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## “Small Wars”: The Legal Challenges

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Kenneth Watkin\*

**R**ear Admiral Christenson, Ladies and Gentlemen.

Let me begin by saying what a pleasure it is to finally be here at the Naval War College delivering opening remarks at the annual international law conference. I say “finally” because as many of you know I took a detour, quite literally. While driving here last June to look for accommodations, I received a phone call asking if I would be a Foreign Observer on the Israeli independent commission investigating the Gaza maritime incident of May 31, 2010. I accepted and the College was very gracious in delaying my start and, I must say, patient in waiting for my return.

I am not going to comment on the commission, in part because its work is still ongoing; however, Part One of its report dealing with the blockade is available on the commission website for those who have an interest in the law governing such operations.<sup>1</sup> I will say, however, that if I thought traveling to the Middle East a year ago would be my last connection with the Naval War College for a while I was completely mistaken. Perhaps it should have come as no surprise given the subject matter of the inquiry, but it seemed everywhere I turned I found myself in touch with someone or a learned publication connected to this College.

The list of former Stockton Professors was itself impressive. They included, most obviously, Mike Schmitt and Wolff Heintschel von Heinegg, who directly assisted the commission, but also inevitably reference had to be made to the

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\* Stockton Professor, U.S. Naval War College.

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influential works of other Stockton Professors, such as Yoram Dinstein<sup>2</sup> and my fellow Canadian Leslie Green.<sup>3</sup> Craig Allen’s article “Limits on the Use of Force in Maritime Operations in Support of WMD Counter-Proliferation Initiatives,” found in the eighty-first edition of the International Law Studies series<sup>4</sup> (the “Blue Book”), was particularly informative regarding the law on stopping ships on the high seas. Articles such as Professor Allen’s highlight the impact that the product of conferences like this can have on real-world international issues.<sup>5</sup>

The connection to the College did not stop there. Wolff Heintschel von Heinegg’s contribution on blockade to the *Max Planck Encyclopedia of Public International Law* is world leading.<sup>6</sup> The International Institute of Humanitarian Law’s Rules of Engagement Handbook,<sup>7</sup> brought to life under the steady hand of Dennis Mandsager, provided guidance in an area often ignored by international lawyers: the right to individual personal self-defense, as opposed to State self-defense, under international law. In addition, the book *Naval Blockades and Seapower*,<sup>8</sup> edited by two professors from the Naval War College, Bruce A. Elleman and S.C.M. Paine, provided an excellent historical perspective on blockades and maritime interdiction. Finally, NWP 1-14M, *The Commander’s Handbook on the Law of Naval Operations*,<sup>9</sup> a product of the International Law Department, served not only as an essential source on the law governing blockades, but also, importantly, as an indication of the views of a specially affected State, like the United States, which then could be compared with the more international flavor of the 1994 *San Remo Manual*.<sup>10</sup> Quite impressive influence by the International Law Department, its alumni and the much broader Naval Warfare College community on an issue arising a world away. I can admit to feeling a considerable amount of humility given the work of my predecessors as I start my sojourn as the Stockton Professor.

However, we are not here to talk about blockade, but rather “non-international armed conflict,” although the relative inattention paid to such conflicts by international lawyers until recently reminds me of the reference in the *San Remo Manual* regarding the participants having commenced their discussion of blockade law with the question of whether it was “entirely archaic,” with some participants expressing the view it had fallen into “complete desuetude.”<sup>11</sup> I personally can confirm that blockades—and blockade law—have not disappeared and it is clear that in looking at both history and the present situation non-international armed conflict has definitely not fallen into disuse.

