# Global Battlefield (3:47)

**Advantage one is the global battlefield**

**The AUMF provides the legal authority for a global battlefield. 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**

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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. Only congressional restrictions prevent drone conflicts from quickly spiraling into nuclear wars.**

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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.

Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156

A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. The genie is out of the bottle: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157

The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

If the US fails to take these steps, its unchecked pursuit of drone technology will have serious consequences for its image and global position. Much of American counterterrorism policy is premised on the notion that the narrative that sustains Al-Qaeda must be challenged and eventually broken if the terrorist threat is to subside over the long term. The use of drones does not break this narrative, but rather confirms it. It is ironic that Al-Qaeda’s image of the United States—as an all-seeing, irreconcilably hostile enemy who rains down bombs and death on innocent Muslims without a second thought—is inadvertently reinforced by a drones policy that does not bother to ask the names of its victims. Even the casual anti-Americanism common in many parts of Europe, the Middle East and Asia, much of which portrays the US as cruel, domineering and indifferent to the suffering of others, is reinforced by a drones policy which involves killing foreign citizens on an almost daily basis. A choice must be made: the US cannot rely on drones as it does now while attempting to convince others that these depictions are gross caricatures. Over time, an excessive reliance on drones will deepen the reservoirs of anti-US sentiment, embolden America’s enemies and provide other governments with a compelling public rationale to resist a US-led international order which is underwritten by sudden, blinding strikes from the sky. For the United States, preventing these outcomes is a matter of urgent importance in a world of rising powers and changing geopolitical alignments. No matter how it justifies its own use of drones as exceptional, the US is establishing precedents which others in the international system—friends and enemies, states and non-state actors—may choose to follow. Far from being a world where violence is used more carefully and discriminately, a drones-dominated world may be one where human life is cheapened because it can so easily, and so indifferently, be obliterated with the press of a button. Whether this is a world that the United States wants to create—or even live in—is an issue that demands attention from those who find it easy to shrug off the loss of life that drones inflict on others today. Pg. 23-29 //AT: Executive CP – Must be regulated by external actor

**Clarifying the AUMF’s geographical scope restricts the use of the law of armed conflict dial backs US pursuit of an open-ended war**

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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 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 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, May 2012

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. 50-51

**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 (4:35)

**Advantage two is Transatlantic Relations –**

**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

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.

**T-TIP reduces US dependence on China. They can’t win offense because more US-European trade is inevitable.**

**Kelly 13** - PhD Candidate with the Centre for the Study of European Governance @ University of Nottingham [Katrina Kelly, “An American perspective on the EU: The United States should work to ensure European stability,” London School of Economics, February 23, 2013, pg. http://blogs.lse.ac.uk/europpblog/2013/02/23/an-american-perspective-on-the-eu-the-united-states-should-work-to-ensure-european-stability/

Eurosceptiscm is gaining attention and support in the UK, and perhaps throughout Europe. Although this appears to be a European problem, any wavering in the stability of the European Union will have widespread effects on the global political economy. In this post I examine eurosceptiscm from an American standpoint, and assesses how and why the United States must continue, if not increase, its support for unity within the European Union.

The cold war officially ended in 1991. Despite this, the United States has remained skeptical that there is not, nor will be, a future military threat from the Eastern hemisphere. If this statement was once considered debatable, such doubts were surely quelled in the spring of 2006 when the United States began negotiations with both the Czech Republic and Poland to determine the best site for the future installation of an anti-ballistic missile site.

The United States has been an aggressive military nation since, or perhaps because of, its initial creation. We are a nation that profits and rarely shirks from military interference and must be realistic about future military engagements. The rationale for defending the EU solely for its appropriateness as a missile defense system against nations like Iran and North Korea only begins to touch on the benefits that the European Union provides for the United States. By combining 27 nations in unity the European Union provides the strongest ally in defense for the United States. We no longer have to address, nor stress, individual diplomatic relations in Europe, but can instead be sure of support from 27 of the world’s strongest nations. The benefits of having strong diplomatic ties with so many nations versus individual nations surely need no further explanation.

In the United Kingdom there is often a tendency to address only the western European nations when discussing the effectiveness of the European Union. In the United States, we must not adopt the British tendency to dismiss the Union as individual nations and study only the effectiveness of the EU as a whole. The Union is a federal state made up 27 member-states, 17 of which use the euro, and must constantly be examined as such. The benefits of the European Union lie not only in the diplomatic solidarity provided by a unity of such a large number of nations, but also in the economic stability provided by such a vast joining of nations.

