## 1AC

### Plan

#### The United States federal government should limit the war power authority of the president for self-defense targeted killings to outside an armed conflict.

### 1AC Drones

#### Advantage one is Drones

#### Conflation of legal regimes for targeted killing results in overly constrained operations—undermines counterterrorism

Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., 10/22/11, Self-defense Targeting: Blurring the Line between the Jus ad Bellum and the Jus in Bello, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1947838

At the core of the self-defense targeting theory is the assumption that the jus ad bellum provides sufficient authority to both justify and regulate the application of combat power.71 This assumption ignores an axiom of jus belli development: the compartmentalization of the jus ad bellum and the jus in bello.72 As Colonel G.I.A.D. Draper noted in 1971, “equal application of the Law governing the conduct of armed conflicts to those illegally resorting to armed forces and those lawfully resorting thereto is accepted as axiomatic in modern International Law.”73 This compartmentalization is the historic response to the practice of defining jus in bello obligations by reference to the jus ad bellum legality of conflict.74 As the jus in bello evolved to focus on the humanitarian protection of victims of war, to include the armed forces themselves,75 the practice of denying LOAC applicability based on assertions of conflict illegality became indefensible.76 Instead, the de facto nature of hostilities would dictate jus in bello applicability, and the jus ad bellum legal basis for hostilities would be irrelevant to this determination.77

This compartmentalization lies at the core of the Geneva Convention lawtriggering equation.78 Adoption of the term “armed conflict” as the primary triggering consideration for jus in bello applicability was a deliberate response to the more formalistic jus in bello applicability that predated the 1949 revision of the Geneva Conventions.79 Prior to these revisions, in bello applicability often turned on the existence of a state of war in the international legal sense, which in turn led to assertions of inapplicability as the result of assertions of unlawful aggression.80 Determined to prevent the denial of humanitarian regulation to situations necessitating such regulation—any de facto armed conflict—the 1949 Conventions sought to neutralize the impact of ad bellum legality in law applicability analysis.81

This effort rapidly became the norm of international law.82 Armed conflict analysis simply did not include conflict legality considerations.83 National military manuals, international jurisprudence and expert commentary all reflect this development.84 This division is today a fundamental LOAC tenet—and is beyond dispute.85 In fact, for many years the United States has gone even farther, extending application of LOAC principles beyond situations of armed conflict altogether so as to regulate any military operation.86 This is just another manifestation of the fact that States, or perhaps more importantly the armed forces that do their bidding, view the cause or purported justification for such operations as irrelevant when deciding what rules apply to regulate operational and tactical execution.

This aspect of ad bellum/in bello compartmentalization is not called into question by the self-defense targeting concept.87 Nothing in the assertion that combat operations directed against transnational non-State belligerent groups qualifies as armed conflict suggests the inapplicability of LOAC regulatory norms on the basis of the relative illegitimacy of al Qaeda’s efforts to inflict harm on the United States and other victim States (although as noted earlier, this was implicit in the original Bush administration approach to the war on terror).88 Instead, the self-defense targeting concept reflects an odd inversion of the concern that motivated the armed conflict law trigger. The concept does not assert the illegitimacy of the terrorist cause to deny LOAC principles to operations directed against them.89 Instead, it relies on the legality of the U.S. cause to dispense with the need for applying LOAC principles to regulate these operations.90 This might not be explicit, but it is clear that an exclusive focus on ad bellum principles indicates that these principles subsume in bello conflict regulation norms.91

There are two fundamental flaws with this conflation. First, by contradicting the traditional compartmentalization between the two branches of the jus belli,92 it creates a dangerous precedent. Although there is no express resurrection of the just war concept of LOAC applicability, by focusing exclusively on jus ad bellum legality and principles, the concept suggests the inapplicability of jus in bello regulation as the result of the legality of the U.S. cause. To be clear, I believe U.S. counterterror operations are legally justified actions in self-defense. However, this should not be even implicitly relied on to deny jus in bello applicability to operations directed against terrorist opponents, precisely because it may be viewed as suggesting the invalidity of the opponent’s cause deprives them of the protections of that law, or that the operations are somehow exempted from LOAC regulation. Second, even discounting this detrimental precedential effect, the conflation of ad bellum and in bello principles to regulate the execution of operations is extremely troubling.93 This is because the meaning of these principles is distinct within each branch of the jus belli.94

Furthermore, because the scope of authority derived from jus ad bellum principles purportedly invoked to regulate operational execution is more restrictive than that derived from their jus in bello counterparts,95 this conflation produces a potential windfall for terrorist operatives. Thus, the ad bellum/in bello conflation is ironically self-contradictory. In one sense, it suggests the inapplicability of jus in bello protections to the illegitimate terrorist enemy because of the legitimacy of the U.S. cause.96 In another sense, the more restrictive nature of the jus ad bellum principles it substitutes for the jus in bello variants to regulate operational execution provides the enemy with increased protection from attack.97 Neither of these consequences is beneficial, nor necessary. Instead, compliance with the traditional jus ad bellum/jus in bello compartmentalization methodology averts these consequences and offers a more rational approach to counterterrorism conflict regulation.98

#### That makes future terrorist attacks inevitable

Geoffrey Corn, South Texas College of Law, 6/2/13, Corn Comments on the Costs of Shifting to a Pure Self-Defense Model, www.lawfareblog.com/2013/06/corn-comments-on-the-prospect-of-a-shift-to-a-pure-self-defense-model/

The President’s speech – like prior statements of other administration officials – certainly suggests that the inherent right of self-defense is defining the permissible scope of kinetic attacks against terrorists. I wonder, however, if this is more rhetoric than reality? I think only time will tell whether actual operational practice confirms that “we are using force within boundaries that will be no different postwar”. More significantly, if practice does confirm this de facto abandonment of AUMF targeting authority, I believe it will result in a loss of the type of operational and tactical flexibility that has been, according to the President, decisive in the degradation of al Qaeda to date. The inherent right of self-defense is undoubtedly a critical source of authority to disable imminent threats to the nation, but it simply fails to provide the scope of legal authority to employ military force against the al Qaeda (and associated force) threat that will provide an analogous decisive effect in the future.