I want to start with this quote by Colonel Callwell of, at that time, His Britannic Majesty’s Forces, defining in 1906 a form of warfare known as “small wars”: “campaigns undertaken to suppress rebellion and guerrilla warfare in all parts of the world where organized armies are struggling against opponents who will not meet them in the open field.”<sup>12</sup>

Of course, these often are “non-international armed conflicts” by another name. Now in case anyone is wondering why a “Naval” War College is concerning itself with “small wars,” one need not look farther than the United States Marine Corps, whose 1940 *Small Wars Manual* was not only the leading text on the subject in its day, but also identified such wars as representing the “normal and frequent operations of the Marine Corps.”<sup>13</sup> Little has changed, when one considers that the Vietnam War and the ongoing conflict in Afghanistan qualify in various aspects as “small wars,” although they are anything but small. I leave it up to you to consider whether the Navy and Marine Corps involvement in the air and missile strikes at the opening of the Libya operation constituted participation in yet another “small war.”

“Small wars” are not new. Unfortunately, neither is the inability of the international community to provide the parties fighting such conflicts the comparatively extensive and clear legal framework that is in existence for State-versus-State conflict. Indeed, both operators and their legal advisors should get uncomfortable when reference has to be made to an international criminal law treaty, the 1998 Rome Statute,<sup>14</sup> for the clearest convention-based listing of the legal norms applicable to such conflict.<sup>15</sup> Indeed, in what is now over a century after Colonel Callwell’s definition of “small wars” was presented, it is hard not to use the term “failure”—or at least more positively “limited success,” if you are a “glass half full” individual—when considering how well, in terms of consensus and clarity, the articulation of the law of non-international armed conflict has fared.

As most of you are aware a big part of the reason for this “limited success” is that States themselves have been very reluctant, indeed often hostile, to the notion of clarifying this area of the law. Certainly, the unsuccessful efforts of the International Committee of the Red Cross (ICRC) to have the rules of international armed conflict apply equally to non-international ones during the negotiations of the 1949 Geneva Conventions stand out as one of a number of examples of that reluctance. What was left was the important, but exceptionally watered-down, Common Article 3 protections applicable to “conflicts not of an international character.”<sup>16</sup> States, including the brand-new States of the post-colonial period, continued to be very concerned that their non-State opponents, existing and potential, would be “legitimized” by their being provided the same rights as States in a treaty regime governing armed conflict.<sup>17</sup> While I understand the *jus ad bellum* branch of international law governing the recourse to war concerns itself with State-versus-State conflict, and considerable effort is made to ensure the law governing the conduct of hostilities, *jus in bello*, applies equally to all participants, State and non-State alike, it is also clear to me one aspect of just war theory, fighting for a State as the “right authority” in order to have legitimacy, hangs like a dark cloud

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over the attempts to reach consensus on the legal regulation of non-international armed conflict. In particular, it impacts on issues such as status of participants, detention, targeting and direct participation in hostilities (DPH)—the common topics of contemporary media headlines. In addition, given the evident lack of consensus as to what law applies to these “small wars,” it has left open a much broader and more vigorous dialogue regarding how and to what degree human rights law governs the use of force, the treatment of detainees and the accountability process in internal conflicts.

Despite claims that international humanitarian law can be applied in its entirety to non-international conflicts, and the policies of various States that seek to do just that, it appears to me that gaps remain. I also sense, at times, an element of fatigue setting in within the legal community regarding these issues. As someone mentioned to me recently as we were talking about an upcoming event, there is a feeling of “not yet another conference on the interface between human rights and humanitarian law.” However, it cannot be a fatigue that is forged with a sense of resounding success. One decade into the twenty-first century many countries are still engaged in “small wars,” both long- and short-term, and the requirement to resolve these issues remains more important than ever.

I believe there are a number of reasons why this area of the law must be clarified.

First, non-international armed conflict has been and remains the predominant form of warfare. Notwithstanding a growing concern over potential international armed conflicts with certain States flexing newfound economic and military powers, they remain just that, potential conflicts, which, should they arise, would largely be conducted within a comparatively well-developed framework of international law—although, as will be discussed shortly, not one without some disagreement. The same cannot be said for the existing and future “small wars” that will continue to occupy the attention of States, either because they are occurring within their territory or as a result of having deployed expeditionary forces to deal with them. Non-international armed conflict will not disappear in the same way that blockades were believed by some to have fallen into disuse.

