# Plan

#### The United States federal government should statutorily clarify that its authorization to use force is for zones of active hostilities

# Global Battlefield 1ac (8)

**Advantage \_\_\_\_: Global Battlefield**

#### AUMF provides the legal authority for a global battlefield. Obama’s internal restrictions are insufficient

**Hafetz 13** – Lawyer with the National Security Project of the American Civil Liberties Union [Jonathan Hafetz (Volunteers to assist Guantanamo captives to access the US Justice system), “War Without Strategy: America Still Doesn't Have a Plan to Fight Terrorism,” Boston Review, June 18, 2013, pg. http://www.bostonreview.net/world-books-ideas/war-without-strategy

But Mazzetti and Scahill highlight important operational continuities between the two administrations. The Obama administration has defined the conflict in the same terms as the Bush administration, notwithstanding the latter’s broader rhetoric about a global war on terror. And Obama has used this loosely framed conflict—one that encompasses not only al Q(aeda but also associated groups—to target terrorism suspects wherever they are found. The conflict’s elasticity has reduced the need to develop an endgame or a plan to achieve it, requiring instead only the will and means to make piecemeal war against one suspect at a time.

Obama’s recent speech marks the first the time the administration has publicly questioned this logic. The president emphasized that drones are not a “cure all for terrorism” and that while drones remain a valuable tool, they must be part of a larger strategy that addresses the underlying grievances and conflicts that fuel terrorism. Obama issued new guidelines to restrict the use of drones and underscored that the current war against al Qaeda and associated groups must at some point be brought to an end.

But the description of the new guidelines for drone strikes—the guidelines themselves remain classified—leaves important questions unanswered, including the definition of an “imminent” threat or an “associated” force.  Much turns on the meaning of these terms, including when drone strikes may be authorized and precisely with whom the United States believes it is at war.

The last decade has shown that war is a powerful enabler, making it easier for the government to justify killing beyond the battlefield and to avoid the difficulties of apprehending terrorist suspects in countries without effective governments. Forceful voices within the military and intelligence services will be reluctant to give up the flexibility that the current model provides, while opposing politicians will equate abandoning the model with weakness in response to terrorism. Meanwhile, the constant fear of the next terrorist attack will continue to exert pressure to use powerful tools such as drones to address short-term threats, without regard to strategic decision-making.

America’s attachment to the war-on-terror model underlies ongoing proposals to expand the 2001 Authorization for Use of Military Force (AUMF), the main domestic legal authority for U.S. military action against al Qaeda and associated groups in Afghanistan and elsewhere. Such proposals are aimed at shoring up the legal basis for drone strikes and other military operations as the United States completes its withdrawal from Afghanistan in 2014 and as new threats emerge elsewhere. A Hoover Institution white paper, for example, calls upon Congress to enact an open-ended statute authorizing the use of military force against future terrorist organizations, to be designated by the executive as circumstances warrant. Such an authorization would place the United States on a permanent war footing and allow for the continued expansion of drone strikes and other military operations against suspected terrorists.

Obama has pledged not to sign any law that expands upon the AUMF and has said he will work ultimately to repeal it. But the AUMF is still in force, and it has proven capacious enough to cover the drone warfare Mazzetti and Scahill describe. Indeed, as a Defense Department official recently told the Senate Armed Services Committee, there is no geographic boundary or end point in the current conflict, which he said could last for another ten to twenty years. In other words, even with his expressed aim of winding down the war on terror, and even without an expanded AUMF, Obama is leaving himself the option of an endless, boundless war, which, as he acknowledged, may be legal but also strategically unwise.

Obama also pledged to make more information about America’s secret wars public. This is an important part of restricting drones and other operations conducted away from the battlefield. Transparency enables the public to act as a check on a war that has only widened over time. Secrecy, by contrast, allows the government to engage in ad hoc operations without consideration of a larger strategy for fighting terrorism or bringing the conflict to a close.

Greater transparency, however, will only go so far. As Mazzetti and Scahill show, one of the greatest challenges to restricting drones is that they permit the United States to engage in war without experiencing war’s hardships firsthand.  A war that brings little risk to the homeland or its citizens—including those in the armed forces—does not elicit much protest, as polling on the use of drones against foreign targets has consistently shown. Whereas the public would likely demand a real strategy for completing a war in which its own sons and daughters are dying, the urgency of such demands is tempered in a drone war, providing cover for yet more improvisational fighting.

The temptation to use drones will inevitably increase as the technology becomes more accurate and effective. But higher-precision killing will not alter the reality of death and destruction where drones strike or the terror they instill when they dot the skies, all of which fuels anti-American sentiment and creates tensions with partner states. The tipping point will come only when the United States absorbs and internalizes drones’ hidden costs and commits to a strategy that takes those costs seriously. The President’s speech suggests that this process has begun, but there is still a long way to go.

#### Others will seize on the AUMF’s expansive view of the battlefield to legitimize their own global wars

**Roth 13** – Executive Director @ Human Rights Watch [Kenneth Roth, “ (JD from Yale University) The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force” “ [Statement to the Senate Armed Services Committee](http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo) , May 16, 2013, pg. http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo

The Authorization for the Use of Military Force

When it comes to our most basic rights, there is probably no more important distinction than the line between peace and war.  In peacetime, the government can use lethal force only if necessary to stop an imminent threat to life, and it can detain only after according full due process.  But in wartime, the government can kill combatants on the battlefield, and it has greatly enhanced power to detain people without charge or trial.  So, safeguarding the right to life and liberty depends in important part on ensuring that the government is not operating by wartime rules when it should be abiding by peacetime rules.

Human Rights Watch does not ordinarily take positions on whether a party to a conflict is justified in taking up arms.  Rather, once armed conflict breaks out, we generally confine ourselves to monitoring how both sides to the conflict fight the war, with the aim of enforcing international standards protecting noncombatants.  In the Latin terms used among legal experts, we focus on jus in bello, not jus ad bellum.

However, the combination of a declared global war and the newly enhanced capacity to kill individual targets far from any traditional battlefield poses new dangers to basic rights—ones that will only grow as the US role in the Afghan armed conflict winds down. That leaves only al-Qaeda and similar armed groups but without the elements that traditionally limit use of the war power: the control of territory and a recognizable battlefield. To paint the problem most starkly, might a government that wants to kill a particular person simply declare “war” on him and shoot him, circumventing the basic due-process rights to which the target would ordinarily be entitled?  Or, might a government intent on wiping out a drug gang simply declare “war” on its members?  If a government wants to be less draconian but still avoid the burden of mounting a criminal prosecution, might it declare “war” on drug trafficking and detain without trial any participants it picks up?

These are not fanciful scenarios.  Drug traffickers pose a violent threat to many Americans and are almost certainly responsible for more American deaths than terrorism.  Already we talk of a metaphorical war on drugs.  Why not a real war?

I hope we cringe at that thought.  Detested as drug traffickers are, I hope we recoil at the thought of summarily killing or detaining them. But that is the risk if we allow the government unhindered discretion to decide when to apply war rules instead of peace rules. This threat of an end run around key constitutional rights highlights the need to articulate clear limits to any war related to terrorism.

Some have suggested that mere transparency around the war-peace distinction should be enough—that Congress might authorize ongoing war against terrorist groups present and future so long as the administration states clearly at any given moment the groups with which it is at war. But that open-ended authorization is dangerous, because governments will be tempted to take the easy path of war rules over the more difficult path of respecting the full panoply of rights that prevail in peacetime. We cannot trust that public scrutiny is enough to restrain abuse given how easy it is to vilify alleged terrorist groups.

If a particular group poses such a serious threat that it can be met only with war, focused war authorization can be sought. But an open invitation to live by war rules makes it too easy for the government to circumvent key rights.

Indeed, it is perilous enough when the government entrusted with the power to set aside certain peacetime rights is the United States. But once the US government takes this step, we can be certain that governments with far less sensitivity to rights will follow suit. The Chinas and Russias of the world will be all too eager to seize this precedent to pursue their enemies under war rules, be they “splittist” Tibetans or “subversive” dissidents.

Even without the AUMF, the United States is hardly defenseless against the scourge of terrorism. Since the September 11 attacks nearly a dozen years ago, the United States has vastly enhanced its intelligence, surveillance, and prosecutorial capacities. And, should these tools prove insufficient to meet a particular threat, the right of self-defense still allows resort to military force.  However, because of the fundamental rights at stake, war should be an option of necessity, not a blank check written in advance, as some are proposing for a revamped AUMF. Now that that Afghan war is winding down, it is time to retire the AUMF altogether.

Drone Attacks

The problem of excessive reliance on the rules of war for using deadly force is illustrated by the use of drones to kill suspects. Drone attacks do not necessarily violate international human rights or humanitarian law. Indeed, given their ability to survey targets for extended periods and to fire with pinpoint accuracy, drones may pose less of a threat to civilian life than many alternatives. Still, their use has become controversial because of profound doubts about whether the Obama administration is abiding by the proper legal standards to deploy them. For example, killing Taliban and al-Qaeda forces fighting US troops may be lawful in a traditional armed conflict like the one still underway in Afghanistan, but what is the justification for killing people who are not part of these groups in places like Yemen and Somalia? And where does northwestern Pakistan fit?