It strikes me (no pun intended) that arguments – or policy choices – in favor of abandoning the armed conflict model because the inherent right of self-defense will provide sufficient counter-terrorism response authority may not fully consider the operational impact of such a shift. From an operational perspective, the scope of authority to employ military force against the al Qaeda belligerent threat pursuant to the inherent right of self-defense is in no way analogous to the authority to do so within an armed conflict framework. This seems especially significant in relation to counter-terror operations. According to the President, the strategic vision for the “next generation” counter-terror military operations is not a “boundless ‘global war on terror’ – but rather a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.”

Relying exclusively on the inherent right of self-defense would, I suggest, potentially undermine implementing this strategic vision. It seems to me that disruption, and not necessarily destruction, is the logical operational “effect” commanders routinely seek to achieve to implement this strategy. Destruction, when feasible, would obviously contribute to this strategy. It is, however, doubtful that a group like al Qaeda and its affiliates can be completely destroyed – at least to the point that they are brought into complete submission – through the use of military power. Instead, military force can effectively be used to disrupt this opponent, thereby seizing and retaining the initiative and keeping the opponent off balance. Indeed, President Obama signaled the benefit of using military force to achieve this effect when he noted that al Qaeda’s “remaining operatives spend more time thinking about their own safety than plotting against us. They did not direct the attacks in Benghazi or Boston. They have not carried out a successful attack on our homeland since 9/11.”

A key advantage of the armed conflict framework is that it provides the legal maneuver space to employ military force in a manner that will effectively produce this disruptive and degrading effect. In contrast, under a pure self-defense framework, use of military force directed against such networks would necessarily require a determination of imminent threat of attack against the nation. Unlike the armed conflict model, this would arguably make conducting operations to “disrupt” terrorist networks more difficult to justify. I believe this is borne out by the reference to the pre-9/11 self-defense model. While it is true that military force was periodically employed as an act of self-defense during this era, such use seems to have been quite limited and only in response to attacks that already occurred, or at best were imminent in a restrictive interpretation of that term. In short, the range of legally permissible options to use military power to achieve this disruptive effect is inevitably broader in the context of an existing armed conflict than in isolated self-defense actions.

It may, of course, be possible to adopt an interpretation of imminence expansive enough to facilitate the range of operational flexibility needed to achieve this disruptive effect against al Qaeda networks. But this would just shift the legality debate from the legitimacy of continuing an armed conflict model to the legitimacy of the imminence interpretation. Even this would not, however, provide analogous authority to address the al Qaeda belligerent threat. Even if an expanded definition of imminence undergirded a pure self-defense model, it would inevitably result in hesitancy to employ force to disrupt, as opposed to disable, terrorist threats, because of concerns of perceived overreach.

It may be that a shift to this use of force framework is not only inevitable, but likely to come sooner than later. It may also be that such a shift might produce positive second and third order effects, such as improving the perception of legitimacy and mitigating the perception of a boundless war. It will not be without cost, and it is not self-evident that the scope of attack authority will be functionally analogous to that provided by the armed conflict model. Policy may in fact routinely limit the exercise of authority under this model today, but once the legal box is constricted, operationally flexibility will inevitably be degraded. It is for this reason that I believe the administration is unlikely to be too quick to abandon reliance on the AUMF.

#### Drones solve safe havens – prevents a terror attack

Johnston 12 (Patrick B. Johnston is an associate political scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. He is the author of "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," published in International Security (Spring 2012)., 8/22/2012, "Drone Strikes Keep Pressure on al-Qaida", www.rand.org/blog/2012/08/drone-strikes-keep-pressure-on-al-qaida.html)

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them. My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants. Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack. Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists. Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad. What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland. Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely. Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult. As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness. The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

#### No defense

Bunn 13 (Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998., 10/2/2013, “Steps to Prevent Nuclear Terrorism: Recommendations Based on the U.S.-Russia Joint Threat Assessment”, <http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>)

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

#### Extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

#### Causes US-Russia miscalc—extinction

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1 potentially leading to collapse of modern civilization worldwide, and even the extinction of humanity. 2 Nuclear war between the United States and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides’ development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 5 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 6 However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 7 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 8 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 10 especially if such an event occurs during a crisis between the United States and Russia. 11 A variety of nuclear terrorism scenarios are possible. 12 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16

### 1AC Legal Regimes

#### Advantage two is legal regimes

#### US targeted killing derives authority from both armed conflict (jus in bello) and self-defense (jus ad bellum) legal regimes—that authority overlap conflates the legal regimes

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

For the past several years, the United States has relied on both armed conflict and self-defense as legal justifications for targeted strikes outside of the zone of active combat in Afghanistan. A host of interesting questions arise from both the use of targeted strikes and the expansive U.S. justifications for such strikes, including the use of force in self-defense against non-state actors, the use of force across state boundaries, the nature and content of state consent to such operations, the use of targeted killing as a lawful and effective counterterrorism measure, and others.7 Furthermore, each of the justifications—armed conflict and self-defense—raises its own challenging questions regarding the appropriate application of the law and the parameters of the legal paradigm at issue. For example, if the existence of an armed conflict is the justification for certain targeted strikes, the immediate follow-on questions include the determination of a legitimate target within an armed conflict with a terrorist group and the geography of the battlefield. Within the self-defense paradigm, key questions include the very contours of the right to use force in self-defense against individuals and the implementation of the concepts of necessity and imminence, among many others.