The prevalence of non-international armed conflict has also been ensured by an approach that views only State-on-State conflict as “international” in character. However, such “pure” international armed conflicts are by definition increasingly rare. The effect of a determination that a conflict is non-international in character is that participants are then immersed in a legal environment that in many places lacks the clarity of its international counterpart. In an interesting historical note, such determinations can be made virtually overnight. In Afghanistan, as early as June 2002, there were declarations that the then-existing international armed conflict was over.<sup>18</sup> The conflict from that point was to be considered

a non-international one. Of note, the U.S. Supreme Court in *Hamdan* subsequently adopted this categorization for the Afghanistan conflict in 2006.<sup>19</sup> One could wonder if the troops on the ground actually noticed the difference. I can tell you there was no change in the operational environment, the threat or the complexity of the operations they were conducting. I doubt the legal advice provided to them changed either. However, such debates regarding “form” often seem to occur without much thought of the resulting legal uncertainty they are imposing on participants. The debate over categorizing conflict does cause me to think at times of Michael Walzer and, if I can paraphrase him, I think it may fairly be said that lawyers do from time to time appear to construct paper worlds which fail at crucial points to correspond to the world in which everyone else lives.<sup>20</sup> It is no wonder that for many practitioners the key focus is on whether there is an “armed conflict” rather than on a struggle over assessing its degree of “international” or “non-international” character.

It is common to look at the Instructions for the Government of Armies of the United States in the Field of 1863, the famous Lieber Code, as a starting point in the effort to codify the rules governing armed conflict. It is quite ironic this effort commenced with a conflict that itself in contemporary terminology would be termed a “conflict not of an international character.” Of course, we all know it better as a civil war. After nearly one hundred fifty years of working to regulate such armed conflict it seems the situation has become less clear. Perhaps the reason the Lieber Code managed to even get off the ground was that it was the product of one government rather than an international effort. In this respect the suggestion by John Bellinger, a former Department of State Legal Advisor, in an article on the law about detainee operations in contemporary conflict found in the 2011 *American Journal of International Law*<sup>21</sup> appears to have considerable merit. He suggests that specially affected States, those engaged in detention operations, should get together and work out a recommended common set of legal rules governing such operations given the inability of the international community to do so.<sup>22</sup>

Unfortunately things actually seem to be getting increasingly muddier. It was suggested at a conference I recently attended that because there were no “combatants” in non-international armed conflict there could be no “combatant privilege” for State armed forces. Further, the authority for a State to use deadly force would have to be found in domestic legislation of the State, even if those soldiers were fighting on the other side of the world. While I am at a loss to think of any State practice of prosecuting its own security forces on the basis there was no empowering domestic legislation, it would be interesting to know how many of the States represented in this room with troops serving in Afghanistan have such specific domestic

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legislation focused on targeting during a non-international armed conflict in a far-away land. I would suggest there is strong argument supporting the existence of a customary norm of providing State security forces a form of “privilege” in respect to the use of force in internal armed conflicts. Perhaps this will be an issue that can be discussed and clarified during this conference.

Second, the lack of clarity regarding the law of non-international armed conflict can have a profound and sometimes negative effect, not only on the victims of conflict, but also on States in terms of whether their actions are viewed as being legitimate. What if there had been a greater international consensus on the substantive law that applied to the detention, treatment, transfer and status review of unprivileged belligerents (if one can use that term in a non-international armed conflict) detained in the post-9/11 period? Would the potential for abuse and allegations of mistreatment have been the same? One cannot help but think that the dialogue would have been much different if there had been greater clarity in the law. An application of the policy of treating captured personnel under prisoner-of-war standards, without providing that status, or as security detainees under Geneva Convention IV could have been a practical, defensible and ultimately helpful approach. However, even now, some ten years after the issue first arose, an internationally agreed framework governing detainees in non-international armed conflict is lacking. That it remains a topic of academic debate at this conference demonstrates the distance that must still be traveled on this issue before “success” can be declared.

