

A Practical Perspective on Attacking Armed Groups

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I. INTRODUCTION

It has been a tremendous honor both to address the 2nd Israeli Defense Forces Conference on the Law of Armed Conflict and to provide this Article. My goal is to provide more detail on my views regarding organized armed groups¹ under International Humanitarian Law, which I will refer to as the Law of Armed Conflict (LOAC). While I am not an academic, I hope to provide the practical perspective that comes from implementing LOAC rules during real-world operations. My perspective also comes from recognizing the need to apply these rules across a broad spectrum of operations: in the air, on the ground, at sea, in both urban and remote areas, and in future conflicts that might not resemble today's fight.

Let me begin by emphasizing that the United States is absolutely committed to complying with the LOAC during all military operations. The United States has devoted more time, training, and personnel to this vital task than any other nation in the history of warfare. To help our commanders comply with the LOAC, I typically apply a three-part framework when I provide legal advice on a proposal to attack any person.

In this Article, I will describe the three questions I ask and highlight some of the practical problems that can arise when we answer each of the three questions. After that, I will move on to a discussion of how organized armed groups are treated under the

1. Because this article extensively discusses the ICRC's INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW, I have used the term "organized armed group" for clarity. INT'L COMM. OF THE RED CROSS, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW 31 (Nils Melzer ed., 2009) [hereinafter ICRC DPH STUDY]. The Department of Defense generally uses the term "armed group" in order to avoid confusing the requirement of organization that groups must have in order to be considered lawful combatants and whether groups are sufficiently organized for the purposes of determining whether the group is liable to attack. One of the LOAC requirements for armed groups to be considered lawful combatants is that they have sufficient discipline and command mechanisms like a traditional military chain-of-command. See U.S. DEPT OF DEF., DEP'T OF DEF. LAW OF WAR MANUAL § 4.6.3 (Dec. 2016) [hereinafter DOD LAW OF WAR MANUAL]; cf. *id.* § 19.20.2.2 (explaining the requirements that groups must meet to be covered by certain provisions of the Geneva Convention). On the other hand, this requirement of lawful combatant status does not apply when assessing whether armed groups may be subject to attack as unprivileged belligerents.

LOAC, and how that treatment is—and should remain—different from how civilians are treated when they directly participate in hostilities. I consider this distinction to be the most important part of the discussion about targeting persons in today's conflicts, but I note that this key concept is sometimes misunderstood or misapplied, so it plays a prominent role in my presentation.

II. THREE-PART FRAMEWORK FOR ATTACKING PEOPLE

When describing this three-part framework for targeting a person—or making a person the object of attack, to use the LOAC term²—I am drawing on my experience serving as the Staff Judge Advocate for the U.S. Central Command (CENTCOM). Even though the United States was engaged in a number of non-international armed conflicts during my time at CENTCOM,³ I think that this three-part framework would be relevant for international armed conflicts as well. When conducting combat operations during an armed conflict, a commander will conduct the Joint Targeting Process to select targets to attack.⁴ Some of those targets will be people. Before attacking, the commander must determine whether those people are subject to attack under the LOAC.⁵ To advise the commander in making that decision, I use a three-part framework. Before applying this three-part framework, I begin by treating all persons as if they are not subject to attack unless we establish otherwise.⁶

I then apply our three-part framework to determine whether a person is subject to attack. First, I ask whether the person is a member of the armed forces. Second, I ask whether the person is a member of an organized armed group. Finally, I ask whether the person is directly

2. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.4.1.

3. U.S. NAT'L SEC. COUNCIL, REPORT ON THE LEGAL AND POLICY FRAMEWORKS GUIDING THE UNITED STATES' USE OF MILITARY FORCE AND RELATED NATIONAL SECURITY OPERATIONS 2–12, 15–18 (2016) [hereinafter REPORT ON LEGAL AND POLICY FRAMEWORKS].

4. JOINT CHIEFS OF STAFF, JOINT PUB. 3-0, JOINT OPERATIONS at III-26 (Jan. 17, 2017).

5. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.4.2.