However, equally fundamental questions arise from the use of both justifications at the same time, without careful distinction delimiting the boundaries between when one applies and when the other applies. From the perspective of the policymaker, the use of both justifications without further distinction surely offers greater flexibility and potential for action in a range of circumstances.8 To the extent such flexibility does not impact the implementation of the relevant law or hinder the development and enforcement of that law in the future, it may well be an acceptable goal. In the case of targeted strikes in the current international environment of armed conflict and counterterrorism operations occurring at the same time, however, the mixing of legal justifications raises significant concerns about both current implementation and future development of the law.

One overarching concern is the conflation in general of jus ad bellum and jus in bello. The former is the law governing the resort to force—sometimes called the law of self-defense—and the latter is the law regulating the conduct of hostilities and the protection of persons in conflict—generally called the law of war, the law of armed conflict, or international humanitarian law. International law reinforces a strict separation between the two bodies of law, ensuring that all parties have the same obligations and rights during armed conflict to ensure that all persons and property benefit from the protection of the laws of war. For example, the Nuremberg Tribunal repeatedly held that Germany’s crime of aggression neither rendered all German acts unlawful nor prevented German soldiers from benefitting from the protections of the jus in bello.9 More recently, the Special Court for Sierra Leone refused to reduce the sentences of Civil Defense Forces fighters on the grounds that they fought in a “legitimate war” to protect the government against the rebels.10 The basic principle that the rights and obligations of jus in bello apply regardless of the justness or unjustness of the overall military operation thus remains firmly entrenched. Indeed, if the cause at arms influenced a state’s obligation to abide by the laws regulating the means and methods of warfare and requiring protection of civilians and persons hors de combat, states would justify all departures from jus in bello with reference to the purported justness of their cause. The result: an invitation to unregulated warfare.11

#### Authority overlap destroys both the self-defense and armed conflict legal regimes

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

In contrast, human rights law’s requirement that force only be used as a last resort when absolutely necessary for the protection of innocent victims of an attack creates an obligation to attempt to capture a suspected terrorist before any lethal targeting.101 A state using force in self-defense against a terrorist cannot therefore target him or her as a first resort but can only do so if there are no alternatives—meaning that an offer of surrender or an attempt at capture has been made or is entirely unfeasible in the circumstances. Thus, if non-forceful measures can foil the terrorist attack without the use of deadly force, then the state may not use force in self-defense.102 The supremacy of the right to life means that “even the most dangerous individual must be captured, rather than killed, so long as it is practically feasible to do so, bearing in mind all of the circumstances.”103 No more, this obligation to capture first rather than kill is not dependent on the target’s efforts to surrender; the obligation actually works the other way: the forces may not use deadly force except if absolutely necessary to protect themselves or innocent persons from immediate danger, that is, self-defense or defense of others. As with any law enforcement operation, “the intended result . . . is the arrest of the suspect,”104 and therefore every attempt must be made to capture before resorting to lethal force.

In the abstract, the differences in the obligations regarding surrender and capture seem straightforward. The use of both armed conflict and self-defense justifications for all targeted strikes without differentiation runs the risk of conflating the two very different approaches to capture in the course of a targeting operation. This conflation, in turn, is likely to either emasculate human rights law’s greater protections or undermine the LOAC’s greater permissiveness in the use of force, either of which is a problematic result. An oft-cited example of the conflation of the LOAC and human rights principles appears in the 2006 targeted killings case before the Israeli Supreme Court. In analyzing the lawfulness of the Israeli government’s policy of “targeted frustration,” the Court held, inter alia, that [a] civilian taking a direct part in hostilities cannot be attacked at such time as he is doing so, if a less harmful means can be employed. . . . Indeed, among the military means, one must choose the means whose harm to the human rights of the harmed person is smallest. Thus, if a terrorist taking a direct part in hostilities can be arrested, interrogated, and tried, those are the means which should be employed.105

The Israeli Supreme Court’s finding that targeting is only lawful if no less harmful means are available—even in the context of an armed conflict—“impose[s] a requirement not based in [the LOAC].”106 Indeed, the Israeli Supreme Court “used the kernel of a human rights rule—that necessity must be shown for any intentional deprivation of life, to restrict the application of [a LOAC] rule—that in armed conflict no necessity need be shown for the killing of combatants or civilians taking a direct part in hostilities.”107 Although the holding is specific to Israel and likely influenced greatly by the added layer of belligerent occupation relevant to the targeted strikes at issue in the case,108 it demonstrates some of the challenges of conflating the two paradigms.

First, if this added obligation of less harmful means was understood to form part of the law applicable to targeted strikes in armed conflict, the result would be to disrupt the delicate balance of military necessity and humanity and the equality of arms at the heart of the LOAC. Civilians taking direct part in hostilities—who are legitimate targets at least for the time they do so—would suddenly merit a greater level of protection than persons who are lawful combatants, a result not contemplated in the LOAC.109

Second, soldiers faced with an obligation to always use less harmful means may well either refrain from attacking the target—leaving the innocent victims of the terrorist’s planned attack unprotected—or disregard the law as unrealistic and ineffective. Neither option is appealing. The former undermines the protection of innocent civilians from unlawful attack, one of the core purposes of the LOAC. The latter weakens respect for the value and role of the LOAC altogether during conflict, a central component of the protection of all persons in wartime.

From the opposing perspective, if the armed conflict rules for capture and surrender were to bleed into the human rights and law enforcement paradigm, the restrictions on the use of force in selfdefense would diminish. Persons suspected of terrorist attacks and planning future terrorist attacks are entitled to the same set of rights as other persons under human rights law and a relaxed set of standards will only minimize and infringe on those rights. Although there is no evidence that targeted strikes using drones are being used in situations where there is an obligation to seek capture and arrest, it is not hard to imagine a scenario in which the combination of the extraordinary capabilities of drones and the conflation of standards can lead to exactly that scenario. If states begin to use lethal force as a first resort against individuals outside of armed conflict, the established framework for the protection of the right to life would begin to unravel. Not only would targeted individuals suffer from reduced rights, but innocent individuals in the vicinity would be subject to significantly greater risk of injury and death as a consequence of the broadening use of force outside of armed conflict.