The Obama administration has offered several possible legal rationales for drone strikes, but with little clarity about the concrete, practical limits, if any, under which it purports to operate. Beyond the risk to people in these countries who face possible wrongful targeting, the lack of clarity denies Congress and the American public the ability to exercise effective oversight. It also makes it easier for other countries that are rapidly developing their own drone programs to interpret that ambiguity in a way that is likely to lead to serious violations of international law.

One possible rationale for drone strikes comes from international humanitarian law governing armed hostilities. The Obama administration has formally dropped the Bush administration’s use of the phrase “global war on terror,” but its interpretation of the AUMF as authorizing “war with al Qaeda, the Taliban, and associated forces” looks very similar. This expansive view of the “war” currently facing the United States cries out for a clear statement of its limits. Does the United States really have the right to attack anyone it might characterize as a combatant against the United States anywhere in the world? We would hardly accept summary killing if the target were walking the streets of London or Paris.

John Brennan has said that as a matter of policy the administration has an “unqualified preference” to capture rather than kill all targets. But what are the factors leading the administration to decide that this preference can be met? Will it kill simply because convincing another government to arrest a suspect may be difficult? If so, how much political difficulty will it put up with before launching a drone attack?  Will it kill simply because of the risk involved if US soldiers were to attempt to arrest the suspect? If so, how much risk is the administration willing to accept before pulling the kill switch? The truth is that we have no idea. We don’t know whether these decisions are being made with appropriate care or not. We do know that other governments are likely to interpret this ambiguity in ways that are less respectful than we would want of the fundamental rights involved.

Moreover, away from a traditional battlefield, international human rights law requires the capture of enemies if possible. As noted, failing to apply that law encourages other governments to circumvent it as well—to summarily kill suspects simply by announcing a “war” against their group without there being a traditional armed conflict anywhere in the vicinity. Imagine the mayhem that Russia could cause by killing alleged Chechen “combatants” throughout Europe, or China by killing Uighur “combatants” in the United States. In neither case is the government where the suspect is located likely to cooperate with arrest efforts. And these precedential fears are real: China recently considered using a drone to kill a drug trafficker in Burma. //AT: Executive CP: Lack legal clarity is the issue

#### AUMF provides the playbook needed to justify their limitless wars. We have a small window of opportunity to prevent this from happening

**Brooks 13** - Professor of Law @ Georgetown University [Rosa Brooks (Senior Fellow @ New America Foundation, Former Counselor to the Undersecretary of Defense for Policy @ Department of Defense, Former Special Coordinator for Rule of Law and Humanitarian Policy @ DOD and Recipient of the [Secretary of Defense Medal for Outstanding Public Service](http://en.wikipedia.org/wiki/Secretary_of_Defense_Medal_for_Outstanding_Public_Service)), “The Constitutional and Counterterrorism Implications of Targeted Killing,” Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, US Committee on the Judiciary, April 23, 2013, pg. http://tinyurl.com/kfaf749

Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41

No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should *not* depend solely on the good faith and benevolence of government officials.

As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness.

The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable?

5. Setting Troubling International Precedents

Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice.

Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder.

Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack."

The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular.

It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will *consent* to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will *not* consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem.

This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill-defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities? //AT: Exec CP – Normalize exceptional activities & look at legal justification

#### This precedent erodes norms on the use of force and pushes us into a “law of the jungle.” Clarifying the AUMF prevents drone conflicts from quickly spiraling into nuclear wars.

**Boyle 13** – Professor of Political Science @ La Salle University [Michael J. Boyle (Former Lecturer in International Relations and Research Fellow in the Centre for the Study of Terrorism and Political Violence @ University of St. Andrews), “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) pg. 1–29

The race for drones

An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125

A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities.

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own.

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144

Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government.

One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147

Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them.

Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

Conclusion

Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack.

In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States.

#### Human survival hangs in the balance. An international order governed by the “law of the jungle” terminally non-uniques all of their impacts

**Weston 91** – Chair of the International and Comparative Law Program @ The University of Iowa [Weston, Burns H., “Logic and Utility of a Lawful United States Foreign Policy,” Transnational Law & Contemporary Problems, Vol. 1, Issue 1 (Spring 1991), pp. 1-14

George Will and others like him are right, of course, that the rhetoric of international law can be used, like a double-edged sword, against the United States as well as by it. They are wrong, however, to bemoan this fact-unless, of course, they bemoan the nature of law itself, a process of legitimized politics that, in Benjamin Cardozo's unforgettable words, seeks the "reconciliation of the irreconcilable," the "merger of antitheses," the "synthesis of opposites," in "one unending paradox."12 Though the "real world" often is not a very nice place and though for this reason it sometimes may seem that the responsible pursuit of national interests requires realpolitik policies and practices, a foreign policy that corresponds with what most people have in mind when they think of "The Rule of Law" (i.e., notions of equality, mutuality, reciprocity, cooperation, and third-party procedure) is more likely to find itself on the winning side of most political and strategic battles than one that does not. Legality, like honesty, is generally the best policy. It enhances power used under its aegis.

In the pages following, I suggest six concrete reasons why the United States-indeed, all nations- should take international law seriously, even¶ when others do not. Viewed in isolation, they may not persuade the hardened realpolitiker. Viewed together, however, they should.

1. Respect for International Law Assists Human Survival

To begin with, it is not healthy for people (and for other living things) to resist principles of international law in a world that is bristling with more than 50,000 nuclear weapons and other greatly expanded technologies of war and mass destruction. If the history of the last half century has taught us anything, it is that our present militarily competitive international order cannot be expected to prevent large-scale war for very long (e.g.,Kuwait). There is, therefore, little hope for genuine security, national or global, without a strengthening of the legal foundations, bilateral and multilateral, for the nonmilitary-preferably democratic-resolution of international disputes. These would include, but not be limited to, the improvement of U.N. peacekeeping and peacemaking opportunities and capabilities, and the improvement of both national and international opportunities and capabilities for legal challenges to coercive foreign policies. 13 Even if other countries do not always follow suit, surely our country and our children's future will be better served if we strive hard to build as peaceful and just a world society as we can, and while we still have the chance. 14 The Soviet Union, home to more than 25,000 nuclear weapons and many newly-awakened nationalisms, faces a world history that demonstrates little support for the proposition that collapsing empires fade quietly. And in our increasingly "high-tech" world, with military research and development fast at work on atomic guns, particle-beam cannons, and other space age deviltries that divert attention from the perils of nuclear proliferation, many regimes in Western Asia and elsewhere have been acquiring nuclear and other weapons of mass destruction-and the means to deliver them, with frightening ease and speed, to almost anywhere on earth.

In sum, it is respect (or lack of respect) for international law that, in the end, will determine the fate of the Earth. As the late Bill Bishop counseled pithily over two decades ago, "under present conditions all [States]¶ need international law in order to continue to exist together on this planet."15 Rededication to the world rule of law and cooperation in this Age of Nuclear Anxiety is not a matter of choice. It is, quite simply, a matter of survival.

2. Respect for International Law Enhances International Stability

Living as we do in the twilight years of the global Middle Ages, characterized by more than 160 separate fiefdoms, each with a monopoly control over the military instrument and each only barely accountable in any formal sense either to each other or to the larger arena in which each operates, it is easy to be seduced by the popular claim that ours is an anarchical world. Such an outlook does not, however, comport with reality. Every hour of every day, ships ply the sea, planes pierce the clouds, and artificial satellites probe outer space. Every hour of every day, communications are transmitted, goods and services traded, and people andthings transported from one country to another. Every hour of every day, transactions are negotiated, resources exploited, and institutions established across national and equivalent frontiers. And in all these respects, the many processes of authoritative and controlling decision that help to regulate such endeavors-what we call international law-are observed rather well on the whole.

On the other hand, when States bend, twist, or otherwise show disrespect for this ordering force to suit their special interests, international law, because it is an essentially voluntarist process of decision that is seriously lacking in centralized command and enforcement structures, quickly loses its otherwise stabilizing influence. The kidnapping of sixty-two Americans at the U.S. Embassy in Teheran in 1979, for example, demonstrates well the fundamental instability that can flow from a failure or refusal to abide by international law. Without, in this instance, a commitment to the basic rules of diplomatic protection, diplomacy ceased to exist and respectable discourse became impossible. Without a commitment to the world rule of law there could be no assurance of inter-governmental stability.

Of course, States-especially the major powers-are perfectly capable of unilaterally resisting the doctrines, principles, and rules of international law without necessarily feeling directly the destabilizing impact that their noncompliance ultimately has on the wider structure of international law and order itself. The probability of being formally punished for violating international law is usually so slim that foreign policy strategists commonly give little or no weight to the cost of decision-making marked by dubious legality.

However, the increasingly interdependent and interpenetrating character of today's world is of such magnitude and complexity that no nation, least of all the United States, can sensibly afford to insist upon its own independence of action without simultaneously threatening its own ultimate good and the ultimate good of others, and potentially in very fundamental ways. Though not understood by most Americans, it is in fact the United States "which stands to lose the most in a state of world anarchy." 16 Because the United States and its citizens have such wide-ranging and far-flung international interests, we urgently need a stable, predictable environment of international legal rules and procedures that can help to secure those interests on a cooperative basis worldwide. It is not in the first instance our freedom of action that should be our concern when we refuse to commit to the world rule of law, but rather, the stability of our world public order itself.