6. There has been much discussion about whether LOAC requires a presumption that persons have a civilian status in case of “doubt.” *See id.* § 5.4.3.2; Memorandum from Joint Chiefs of Staff to Sec’y of Def., Review of the 1977 First Additional Protocol to the Geneva Conventions of 1949 (May 3, 1985). I do not mean to imply a formal legal presumption in case of “doubt” as found in the Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 50, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I], which the United States has not accepted. Instead, I simply mean that our analysis reflects the practical reality that in order to attack, a commander must have a good-faith, reasonable belief that a person or object is subject to attack under LOAC. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.3, 5.10.2.2. Practically speaking, that means that U.S. forces do not attack until they believe that standard is met.

participating in hostilities. In general, if the answer to any one of these questions is “yes,” then the person will be subject to attack. If the answer to all three questions is “no,” then the person may not be attacked.

A. *Members of State Armed Forces*

This is the simplest of the three concepts. If an individual is wearing a military uniform or carrying a military ID card, we all know he or she generally may be killed 24/7 even, as Professor Yoram Dinstein noted, while asleep in his or her bed.⁷

The rule that members of the armed forces are generally subject to attack obviously applies to front-line infantry fighters, pilots, and other members of the armed forces who directly participate in hostilities. However, the rule is very broad because it is focused on membership, not conduct—it is not tied to the rule governing civilians who directly participate in hostilities.⁸ Before we continue, we should stop and consider just how broad this rule is. Although there are limited exceptions, such as for military medical and religious personnel and persons *hors de combat*, commanders may generally attack all members of the enemy’s armed forces, including rear-echelon support personnel.⁹ In order to illustrate this important point, I provide the following examples of roles performed by uniformed members of the US armed forces:

- Supply / Logistics Specialists
- Human Resource Managers
- Military Truck Drivers
- Public Affairs Officers
- Finance Clerks
- Cooks
- Computer Experts / IT Professionals
- Military Musicians
- Military Researchers who Develop / Test Munitions and Drone Technology
- Communications Experts
- Civil Affairs Officers
- And last but not least, Lawyers!

7. Yoram Dinstein, Professor Emeritus, Tel Aviv University, Keynote Address at The Second Israel Defense Forces International Conference on the Law of Armed Conflict (Apr. 25, 2017); *see also* DOD LAW OF WAR MANUAL, *supra* note 1, § 5.7.1.

8. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.8; *see also* Additional Protocol I, *supra* note 6, art. 51; Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 13, June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II].

9. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.7; *see* ICRC DPH STUDY, *supra* note 1, at 20–24, 27–31.

Few of these uniformed personnel could be described as directly participating in hostilities as that phrase is understood when applying it to civilians, yet all may be attacked by virtue of their membership in the armed forces. It is likely that organized armed groups have similar categories of support personnel.

B. *Members of Organized Armed Groups*

When states are engaged in a non-international armed conflict against organized armed groups, members of those organized armed groups may also be attacked, just like members of the armed forces.¹⁰ However, this analysis presents some legal and practical challenges.

1. Which Groups Qualify as Organized Armed Groups?

As the name implies, the group must be both organized and armed. To be organized, the group must have some structure and cohesion. The group must also have some command mechanism that allows the group to execute direction from leaders, though it need not look like a traditional military chain of command. A key consideration is whether the armed group is sufficiently cohesive so that we can impute an intention to wage war to the armed group as a whole.¹¹

The group must also be armed. This does not mean each member must be armed, but it does mean that the group as a whole must generally conduct hostile or belligerent activities—using violence to achieve its objectives, analogous to a state's armed forces. In some cases, if a nonstate actor includes both an armed group and a political organization, and those elements can be distinguished, then the political organization might not be part of the armed group. These analyses all require intelligence information about the nonstate actor.

In case there is any doubt, the United States views ISIS and al-Qaeda as armed groups whose members are subject to attack.¹² But as an Israeli Brigade Commander in the Golan Heights noted,¹³ there are many rebel bands or armed factions operating across Syria, and some of them do not appear to be sufficiently organized to qualify as “organized armed groups.” These entities might be more accurately characterized as movements or loose criminal gangs rather than organized armed groups.