#### This degrades the entire collective security structure resulting in widespread interstate war

Craig Martin, Associate Professor of Law at Washburn University School of Law, 2011, GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

The United States has been engaging in this practice of using drone-mounted missile systems to kill targeted individuals since at least 2002.98 An increasing number of countries are developing drone capabilities, and other countries have employed different methods of targeted killing that constitute a use of force under jus ad bellum.99 The evidence suggests that the United States intends to continue and indeed expand the program, and there is a growing body of scholarly literature that either defends the policy’s legality, or advocates adjustment in international law to permit such action. There is, therefore, a real prospect that the practice could become more widespread, and that customary international law could begin to shift to reflect the principles implicit in the U.S. justification andin accordance with the rationales developed to support it**.**

Some of the implications of such an adjustment in the jus ad bellum regime are obvious from the foregoing analysis. As discussed, there would be a rejection of the narrow principle of self-defense in favor of something much closer to the Grotian concept of defensive war, encompassing punitive measures in response to past attacks and preventative uses of force to halt the development of future threats. The current conditions for a legitimate use of force in self-defense, namely the occurrence or imminence of an armed attack, necessity, and proportionality, would be significantly diluted or abandoned. Not only the doctrine of self-defense, but other aspects of the collective security system would be relaxed as well. Harkening back to Grotian notions of law enforcement constituting a just cause for war, the adjusted jus ad bellum regime would potentially permit the unilateral use of force against and within states for the purpose of attacking NSAs as such, in effect to enforce international law in jurisdictions that were incapable of doing so themselves.100 This would not only further undermine the concept of self-defense, but would undermine the exclusive jurisdiction that the U.N. Security Council currently has to authorize the use of force for purposes of “law enforcement” under Chapter VII of the Charter. Thus, both of the exceptions to the Article 2(4) prohibition on the use of force would be expanded.

In addition, however, the targeted killing policy threatens to create other holes in the jus ad bellum regime. This less obvious injury would arise from changes that would be similarly required of the IHL regime, and the resulting modifications to the fundamental relationship between the two regimes. These changes could lead to a complete severance of the remaining connection between the two regimes. Indeed, Ken Anderson, a scholar who has testified more than once on this subject before the U.S. Congress,101 has advocated just such a position, suggesting that the United States should assert that its use of force against other states in the process of targeted killings, while justified by the right to self-defense, does not rise to such a level that it would trigger the existence of an international armed conflict or the operation of IHL principles.102 If customary international law evolved along such lines, reverting to gradations in the types of use of force, the change would destroy the unity of the system comprised of the jus ad bellum and IHL regimes, and there would be legal “black holes” in which states could use force without being subject to the limitations and conditions imposed by the IHL regime.

The structure of Harold Koh’s two-pronged justification similarly implies a severance of this relationship between jus ad bellum and IHL, albeit in a different and even more troubling way. His policy justification consists of two apparently independent and alternative arguments—that the United States is in an armed conflict with Al Qaeda and associated groups; and that the actions are justified as an exercise of self-defense. The suggestion seems to be that the United States is entitled on either basis to use armed force not just against the individuals targeted, but also against states in which the terrorist members are located. In other words, the first prong of the argument is that the use of force against another sovereign state, for the purposes of targeting Al Qaeda members, is justified by the existence of an armed conflict with Al Qaeda. If this is indeed what is intended by the policy justification, it represents an extraordinary move, not just because it purports to create a new category of armed conflict (that is, a “transnational” armed conflict without geographic limitation),103 but because it also suggests that there need be no jus ad bellum justification at all for a use of force against another state. Rather, the implication of Koh’s rationale is that the existence of an armed conflict under IHL can by itself provide grounds for exemption from the prohibition against the threat or use of force under the jus ad bellum regime.

This interpretation of the justifications cannot be pressed too far on the basis of the language of Mr. Koh’s speech alone, which he hastened to explain at the time was not a legal opinion.104 The two justifications could be explained as being supplementary rather than independent and alternative in nature. But the conduct of the United States in the prosecution of the policy would appear to confirm that it is based on these two independent justifications.105 The strikes against groups and states unrelated to the 9/11 attacks could be explained in part by the novel idea that force can be used against NSAs as such, wherever they may be situated. But even assuming some sort of strict liability for states in which guilty NSAs are found, that explanation still does not entirely account for the failure to tie the use of force against the different groups to specific armed attacks launched by each such group. This suggests that the United States is also relying quite independently on the argument that it is engaged in an armed conflict with all of these groups, and that the existence of such an armed conflict provides an independent justification for the use of force against the states in which the groups may be operating.

While the initial use of force in jus ad bellum terms is currently understood to bring into existence an international armed conflict and trigger the operation of IHL, the changes suggested by the policy would turn this on its head, by permitting the alleged existence of a “transnational” armed conflict to justify the initial use of force against third states. Whereas the two regimes currently operate as two components of an overall legal system relating to war, with one regime governing the use of force and the other the conduct of hostilities in the resulting armed conflict, the move attempted by the U.S. policy would terminate these independent but inter-related roles within a single system, and expand the role and scope of IHL to essentially replace aspects of the jus ad bellum regime. This would not only radically erode the jus ad bellum regime’s control over the state use of force, but it could potentially undermine the core idea that war, or in more modern terms the use of force and armed conflict, constitutes a legal state that triggers the operation of special laws that govern the various aspects of the phenomenon. There is a risk of return to a pre-Grotian perspective in which “war” was simply a term used to describe certain kinds of organized violence, rather than constituting a legal institution characterized by a coherent system of laws designed to govern and constrain all aspects of its operation.

