging from the exchanges of views to dwell on. This time, allow me to concentrate on a single (albeit two-pronged) topic. To me, there is a troubling aspect of the presentations and the deliberations that I notice (and not for the first time). This relates, as it were, not to the music but to the

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tone: not the presentations or interventions in debates by themselves, but the manner in which they are made. I am rather taken aback by the fact that, when military lawyers who practice the law of armed conflict (LOAC) take the floor, they invariably sound on the defensive. Defensive about what and why?

The answer, first and foremost, is that we have to defend our shared societal values against the barbarians who are pushing in at the gates of civilization. Of course, there have always been barbarians exerting force at the gates of civilization. The Roman Empire held off the hordes of the ancient barbarians for many centuries. But one must never feel complacent. After all, in time, the relentless pressure of the ancient barbarians did overwhelm the Roman Empire. If we want to ensure that our own defenses are not breached by the modern barbarians (i.e., rogue States and organized armed groups of non-State actors whose *modus operandi* is terrorism), we must vigilantly verify that they are maintained in good shape.

It is necessary to take into account that in modern times the onslaught of the barbarians has become more insidious because they have adopted lawfare as one of the most effective weapons wielded against us. “Lawfare” is an expression popularized in the last decade by Charlie Dunlap (who is here with us). Lawfare is to be understood as a means of warfare, and indeed as a countermeasure against military reverses. Since the modern barbarians are unable to win discrete battles against the technologically superior armed forces arrayed against them, they try to win the war by using lawfare. What the barbarians do is use—and generally abuse—legal arguments to foil any military success that may be scored by the armed forces of civilized nations.

The notion of winning war by lawfare may appear to be far-fetched. Yet, we must not underrate the potency of lawfare as a weapon of mass destruction—in this case, a weapon of mass disinformation—attuned to the peculiarities of the era in which we live. Allegations of breaches of LOAC by our troops (usually magnified in propaganda to the scale of “atrocities”) tend to drive a wedge between our military community and the civil society. When the public perception is that “atrocities” have been perpetrated by our troops, no victory in the field can repair the psychological damage done to the cause for which we are fighting.

The Vietnam conflict has shown that a civilized country such as the United States can win military battles, yet lose a war only because public opinion at home turns against it. Post-Vietnam, it is folly to lose sight of mood swings in public opinion: polls indicating opposition to a war may determine its political outcome (which is the only outcome that counts in the final analysis) no less—perhaps even more—than actual defeats sustained in military encounters.

Lawfare was not a major consideration at the time of Vietnam, but it has become so today. This is a new development that has come about at or around the dawn of

the twenty-first century. Whatever its precise origins, the new element brought into play is that legal arguments can be effectively canvassed to corrode the indispensable home-front support for a given war. This is done by condemning as unlawful the means and methods of warfare resorted to by our troops. In particular, lawfare seems to strike the right chord with the public when it hammers skillfully on the sensitive issue of civilian losses (and damage to civilian objects) incidental to attacks executed by our armed forces against lawful enemy targets. The subject is encapsulated in the commonly used phrase “collateral damage.”

The most fascinating dimension of lawfare, as practiced against us today, is the profound irony of the entire situation. On one side, you have the modern barbarians who are conducting hostilities in an utterly lawless fashion: not only do they ignore LOAC; they trample it underfoot. Specifically, the barbarians do not hesitate to kill civilians (including a sacrifice of their own civilians) on a large scale. In fact, they slaughter civilians on a large scale recklessly and even in a premeditated fashion.

On the other side, you have civilized nations. Generally speaking, civilized nations abide by LOAC. They do so notwithstanding the complications resulting from the diametrically opposite conduct of the enemy. Indeed, despite many temptations, LOAC has not been relaxed to allow civilized nations more elbow room when confronting the barbarians. If anything, in the last few decades LOAC—as accepted and practiced by civilized nations—has become more rigorous than ever.