Growing from the position as a strong “supporter” of European integration; the US/EU now holds the largest economic relationship in the world. In 2010 $1,537.4 billion flowed between the European Union and the United States. Today, the EU counts for 18.7% of exports from the US. Including services, and not including $131.9 billion of direct investments, the EU makes up more than 31% of all US trade relations. When looking at the increasing trend towards globalization, this relationship will only continue to grow as trade relations continue to dissolve international barriers. At least, this is one scenario. On the opposing side the relationship could completely dissolve, not through choice, but through inevitability.

The economic climate today has forced nations to reconsider their spending habits. In Europe, where the recession has caused some nations, specifically southern nations, to hover on the brink of bankruptcy, spending has been scrutinized to the point that each spending measure has become politicized. Eurosceptiscm, or criticism of the EU, is an act of opposition to the process of European integration. The idea centers on the thought that integration weakens the nation-state and claims that it is undemocratic (on the most-extreme side) or argues that the EU is too bureaucratic and costly (the most common argument). Whereas at one time the EU was considered a highly popular institution, today only 31.9% of citizens polled in a Eurobarometer test believe that the EU views the EU positively.

In the UK this view is especially strong. What used to be a notion of the Conservative Party is now a policy initiative that David Cameron recently delivered a speech on. In an age of increased austerity, Cameron has addressed the concern that the EU’s recent demand of a 6.8% increase in UK spending in the EU is unwarranted. What once seemed to be a mere financial grumbling of the Conservatives has become a popular prediction for some economists.

While the British are considering decreased relations with Europe, it may be useful to consider what increasing our relations with Europe could do for both the American and global economy. For the past year, a free-trade agreement between the US and Europe has become more attainable than any discussions in the past decade have alluded to. Both leaders of the private and public sector seem to agree that a free-trade agreement between the two continents could result in the stimulus that economists have been searching for since the 2008 crisis. Although tariffs between the US and EU are already low, the companies that do the most transatlantic trade argue that a decrease in the 3% average would mean huge savings for the firms.  As an agreement like this would boost the earnings of firms without have repercussions on the taxpayer, increasing support for EU/US relations to mature in a NAFTA-like agreement seems to be a feasible idea.

A free-trade agreement would not only act as a stimulus, but would help to weaken the growing American dependence on the Chinese. China has dominated the political debate in the US, which may or may not be accurate, but in reality trade with Europe is much larger than trade with China. Increasing our support for the EU would help to set a positive curve for demand and help to decrease the rate of acceleration of dependence on the Chinese. At the same time, Europe is considering the same type of agreement with China, as they recognize and need, the stimulus benefits from such a trade agreement. If we do not act then surely, as the past decade has shown, the Chinese will be quick to make an agreement with the EU. The Chinese know that fluctuation in the Yuan is always a concern and they would be quick to seal a deal that would help to increase stability in export and imports.

In order to benefit from such a trade agreement, a decision must be taken quickly on European and American trade relations. Without it the natural dissolution of trade barriers will allow this to happen inevitably, but in a slow process that would not act as a stimulus to growth on either side of the Atlantic.

**Trade imbalance encourages China bashing that undermines US-China relations.**

**Ramirez & Rong 12** – Professors of Economics @ George Mason University [Carlos D. Ramirez & Rong Rong “China Bashing: Does Trade Drive the “Bad” News about China in the USA?,” Review of International Economics, 20(2), 2012, pg. 350–363

Trade between the USA and China has been growing at a substantial rate over the last two decades (1990–2010). In 1990, total bilateral trade stood at US$20 billion. By 2008 this figure had risen to US$409 billion, implying an annual growth rate of over 4% in real terms—a rate faster than that of the US economy over the same period.1 It is very likely that Sino-American trade relations will continue to grow in the foreseeable future, although perhaps not at the same rate, given the gravity of the 2007–09 recession in the USA.

Despite the phenomenal rate of growth, trade relations between the two countries have been anything but smooth. Trade disputes have frequently surfaced, and over the years, as the size of the bilateral trade deficit has widened, economic relations have become tense: since 2005, the growing bilateral deficit has been linked to a variety of issues, including currency exchange manipulation, health and safety standards, and discriminatory regulation. Indeed, between 1990 and 2010, the tense trade relations¶ have lead to the introduction of numerous bills in Congress with explicit grievances against China.2

Intertwined with these trade-related complaints are other grievances that, though not necessarily directly related to trade issues, nonetheless form part of Sino-American relations. These other grievances relate to China’s political system, human rights, Tibet, repression, and so forth, and are frequently reported on in US media outlets, more often than not with a slant unfavorable to China.