There is a tendency in the U.S. approach to the so-called “global war on terror” to cherry-pick principles of the laws of war and to apply them in ways and in circumstances that are inconsistent with the very criteria within that legal system that determine when and how it is to operate. This reflects a certain disdain for the idea that the laws of war constitute an internally coherent system of law.106 In short, the advocated changes to the jus ad bellum regime and to the relationship between it and the IHL regime, and thus to the laws of war system as a whole,107 would constitute marked departures from the trajectory the system has been on during its development over the past century, and would be a repudiation of deliberate decisions that were made in creating the U.N. system after the Second World War.108

The premise of my argument is not that any return to past principles is inherently regressive. A rejection of recent innovations in favor of certain past practices might be attractive to some in the face of new transnational threats. The argument here is not even to deny the idea that the international law system may have to adapt to respond to the transnational terrorist threat. The point, rather, is that the kind of changes to the international law system that are implicit in the targeted killing policy, and which are advocated by its supporters, would serve to radically reduce the limitations and constraints on the use of force by states against states. The modern principles that are being abandoned were created for the purpose of limiting the use of force and thus reducing the incidence of armed conflict among nations. The rejection of those ideas and a return to older concepts relating to the law of war would restore aspects of a system in which war was a legitimate tool of statecraft, and international armed conflict was thus far more frequent and widespread.109

The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed conflict with NSAs. The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. The expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is significantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifications for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed conflict with NSAs generally.

We may think about each of these innovations as being related specifically to operations against terrorist groups that have been responsible for heinous attacks, and applied to states that have proven uniquely unwilling or unable to take the actions necessary to deal with the terrorists operating within their territory. But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives. Along the lines that Jeremy Waldron argues in chapter 4 in this volume,110 more careful thought ought to be given to the general norms that we are at risk of developing in the interest of justifying the very specific targeted killing policy. Ultimately, war between nations is a far greater threat, and is a potential source of so much more human suffering than the danger posed by transnational terrorism. This is not to trivialize the risks that terrorism represents, particularly in an age when Al Qaeda and others have sought nuclear weapons. But we must be careful not to undermine the system designed to constrain the use of force and reduce the incidence of international armed conflict, in order to address a threat that is much less serious in the grand scheme of things.

#### Robust support for the impact—legal regime conflation results in uncontrollable conflict escalation

Ryan Goodman, Anne and Joel Ehrenkranz Professor of Law, New York University School of Law, December 2009, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, Yearbook of International Humanitarian Law / Volume 12

A substantial literature exists on the conflation of jus ad bellum and jus in bello. However, the consequences for the former side of the equation – the resort to war – is generally under-examined. Instead, academic commentary has focused on the effects of compliance with humanitarian rules in armed conflict and, in particular, the equality of application principle. In this section, I attempt to help correct that imbalance.

In the following analysis, I use the (admittedly provocative) short-hand labels of ‘desirable’ and ‘undesirable’ wars. The former consists of efforts that aim to promote the general welfare of foreign populations such as humanitarian interventions and, on some accounts, peacekeeping operations. The latter – undesirable wars – include conflicts that result from security spirals that serve neither state’s interest and also include predatory acts of aggression.

4.1.1 Decreased likelihood of ‘desirable wars’

A central question in debates about humanitarian intervention is whether the international community should be more concerned about the prospect of future Kosovos – ambitious military actions without clear legal authority – or future Rwandas – inaction and deadlock at the Security Council. Indeed, various institutional designs will tend to favor one of those outcomes over the other. In 1999, Kofi Annan delivered a powerful statement that appeared to consider the prospect of repeat Rwandas the greater concern; and he issued a call to arms to support the ‘developing international norm in favor of intervention to protect civilians from wholesale slaughter’.95 Ifoneassumesthatthereis,indeed,aneedforcontinuedorgreatersupport for humanitarian uses of force, Type I erosions of the separation principle pose a serious threat to that vision. And the threat is not limited to unilateral uses of force. It also applies to military operations authorized by the Security Council. In short, all ‘interventions to protect civilians from wholesale slaughter’ are affected.

Two developments render desirable interventions less likely. First, consider implications of the Kosovo Commission/ICISS approach. The scheme imposes greater requirements on armed forces engaged in a humanitarian mission with respect to safeguarding civilian ives.96 If that scheme is intended to smoke out illicit intent,97 it is likely to have perverse effects: suppressing sincere humanitarian efforts at least on the margins. Actors engaged in a bona fide humanitarian intervention generally tend to be more protective of their own armed forces than in other conflicts. It is instructive to consider, for instance, the precipitous US withdrawal from the UN mission in Somalia – code-named Operation Restore Hope – after the loss of eighteen American soldiers in the Battle of Mogadishu in 1993, and the ‘lesson’ that policymakers drew from that conflict.98 Additionally, the Kosovoc ampaign – code-named Operation Noble Anvil – was designed to be a ‘zero-casualty war’ for US soldiers, because domestic public support for the campaign was shallow and unstable. The important point is that the Kosovo Commission/ICISS approach would impose additional costs on genuine humanitarian efforts, for which it is already difficult to build and sustain popular support. As a result, we can expect to see fewer bona fide interventions to protect civilians from atrocities.99 Notably, such results are more likely to affect two types of states: states with robust, democratic institutions that effectively reflect public opinion and states that highly value compliance with jus in bello. Both of those are the very states that one would most want to incentivize to initiate and participate in humanitarian interventions.