For the United States, the question of whether an organized armed group is a party to a particular non-international armed conflict

10. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.7.3.

11. *See id.* § 5.7.1.

12. REPORT ON LEGAL AND POLICY FRAMEWORKS, *supra* note 3, at 5.

13. Participants in the 2nd Israeli Defense Forces (IDF) Conference on the Law of Armed Conflict travelled to the Golan Heights and were briefed by an IDF Brigade Commander who described a wide array of various groups operating in Syria.

against the United States is dependent on the factual situation. This question of international law is informed by US domestic law and US policy.¹⁴

2. Identifying Members of Organized Armed Groups

Once we know which groups qualify, the second challenge is to identify individual members of organized armed groups. Membership may be determined through either formal or functional membership in the organized armed group.¹⁵ Formal membership may be established by indicia such as a rank or title, an oath, a uniform, or a document that indicates that a person has formally joined the organized armed group.¹⁶ Functional membership exists where a person is functionally integrated into the group.¹⁷ This may include the performance of roles within the organized armed group that parallel the roles of members of state armed forces, such as infantry fighters or logistics officers. Because the concept of “membership” in nonstate armed groups can be formal or functional, the Department of Defense (DoD) will often refer to persons being “part of” or “belonging to” nonstate armed groups.¹⁸

Identifying who is part of a group can be really challenging in practice—especially when confronting a group like ISIS. Every once in a while, members will fly an ISIS flag on their trucks, but generally speaking, they do not wear uniforms to distinguish themselves from civilians. In fact, they often try to hide their membership by blending in with civilians. Therefore, commanders often require significant intelligence to identify members of organized armed groups.

The United States and its coalition partners work hard to collect and analyze intelligence that identifies members of organized armed groups and distinguishes them from non-combatants. They also develop targeting procedures that reflect care to ensure that only enemy combatants are struck while seeking to minimize civilian casualties. Minimizing civilian casualties is an important effort, and it is quite challenging, particularly during combat in dense urban areas like we have seen in Iraq and Syria.

When US forces identify individual members of an organized armed group, they may lawfully attack them. And just like we discussed with members of the armed forces, members of organized armed groups (with similar exceptions for personnel such as medical teams¹⁹ and those *hors de combat*) may be targeted based on

14. REPORT ON LEGAL AND POLICY FRAMEWORKS, *supra* note 3, at 3–11.

15. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.7.3.

16. *See id.* § 5.7.3.1.

17. *Id.* § 5.7.3.2.

18. *See, e.g., id.* § 4.18.4.1.

19. To be protected, medical and religious personnel must be exclusively engaged in those humanitarian duties. *Id.* § 17.15.1.1. Most of the armed groups we face do not have personnel *exclusively* engaged in such humanitarian duties.

membership, even if their role is not to directly participate in hostilities.

C. Civilians Who Directly Participate in Hostilities

If a person does not meet these two membership tests, he or she generally would be regarded as a civilian.²⁰ For example, both a person affiliated with a roaming, disorganized band and a person you do not have enough intelligence on to identify as a member of an organized armed group must be treated as civilians. And civilians cannot be attacked unless they directly participate in hostilities. So our third and final step in our three-part process is to determine whether a person is a civilian who is directly participating in hostilities.

When it comes to direct participation in hostilities, the International Committee of the Red Cross (ICRC) advocates for requiring three elements to be met: (1) A specific act must reach the required threshold of harm, (2) there must be a direct causal link between the specific act and the harm likely to result, and (3) the act must have a belligerent nexus.²¹ While I disagree with the test in some areas (which I discuss in more detail below), there are two things that make it a good starting point for discussion: its simplicity and the fact that it sets a high standard. Both are important because the LOAC is applied by young soldiers on battlefields who must often make immediate life-or-death decisions, rather than by lawyers or professors on university campuses with time to research each issue.