It goes almost without saying that instances of breaches of LOAC do occur even where civilized armed forces are concerned. However, (i) relatively speaking, these instances are few and far between (although they are usually well-publicized in the media); and (ii) there is in place a highly developed military justice system that is entrusted with the strict enforcement of LOAC and the winnowing out of offenders (many participants in the present conference represent that system). We also spend enormous human and financial resources in disseminating LOAC and instilling its directives into the troops through constant training at all command levels.

The long and the short of it is that the civilized armed forces—on the whole—have a laudable record of implementation of LOAC, whereas the barbarians have an appalling one. This is where the true “asymmetry of warfare” is manifested in modern times. But here is the puzzling aspect of that asymmetry. One would have expected that the civilized side would go on the legal offensive, charging the enemy with recourse to methods of barbarism that contravene every cardinal principle of LOAC. Instead, while we keep relatively silent, the barbarians mount a legal offensive against us through lawfare. Unfazed by their own show of open disdain for

LOAC, they dare to accuse us of contravening it. They behave as free riders, and yet they literally get away with murder—indeed, mass murder of civilians.

How do we respond? Not with the outrage that might have been expected. The prevailing tone in the present conference—as in similar gatherings—has been defensive and even apologetic. It appears that the barbarians have managed to get under our skin, and we suffer from irrational pangs of a guilty conscience. As a consequence, command echelons on our side often bend over backward in the application of LOAC. What has come to light in the course of the conference is that, in Afghanistan, airstrikes essential to mission accomplishment—and legally unimpeachable—have been scrapped, so as to avoid altogether lawful collateral damage to civilians. We have also heard about the Israeli army resorting to the baffling practice of issuing, prior to attacks against lawful targets, many thousands of individual warnings to enemy civilians on their cellular phones. Just think of the logistical effort invested, undertaken without any legal rhyme or reason, in such an operation.

As we have repeatedly been told in the present conference, “this is not about them, it’s about us.” But what does our odd defensive behavior truly show about us? If we sound as if we were in the wrong in circumstances where we are actually in the right, this is not due to any intrinsic societal values. It is due to an uncalled-for guilt complex, based on a specious sense that perhaps our technological superiority has led us to conduct hostilities in a manner that is incompatible with LOAC.

In reality, technological superiority (epitomized by precision-guided munitions, unmanned aerial vehicles (UAVs) and a host of other sophisticated tools of warfare) has led civilized armed forces to pay greater—rather than lesser—attention to the detailed constraints of LOAC. Attacks are now more surgical than in the past, information about what is going on “on the other side of the hill” is increasingly collated in real time, and so forth. Yet, we are simply not giving ourselves a break. One can sincerely say that “we have met the enemy and it is us.” As far as I am concerned, the moral of the story is that we should undergo some sort of mental therapy. Otherwise, civilization may not outlast the modern barbarians.

I would like to address the central theme of lawfare: *viz.*, enemy civilian losses. Civilized nations adhere tenaciously to the cardinal LOAC principle of distinction between combatants and civilians. What this principle denotes is that every feasible precaution must be taken in wartime to ensure that innocent enemy civilians will be spared from injury by exempting them from attack. I use the phrase “innocent civilians” in order to distinguish genuine civilians from those who masquerade as civilians but take a direct part in hostilities, thereby losing the exemption from attack for such time as they are doing so (a stretch of time which is quite controversial in its length as the oral discussion in the present conference has demonstrated).

The exemption from attack embraces also civilian objects, namely, all objects that are not military objectives (as defined negatively in Article 52 of 1977 Additional Protocol I to the Geneva Conventions).¹

By following the principle of distinction in the course of hostilities, civilized belligerent parties, in principle, kill enemy civilians—or destroy civilian objects—only when the losses (to human beings) or damage (to property) constitute collateral damage. Admittedly, human errors and technical malfunctions do occur occasionally. But, otherwise, solely lawful targets are selected for attack. Nevertheless, civilians—and civilian objects—are inevitably subject to harm when present or located in or around these targets, because this is deemed collateral damage.