3. Respect for International Law Advances Our Geopolitical Interests

Allowing principles of international law and multilateral cooperation to inform our foreign policy also serves our geopolitical interests, especially our long-term geopolitical interests. For example, in contrast to our recent hegemonic warmongering in Grenada, Nicaragua, and Panama, a record of faithful adherence to the principle of nonintervention and to the right to self-determination would have helped, politically at least, to neutralize the Israelis in southern Lebanon and the Occupied Territories, the Soviets in the Baltics, and the Iraqis in Kuwait. As the late L.F.E. Goldie observed a number of years ago: "Obedience to law... is not only a categorical value but also a prudential one." 1'7 My colleague and former Prime Minister of New Zealand Sir Geoffrey W. R. Palmer, referring to the need for strict compliance with arms control and disarmament treaties, once put it this way: "[I]s it possible on the one hand to look to international law to provide essential security guarantees, while on the other hand, in other areas, the right is quietly being reserved to undermine, ignore and indeed walk away from the rule of law in international affairs?"18

In recent years, however, during the Reagan presidency especially, the United States has come before the world community more to bury international law than to praise it. Selectively displaying its military strength to the general disregard of international law, it has chosen, at least when the risks have been low, to advance several broadly defined but narrowly determined national interests:

(1) demonstrating American will to act with decisiveness and reinforcing deterrence against the Soviet Union in the Third World; (2) displaying the ability of U.S. armed forces to defend American and allied interests; (3) inducing countries that challenge the U.S. to cease and desist; and (4) enhancing in the broadest terms an international perception of the U.S. as the great world power. 19

But to favor such special interests over the common interest of a world rule of law is to shoot ourselves in the geopolitical foot-perhaps not always, but more often than is commonly realized. It gets us into quagmires from which it is hard to extricate ourselves and it subverts our ability to ensure in other settings that other governments, especially our adversaries, will fulfill their obligations under international law that are in our interest for them to fulfill.

The point is depressingly simple to illustrate. If we can unilaterally reinterpret and abrogate an arms control treaty with the Soviet Union,20 why cannot the Soviets do the same with us? If we can excuse the kidnapping and killing of innocent civilians by the Nicaraguan Contras because they were "freedom fighters,"21 what right do we have to condemn the Palestinians or Shiites for doing the same thing in Lebanon? If we can ignore a World Court decision relative to the human rights violations we encouraged in Nicaragua,2 how can we complain when Iran ignores a World Court decision relative to the taking of U.S. hostages in Teheran?2 If we can claim the right to seize fugitives from abroad,2 what logic compels our right to object when the Iranian Majlis (parliament) approves legislation authorizing Iranian officials to arrest Americans anywhere in the world for violations of Iranian law?25 If we can intercept a civilian aircraft over the Mediterranean on the grounds that it appears to threaten our national security interests, 26 what is to stop the Soviet Union from doing the same thing over the Pacific for the same reason?27 If we can condone a U.S. military raid upon an ambassadorial residence in Panama despite our obligations under the 1961 Vienna Convention on Diplomatic Relations, how can we complain when Iranian students seize a U.S. embassy protected by the 1961 Vienna Convention on Diplomatic Relations? 28 And so forth.

Such partisan uses of international law are illustrative of what, during the 1980s, has been referred to as the "Reagan Corollary" of international law-which is to claim a right "to pressure the international legal system into changing in a manner beneficial to United States interests."9 However, such uses do not, in the end, correspond to our long-term national interest of ensuring that other governments in other settings fulfill their obligations under international law. Were every nation to adopt this Reagan Corollary, a perverted interpretation of international doctrines, principles, and rules would become the standard practice and the international legal system would quickly disintegrate into a system of retributive justice extremely unsafe for the geopolitical interests of even the most powerful States.

Thus, if the United States wants to insist upon compliance with international law to protect American interests, it will be to its advantage to obey international law, even when its application proves inconvenient. If we want meaningful international law to be available when we find it useful, we must respect it even when we do not.

4. Respect for International Law Promotes Policy Efficacy

A failure to adhere to international law-in particular the prohibitions against the threat and use of nondefensive force and the admonitions to¶ promote and safeguard human rights-tends also to be counterproductive, hence not very efficacious. While militarism and support of repressive regimes to the disregard of international law may sometimes yield tactical victories that are viscerally pleasing in the short-run, they rarely achieve strategically satisfying gains, to say nothing of justice, over the long-run. Consider, for example, the Reagan administration's decision, pursuant to what came to be known as the "Schultz Doctrine," to fight terrorism with American-sponsored counterterrorism, 30 the ultimate denouement of which was the sordid Iran-Contra affair. In keeping with this decision, the United States provided Israel with diplomatic, financial, and material support of Israel's illegal invasion of southern Lebanon in 1982,31 in violation of common Article 1 of the four Geneva Conventions on the laws of war of 194932 and involving the killing of more than 20,000 people (at a time when, ironically, Palestinian terrorist attacks against American persons and property had been in decline). Not surprisingly, the victims of the invasion and their sympathizers held Washington responsible, in conjunction with Israel, for the atrocities committed by the Israeli army and the Lebanese Phalange militia against Palestinian civilians in the Sabra and Shatilla refugee camps in southern Lebanon.33 American interests immediately began to experience a pronounced increase in terrorist attacks-via airplane hijackings, kidnappings, assassinations, bombings, and other paramilitary activitiesfrom Palestinian, Shiite, and other groups throughout the Middle East.

Consider also the refusal of the United States to accept the jurisdiction of the International Court of Justice in the case brought by Nicaragua in April 1985 in protest of Washington's illegal assistance to, and support of, the Contra guerrillas against Nicaragua's democratically elected Sandinista government.34 Instead of making its substantive case before the Court, the United States contended that what it considered to be an issue of Western Hemispheric security was not properly for the World Court to decide and that, in any event, there was no reason for the United States to submit to the Court's jurisdiction when, over the years, the Soviet Union had consistently refused to do so. 35 As one sensitive observer put it, "[this] argument was politically attractive domestically, but it eroded the stature of the World Court that American values had once tried to build up."36 More such examples could easily be recounted. It might be asked, for example, whether our aiding and abetting the assassination of Chile's Allende or our legally dubious support of the Shah of Iran really did serve our long-term national interest. And the same might be asked, as well, of the Iran-Contra affair and of our legally questionable assistance to Saddam Hussein during and after the Iran-Iraq war.

But the efficacy argument is perhaps best demonstrated by noting the large-scale political support that was extended to Washington, internationally as well as nationally, during at least the early months of the 1990-91 Persian Gulf crisis when the United States pressed hard for economic sanctions against Iraq that were, it can be said, not only timely and measured but in keeping with the collective security system authorized in San Francisco in 1945.37 Adherence to the principles and procedures of international law, President Bush discovered, was essential to gaining the world's support to force Iraq's hand. Lawful foreign policies are consensusbuilding policies-politically pragmatic or efficient policies-and they are useful even to a superpower.

To put it all another way, we abandoned lynching parties on the western frontier not only because they turned into orgies of wasteful bloodlust but also because they simply did not stop horse thieves. International law violations, like violations of law in general, have a dubious pragmatic record at best.

5. Respect for International Law Safeguards Domestic Society

Disregard of international law and institutions tends to be self destructive as well as destructive of international order. The consequences of our unilateral and disproportionate uses of force in Vietnam should be proof enough. Over a decade and a half later, as such movies as Platoon, Born on the Fourth of July, and Casualties of War alone bear witness, we are still licking the socioeconomic, political, and ethical wounds. Though not always immediately apparent or discernible, international law violations and "go-it- alone" policies that fail to show a decent respect for the rights and opinions of others invariably corrode our core essence, diminishing our national integrity and threatening even our individual liberties. As Professor Bilder has asked, can we legitimately expect to separate the standards that govern the way our government operates internationally from those that govern it internally? 8 If we tell our elected officials that it's okay to act illegally, corruptly, or brutally abroad, can we be completely sure that they will really listen when we tell them that they should not act that way at home? If we say to the Secretary of State, the CIA, or the National Security Council that it's okay to bend the law a little because we do not like another country's ideology, can we rightfully expect that the Attorney General or the FBI will not bend the law a little when it comes to those of our citizens who do not share the government's ideology in domestic affairs?

In other words, when we show contempt for international law and cooperation, we badly damage our sense of national self-respect and purpose and, in so doing, invite civil unrest. In addition to the widespread civil disobedience that characterized the era of the legally problematic Vietnam War, we may note the popular protests that, more recently, accompanied Washington's extraordinary build-up of offensive nuclear weapons, its policy of "constructive engagement" with apartheid South Africa, and its military adventurism in Central America.3 9 One of the wondrous things about our country-deep-rooted in our ideology even if not always borne out in practice-is our commitment to decent behavior and the rule of law. From our very beginnings, we have officially embraced the notion of a Higher Law based upon "principles of right and justice that prevail because of their own obvious merit:"40 liberty, equality, participation, and due process. And since at least the turn of the century, cognate international principles have been added: the self-determination of peoples, the sovereign equality of States, respect for international law and organization, and the peaceful settlement of international disputes. So, when our government resorts to¶ foreign policy plots and maneuvers of a Machiavellian sort that sacrifice or otherwise diminish these principles, the spillover into the domestic arena is predictable. The government soon loses the support of the people.