Third, I also sense from time to time that there is a belief that the issues applicable to non-international conflict have no real relevance to conflicts between States. Perhaps this is simply a reflection of the lack of interest demonstrated by States themselves in the regulation of non-international armed conflict. However, there can be significant “cross-pollination” of legal issues. For example, a number of issues that arise in the conduct of internal “small wars” are also inherent in an insurgency being carried out during belligerent occupation, which, of course, occurs during international armed conflict. Both occupation and internal conflicts ultimately involve what General Sir Rupert Smith has called a “war amongst the people.”<sup>23</sup> In addition, it is highly likely that any future war between States would involve not only clashes between regular military forces but also “irregular forces,” “organized armed groups” or even individual civilians acting on the State’s behalf. This includes in the cyber realm. Any suggestion that legal issues in non-international armed conflict are not relevant to international conflict would have to address the controversial aspects of Additional Protocol I<sup>24</sup> that appear for nearly thirty-five years to have stood in the way of its universal acceptance and application to international armed conflicts.<sup>25</sup>

Fourth, and finally, the unwillingness of States to engage in clarifying what law applies to non-international armed conflict has in many respects negatively impacted on their ability to influence how that law will be, and is presently being, shaped. As Yoram Dinstein has noted in the most recent edition of his book *The Conduct of Hostilities under the Law of International Armed Conflict*, “[i]nternational law must march in lockstep with the compelling demands of reality.”<sup>26</sup> Gaps, both real and perceived, are being filled through means such as unofficial restatements of the law and manuals of rules crafted by various groups of legal “experts.” States do send officials in their personal capacity, although they are often outnumbered, and ultimately lack the voice that they would have in official treaty negotiations. The results can be problematic for States. One example is reflected in the ICRC’s DPH study.<sup>27</sup> Now, I am critical of a number of aspects of the study;<sup>28</sup> however, at the same time it must be noted that the ICRC courageously took on one of the most perplexing and difficult issues of the contemporary law of armed conflict—one that States appear to have been “unwilling or unable,” to use a contemporary phrase, to address.

My goal today is not to dwell on specific details of the DPH study but rather to refer to it as being representative of a trend of suggesting that States should be held to a different and ultimately more onerous standard than their non-State opponents. The study sets out significantly broader parameters for “membership” in regular armed forces, and therefore for the forces’ ultimate targetability, than it does for members in the “organized armed groups” against which they are fighting. In effect, it seems to turn the *jus ad bellum* principle of “right authority” on its head. A principle that provided the basis for giving prisoner-of-war status to those fighting for a State, thereby privileging them over their non-State counterparts, now seems to mean, if you accept the thesis, those same State actors, indeed many of you in this auditorium, can be more easily killed than persons performing exactly the same function in an opposing non-State organized armed group. Indeed the non-State counterparts would be protected from being targeted by being considered to be “civilians.”

Ultimately, this approach seems to have a “human rights–like” flavor, where it is the State that is always held more responsible and accountable. In a 2010 report to the Human Rights Council, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, when looking at the DPH study, suggested that while some may see an inequity between State forces and non-State actors identified in the study, it is one built into international humanitarian law in order to protect civilians.<sup>29</sup> It is not immediately clear to me that the statistics from the Afghanistan conflict support this approach. Indeed, it is reported that in Afghanistan in 2010, 75 percent of civilian casualties were caused by insurgents.<sup>30</sup> It is difficult to see

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how making insurgents who have demonstrated little reticence about killing uninvolved civilians more difficult to target than their State counterparts enhances the protection for those civilians. It also points to one of the acknowledged challenges of applying human rights norms to contemporary armed conflict. International humanitarian law has long sought to have equal application to both sides of the conflict, the issue of prisoner-of-war status notwithstanding. Adding new inequity to the existing law is not likely to aid in reaching consensus among such significant stakeholders in international law as States.