The purpose of this paper is to investigate empirically the extent to which news reports of US grievances against China that are not necessarily directly related to trade (e.g. on the subject of human rights) are driven by cycles in the US–China trade deficit. Many scholars of Sino-American relations suspect that there is such a link. For example, these scholars see an ulterior motive behind the US preoccupation with China’s record on human rights (Wang, 2002).

To conduct this investigation, a China “bad news” index is constructed for the period January 1990–December 2008.3 To develop the index, a count is made of articles that talk about China in connection with one of the following grievance issues: “human rights,” “Tibet,” “child labor,” “democracy,” and “repression.”4 This paper then makes use of a parsimonious transfer model to examine the extent to which unexpected changes in the trade deficit explain movements in the bad news index. The results indicate that 3–4 months after an unexpected widening of the bilateral trade deficit, the frequency of bad news rises sharply, before subsiding in subsequent months. It is found that the likelihood of this relationship’s being purely coincidental is relatively low— about 1%. The relationship is robust to the choice of the model specification as well as to a variety of assumptions about the behavior of the lag structure.

Explaining the relationship between an unexpected widening of the bilateral trade deficit and an increased frequency of bad news is actually quite straightforward and does not rely on esoteric conspiracy theories. The timing of a decision to publish bad news about China can be explained by a publisher’s interest in readership and therefore in revenues. As the bilateral trade deficit unexpectedly widens, many US members of Congress respond to pressure groups by voicing their misgivings and trepidations on the subject. Indeed, this paper finds empirical support for this last argument. In particular, a positive and statistically significant correlation between the annual number of¶ Congressional hearings on China and the US–China bilateral trade deficit is detected. A regression analysis reveals that this relationship is robust to different functional forms.

The fact that Congress becomes more preoccupied about China, in combination with the fact that China is one of the largest US trading partners, makes China a more salient topic of discussion, so that the media find it more worthwhile to run stories about China with a negative slant. The old adage “there is no news like bad news” is illustrative in this regard. The notion that the US media, in deciding what is newsworthy, operate as profit-maximizing enterprises should not be controversial. Indeed, a substantial amount of research finds that this is the case.5

The results lend evidence to the proposition that the reporting of negative news about China may indeed be influenced by tensions arising from the widening bilateral trade deficit. This investigation gives empirical support to the suspicion of many Sino- American scholars that “China bashing” is, at least in part, a reaction to the widening US–China trade deficit. To the present authors’ knowledge, this is the first paper that empirically evaluates the linkage between US–China trade deficits and news— specifically bad news. Given that relations between the two countries are often at the¶ center of attention in US politics, it is believed that this is an important issue that needs to be elucidated. Pg. 350-351

**Bashing risks nuclear war**

**Gross 12** - Senior associate of Pacific Forum CSIS [Donald Gross (A former State Department official who developed diplomatic strategy toward East Asia. Counselor of the U.S. Arms Control and Disarmament Agency and director of legislative affairs at the National Security Council in the White House), “Quit bashing Beijing — China’s rise is good for America,” Salon, Monday, Oct 22, 2012 03:30 PM EDT, pg. http://www.salon.com/2012/10/22/quit\_bashing\_beijing\_chinas\_rise\_is\_good\_for\_america/

The routine scapegoating of China — which no less a figure than Henry Kissinger, the architect of U.S. rapprochement with Beijing in the 1970s, has called “[extremely deplorable](http://www.huffingtonpost.com/2012/10/03/henry-kissinger-2012-election_n_1937157.html)” — is targeted at vulnerable people who have suffered deeply from the effects of the economic recession.

It is easier for both campaigns to shift blame to foreigners than to remind voters that the global financial crisis began on Wall Street, not in Beijing.  Or to point out that trade with China – America’s third-largest export market – has helped pull the United States out of the global financial crisis.

Demagogic attacks by both campaigns on China are particularly dangerous since they play into often unspoken but prevalent anti-Asian racial prejudices in various parts of the United States.  American leaders should try to overcome the sad history of anti-Asian prejudice, not exploit it for political gain.

Perhaps the only consolation one can take in this season of China bashing is that it may finally force a badly needed national debate on U.S. policy toward China.