Our Founding Fathers established that ours is a society of laws, not of men. To most of us, therefore, "standing tall" in the global community does not mean being the toughest kid on the block, pushing other countries around and breaking our promises as we once accused the Soviet Union of doing, but acting humanely and honorably. Intuitively we know that it is necessary for us to uphold the rule of law abroad in order to uphold it at home. Intuitively we know that "[t]he two are inextricably connected." 41 Intuitively we know that a double standard erodes our claim to moral leadership in the international community.42

6. Respect for International Law Ennobles Our National Rectitude

As evidenced by the U.N. General Assembly's declaration of the 1990s as the "Decade of International Law,"43 there is a growing realization that an effective system of international law is fundamental to the achievement¶ of a world public order of human dignity. It is essential to peace and security, and it is indispensable for just solutions to the many complex and urgent problems that otherwise currently make up the human agenda.

International law provides, potentially, the most durable framework for undertaking cooperative action toward the abolition of war, the promotion of human rights, the ending of mass poverty, and the creation of a sustainable global environment. Its progressive evolution, in keeping with Article 28 of the Universal Declaration of Human Rights ("Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized"),4 is the key to all that is right and good.

To insist upon respect for international law and cooperation is, thus, the morally correct thing to do, and for this reason alone it is in our longterm best interest. Rather than throw our weight around as if at some shootout at the OK Corral, the United States should reaffirm its commitment to a law-oriented foreign policy and, from this posture, through carefully planned and diligently executed diplomatic strategy, regain a once assumed (even if not always demonstrated) moral stature among the family of nations-the "American difference," as President Reagan used to call it. Along the way, discovering that it would thus gain the upper hand in the global competition for hearts and minds, including the enthusiastic support of otherwise doubting allies, the United States would also discover that commitment to international law and cooperation is fundamentally a matter of self-interest. Our reputation as a law-abiding nation, one that genuinely honors the world rule of law in practice, is a vital asset, strongly affecting our ability to win friends and influence people. It is a reputation that cannot-must not-be squandered.

Most importantly, however, the United States has an especial obligation in this regard. Quite simply, the size of our economy, the sophistication of our technology, the ubiquity of our investments, and the power of our arsenals make us so globally consequential that the acts and omissions of our government transmit a powerful and usually lasting message. Like it or not, our words and our deeds count heavily in the normative, institutional, and procedural development of world affairs. 45 And this establishes for us, a professedly democratic and peace-loving country, an historically unique moral responsibility. Pg. 4-13 // AT: K

#### Clarifying the AUMF’s geographical scope restricts the use of the law of armed conflict and dials back US pursuit of an open-ended war

**Brooks 13** - Professor of Law @ Georgetown University [Rosa Brooks (Senior Fellow @ New America Foundation, Former Counselor to the Undersecretary of Defense for Policy @ Department of Defense, Former Special Coordinator for Rule of Law and Humanitarian Policy @ DOD and Recipient of the [Secretary of Defense Medal for Outstanding Public Service](http://en.wikipedia.org/wiki/Secretary_of_Defense_Medal_for_Outstanding_Public_Service)), “The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force,” Statement for the Record Submitted the Senate Committee on Armed Services, May 16, 2013, pg. http://scholarship.law.georgetown.edu/cong/113

If the Administration’s use of force outside traditional battlefields is increasingly hard to justify under the AUMF, what should Congress do in response?

Congress could, of course, choose to do in 2013 what it refused to do in 2001, and broaden the existing AUMF to expressly permit the executive branch to use force to deter or preempt any future attacks or aggression towards the United States or U.S. interests. But such an expansion of the AUMF would give this and all future Administrations virtual carte blanche to wage perpetual war against an undefined and infinitely malleablelist of enemies, without any time limits or geographical restrictions.

In my view, this would amount to an unprecedented abdication of Congress’s constitutional responsibilities. In effect, Congress would be delegating its war powers almost wholesale to the executive branch. And while such a broad authorization to use military force could in theory be narrowed or withdrawn by a subsequent Congress, history suggests that the expansion of executive power tends to be a one-way ratchet: power, once ceded, is rarely regained.

Mr. Chairman, my guess is that few members of this committee would wish to contemplate such a broadened AUMF. What is more, it is worth emphasizing once again that while the Bush administration requested such open-ended authority to use force immediately after 9/11, Congress refused to provide it – even at a moment when the terrorist threat to the United States was manifestly more severe than it is now.

Today, the Obama Administration has not requested or suggested that it sees any need for an expanded AUMF. It would be utterly unprecedented for Congress to give the executive branch a statutory authorization to use force when the president has not requested it. Similar flaws characterize proposals to revise the AUMF to permit the president to use force against any organizations he may, in the future, specifically identify as posing a threat to the United States, based on criteria established by Congress. This is the proposal made by the Hoover Institute White Paper co-authored by my colleague Jack Goldsmith. He and his coauthors argue that Congress could pass a revised AUMF containing “general statutory criteria for presidential uses of force against new terrorist threats but requir[ing] the executive branch, through a robust administrative process, to identify particular groups that are covered by that authorization of force.”

While it would surely be useful for Congress to provide greater clarity on what, in its view, constitutes a threat sufficient to justify the open-ended use of military force -- amounting to a declaration of armed conflict-- such a revised AUMF would still effectively delegate to the president constitutional powers properly entrusted to Congress. Once delegated, these powers would be difficult for Congress to meaningfully oversee or dial back—and, once again, it is notable that the president has not requested such a power.

Mr. Chairman, Senator Inhofe, if what we’re concerned about is protecting the nation, there is no need for an expanded AUMF. With or without the 2001 AUMF, no one disputes that the president has the constitutional authority (and the international law authority) to use military force if necessary to defend the United States from an imminent attack, regardless of whether the threat emanates from al Qaeda or from some as yet unimagined terrorist organization.

If Congress chooses to revise the AUMF, it would be far more appropriate to limit it than to expand it. The 2001 AUMF established – at least as a matter of domestic U.S. statutory law-- an indefinitely continuing state of armed conflict between the United States, on the one hand, and those responsible for the 9/11 attacks, on the other hand. This has enabled the executive branch to argue (both as a matter of U.S. law and international law) that it is the principles of the law of armed conflict (LOAC) that should govern the U.S. use of armed force for counterterrorism purposes. But if the law of armed conflict is the applicable legal framework through which to understand the AUMF and through which to evaluate U.S. drone strikes outside of traditional battlefields, there are very few constraints on the U.S. use of armed force, and no obvious means to end the conflict.

Compared to other legal regimes, including both domestic law enforcement rules and the international law on self defense, the law of armed conflict is extremely permissive with regard to the use of armed force. The law of armed conflict permits the targeting both of enemy combatants and their co-belligerents. It also allows enemy combatants to be targeted by virtue of their status, rather than their activities: it is permissible to target enemy combatants while they are sleeping, for instance, even though they pose no “imminent’ threat while asleep, and the lowest-ranking enemy soldier can be targeted just as lawfully as the enemy’s senior-most military leaders. Indeed, uniformed cooks and clerks with no combat responsibilities can be targeted along with combat troops.

It is this highly permissive law of armed conflict framework that has enabled the executive branch to assert that “associates” of al Qaeda and the Taliban may be targeted beyond traditional battlefields, even though this expansion of the use of force beyond those responsible for 9/11was not contemplated by Congress in the 2001 AUMF. Similarly, it is the law of armed conflict framework that has permitted the executive branch to assert the authority to target ever lower-level terrorists and suspected “militants,” rather than restricting drone strikes to those targeting the most dangerous “senior” operatives. It is also the law of armed conflict framework that permits the executive branch to assert that it may target even those individuals and organizations that pose no imminent threat to the United States, in the normal sense of the word “imminent.”

But as the threat posed by Al Qaeda dissipates and U.S. troops withdraw from Afghanistan, it is appropriate for the U.S. to transition to a domestic (and international) legal framework in which there are tighter constraints on the use of military force. Congress can help this transition along by clarifying that the existing AUMF is not an open-ended mandate to wage a “forever war,” and requiring the president to satisfy more exacting legal standards before military force is authorized or used.

In the event that the president becomes aware of a threat so imminent and grave he cannot wait for Congressional authorization prior to using military force, there is no dispute that he can rely on his inherent constitutional powers to take appropriate action until the threat has been eliminated or until Congress can act. However, by expressly granting the power to declare war and associated powers to Congress, our Constitution presumes that the president will only in rare circumstances rely solely on his inherent executive powers to use military force. Historically, non-congressionally authorized uses of force by the president have generally been

reserved for rare and unusual circumstances, and this is as it should be.

Beyond these rare situations of extreme urgency, if the president believes that there is a sustained and intense threat to the United States, he can and should provide Congress with detailed information about the threat, and request that Congress authorize the use of military force to address the specific threat posed by a specific state or organization.

Congress should authorize the use of military force in these circumstances only -- there is no need for Congress to preemptively authorize the president to use military force indefinitely against unspecified threats that the president has not yet identified. And if Congress does authorize the use of military force at the president’s request, the force authorized should be carefully tailored to the specific threat. Furthermore, Congress should be explicit about whether an AUMF is acknowledging or authorizing an ongoing armed conflict, on the one hand, or whether it is simply authorizing the limited use of force for self-defense, on the other hand.