It is frequently glossed over (especially in the media) that LOAC takes some collateral damage to enemy civilians virtually for granted as an inescapable consequence of attacks against lawful targets. Such damage is the case owing to the simple fact that lawful targets cannot be sterilized: some civilians and civilian objects will almost always be in proximity to combatants and military objectives. Hence, a modicum of collateral damage to civilians cannot possibly be avoided unless a battle rages in the middle of the ocean or the desert (where no civilians or civilian objects are within range of the contact zone in which the belligerent parties are conducting attacks against each other).

Far from imposing an all-embracing prohibition on collateral damage to enemy civilians and civilian objects, LOAC expressly permits it as long as (in the words of Additional Protocol I) it is not expected to be “excessive,” compared to the military advantage anticipated.² This is the core of the principle of proportionality (the word “proportionality” itself is not mentioned as such in the Protocol). And “excessive”—we have to keep reminding ourselves—is not synonymous with “extensive.”³ Extensive civilian casualties (and damage to civilian objects), even when plainly expected, may be perfectly lawful when reasonably determined to be non-excessive (on the basis of the information at hand at the time of action) once weighed against the military advantage anticipated.⁴

The study of these expectations and anticipations is not an exact science, and much depends on the perceived “value” of the military objective targeted in the circumstances prevailing at the time. There are numerous question marks that remain unresolved in the implementation of the principle of proportionality. Yet, the principle itself is not contested by any civilized member of the international community.

Of course, war is hell. LOAC has not undertaken a mission impossible of purporting to eliminate the hellish consequences of war. What LOAC basically strives to do is reduce these consequences. To reiterate the language of the 1868 St. Petersburg Declaration (one of the very first LOAC treaties on record), what

LOAC strives at is “alleviating as much as possible the calamities of war.”²⁵ Collateral damage to civilians and civilian objects, too—when it cannot be avoided altogether—has to be minimized in accordance with the principle of proportionality.

Not everybody likes the down-to-earth attitude that LOAC takes vis-à-vis warfare. Indeed, in recent years, a new major problem has arisen. The clear and present danger of the barbarians in front remains unabated. But, in the meantime, another menace has evolved in the back. This menace comes from the human rights zealots and do-goodniks, whom I shall call “human rights–niks” for short. Far be it from me to suggest that every human rights scholar or activist necessarily comes under this rubric. In fact, we have in our midst some genuine scholars in the arena of human rights (preeminently, Françoise Hampson) for whom I have the greatest respect. But all too often today we encounter the unpleasant phenomenon of human rights–niks who, hoisting the banner of human rights law, are attempting to bring about a hostile takeover of LOAC. This is an encroachment that we must stoutly resist.

The human rights–niks in the back are by no means to be confused with the barbarians in front: far from endorsing methods of barbarism, the human rights–niks would prefer a non-violent solution to every conflict. Nevertheless, the danger that the human rights–niks pose is equally acute, since they threaten to pull the legal rug from under our feet. They thus aid and abet the lawfare of the enemy by leaving the civil society with the impression that we are acting (or reacting) in a manner that is incompatible with the loftier aspirations of the law.

Inter alia, human rights–niks would like to revolutionize the field by introducing a normative system of warfare characterized by zero collateral damage to civilians. To accomplish that, they would like to disallow attacks against lawful military targets, if these entail some collateral damage to civilians or civilian objects. Since (as indicated) such collateral damage is bound to happen, this would imply the banning of almost all attacks against enemy combatants and military objectives.

The legal revolution that human rights–niks wish to engender relates to the broad spectrum of norms that govern the conduct of hostilities. Human rights–niks tacitly accuse us of applying the wrong legal system by following LOAC instead of human rights law. They would like to see human rights law applicable in wartime as much as in peacetime: not side by side with, but in lieu of, LOAC. This kind of approach often resonates with the lay (and basically uninformed) public at large, if only because lots of people cannot tell “human” apart from “humanitarian” when LOAC is referred to (as it recurrently is) as “international humanitarian law.” After all, it is the humanitarian impulse that propels both human rights law and international humanitarian law (aka LOAC).