The second development shares many of these same consequences. Consider the implications of the British House of Lords decision in Al-Jedda which cast doubt on the validity of derogations taken in peacekeeping operations as well as other military efforts in which the homeland is not directly at stake and the state could similarly withdraw. The scheme imposes a tax on such interventions by precluding the government from adopting measures that would otherwise be considered lawful and necessary to meet exigent circumstances related to the conflict. Such extraordinary constraints in wartime may very well temper the resolve to engage in altruistic intervention and military efforts that involve similar forms of voluntarism on the part of the state. Such a legal scheme may thus yield fewer such operations and the participation of fewer states in such multilateral efforts. And, the impact of the scheme should disproportionately affect the very states that take international human rights obligations most seriously.

Notably, in these cases, the disincentives might weigh most heavily on third parties: states that decide whether and to what degree to participate in a coalition with the principal intervener. It is to be expected that the commitment on the part of the principal intervener will be stronger, and thus not as easily shifted by the erosion of the separation principle. The ability, however, to hold together a coalition of states is made much more difficult by these added burdens. Indeed, as the United States learned in the Kosovo campaign, important European allies were wary about the intervention, in part due to its lack of an international legal pedigree. And the weakness of the alliance, including German and Italian calls for an early suspension of the bombing campaign, impeded the ability to wage war in the first place. It may be these third party states and their decision whether to join a humanitarian intervention where the international legal regime matters most. Without such backing of important allies, the intervention itself is less likely to occur. It is also those states – the more democratic, the more rights respecting, and the more law abiding – that the international regime should prefer to be involved in these kinds of interventions.

The developments regulating jus ad bellum through jus in bello also threaten to make ‘undesirable wars’ more likely. In previous writing, I argue that encouraging states to frame their resort to force through humanitarian objectives rather than other rationales would, in the aggregate, reduce the overall level of disputes that result in uncontrolled escalation and war.100 A reverse relationship also holds true. That is, encouraging states to forego humanitarian rationales in favor of other justifications for using force may culminate in more international disputes ending in uncontrolled escalation and war. This outcome is especially likely to result from the pressures created by Type I erosions of the separation principle.

First, increasing the tax on humanitarian interventions (the Kosovo Commission/ICISS approach) and ‘wars of choice’ (the Al-Jedda approach) would encourage states to justify their resort to force on alternative grounds. For example, states would be incentivized to invoke other legitimated frameworks – such as security rationales involving the right to self-defense, collective self-defense, anticipatory self-defense, and traditional threats to international peace and security. And, even if military action is pursued through the Security Council, states may be reluctant to adopt language (in resolutions and the like) espousing or emphasizing humanitarian objectives.

Second, the elevation of self-regarding – security and strategic – frameworks over humanitarian ones is more likely to lead to uncontrolled escalation and war. A growing body of social science scholarship demonstrates that the type of issue in dispute can constitute an important variable in shaping the course of interstate hostilities. The first generation of empirical scholarship on the origins of war did not consider this dimension. Political scientists instead concentrated on features of the international system (for example, the distribution of power among states) and on the characteristics of states (for example, forms of domestic governance structures) as the key explanatory variables. Research agendas broadened considerably, however, in subsequent years. More recently, ‘[s]everal studies have identified substantial differences in conflict behavior over different types of issues’.101 The available evidence shows that states are significantly more inclined to fight over particular types of issues that are elevated in a dispute, despite likely overall material and strategic losses.102 Academic studies have also illuminated possible causal explanations for these empirical patterns. Specifically, domestic (popular and elite) constituencies more readily support bellicose behavior by their government when certain salient cultural or ideological issues are in contention. Particular issue areas may also determine the expert communities (humanitarian versus security mindsets) that gain influence in governmental circles – a development that can shape the hard-line or soft-line strategies adopted in the course of the dispute. In short, these links between domestic political processes and the framing of international disputes exert significant influence on whether conflicts will eventually culminate in war.

Third, a large body of empirical research demonstrates that states will routinely engage in interstate disputes with rivals and that those disputes which are framed through security and strategic rationales are more likely to escalate to war. Indeed, the inclusion of a humanitarian rationale provides windows of opportunity to control and deescalate a conflict. Thus, eliminating or demoting a humanitarian rationale from a mix of justifications (even if it is not replaced by another rationale) can be independently destabilizing. Espousing or promoting security rationales, on the other hand, is more likely to culminate in public demands for increased bellicosity, unintended security spirals, and military violence.103

Importantly, these effects may result even if one is skeptical about the power of international law to influence state behavior directly. It is reasonable to assume that international law is unlikely to alter the determination of a state to wage war, and that international law is far more likely to influence only the justificatory discourse states employ while proceeding down the warpath. However, as I argue in my earlier work, leaders (of democratic and nondemocratic) states become caught in their official justifications for military campaigns. Consequently, framing the resort to force as a pursuit of security objectives, or adding such issues to an ongoing conflict, can reshape domestic political arrangements, which narrows the subsequent range of policy options. Issues that initially enter a conflict due to disingenuous representations by political leaders can become an authentic part of the dispute over time. Indeed, the available social science research, primarily qualitative case studies, is even more relevant here. A range of empirical studies demonstrate such unintended consequences primarily in the case of leaders employing security-based and strategic rationales to justify bellicose behavior.104 A central finding is that pretextual and superficial justifications can meaningfully influence later stages of the process that shape popular and elite conceptions of the international dispute. And it is those understandings that affect national security strategies and the ladder of escalation to war. Indeed, one set of studies – of empires – suggests these are mechanisms for powerful states entering into disastrous military campaigns that their leaders did not initially intend.