International law imposes criteria for the use of force in national self-defense that are far more stringent than the criteria for using force in the course of an armed conflict that is ongoing. Unlike the international law of armed conflict, the international law of self-defense permits states to use force only to respond to an armed attack or to prevent an imminent armed attack, and the use of force in self defense is subject to the principles of necessity and proportionality. Under self defense rules (unlike law of armed conflict rules) individuals who pose no imminent threat cannot be targeted, and inquiries into imminence, necessity and proportionality tend to restrict the use of force in self defense to strikes against those who— by virtue of their operational seniority or hostile activities- pose threats that are urgent and grave, rather than speculative, distant or minor.

For this reason, I believe that if Congress wishes to refine or clarify the AUMF, it should consider limiting the AUMF’s geographic scope, limiting its temporal duration, and limiting the authorized use of force to that which would be considered permissible self defense under international law, or all three.

Expressly limiting the AUMF’s geographic scope to Afghanistan and/or other areas in which U.S. troops on the ground are actively engaged in combat, for instance, would clarify that the ongoing armed conflict (and the applicability of the law of armed conflict) is limited to these more traditional battlefield situations. As noted above, such a geographical limitation would by no means undermine the president’s ability to use force to protect the United States from threats emanating from outside of the specified region. Such a geographical limitation would merely make it clear that any presidential desire to use force elsewhere would require him either to request an additional narrowly drawn congressional authorization to use force, or would require that any non-congressionally authorized use of force be justified -- constitutionally and internationally – on self defense grounds, by virtue of the gravity and imminence of a specific threat.

Limiting the AUMF’s temporal scope could be accomplished by adding a “sunset” provision to the AUMF. The current AUMF could be set to expire when U.S. troops cease combat operations in Afghanistan, for instance, or in 2015, whichever date comes first. Here again, such a limitation would not preclude the president from requesting an extension or a new authorization to use force, if clearly justified by specific circumstances, nor would it preclude the president from relying on his inherent constitutional powers if force becomes necessary to prevent an imminent attack.

Finally, the AUMF could be revised to clarify Congress’ view of the applicable legal framework. Congress could state explicitly that it authorizes the president to engage in an ongoing armed conflict within the borders of Afghanistan between the U.S. and Al Qaeda, the Taliban and their co-belligerents, but that it does not currently authorize the initiation or continuation of an armed conflict in any other place, and expects therefore that any U.S. military action elsewhere or against other actors shall be governed by principles of self-defense rather than by the law of armed conflict.

There are many possible ways for Congress to signal its commitment to preventing the AUMF from being used to justify a “forever war.” Each of these approaches has both benefits and drawbacks, and each would require significant further discussion. But I believe that Congress’ focus should be on ensuring that war remains an exceptional state of affairs, not the norm. At a minimum, this should preclude any Congressional expansion of existing AUMF authorities. Pg. 10-14

#### Statutory distinction between zones of hostilities and elsewhere sets a standard and allows the US build an international consensus

**Daskal 13** – Professor and Fellow in the Center on National Security and the Law @ Georgetown University Law Center [Jennifer C. Daskal (Former counsel to the Assistant Attorney General for National Security @ Department of Justice (DOJ). Served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force and provided legal advice on detention, surveillance, and interrogation practice. Former senior counterterrorism counsel at Human Rights Watch. JD from Harvard University), “The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone,” University of Pennsylvania Law Review, Vol. 161, No. 5, April 2013

CONCLUSION

Legal scholars, policy makers, and state actors are locked in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic locations or extends to wherever al Qaeda members and associates go. The United States’ broad view of the conflict, coupled with its broad definition of the enemy, has led to a legitimate concern about the creep of war. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state’s ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of non-international armed conflict (traditionally understood to govern intra-state conflicts) provides the answers that are so desperately needed.

The framework proposed by this paper fills the international law gap, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and elsewhere in determining the rules that apply. Specifically, it offers a set of standards that would both limit and legitimize the use of out-of-battlefield targeted killings and law-of-war-based detention – subjecting their use to an individualized threat assessment, a least harmful means test, and significant procedural safeguards. This approach confines the use of out-of-battlefield targeting killings and detention without charge to the extraordinary situation when the security of the state demands it. It thus protects against the unnecessary erosion of peacetime norms and institutions and safeguards individual liberty, while at the same time ensuring that the state can effectively respond to grave threats to its security, wherever the threat is based. The United States already has adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting this framework as a matter of law, the United States can begin to set the standards and build an international consensus as to the rules that ought to apply, not just in this conflict, but in the conflicts of the future. The reputation, security, and foreign policy gains of doing so make it a worthwhile endeavor. Pg. 1233-1234

#### Statutory codification of this geographical distinction creates an international norm that deters drone wars

**Zenko 13** – Fellow in the Center for Preventive Action @ Council on Foreign Relations [Dr. Micah Zenko (PhD in political science from Brandeis University), “Reforming U.S. Drone Strike Policies,” Council on Foreign Relations, Council Special Report No. 65, January 2013

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.

In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies. Pg. 22-25

# Europe Advantage (13)

**Advantage \_\_\_\_\_: Europe**

#### Statutory distinction between active hostilities and elsewhere prevents a decline in US-European relations

**Daskal 12** – Professor and Fellow in the Center on National Security and the Law @ Georgetown University Law Center [Jennifer C. Daskal (Former counsel to the Assistant Attorney General for National Security @ Department of Justice (DOJ). Served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force and provided legal advice on detention, surveillance, and interrogation practice. Former senior counterterrorism counsel @ Human Rights Watch. JD from Harvard University), “The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone,” University of Pennsylvania Law Review, Vol. 161, May 2012, pg. http://ssrn.com/abstract=2049532

Dating back to 2006, the United States has, at least implicitly and as a matter of policy, recognized the distinction between zones of active hostilities and elsewhere. As is well known, the Bush administration initially placed a significant number of off-the-battlefield captures into long-term law-of-war detention. Detainees reportedly included persons captured in places as far-flung from the battlefield in Afghanistan as Bosnia, Dubai, Mauritania, and Thailand – as well as the United States.82 These out-of-battlefield detentions turned out to be highly controversial. They have been the subject of numerous court challenges, international criticism, and endless commentary. Moreover, they raise difficult questions about repatriation – issues with which the United States continues to struggle.83

Beginning in September 2006, the Bush administration announced a shift in policy. Largely in response to the Supreme Court’s ruling in Hamdan, President Bush announced that he was closing the CIA-run detention black cites, at least temporarily, and ordered the transfer of 14 long-term CIA detainees to Guantanamo. 84 Subsequently, the number of out-of-battlefield captures transferred to Guantanamo trickled to a mere few: three in 200785 and one in 2008.86 All were described as high-value, based on alleged links to high-level al Qaeda operatives or involvement in specific terrorist attacks.87

Two days after taking office, on January 22, 2009, President Obama announced the permanent shuttering of the CIA sites.88 His administration has committed not to transfer any detainees to Guantanamo.89 Since 2009, Warsame is the only known case of an out-of-battlefield detainee being placed in anything other than short-term military custody. After approximately two months, he was¶ transferred to federal court for trial.

Some have argued that the low number of out-of-battlefield detentions is due in part to the lack of viable locations for holding detainees. But while that may be a factor, it seems that the high diplomatic, reputational, and transactional costs of such detentions, and the relative effectiveness of the criminal justicesystem in responding to the threat are equally – if not more – important factors in limiting the reliance on law-of-war detention.90

As out-of-battlefield detentions have declined, targeted killings reportedly have increased dramatically. The vast majority of these appear to have been concentrated in northwest Pakistan – an area that most concede is part of the¶ zone of active hostilities.91

Critically, the Obama administration appears to have adopted a distinction between Afghanistan and northwest Pakistan and elsewhere in setting the rules for these strikes. Thus, at the same time that top administration officials have argued that its military authorities are not limited to the “hot battlefield” of Afghanistan, they have argued that “outside of Afghanistan and Iraq” its targeting efforts are limited to those “who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qa’ida and its associated forces.”92 Whether or not one agrees with the standard employed, it is clear that the administration itself recognizes a distinction between Afghanistan (and formerly Iraq) and other areas embroiled in the conflict with al-Qaeda. Procedural rules in terms of who must authorize the strike also reportedly vary depending on whether one is operating within Afghanistan or elsewhere.93 While there are good reasons to demand additional safeguards, the U.S.’s own actions already reflect the importance and value of distinguishing between zones of active hostilities and elsewhere.

C. THE SECURITY CALCULUS

Some are likely to raise security objections to any effort to distinguish between zones of active hostilities and elsewhere, even if the distinction operates solely to limit, rather than prohibit, the use of law of war authorities outside such zones. But such objections tend to be overstated. In fact, the United States’ own practices appear to recognize the security and foreign policy benefits of drawing a distinction between zones of active hostilities and elsewhere. There are several reasons why it is in the long-term security interest of the United States to seek international consensus for such an approach – not just as a matter of policy but also as a matter of law.