With respect to national security, the Obama administration benignly describes its large-scale military buildup in the Pacific as a “strategic pivot” to Asia or “rebalancing” U.S. forces.  Both terms are euphemisms that mask the reality of current policy.  We are now implementing an aggressive containment strategy that stimulates China’s military modernization and its own preparations for war.

Increased tensions with China could have a number of dire outcomes.  They could lead to serious military conflict over Taiwan’s political status, over whether Japan or China holds sovereignty to several uninhabitable islands in the East China Sea, or over the ownership of small islands and energy resources in the South China Sea.  In a worst case, those conflicts could escalate, by accident or design, to a nuclear exchange.

**AND, ignoring European concerns forces it to become a counterweight. We will also control the internal link to every impact in the debate**

**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.

**Constraints on authority will reduce 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, 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. 50

# Plan (:40)

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

**Policy limits already exist. The plan just legally codifies them**

**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 @ 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

Recent statements by administration officials suggest that while, as a matter¶ of law, the United States continues to press a broad definition of the enemy force, its actions, as a matter of policy, are more restrained. Specifically, it¶ focuses its targeted-killing operations on those who pose a "significant¶ threat"57 and only as a matter of last resort. In the words of John Brennan,¶ the United States does not seek to kill every al Qaeda member, but instead focuses its efforts on "disrupt[ing] . . . plans and . . . plots before they¶ come to fruition,"58 and limits lethal strikes to situations in which it is the¶ "only recourse" against the threat.59 Brennan cites operational leaders, operatives in the midst of training for an attack, and persons who possess unique operational skills that are being leveraged for an attack. 60 But no binding limits have yet been articulated, and it is not clear that they exist. 61 Are the examples of possible targets exclusive or merely illustrative? How far along does the attack planning need to be? Is mere agreement to plot or plan enough? In what situations is lethal targeting considered the "only recourse"? pg. 1185-1186

**The executive will comply. Obama is working closely with Congress to size down the AUMF.**

**Brown 13** [Hayes Brown, "Obama Lays Out Plan To End The War Against Al Qaeda,” Think Progress, May 23, 2013 at 3:52 pm, pg . http://thinkprogress.org/security/2013/05/23/2055331/obama-aumf-repeal/

President Obama delivered a wide ranging speech on Thursday, laying out his vision for countering terrorism in his second term, including announcements on the use of drones, the future closure of the military prison at Guantanamo Bay, and the eventual end of the long war against al Qaeda.

Most importantly, Obama announced that he intends to work closely with Congress to “refine, and ultimately repeal” the 2001 Authorization for the Use of Military Force (AUMF). Passed in the aftermath of 9/11, the AUMF gave the president broad authority to carry out military action against “those nations, organizations, or persons” who “planned, authorized, committed, or aided” the 2001 attack.

“Groups like [Al Qaeda in Arabian Peninsula] must be dealt with, but in the years to come, not every collection of thugs that labels themselves al Qaeda will pose a credible threat to the United States,” Obama said. “Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states.”

Congress recently began its first set of hearings into possible revisions of the AUMF, which is about to enter its twelfth year in force. Currently, there are competing proposals in the Senate and House to either repeal the authorization in its entirety or revise it to allow for the use of force beyond the perpetrators of 9/11. Obama, however, refused to go along with any broadening of the AUMF, saying he “will not sign laws designed to expand this mandate further.”

CAP expert Ken Gude hailed Obama’s commitment to repealing the AUMF as the “beginning of the end” of the war against al Qaeda. While remnants of al Qaeda and new groups remain threats, “the extraordinary military response that followed the attacks of 9/11 embodied in the 2001 Authorization to Use Military Force can now be wound down, the permanent war footing retired, and we can rebalance our efforts to fight terrorism to rely more on our effective and efficient law enforcement and intelligence agencies,” Gude told ThinkProgress.

In his speech today, Obama continued: “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.” The clear declaration builds upon previous statements from former members of Obama’s administration that the battle against al Qaeda cannot go on indefinitely.

That desire to eventually repeal the AUMF makes up the cornerstone of the counterterrorism strategy Obama laid out today. The current Obama administration approach to conducting targeting killing and other portions that strategy were only just recently codified, as Obama acknowledged in his remarks. In it, the use of drone strikes and other applications of force will be streamlined to a more limited set of targets, with a higher level of scrutiny applied when determining those targets, while a renewed focus on the other elements of preventing terrorism will be implemented.