#### Self-defense regime collapse causes global war—US TK legal regime key—only Congress solves international norm development

Beau Barnes, J.D., Boston University School of Law, Spring 2012, REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE, https://www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/20a66345129fe3d885256e5b00571830/b7396120928e9d5e85257a700042abb5/$FILE/By%20Beau%20D.%20Barnes.pdf

Therefore, the more likely result is that the Executive Branch, grappling with the absence of explicit legal authority for a critical policy, would need to make increasingly strained legal arguments to support its actions.121 Thus, the Obama Administration will soon be forced to rationalize ongoing operations under existing legal authorities, which, I argue below, will have significant harmful consequences for the United States. Indeed, the administration faces a Catch-22—its efforts to destroy Al Qaeda as a functioning organization will lead directly to the vitiation of the AUMF. The administration is “starting with a result and finding the legal and policy justifications for it,” which often leads to poor policy formulation.122 Potential legal rationales would perforce rest on exceedingly strained legal arguments based on the AUMF itself, the President’s Commander in Chief powers, or the international law of selfdefense.123 Besides the inherent damage to U.S. credibility attendant to unconvincing legal rationales, each alternative option would prove legally fragile, destabilizing to the international political order, or both.

1. Effect on Domestic Law and Policy

Congress’s failure to reauthorize military force would lead to bad domestic law and even worse national security policy. First, a legal rationale based on the AUMF itself will increasingly be difficult to sustain. Fewer and fewer terrorists will have any plausible connection to the September 11 attacks or Al Qaeda, and arguments for finding those connections are already logically attenuated. The definition of those individuals who may lawfully be targeted and detained could be expanded incrementally from the current definition, defining more and more groups as Al Qaeda’s “co-belligerents” and “associated forces.”124 But this approach, apart from its obvious logical weakness, would likely be rejected by the courts at some point.125 The policy of the United States should not be to continue to rely on the September 18, 2001, AUMF.

Second, basing U.S. counterterrorism efforts on the President’s constitutional authority as Commander in Chief is legally unstable, and therefore unsound national security policy, because a combination of legal difficulties and political considerations make it unlikely that such a rationale could be sustained. This type of strategy would likely run afoul of the courts and risk destabilizing judicial intervention,126 because the Supreme Court has shown a willingness to step in and assert a more proactive role to strike down excessive claims of presidential authority.127 Politically, using an overly robust theory of the Commander in Chief’s powers to justify counterterrorism efforts would, ultimately, be difficult to sustain. President Obama, who ran for office in large part on the promise of repudiating the excesses of the Bush Administration, and indeed any president, would likely face political pressure to reject the claims of executive authority made “politically toxic” by the writings of John Yoo.128 Because of the likely judicial resistance and political difficulties, claiming increased executive authority to prosecute the armed conflict against Al Qaeda would prove a specious and ultimately futile legal strategy. Simply put, forcing the Supreme Court to intervene and overrule the Executive’s national security policy is anathema to good public policy. In such a world, U.S. national security policy would lack stability—confounding cooperation with allies and hindering negotiations with adversaries.

There are, of course, many situations where the president’s position as Commander in Chief provides entirely uncontroversial authority for military actions against terrorists. In 1998, President Clinton ordered cruise missile strikes against Al Qaeda-related targets in Afghanistan and Sudan in response to the embassy bombings in Kenya and Tanzania. In 1986, President Reagan ordered air strikes against Libyan targets after U.S. intelligence linked the bombing of a Berlin discotheque to Libyan operatives.129 Executive authority to launch these operations without congressional approval was not seriously questioned, and no congressional approval was sought.130 To be sure, many of the targeted killing operations carried out today fall squarely within the precedent of past practice supplied by these and other valid exercises of presidential authority. Notwithstanding disagreement about the scope of Congress’s and the president’s “war powers,” few would disagree with the proposition that the president needs no authorization to act in selfdefense on behalf of the country. However, it is equally clear that not all terrorists pose such a threat to the United States, and thus the on terror,”137 further distancing counterterrorism operations from democratic oversight would exacerbate this problem.138 Indeed, congressional oversight of covert operations—which, presumably, operates with full information—is already considered insufficient by many.139 By operating entirely on a covert basis, “the Executive can initiate more conflict than the public might otherwise [be] willing to support.”140

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 Only then can the President’s efforts be sustained and legitimate.

2. Effect on the International Law of Self-Defense

A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of selfdefense—the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144

This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the Obama Administration has disclaimed this manner of broad authority because the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’”146 relying solely on the international law of self defense would likely lead to precisely such a result.

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148

Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152

Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the obsolescence of the AUMF would force the United States into an “aggressive interpretation” of international legal authority,157 not just discrediting its own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world.158

#### Strong LOAC regime key to stable goldilocks on autonomous weapons systems - a total ban fails

Anderson and Waxman 11/5/13

Mr. Anderson is a law professor at American University and a senior fellow of the Brookings Institution. Mr. Waxman is a professor at Columbia Law School and a fellow at the Council on Foreign Relations. Both are members of the Hoover Institution Task Force on National Security and Law, Real Clear Defense, November 5, 2013, "Killer Robots and the Laws of War", http://www.realcleardefense.com/articles/2013/11/05/killer\_robots\_and\_the\_laws\_of\_war\_106946.html

Computerized weapons capable of killing people sound like something from a dystopian film. So it's understandable why some, scared of the moral challenges such weapons present, would support a ban as the safest policy. In fact, a ban is unnecessary and dangerous.

No country has publicly revealed plans to use fully autonomous weapons, including drone-launched missiles, specifically designed to target humans. However, technologically advanced militaries have long used near-autonomous weapons for targeting other machines. The U.S. Navy's highly automated Aegis Combat System, for example, dates to the 1970s and defends against multiple incoming high-speed threats. Without them, a ship would be helpless against a swarm of missiles. Israel's Iron Dome missile-defense system similarly responds to threats faster than human reaction times permit.

Contrary to what some critics of autonomous weapons claim, there won't be an abrupt shift from human control to machine control in the coming years. Rather, the change will be incremental: Detecting, analyzing and firing on targets will become increasingly automated, and the contexts of when such force is used will expand. As the machines become increasingly adept, the role of humans will gradually shift from full command, to partial command, to oversight and so on.