First, the high-profile and controversial nature of out-of-conflict zone killings and detentions without charge often work to the advantage of terrorist groups and to the detriment of the state. As the U.S. Counterinsurgency Manual explains, it is impossible and self-defeating to attempt to capture or kill every potential insurgent: “Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power” by increasing their own legitimacy while decreasing the insurgent’s legitimacy.94 Excessive use of force, unlawful detentions, and punishment without trial are described as “illegitimate actions” that are ultimately “self-defeating.”95 In this vein, the Manual advocates moving “from combat operations to law enforcement as quickly as feasible.”96 Self-imposed limits on the use of detention without charge and targeted killing without judicial process may actually inure to the benefit of the belligerent state. 97

Second, limiting the exercise of these authorities outside zones of active hostilities better accommodates the demands of European allies, whose support the United States relies upon. As John Brennan has emphasized, “[t]he convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies – who, in ways public and private, take great risks to aid us in this fight. But their participation must be consistent with their laws, including their interpretation of international law.” Key European partners have long viewed the conflict with al Qaeda as limited to the hot battlefield of Afghanistan and northwest Pakistan (and formerly Iraq). According to this view, use of force outside such areas is only permitted under a self-defense framework in response to those who pose an “imminent” threat, and law of war detentions are arguably prohibited altogether.98 By accepting self-imposed limits on its out-of-hot battlefield actions, the United States better positions itself to develop international consensus as to the rules that ought to apply.

Third, such self-imposed restrictions are also more consistent with the United States’ long-standing role as champion of human rights and the rule of law – a role that becomes hard for the United States to play when it is viewed as supporting a theory of broad-based law of war authority that gives it wide latitude to bypass otherwise applicable human rights and domestic law enforcement norms. Pg. 25-28

#### The transatlantic partnership is at risk. All negotiations will be poisoned by the EU’s use of them to challenge the legal basis of US non-battlefield strikes

**Yachot 13** - Communications Strategist @ American Civil Liberties Union [Noa Yachot, “European Parliament Members Speak Out Against U.S. Targeted Killing Program,” American Civil Liberties Union, 03/07/2013 at 1:47pm, pg. https://www.aclu.org/blog/national-security/european-parliament-members-speak-out-against-us-targeted-killing-program]

In a sign of the growing international concern over the U.S. targeted killing program, three European parliamentarians today expressed grave concern over the program, its human rights implications, and its destabilizing effects on international law.

In Brussels yesterday, several members of the European Parliament (EP) hosted a first-ever briefing on the topic with the ACLU’s Hina Shamsi and Jamil Dakwar, and the U.N. Special Rapporteur on human rights and counter-terrorism, Ben Emmerson. It was announced today that two EP subcommittees will hold a hearing next month to further investigate the U.S. program.

The MEPs who hosted yesterday’s briefing – Ana Gomes (S&D–Portugal), Sarah Ludford (ALDE–UK) and Rui Tavares (GREENS–Portugal) – released the following statement after the briefing:

“We are deeply concerned about the legal basis, as well as the moral, ethical and human rights implications of the United States’ targeted killing programme that authorises the CIA and the military to hunt and kill individuals who have suspected links to terrorism anywhere in the world.

“Despite having abandoned the ‘War on Terror’ rhetoric, the US sticks to the notion that it is in the realm of a war, and not organised criminality, when fighting terrorism. It has a destabilising effect on the international legal framework. International law regulates both justification to engage in war and limits to acceptable wartime conduct. It foresees that in the context of armed conflict, states may use lethal force against individuals who are directly taking part in hostilities. We, however, contest the validity of the United States’ legal capacity to justify the deadly force it is employing when compared to traditional definitions of war developed over centuries. In any case, international law demands that civilian bystanders must be protected from harm.

“We are, therefore, deeply concerned that the US is not abiding by its International Law obligations, under both International Humanitarian Law and International Human Rights Law. Our concern is not only for the victims of this US policy, but also for the threat to international legal standards from this US attempt to undermine them.

 “There are a growing number of reports demonstrating that hundreds of civilians are being killed in the framework of the targeted killing program. This is being done without any transparency in justification of a ‘wartime’ policy. We urge our American allies to address the pressing questions over the legal criteria at the basis of a policy that, in targeting so-called militants, destroys both innocent human beings and our common legal heritage.

“We cannot remain silent. The European Union and its Member States must speak up against a practice that will set a dangerous and unwelcome precedent for International Law. Europe has a critical role to play in global security. For that reason we must approach our American friends and allies in a transatlantic effort for stability founded on the fundamental principles of human rights, human security and the rule of law. We strongly believe that the US policy on targeted killings puts global stability and international order at risk, entails the proliferation of the technology used for that purpose, and also entails retaliation from state and non-state actors through selective killing, possibly of US and European citizens.

“We, thus, commend the efforts of all civil society organisations which are seeking to ensure US adherence to international legal obligations.
“We will struggle to constructively engage with our US allies in all EU-US parliamentary fora and we will remain committed to keeping the issue of targeted killings on the EU agenda.
“Up to this day, no EU Member State has supported the US legal analysis and justification for use of armed drones in targeted killings in responding to the threat of terrorism. EU Member States have chosen to respond to that threat in a way that is consistent with International Law, which is also, crucially, consistent with EU values and principles. We will be demanding from Member States that they reaffirm that commitment, internally and externally, and we strongly believe that this is the only approach that enhances global security and human rights without diminishing either.”

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After the briefing in Brussels, MEP Barbara Lochbihler of Germany, who chairs the EP Subcommittee on Human Rights, said that she would hold a joint hearing on the U.S. program with the EP Subcommittee on Security and Defense.

Thousands of people are estimated to have been killed in the U.S. targeted killing program, according to the UK’s Bureau of Investigative Journalism. That number includes many civilians and four American citizens. And while the program has sown fear and anger in the countries in which it is carried out, our friends and allies worldwide are also voicing growing concerns over its moral, ethical, and legal consequences.

Last week the ACLU testified on the U.S. killing program as part of a hearing on human rights and counter terrorism before a parliamentary committee of the German Bundestag. And earlier this year, Emmerson of the U.N. announced he would lead an inquiry into targeted killing by the U.S. and other countries, the results of which he will present to the U.N. General Assembly in the fall.

The U.S. must stop unlawful targeted killing before it causes even more damage to the international framework that protects the right to life and limits nations’ use of lethal force. We mustn’t set a precedent that we do not wish for others to follow. Our values, adherence to the rule of law and human rights, long-term national security, and friendships with allies are all at stake.

#### T-TIP is unique vulnerable. EU concerns about US counterterror strategy will get drawn into the negotiations

**Levanti 13** – Masters in European Public Affairs @ Maastricht University [[Natasha Marie Levanti](http://www.europeanpublicaffairs.eu/author/natashamarielevanti/) , “The Transatlantic Journey – TTIP & Cautious Optimism,” Bursting the Bubble, 2 September 2013, pg. http://www.europeanpublicaffairs.eu/the-transatlantic-journey-ttip-cautious-optimism/

Transatlantic economic cooperation has been something on the minds of those on both sides of the Atlantic before the recent economic woes. For instance, the Transatlantic Economic Council (TEC) was formed in 2007 to deal with increasing regulatory cooperation, as well as aid in addressing non-tariff barriers to transatlantic trade. With the economic situations in both Europe and the United States, starting in 2008 with the housing market collapse, the two entities were more concerned about their individual recovery than cooperation between the two. Yet at the same time, the situation proved for many individuals that now is the time to pursue closer transatlantic trade and investment cooperation.

Data protection and surveillance was recently brought to light as a major issue between the U.S., and the EU. One which almost delayed the transatlantic trade talks due to, most notably, German and French objections after knowledge of possible U.S. surveillance tactics came to light. After some U.S. promises, the trade talks will continue as planned, but this is a glimpse of the extensive number of policy differences which will require discussion during this process. The intention and common belief is that the trade talks will go smoothly, creating a broad spectrum trade relationship between two of the world’s largest regional economies. Yet, with recent events one would think the talks are already off to a rocky start. Therefore, it is important to be aware of some of the issues or perspectives concerning E.U. / U.S. relations before they formally appear in the trade talks that are underway. While not all of these will specifically be discussed as part of the trade negotiations, as is seen with the recent occurrence about data protections, some of these issues may in fact be drawn into the talks surrounding the greater European Union relations with the United States.

After recent events, Data Protection is definitely an issue. Data protection issues have been recurrent between the two since the terror attacks of 9/11, though most recently brought to light again due to accusations of the U.S. tapping into various E.U. offices. In order to prevent this recent development from completely derailing the upcoming trade negotiations, the United States has offered to create ‘working groups’ on the subject.

A hot topic recently has been Cybersecurity. This is mainly due to the court cases surrounding U.S. based companies such as Google and Facebook. Yet despite the fact that there are, and probably will remain to be differences in the regulation of cybersecurity, both sides do appear willing to increase cooperation on this front in order to help counter cybercrime.

The European Union Trading System (ETS) is also a touchy subject, a system put in place to have airlines purchase carbon allowances in an effort to offset CO2 emissions by encouraging airlines to invest in more environmentally friendly aircraft. The E.U., under pressure from international relations has stopped, at least for the moment, the system’s international implementation. Part of this ‘international’ pressure was undoubtedly derived from a piece of legislation passed by U.S. Congress in 2012 that ‘prohibits’ U.S. aircraft operators from actively engaging in the European ETS. This matter has currently been taken up by the U.N.’s International Civil Aviation Organization, which promised in November of 2012 that this would be an issue addressed within the coming year.

Periodically, officials from the U.S. will bring up European energy security as an issue, or at least something that, with deeper trade relations, is considered to be a U.S. interest. Part of this issue is the diversification of European energy resources, since currently it is fairly reliant on Russian supplies. Also of concern in the energy sector is the increase of sustainable energy and the consolidation of the EU’s internal energy market.