The trouble is that, if we were to do what the human rights–niks want us to do, hostilities would become impracticable. That is to say, all forms of warfare would be beyond the pale. Many human rights–niks do not hide that this is what they truly—and ultimately—want. They are animated by genuine motives of pacifism (echoed even in one of the questions posed during the questions-and-answers time in our own conference), and they believe that LOAC stands in their way. What they fail to grasp is that, while war may be nobly wished away, it is not a phenomenon that is likely to disappear as long as there are barbarians who force it on the civilized world. And it is impossible to fight a war if we are not ready to shed blood. LOAC is doing what it can to ensure that bloodletting is confined to combatants, leaving innocent civilians out of the circle of fire. Still, zero collateral damage to civilians (or civilian objects) is not a hardheaded scenario in war, and LOAC recognizes that naked truth.

When the position is examined objectively, it becomes obvious that LOAC is the only effective dike against “total war.” Without LOAC, civilian casualties in wartime will not be reduced: they will escalate. If human rights law were to replace LOAC—if no feasible options of conducting hostilities were left to belligerent parties in war—ultimately no rules would survive, inasmuch as the legal paper-constraints would simply be ignored by the clashing armies. Therefore, the genuine option that must be exercised is not between LOAC (characterized by pragmatism and common sense) and human rights law (untainted in its pristine purity). It is between LOAC and lawlessness. And just as we strenuously reject lawlessness as practiced by the barbarians, we must not allow lawlessness to be inflicted on our own side out of a misguided belief in some notional primacy—in the wrong context—of human rights precepts.

Many people think that the best solution to the problem is a compromise of sorts, reflected in the dual application of both LOAC and human rights law (side by side with one another) in an armed conflict. This may sound ideal, except that, for several reasons, such duality is neither necessary nor even possible in multiple contexts.

The first plank of the argument is that, empirically, LOAC has withstood the test of time. LOAC has progressed for a long period of time: much longer than human rights law (which is a product of the post–World War II era). The evolution of LOAC is a product of close cooperation among military personnel, lawyers and diplomats. The whole system is generated and shaped by the special demands of armed conflict, and is predicated on a calibrated balancing act between the requirements of military necessity and humanitarian considerations. Largely speaking, only human rights–niks believe that LOAC has proved unequal to its task.

Interestingly enough, the human rights-niks object even to Additional Protocol I—an instrument adopted in 1977 through the pressure of developing countries—which (although binding on most countries in the world) is not accepted as such by the United States and quite a few other countries. Even the United States regards some provisions of the Protocol (including those cited by me here) as declaratory of existing customary international law. But there is a “Great Schism” (as I like to call it) regarding the status of a host of other stipulations of the Protocol. All the same, even detractors of diverse portions of the Protocol will not contend that it has crossed the red line from LOAC into human rights law.

The second plank of the argument is that the dissonance between LOAC and human rights law is not categorical. Some relevant legal norms of LOAC and human rights law are actually identical (see the example of torture in the next paragraph). But, where differences and variations exist, that does not necessarily mean that human rights law is more “advanced.” It must not be overlooked that most human rights are subject to built-in limitations (such as national security),⁶ and—above all—to outright derogations in wartime.⁷ By contrast, LOAC—crafted specifically by and for the challenges of wartime—is not subject to any similar limitations or derogations.

For sure, there are some exceptional human rights which are non-derogable.⁸ But, if you take the leading example—to wit, the prohibition of torture—you find that, not coincidentally, the very same prohibition constitutes an integral part of LOAC.⁹ So why do we need human rights law?

The third plank of the argument is that, even from a humanitarian perspective, LOAC must not be automatically categorized as inferior to human rights law. Certain norms of LOAC are more stringent than the parallel rules existing in the domain of human rights law in peacetime. To cite the two most obvious illustrations:

- (a) The use of riot control agents (primarily, tear gas) as a method of warfare is banned by the 1993 Chemical Weapons Convention, yet is expressly permitted for law enforcement purposes.¹⁰ The concern underlying this rule is not to loosen the core prohibition of the employment of chemicals (gas warfare) in battle.¹¹ However, the result is clear: non-lethal chemical agents can be part of the arsenal when quelling riots, although not in combat.
- (b) The employment of expanding soft-nosed bullets is forbidden pursuant to LOAC (on the ground that they cause unnecessary suffering),¹² but—due to their greater stopping power—they have become almost standard issue to anti-terrorist special law enforcement units in peacetime.