Therefore, I appreciate the simplicity of the ICRC's approach to interpreting what constitutes direct participation in hostilities: you may only attack a civilian when that civilian's action directly poses a risk of some harm. I also appreciate that the ICRC's approach sets a high standard—I think a narrow, high standard is appropriate to protect civilians from being unnecessarily targeted. I also think a narrow, high standard can be clear enough to be understood by an eighteen-year-old private who is tired, hungry, and scared.

That does not mean that the ICRC standard is perfect, however. I strongly disagree with the ICRC's assertion of a LOAC duty to capture persons who are legitimate targets before making them the object of attack.²² In addition, the ICRC's interpretation should better account for people who have a pattern of direct participation in hostilities. The ICRC's "revolving door" of protection for these individuals does not accurately reflect the law of armed conflict.²³ Finally, I think the test's "one causal step" requirement for direct causation may be too limited in some cases where the participant deliberately takes action intended

20. *Id.* § 4.8.1.5, 5.7.2.

21. ICRC DPH STUDY, *supra* note 1, at 46–64.

22. *Id.* at 77–82.

23. *Id.* at 70–71.

to contribute to military action.²⁴ However, I think that, in general, the ICRC interpretive guidance is a good starting point for determining whether civilians are directly participating in hostilities.²⁵

III. ORGANIZED ARMED GROUPS AND DIRECT PARTICIPATION IN HOSTILITIES

That said, some argue that the direct participation in hostilities standard is good enough to replace the test for membership in organized armed groups.²⁶ I completely disagree with this approach, and I would like to discuss three legal and practical reasons why it is not appropriate.

Before we get started, it is important to identify exactly where the disagreement lies. In 2009, the ICRC released its Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law (ICRC DPH Study).²⁷ In the study, the ICRC acknowledges that, in both international²⁸ and non-international²⁹ armed conflict, members of organized armed groups may be attacked.³⁰ The ICRC also acknowledges that these members may be attacked at all times, twenty-four hours a day, so long as they remain members.³¹

So far so good, but the ICRC and I part company when it comes time to define the members of an organized armed group. For the ICRC, members of the organized armed group are defined by “whether a person assumes a continuous function for the group involving his or her direct participation in hostilities (hereafter: ‘continuous combat function’).”³² In other words, the ICRC links the question of

24. *Id.* at 52–53.

25. While a good starting point for discussion, the ICRC’s interpretation should be more informed by state practice and the realities of military operations. In presenting authoritative guidance for U.S. Department of Defense (DoD) practitioners, the DoD sought to put forward such an approach in the LAW OF WAR MANUAL, which provides general guidance and factors for DoD lawyers to use in advising commanders on the law. The LAW OF WAR MANUAL also provides lists of common examples of activities that constitute direct participation and activities that do not constitute direct participation that, I submit, anyone with common sense and a familiarity with military operations can understand. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.8.3.

26. ICRC DPH STUDY, *supra* note 1, at 32–36.

27. *Id.*

28. *Id.* at 21–24.

29. *Id.* at 27–36.

30. *Id.* at 71 (“[M]embers of organized armed groups belonging to a nonstate party to the conflict cease to be civilians for as long as they remain members by virtue of their continuous combat function.”).

31. *Id.* at 72 (“[W]here individuals go beyond spontaneous, sporadic, or unorganized direct participation in hostilities and become members of an organized armed group belonging to a party to the conflict, IHL deprives them of protection against direct attack for as long as they remain members of that group.”).

32. *Id.* at 33.

membership to the test for direct participation in hostilities: “Individuals who continuously accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, are not members of that group within the meaning of IHL. Instead, they remain civilians assuming support functions”³³

As I mentioned earlier, I think the ICRC’s proposed approach is problematic. A better approach—and the approach that is more consistent with state practice—is to define members of an armed group in a much more common sense way—by looking to formal or functional membership as described above. There are three reasons why this membership approach is better.