The fight against terror and the future of NATO are not likely to be discussed at the trade talks; however these two issues need to be considered when looking at the current level of general cooperation between Europe and the United States**.** Both have been led by joint U.S. / European forces and since September 11, 2001, there has most assuredly been a deeper level of communication and cooperation. This is linked in part to other issues such as cybersecurity and data protection, and was, at least in part, some of the reasoning behind recent developments in those two sectors.

#### AND, T-TIP will be the launching pad for an effective multilateral solutions to food insecurity and carbon emissions

**Benson 13** - Intern at the Streit Council [Johann Benson (Master’s degree in public policy at the University of Minnesota’s Humphrey School of Public Affairs), “[Toward a Transatlantic Free Trade Agreement: What Impact on World Trade?](http://blog.streitcouncil.org/?p=1448),” Streit Talk, July 26, 2013 pg. http://blog.streitcouncil.org/?tag=ttip

With negotiations now officially underway, the proposed Transatlantic Trade and Investment Partnership (TTIP) is taking its first steps toward becoming reality. Questions remain, however; not only about what form the final agreement may take, but also what effect it could have on international trade.

In its [initial assessment of the TTIP](http://www.oecd.org/trade/TTIP.pdf), the OECD notes that while multilateral arrangements are preferable, bilateral and plurilateral agreements like the proposed TTIP “can be supportive of an effective multilateral trading system.” One of the primary ways in which these agreements can promote trade at the global level is by addressing issues that currently lie outside the scope of WTO regulations. Richard Baldwin, of the Graduate Institute in Geneva and the Centre for Economic Policy Research, has laid out the shortcomings of current WTO regulations and how post-2000 trade agreements are [fundamentally different](http://www.cepr.org/sites/default/files/policy_insights/PolicyInsight56.pdf) from those of the 1990s.

Baldwin argues that the rise of global supply chains has elevated the importance of removing non-tariff barriers, while tariffs (with some notable exceptions) have largely fallen by the wayside. Current WTO regulations (as well as agenda items of the stalled Doha Round) are not adequate for addressing the most pressing issues of international commerce and investment, such as competition (or antitrust) policy, the movement of capital, intellectual property rights (IPR), and investment assurances. These issues can and often have been addressed through recent bilateral trade and investment agreements. Critically, Baldwin also notes that there is a feedback effect from increased trade liberalization that makes future liberalization even more likely. It is for this reason, if no other, that an EU-U.S. free trade agreement is a step in the right direction.

Economic gains from the TTIP would mainly come from the harmonization of regulations and the removal of other non-tariff barriers. While the agreement is expected to lead to trade diversion among EU members (in the case of an ambitious agreement, for example, total trade between the UK and Spain [would decrease by about 45%](http://www.euractiv.com/trade/transatlantic-free-trade-boon-ba-analysis-529218)), it is projected that the TTIP would benefit the struggling economies of southern Europe even more than the EU as a whole. It would also drive trade creation between the EU and the U.S., and between the transatlantic area and third parties. For example, if car safety standards are harmonized in the European and American markets, it lowers costs not only for U.S. and EU automakers, but also for [any other company that exports to both markets](http://www.cfr.org/eu/eu-ustransatlantic-trade-investment-partnership/p30766). In fact, the third parties with the largest expected gains from the TTIP are ASEAN countries, due to their [very high trade to GDP ratios](http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf). Unfortunately, the fact that third parties often benefit from the removal of non-tariff barriers can also act as an obstacle to bilateral agreements. For instance, Jagdish Bhagwati has noted that [getting rid of production subsidies](http://werewolf.co.nz/2012/11/tpp-head-first-into-the-spaghetti-bowl/) requires a multilateral agreement because “you cannot – bilaterally – say that if the U.S. reduces or relaxes production subsidies, it will be only for New Zealand. Or only for Brazil.” This may, in some respects, limit the breadth and depth of the TTIP.

One of Bhagwati’s other worries about preferential trade agreements is that they create dispute settlement mechanisms that favor the stronger trading partner and undermine the WTO’s own dispute settlement mechanism. If the TTIP is eventually opened to newcomers on a take-it-or-leave-it basis, any country wishing to join the agreement – for which there would be strong incentives – would be strictly [a rule-taker](http://www.die-gdi.de/CMS-Homepage/openwebcms3_e.nsf/%28ynDK_contentByKey%29/MRUR-99EA5H?Open), with absolutely no say in the drafting of existing regulations. While numerous commentators argue that the primary objective of the TTIP is to ensure that “the United States and Europe remain [standard makers](http://www.cfr.org/trade/getting-yes-transatlantic-trade/p31077), rather than standard takers, in the global economy,” there is a risk that China and other emerging economies will attempt to erect trading blocs amongst themselves and create their own rules.

Completing the Doha Round may still be an uphill battle after the TTIP is concluded. The agreement is not likely to seriously threaten the multilateral trading system for the simple fact that bilateral deals – no matter how large – are themselves unable to address [a longer list](http://www.lowyinstitute.org/publications/saving-multilateralism-g20-wto-and-world-trade-0) of the world’s most pressing trade issues. Resource and food security, exchange rate policy, and efforts to limit carbon emissions all demand multilateral solutions. But the TTIP could provide a launching pad to address these and other issues.

#### Only a multilateral response can slow the rate of climate change. Economic concerns will collapse the the Kyoto framework

**CFR 13** [Council on Foreign Relations, “The Global Climate Change Regime,”Issue Brief, Release Date Last Updated: June 19, 2013, pg. http://www.cfr.org/climate-change/global-climate-change-regime/p21831

Scope of the Challenge

Climate change is one of the most significant threats facing the world today. According to the American Meteorological Society, there is a 90 percent probability that global temperatures will rise by 3.5 to 7.4 degrees Celsius (6.3 to 13.3 degrees Fahrenheit) in less than one hundred years, with even greater increases over land and the poles. These seemingly minor shifts in temperature could trigger widespread disasters in the form of rising sea levels, violent and volatile weather patterns, desertification, famine, water shortages, and other secondary effects including conflict. In November 2011, the International Energy Agency warned that the world may be fast approaching a tipping point concerning climate change, and suggested that the next five years will be crucial for greenhouse gas reduction efforts.

Avoiding the worst consequences of climate change will require large cuts in global greenhouse gas emissions. Humans produce greenhouse gases by burning coal, oil, and natural gas to generate energy for power, heat, industry, and transportation. Deforestation and agricultural activity also yield climate-changing emissions.

One way to reduce emissions would be to switch from fossil-fuel-based power to alternative sources of energy, such as nuclear, solar, and wind. A second, parallel option would be to achieve greater energy efficiency by developing new technologies and modifying daily behavior so each person produces a smaller carbon footprint. Additionally, retrofitting buildings and developing energy-efficient technology greatly help curb greenhouse gas emissions. All such measures, however, engender significant cost, and the onset of the global financial crisis has placed serious new constraints on national budgets both in the developed and developing worlds. Some climate change experts have expressed concern that the ongoing global financial crisis could defer action on climate change indefinitely.

Even if such reforms were implemented, substantial efforts will still be required to adapt to unavoidable change. Recent climate-related events, such as the flooding in Pakistan and Thailand, have caused focus to fall on adaptation financing to developing countries, which could support infrastructure projects to protect vulnerable areas. Other efforts might include drought-tolerant farming.

Distribution of global emissions reinforces the need for broad multilateral cooperation in mitigating climate change. Fifteen to twenty countries are responsible for roughly 75 percent of global emissions, but no one country accounts for more than about 26 percent. Efforts to cut emissions—mitigation—must therefore be global. Without international cooperation and coordination, some states may free ride on others' efforts, or even exploit uneven emissions controls to gain competitive advantage. And because the impacts of climate change will be felt around the world, efforts to adapt to climate change—adaptation—will need to be global too.

At the launch of the United Nations Framework Convention on Climate Change seventeenth Conference of Parties (COP-17) in Durban, South Africa, many climate change experts were concerned that the Kyoto Protocol could expire in 2012 with no secondary legally binding accord on limiting global emissions in place. This fear, however, was somewhat assuaged as the nearly two hundred countries present at the COP-17 approved an extension of the protocol through 2017 and potentially 2020. A decision was also reached at the meeting to draft a successor accord to the Kyoto Protocol by 2015, which would ultimately come into force in 2020. Delegates also envisioned that the new accord would include greenhouse gas emissions targets for all countries, regardless of their level of economic development. This framework notably contrasts with that of the Kyoto Protocol, which primarily focuses on reducing emissions emanating from developed countries.

Despite these and other marked successes during the COP-17, the perceived lack of leadership by central players in the climate change debate—especially the United States—has elicited increasing concern about the long term prospects of the global climate change regime. Additionally, Canada's December 2011 decision to withdraw from the Kyoto Protocol—based on domestic economic concerns as well as its view that the world's top greenhouse gas emitters have refused to ratify the accord—has generated concerns that the Kyoto Protocol itself may be in danger of collapse. Both of these concerns and many other issues will likely be a part of the agenda for the COP-18, scheduled for November 2012 in Qatar.