When all is said and done, I do not deny that human rights law has a role to play in armed conflict. First, there is a natural complementarity of the two branches of international law in non-international armed conflicts (both in light of the special circumstances of a “civil war” and by dint of the historical fact that the applicability of LOAC in such conducts is a fairly recent occurrence and there are still significant gaps in the law). Second, even in inter-State armed conflicts, LOAC is sometimes silent (a leading example is the issue of the summary trial and possibly execution of deserters).¹³ I think that whenever there is a lacuna in LOAC (in the setting of either an international or non-international armed conflict), it must be filled by human rights law.

Still, the thrust of the matter is that where LOAC is not silent—and when there is no correspondence between LOAC and human rights law—there is no way out of having to choose between the two. In such situations, the rule is straightforward: LOAC prevails over human rights law as the *lex specialis* in armed conflict.¹⁴ This central principle has been acknowledged more than once by the International Court of Justice.¹⁵ It is the incontrovertible *lex lata* today.

Human rights–niks are plainly not happy about this state of affairs. What they would like to do is change the law by moving the signposts. There are many indications of such attempts. None is more invidious than the allegation that we have heard here about targeted killing of enemy combatants by drones (i.e., UAVs) amounting to “extrajudicial killings.”

Personally, I find this allegation ludicrous. What death inflicted on enemy combatants in wartime does not amount to an “extrajudicial killing”? Apparently, in their pipe dream, some human rights–niks replace the battlefield by an imaginary courtroom scenario in which enemy soldiers are charged with the commission of crimes (although it is not clear what these crimes are, considering that the mere participating in battle in wartime is not a crime per se). In this fictitious courtroom, individual soldiers are apparently summoned to face charges and undergo judicial proceedings with due process guaranteed. If capital punishment ensues, the killing ceases to be “extrajudicial.” Criminal prosecution, conviction and punishment (even the death penalty) thus replace the prosecution of hostilities by military formations on the ground, at sea or in the air.

Well, in the real world (as distinct from the dreamworld of human rights–niks), armed clashes in wartime occur not in a chimerical courtroom but in battle: any exchanges between the parties consist of fire traded between military units. Only those who breathe the rarefied air of the United Nations headquarters—removed from any vestiges of reality—can come up with the perception of wartime violence as an “extrajudicial killing.” The more one considers the ramifications of the bizarre attempt to bring “judicial killings”—and their antinomy of “extrajudicial killings”—

into the vocabulary of war, the more one is disposed to the conclusion that it belongs in some sci-fi adventure in a faraway galaxy.

Once we return to this planet, with its artillery barrages and airstrikes—causing colossal casualties to enemy combatants only because they are enemy combatants in wartime—it becomes evident that all hostilities are conducted “extrajudicially.” That being the case, if death to enemy combatants can be inflicted “extrajudicially” wholesale, why can it not be done in retail? And if it can be executed by manned military aircraft, why can it not be carried out by military UAVs?

I am not saying that present-day LOAC is perfect or that it should remain static. There are, of course, bones of contention in LOAC: some more profound (I have already referred to the “Great Schism” relating to Additional Protocol I) and others less intense. All these issues have to be addressed, and there are countless fora (formal and informal) in which discussions—sometimes heated—take place about the road and the road bumps to which I have alluded.

The point that I am trying to drive home is that we—as practitioners of LOAC and academics traveling the same road—must do whatever we can to prevent the hostile takeover of LOAC by the human rights–niks. This is quintessential because what the human rights–niks would like to bring about is not merely a shift in emphasis but a regime change: a legal regime change that will revolutionize the field by making hostilities impossible to engage in effectively.