It seems to me that approaches which do not rely on broadly accepted international law—such as approximating what any other detainee captured under the existing treaty regime in armed conflict would receive, in deciding on the standards for the treatment of those captured in non-international conflict—or which do not evenly apply the law in respect of targeting to all parties to the conflict, are more likely to create obstacles rather than help resolve these fundamental issues.

At the same time, it is difficult to see how States can complain about new “soft law” and manuals of rules if they do not become more strategically and fully engaged in the processes that are being used to clarify the law. Ultimately, attempts will be made to fill voids with or without State participation, and with good reason. Civilians must be protected from the ravages of war. The question is the degree to which States want to influence that process.

There are important, indeed essential, issues that need to be resolved. Impressive work is being done. One example is the 2006 Institute of International Humanitarian Law *Manual on the Law of Non-International Armed Conflict*<sup>31</sup>—no surprise, again with a link to the Naval War College, its authors being Yoram Dinstein, Mike Schmitt and Charles Garraway. Unfortunately, it is a work that has not received the publicity that it should and the unsettled State of the law demands. As editor of this year’s “Blue Book,” I will be interested to see how many authors refer to this manual in their scholarly assessments of non-international armed conflict.

Finally, there is this conference, and the inevitable articles in the “Blue Book” that will result. I encourage all of you to participate fully and ask probing questions of the panelists, thereby shaping the discussion. Indeed, you never know. You, yourself, might someday unexpectedly take a detour and become immersed in a complicated legal problem related to a “small war” occurring on the other side of the world. I do know that you will be able to search the product of this conference, and others like it here at the Naval War College, for guidance when dealing with non-international armed conflict—the difficult humanitarian law issue of our time. Thank you.



Notes

1. Jacob Turkel et al., 1 The Public Commission to Examine the Maritime Incident of 31 May 2010 (2011), available at <http://turkel-committee.gov.il/files/worddocs/8707200211english.pdf>.
2. YORAM DINSTEIN, *THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT* (2d ed. 2010).
3. LESLIE C. GREEN, *THE CONTEMPORARY LAW OF ARMED CONFLICT* (3d ed. 2008).
4. Craig H. Allen, *Limits on the Use of Force in Maritime Operations in Support of WMD Counter-Proliferation Initiatives*, in *INTERNATIONAL LAW CHALLENGES: HOMELAND SECURITY AND COMBATING TERRORISM* 77 (Thomas McK. Sparks & Glenn M. Sulmasy eds., 2006) (Vol. 81, U.S. Naval War College International Law Studies).
5. See GEORGE WALKER, *THE TANKER WAR, 1980–88: LAW AND POLICY* 389–394 (2000) (Vol. 74, U.S. Naval War College International Law Studies).
6. Wolff Heintschel von Heinegg, *Blockade*, in *MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (Rüdiger Wolfrum ed., 2010); Wolff Heintschel von Heinegg, *Naval Blockade*, in *INTERNATIONAL LAW ACROSS THE SPECTRUM OF CONFLICT: ESSAYS IN HONOUR OF PROFESSOR L.C. GREEN ON THE OCCASION OF HIS EIGHTIETH BIRTHDAY* 203 (Michael N. Schmitt ed., 2000) (Vol. 75, U.S. Naval War College International Law Studies).
7. INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW, *SAN REMO HANDBOOK ON RULES OF ENGAGEMENT* (2009), available at <http://www.iihl.org/iihl/Documents/ROE%20handbook%20ENG%20May%202011%20PRINT%20RUN.pdf>.
8. *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES, 1805–2005* (Bruce A. Elleman and S.C.M. Paine eds., 2006).
9. U.S. Navy, U.S. Marine Corps & U.S. Coast Guard, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M/MCWP 5-12.1/COMDTPUB P5800.7A (2007), available at [http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M\\_\(Jul\\_2007\)\\_\(NWP\)](http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M_(Jul_2007)_(NWP)).
10. *SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA* (Louise Doswald-Beck ed., 1995).
11. *Id.* at 176.
12. C.E. CALLWELL, *SMALL WARS: THEIR PRINCIPLES & PRACTICE* 21 (3d ed. 1996) (1896).
13. UNITED STATES MARINE CORPS, *SMALL WARS MANUAL* ¶ 1-1(d) (1940).
14. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.
15. See YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 6 n.11 (4th ed. 2005).
16. Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 3, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.
17. See COMMENTARY TO GENEVA CONVENTION III RELATIVE TO THE TREATMENT OF PRISONERS OF WAR 32 (Jean S. Pictet ed., 1960), available at <http://www.cicr.org/ihl.nsf/COM/375-590006?OpenDocument> (Pictet outlines the reaction by a number of States regarding a wholesale application of the Conventions to internal conflict as: "It was said that it would cover all forms of insurrections, rebellion, and the break-up of States, and even plain brigandage. Attempts to protect individuals might well prove to be at the expense of the equally legitimate protection of the State. To compel the Government of a State in the throes of internal conflict