#### Binding global agreement prevents us from going over the climate cliff. It is not too late

**Davenport 13** - Energy and environment correspondent for National Journal [[Coral Davenport](http://www.nationaljournal.com/reporters/bio/18) (Former fellow with the Metcalf Institute for Marine and Environmental Reporting), “It's Already Too Late to Stop Climate Change,” The National Journal, Updated: May 30, 2013 | 12:16 a.m., Originally posted November 29, 2012 | 12:58 p.m. pg. http://www.nationaljournal.com/magazine/it-s-already-too-late-to-stop-climate-change-20121129

It also means that nations—first and foremost, the world’s two biggest polluters, the United States and China—must develop real, enforceable, and aggressive policies to cut their own carbon emissions, with or without a global agreement. Scientists say that once the world hits that 2-degree mark, the urgency of reducing carbon pollution to avoid a catastrophic tipping point becomes even greater.

Michael Oppenheimer, a professor of geosciences and international affairs at Princeton University and a member of the Nobel Prize-winning U.N. Intergovernmental Panel on Climate Change (IPCC), says that a 2-degree rise is not itself that point, but rather the beginning of irreversible changes. “It starts to speed you toward a tipping point,” he said. “It’s driving toward a cliff at night with the headlights off. We don’t know when we’ll hit that cliff, but after 2 degrees, we’re going faster, we have less control. After 3, 4, 5 degrees, you spiral out of control, you have even more irreversible change. At this point, with prompt action to reduce emissions, we can still keep it from getting totally out of control.”

When it comes to global climate-change treaties, the U.S. has already cried wolf twice on the world stage. In 1997, Vice President Al Gore urged the rest of the world to sign on to the landmark Kyoto Protocol, but the Senate refused to go along. At the 2009 U.N. climate-change summit in Copenhagen, President Obama took on the same role, urging China and other nations to sign pledges to cut carbon emissions, assuring the world that Congress would soon pass a cap-and-trade bill to cut U.S. carbon emissions. Six months later, the bill died in the Senate.

In December 2015, when it comes time to forge a binding global agreement that could keep the world from heading off a climate cliff, Obama won’t be able to face his counterparts on the world stage with just a promise of what’s to come. To get the world’s other major polluters to agree to cut the carbon pollution that threatens U.S. coastal cities, he’ll need to have a new U.S. climate law in hand.

#### Failure risks a planetary die-off – Geologic history is on our side

**Bushnell 10** - Chief scientist at the NASA Langley Research Center [Dennis Bushnell (MS in mechanical engineering. He won the Lawrence A. Sperry Award, AIAA Fluid and Plasma Dynamics Award, the AIAA Dryden Lectureship, and is the recipient of many NASA Medals for outstanding Scientific Achievement and Leadership.) “Conquering Climate Change,” The Futurist, May-June, 2010

Carbon-dioxide levels are now greater than at any time in the past 650,000 years, according to data gathered from examining ice cores. These increases in CO2 correspond to estimates of man-made uses of fossil carbon fuels such as coal, petroleum, and natural gas. The global climate computations, as reported by the ongoing Intergovernmental Panel on Climate Change (IPCC) studies, indicate that such man-made CO2 sources could be responsible for observed climate changes such as temperature increases, loss of ice coverage, and ocean acidification. Admittedly, the less than satisfactory state of knowledge regarding the effects of aerosol and other issues makes the global climate computations less than fully accurate, but we must take this issue very seriously.

I believe we should act in accordance with the precautionary principle: When an activity raises threats of harm to human health or the environment, precautionary measures become obligatory, even if some cause-and-effect relationships are not fully established scientifically. As paleontologist Peter Ward discussed in his book Under a Green Sky, several “warming events” have radically altered the life on this planet throughout geologic history. Among the most significant of these was the Permian extinction, which took place some 250 million years ago. This event resulted in a decimation of animal life, leading many scientists to refer to it as the Great Dying. The Permian extinction is thought to have been caused by a sudden increase in CO2 from Siberian volcanoes. The amount of CO2 we’re releasing into the atmosphere today, through human activity, is 100 times greater than what came out of those volcanoes.

During the Permian extinction, a number of chain reaction events, or “positive feedbacks,” resulted in oxygen-depleted oceans, enabling overgrowth of certain bacteria, producing copious amounts of hydrogen sulfide, making the atmosphere toxic, and decimating the ozone layer, all producing species die-off. The positive feedbacks not yet fully included in the IPCC projections include the release of the massive amounts of fossil methane, some 20 times worse than CO2 as an accelerator of warming, fossil CO2 from the tundra and oceans, reduced oceanic CO2 uptake due to higher temperatures, acidification and algae changes, changes in the earth’s ability to reflect the sun’s light back into space due to loss of glacier ice, changes in land use, and extensive water evaporation (a greenhouse gas) from temperature increases.

The additional effects of these feedbacks increase the projections from a 4°C–6°C temperature rise by 2100 to a 10°C–12°C rise, according to some estimates. At those temperatures, beyond 2100, essentially all the ice would melt and the ocean would rise by as much as 75 meters, flooding the homes of one-third of the global population. Between now and then, ocean methane hydrate release could cause major tidal waves, and glacier melting could affect major rivers upon which a large percentage of the population depends. We’ll see increases in flooding, storms, disease, droughts, species extinctions, ocean acidification, and a litany of other impacts, all as a consequence of man-made climate change. Arctic ice melting, CO2 increases, and ocean warming are all occurring much faster than previous IPCC forecasts, so, as dire as the forecasts sound, they’re actually conservative. Pg. 7-8 //1ac

#### AND, US-EU coop solves all. Ignoring European concerns forces it to act as acounterweight.

**Stivachtis 10** – Director of International Studies Program @ Virginia Polytechnic Institute & State University [Dr. Yannis. A. Stivachtis (Professor of Poli Sci & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html]

There is no doubt that US-European relations are in a **period of transition**, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations.

The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of **North Korea** and especially **Iran**, the proliferation of weapons of mass destruction (WMD), the transformation of **Russia** into a stable and cooperative member of the international community, the growing power of **China**, the political and economic transformation and integration of the **Caucasian** and **Central Asian** states, the integration and stabilization of the **Balkan** countries, the promotion of peace and stability in the **Mid**dle **East**, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels.

Therefore, cooperation between the U.S. and Europe is more **imperative** than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.

The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense.

Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements.

There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become **counterweight** to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.

If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.

There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance.

There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime in Ukraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to **WMD** will fall into the wrong hands; and second, the **spread of conflict** along those countries’ periphery could destabilize neighboring countries and provide **safe havens for terrorists** and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE.

This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other **political issues in the Mid**dle **East** are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the **rising power of China** through engagement but also containment.

The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be **determined above all by U.S. policy towards Europe** and the Atlantic Alliance.

Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that **takes Europe for granted** and routinely **ignores or** even **belittles Europe**an concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits.

#### AND, statutory codification of Obama’s policy solves. Failure allows the issue to quickly fester and undermine relations

**Dworkin 13** - Senior policy fellow @ European Council on Foreign Relations [Anthony Dworkin (Web editor of the Crimes of War Project which a site dedicated to raising public awareness of the laws of war), “Actually, drones worry Europe more than spying,” CNN’s Global Public Square, July 17th, 2013, 10:31 AM ET, pg. http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/

Relations between the United States and Europe hit a low point following [revelations](http://www.cnn.com/2013/06/30/world/europe/eu-nsa/index.html) that Washington was spying on European Union buildings and harvesting foreign email messages.

Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the [recent killing](http://www.reuters.com/article/2013/07/03/us-pakistan-drone-attack-idUSBRE96205820130703) of at least 17 people in Pakistan are therefore only likely to heighten European unease.

In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change.

Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level.

But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim.

However, the changes to American policy that President Obama [announced](http://www.theatlantic.com/politics/archive/2013/05/what-mattered-in-obamas-speech-today-ending-the-open-ended-war-on-terror/276208/) in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time.

European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks.

First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States.

Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes.

But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely.

#### Constraint on authority reduces friction with Europe

**Daskal 13** – Professor and Fellow in the Center on National Security and the Law @ Georgetown University Law Center [Jennifer C. Daskal (Former counsel to the Assistant Attorney General for National Security @ Department of Justice (DOJ). Served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force and provided legal advice on detention, surveillance, and interrogation practice. Former senior counterterrorism counsel at Human Rights Watch. JD from Harvard University), “The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone,” University of Pennsylvania Law Review, Vol. 161, No. 5, April 2013

One might be skeptical that a nation like the United States would ever accept such constraints on the exercise of its authorities. There are, however, several reasons why doing so is in the United States’ own self-interest. First, as described in Part II, the general framework is already largely consistent with current U.S. practice since 2006. The United States has, as a matter of policy, adopted important limits on its use of out-of-battlefield targeting and law-of-war detention – suggesting an implicit recognition of the security and legitimacy benefits of restraint. Second, while the proposed procedural safeguards are more stringent than what is currently being employed, their implementation will increase the legitimacy of the United States’ actions. Third, such an approach more closely tracks that advocated by European partners, which reduces friction with key allies and fosters important cooperation. Fourth, it is consistent with the United States efforts to promote human rights and the rule of law – a role that also ultimately inures to the United States interests. Fifth, and critically, while the United States might be confident that it will exercise its authorities responsibly, it cannot assure that others will follow suit. What is to prevent Russia, for example, from asserting that it is engaged in an armed conflict with Chechen rebels, and can, consistent with the laws of war, kill or detain any person anywhere around the world who it deems to be a “functional member” of a rebel group? Or Turkey doing so with respect to alleged “functional members” of alleged Kurdish rebels? Imagine that such a theory resulted in the killing or detention without charge of one of the United States’ own citizens. The United States would have little ground to object. Pg. 1231-1232