A. LOAC Should Not Treat Members of Nonstate Armed Groups Better Than Members of State Armed Forces

Protecting organized armed group members to a greater extent than armed forces members improperly privileges the nonstate party to a non-international armed conflict. In these conflicts, one side usually consists of a state’s armed forces (whose members lose protection from attack based on their membership alone)³⁴ and the other side consists of a nonstate organized armed group (where, the ICRC argues, only those members who directly participate in hostilities may be attacked).³⁵ Adopting the ICRC’s proposed approach would mean that only one side’s supply, human resources, logistics, intelligence, and legal personnel may be attacked. Ironically, this would provide a huge and unfair advantage to the side that has not assumed the burdens of statehood and that lacks *right authority*³⁶ under international law. In particular, privileging organized armed groups would provide an unfair advantage to the party that (in many cases) does not agree to accept the burdens of the law of armed conflict, such as wearing uniforms or taking other measures to distinguish themselves from the civilian population.³⁷

33. *Id.* at 34; see also Kenneth Watkin, *Opportunity Lost: Organized Armed Groups and the ICRC “Direct Participation in Hostilities” Interpretive Guidance*, 42 N.Y.U. J. INT’L L. & POL. 641, 649 (2010) (arguing that the ICRC has linked the test for membership in an organized armed group to the test for direct participation in hostilities).

34. DOD LAW OF WAR MANUAL, *supra* note 1, § 5.7.1; ICRC DPH STUDY, *supra* note 1, at 30–31.

35. See ICRC DPH STUDY, *supra* note 1, at 32–34 (arguing that recruiters, trainers, and financiers, for example, may not be considered members of an organized armed group “unless their function additionally includes activities amounting to direct participation in hostilities”).

36. DOD LAW OF WAR MANUAL, *supra* note 1, § 1.11.1.1; see also Watkin, *supra* note 33, at 672 (“[T]he armed forces of the different parties have dramatically different rules regarding when their forces can be targeted.”).

37. See DOD LAW OF WAR MANUAL, *supra* note 1, § 3.6.3.2.

So, there would be some perverse incentives if international law required an elevated standard where a state could attack only a small portion of an organized armed group while international law exposed all of that state's forces to attack. On this point, I agree with Professor Michael Schmitt, who said "[a] more reasoned approach, and one that better comports with the underlying logic of the distinction between civilians and organized armed groups, is to simply treat insurgent fighters and members of the armed forces equally" for the purpose of assessing their liability to attack.³⁸

B. Treating Members of Armed Groups No Better Than Members of State Armed Forces Is Consistent with Treaty Law and State Practice

Attacking all members of organized armed groups is consistent with treaty law. It is even consistent with treaties (such as Additional Protocol I and Additional Protocol II) to which the United States is not a party. Let me sketch out a bit of this treaty framework, noting that both Brigadier-General (Retired) Kenneth Watkin and the ICRC themselves have done very detailed studies of the treaty law in this area.³⁹

Common Article 3 of the 1949 Geneva Conventions recognizes that parties to non-international armed conflicts will have "armed forces" that may be attacked unless they have "laid down their arms" or been placed *hors de combat*.⁴⁰

Article 1 of Additional Protocol II recognizes that non-international armed conflicts take place "between [state] armed forces and dissident armed forces or other organized armed groups . . ."⁴¹

Article 43 of Additional Protocol I (AP I) describes the "armed forces" that take part in international armed conflict.⁴² Under AP I, the armed forces of a party to the conflict include "all organized armed

38. Michael N. Schmitt, *The Status of Opposition Fighters in a Non-International Armed Conflict*, 88 INT'L L. STUD. 119, 133 (2012). Of course, for the purpose of criminal prosecution, insurgent fighters and members of state armed forces are not treated equally. Persons belonging to nonstate armed groups lack any legal privilege or immunity from prosecution, but members of state armed forces continue to benefit from the combatant's privilege. See DOD LAW OF WAR MANUAL, *supra* note 1, § 17.4.1.1.

39. Watkin, *supra* note 33, at 650–655; ICRC DPH STUDY, *supra* note 1, at 20–36.

40. Geneva 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; see also Watkin, *supra* note 33, at 653–54 (discussing the differences in references to "armed forces" between Common Article 3 and Additional Protocol II); ICRC DPH STUDY, *supra* note 1, at 27–30 (discussing the meaning of "armed forces" in Common Article 3).