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to apply to such a conflict the whole of the provisions of a Convention expressly concluded to cover the case of war would mean giving its enemies, who might be no more than a handful of rebels or common brigands, the status of belligerents, and possibly even a certain degree of legal recognition.”).

18. See Letter from Philip Spoerri, ICRC Legal Adviser, to Mr. Doherty, Clerk of the Committee on International Development of the House of Commons (Nov. 28, 2002), available at <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmintdev/84/84ap09.htm> (where it is stated that “[f]ollowing the convening of the Loya Jirga in Kabul in June 2002 and the subsequent establishment of an Afghan transitional government on 19 June 2002 . . . the ICRC no longer views the ongoing military operations in Afghanistan directed against suspected Taliban or other armed groups as an international armed conflict.”).

19. Hamdan v. Rumsfeld, 548 U.S. 557 (2006).

20. MICHAEL WALZER, JUST AND UNJUST WARS xix (2000).

21. John B. Bellinger III & Vijay M. Padmanabhan, *Detention Operations in Contemporary Conflicts: Four Challenges for the Geneva Conventions and Other Existing Law*, 105 AMERICAN JOURNAL OF INTERNATIONAL LAW 201 (2011).

22. *Id.* at 243.

23. RUPERT SMITH, THE UTILITY OF FORCE: THE ART OF WAR IN THE MODERN WORLD 3–4 (2007).

24. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

25. Ronald Reagan, *The U.S. Decision Not to Ratify Protocol I to the Geneva Conventions on the Protection of War Victims: Letter of Transmittal*, 81 AMERICAN JOURNAL OF INTERNATIONAL LAW 910 (1987).

26. DINSTEIN, *supra* note 2, at 297.

27. NILS MELZER, INTERNATIONAL COMMITTEE OF THE RED CROSS, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW (2009).

28. Kenneth W. Watkin, *Opportunity Lost: Organized Armed Groups and the ICRC “Direct Participation in Hostilities” Interpretive Guidance*, 42 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS 641 (2010).

29. See Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Study on Targeted Killings* ¶ 67, Human Rights Council, U.N. Doc. A/HRC/14/24/Add.6 (May 28, 2010) (by Philip Alston), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.

30. See *Afghanistan Civilian Casualties: Year by Year, Month by Month*, THE GUARDIAN, <http://www.guardian.co.uk/news/datablog/2010/aug/10/afghanistan-civilian-casualties-statistics> (last visited Nov. 9, 2011).

31. MICHAEL N. SCHMITT, CHARLES H.B. GARRAWAY & YORAM DINSTEIN, THE MANUAL ON THE LAW OF NON-INTERNATIONAL ARMED CONFLICT WITH COMMENTARY (2006), available at <http://www.dur.ac.uk/resources/law/NIACManualIYBHR15th.pdf>.