Notwithstanding the existence of powerful non-governmental (NGO) lobbies, which endorse the approach of the human rights–niks, I do not believe that there is any reason for defeatism within our ranks. International law is not created by human rights–niks or by NGOs. It is created by States through treaties and custom. The general practice of States demonstrates that LOAC is alive and well, and that States do not support the attempt to subvert it through the adoption of human rights law tenets.

Some of us in this room (Charlie Dunlap, Charles Garraway, Mike Schmitt, Dale Stephens, Wolff Heintschel von Heinegg and I), as part of a larger Group of Experts under the aegis of HPCR (Program on Humanitarian Policy and Conflict Research at Harvard University), have just finished the preparation of an air and missile warfare manual,¹⁶ which had a NATO launch in Brussels in March 2010. We have toiled for the last six years, in the course of which we have consulted informally (bilaterally, regionally and multilaterally) with dozens of governments. I recommend that you take a look at the resultant document (which, together with a detailed commentary,¹⁷ runs for more than three hundred pages). The manual consists of 175 black-letter rules adopted by consensus. By itself, the consensus is an extraordinary achievement, bearing in mind that it reflected the views of dozens of experts from Canada to China, from Geneva (the International Committee of

the Red Cross) to Washington, DC. But what I want to spotlight is the extensive informal consultations with governments, even in countries (such as Russia) that were not represented in the Group of Experts.

As the commentary on the manual discloses, the consensus on the black-letter rules was not always easy to arrive at, and often a compromise between conflicting views had to be worked out. But let me assure you that the text of the air and missile warfare manual, as adopted, is couched in pure LOAC language. That is exactly what every government consulted wanted. The chatter of the human rights-niks was not heard at any time during the deliberations with those who actually formulate and implement international law.

My advice to this gathering is, therefore, threefold:

- (a) Keep up the good work on the application and interpretation of LOAC.
- (b) Keep poachers off the grass.
- (c) Above all, keep the faith.

Notes

1. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3, *reprinted in* THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 711, 737 (Dietrich Schindler & Jiri Toman eds., 4th ed. 2004).

2. *Id.*, art. 51(5)(b).

3. *See* YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 131 (2d ed. 2010).

4. *See* Christopher Greenwood, *Current Issues in the Law of Armed Conflict: Weapons, Targets and International Criminal Liability*, 1 SINGAPORE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 441, 461–62 (1997).

5. St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight, Dec. 11, 1868, 138 Consol. T.S. 297, *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 1, at 91, 92.

6. YORAM DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION 77–78 (2009).

7. *See id.* at 71–72.

8. For a comprehensive list, *see id.* at 75–77.

9. *See id.* at 81–82.

10. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction arts. I(5), II(9)(d), Jan. 13, 1993, 1974 U.N.T.S. 45, *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 1, at 239, 242, 244.

11. *See* WILLIAM BOOTHBY, WEAPONS AND THE LAW OF ARMED CONFLICT 136 (2009).

12. Hague Declaration (IV, 3) Concerning Expanding Bullets, July 29, 1899, 1 AMERICAN JOURNAL OF INTERNATIONAL LAW (Supp.) 157 (1907), *reprinted in* THE LAWS OF ARMED CONFLICTS, *supra* note 1, at 99, 100.

13. *See* DINSTEIN, *supra* note 2, at 25.

14. *See id.* at 23–24.

15. *See* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, 240 (July 8); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 177–81 (July 9), *reprinted in* 43 INTERNATIONAL LEGAL MATERIALS 1009, 1038–39 (2004).

16. PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH, MANUAL ON INTERNATIONAL LAWS APPLICABLE TO AIR AND MISSILE WARFARE (2009), *available at* <http://ihlresearch.org/amw/HPCR%20Manual.pdf>.

17. PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH, COMMENTARY ON THE HPCR MANUAL ON INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE (2009), *available at* <http://ihlresearch.org/amw/Commentary%20on%20the%20HPCR%20Manual.pdf>.