41. Additional Protocol II, *supra* note 8, art. 1; see also Watkin, *supra* note 33, at 653–54; ICRC DPH STUDY, *supra* note 1, at 27–30.

42. Additional Protocol I, *supra* note 6, art. 43, 50.

forces, groups, and units which are under a command responsible to that [p]arty”⁴³

Although AP I is not part of the LOAC applicable to the United States, AP I and other treaties recognize that members of organized armed groups are subject to attack based on their membership.⁴⁴ Nowhere do these treaties require that members of organized armed groups also meet the direct participation in hostilities standard that applies to civilians, or that only those persons whose function it is to participate in hostilities regularly and directly may be considered members of the group. This means that our approach—to define membership by looking to formal and functional criteria—is consistent with LOAC treaties on this subject, even treaties that are not binding on the United States.

Our position is also supported by state practice. During my time at CENTCOM, the United States operated as part of a large coalition. From my perspective, the vast majority of these countries, including most of our NATO allies, took a very similar approach. For example, most agreed that identified members of ISIS’s military campaign, including those in roles where they did not directly participate in hostilities, could be legally targeted as members of an organized armed group. As a policy matter, states sometimes limit their strikes to more senior ISIS members, or to those performing the most direct combat functions. Importantly, that type of targeting prioritization does not reflect a legal limitation on the ability to target members of organized armed groups, and therefore does not reflect a state practice that would contribute to customary international law restrictions on targeting members of organized armed groups.

C. Treating Members of Armed Groups No Better Than Members of State Armed Forces Reflects the Reality of Military Operations

Finally, applying the direct participation in hostilities test to organized armed groups would ignore the reality of how armed conflicts take place and how armed forces are organized. Recall that the ICRC’s proposed approach claims to be defining membership.⁴⁵ But armed forces are not usually organized with members having one particular job and nonmembers having another. In the U.S. Army, for example, units are not organized around a distinction between those

43. *Id.* art. 43; see Watkin, *supra* note 33, at 650–53; ICRC DPH STUDY, *supra* note 1, at 20–26.

44. See ICRC DPH STUDY, *supra* note 1, at 22–24 (noting that members of irregular armed forces are not considered civilians for the purposes of conduct of hostilities).

45. The Continuous Combat Function rule proposes to define membership in the organized armed group: “[U]nder IHL, the decisive criterion for individual membership in an organized armed group is whether a person assumes a . . . ‘continuous combat function’” ICRC DPH STUDY, *supra* note 1, at 22–24 (emphasis added).

who fight and those who do not. Instead, soldiers from many different branches and career fields come together in teams—companies, battalions, brigades, divisions, and other task forces—to accomplish missions in furtherance of the war effort.

Likewise, our enemies have formed integrated teams to accomplish common tactical, operational, and strategic goals. We have been studying groups like ISIS and al-Qaeda for many years. We know how the groups are organized and how they fight. They are not usually organized into certain groups that fight and other groups who merely provide support. Instead, like units in states' armed forces, they are often organized into functional teams designed to accomplish missions in support of the group's overall violent objectives. It would make little sense for a legal rule—especially one that claims to be defining membership—to carve apart these functional, mission-focused teams and claim that some team members are not really “members” at all.⁴⁶ Instead, membership is best defined by who is formally or functionally a member of the team itself—the organized armed group—not by the particular role a person fills once they have joined the team.

IV. CONCLUSION

It is vitally important that the United States conducts military operations lawfully. We recognize that, and we have dedicated the resources needed to accomplish it. In this Article, I have described how US forces lawfully attack individuals who are members of organized armed groups. I have discussed the three-part framework that I have used to assess whether an attack on a person is lawful, and I have shown why, subject only to the long-standing exceptions for personnel exclusively engaged in humanitarian duties and personnel *hors de combat*, members of organized armed groups that are party to the conflict may be attacked. I trust that this practical perspective will be useful as we work towards a better understanding of the Law of Armed Conflict.

46. See Watkin, *supra* note 33, at 676, 680–81 (considering the appropriate treatment for fighters who are performing non-combat functions, such as cooking).