This evolution is inevitable as sensors, computer analytics and machine learning improve; as states demand greater protection for their military personnel; and as similar technologies in civilian life prove that they are capable of complex tasks, such as driving cars or performing surgery, with greater safety than human operators.

But critics like the Campaign to Stop Killer Robots believe that governments must stop this process. They argue that artificial intelligence will never be capable of meeting the requirements of international law, which distinguishes between combatants and noncombatants and has rules to limit collateral damage. As a moral matter, critics do not believe that decisions to kill should ever be delegated to machines. As a practical matter, they believe that these systems may operate in unpredictable, ruthless ways.

Yet a ban is unlikely to work, especially in constraining states or actors most inclined to abuse these weapons. Those actors will not respect such an agreement, and the technological elements of highly automated weapons will proliferate.

Moreover, because the automation of weapons will happen gradually, it would be nearly impossible to design or enforce such a ban. Because the same system might be operable with or without effective human control or oversight, the line between legal weapons and illegal autonomous ones will not be clear-cut.

If the goal is to reduce suffering and protect human lives, a ban could prove counterproductive. In addition to the self-protective advantages to military forces that use them, autonomous machines may reduce risks to civilians by improving the precision of targeting decisions and better controlling decisions to fire. We know that humans are limited in their capacity to make sound decisions on the battlefield: Anger, panic, fatigue all contribute to mistakes or violations of rules. Autonomous weapons systems have the potential to address these human shortcomings.

No one can say with certainty how much automated capabilities might gradually reduce the harm of warfare, but it would be wrong not to pursue such gains, and it would be especially pernicious to ban research into such technologies.

That said, autonomous weapons warrant careful regulation. Each step toward automation needs to be reviewed carefully to ensure that the weapon complies with the laws of war in its design and permissible uses. Drawing on long-standing international legal rules requiring that weapons be capable of being used in a discriminating manner that limits collateral damage, the U.S. should set very high standards for assessing legally and ethically any research and development programs in this area. Standards should also be set for how these systems are to be used and in what combat environments.

If the past decade of the U.S. drone program has taught us anything, it's that it is crucial to engage the public about new types of weapons and the legal constraints on their design and use. The U.S. government's lack of early transparency about its drone program has made it difficult to defend, even when the alternatives would be less humane. Washington must recognize the strategic imperative to demonstrate new weapons' adherence to high legal and ethical standards.

This approach will not work if the U.S. goes it alone. America should gather a coalition of like-minded partners to adapt existing international legal standards and develop best practices for applying them to autonomous weapons. The British government, for example, has declared its opposition to a treaty ban on autonomous weapons but is urging responsible states to develop common standards for the weapons' use within the laws of war.

Autonomous weapons are not inherently unlawful or unethical. If we adapt legal and ethical norms to address robotic weapons, they can be used responsibly and effectively on the battlefield.

#### Autonomous weapons make war obsolete in the long-term but stabilizing the transition is key - irresponsible usage causes short-term extinction

Krishnan 09

Armin Krishnan is a Senior Research Assistant in the National Centre for Research Methods at the University of Southampton, UK, Killer Robots: Legality and Ethicality of Autonomous Weapons, 2009, pg. 166-67

Conclusion: The Challenge Ahead

This book has developed the hypothesis of the ‘killer robot': an autonomous weapon that can pick its targets by itself and that can trigger itself. Strictly speaking. there are no such weapons deployed, but the technology for them is already available and it has been available for decades. However, now it is more likely than ever before that robotic weapons will be fielded, as Al could make them smart enough to be militarily useful. They will generally enable many military organizations to use force without putting human lives at risk. The use of robots will allow the removal of many psychological aspects of combat, for better or worse. Robots might also prove vastly superior to humans on the battlefield, being able to shoot much faster and more accurately. In short, ‘unmanned combat' could represent a major discontinuity in the history of warfare.

The current situation of an impending Revolution in Military Affairs (RMA) triggered by IT, robotics, Al and nanotechnology in some aspects resembles the situation immediately after the Second World war. When the nuclear bomb was invented political decision-makers did not fully understand its strategic implications. In fact, the Truman Administration did not have any clear doctrine governing the use of nuclear weapons and it was only in the mid-1950s that the US developed a proper nuclear doctrine. For about 10 years, it was not clear under which exact circumstances and how the US would use nuclear weapons in defense of its interests. As a result, the world almost slithered into the abyss of nuclear war more than once. Politics was simply not ready for the nuclear age. But is politics ready for the age of robotic warfare? One can have serious doubts about it (Asaro 2008b). In the worst case, robotic warfare could weaken deterrents and encourage political and military risk-taking. The use of force might once again become a frequent tool of foreign policy.

Preventing this from happening will require a debate on the moral foundations of warfare, or military ethics. Some applications of technologies like robotics and nanotechnology are incompatible with the military ethos that is still based on the ideal of chivalry. Chivalrous conduct in war is not to kill the enemy at long range with zero risk, but is based on the willingness to fight fairly and to risk as much as the opponent, namely your own life. Only if lives are at stake will there be effective deterrents to the use of force. Of course, fairness in war is not a requirement of international law and the idea certainly seems odd to political and military decision-makers. However, it is still the best argument against an increasing and eventually complete automation of warfare. Using robots for killing people in war is wrong not because international law says so (in fact it doesn't). but because it is inherently unfair. Now could be the right time to bring back the ideals of chivalry and fairness to the discussion on military ethics. This might make many military organizations reconsider their current aims of using robotic systems in combat roles. If Western armed forces do not deploy such systems offensively, then many other states around the world might not feel pressured to develop advanced robotic weapons.

At the same time, there are certainly legitimate uses and roles for unmanned systems (including armed robots) and it would be irrational not to use them for specific purposes, such as guarding bases and borders or for some narrow roles in high-intensity warfare. Not all about them is bad. Even more, it would be unethical to send a human soldier into an environment that is too harsh or no longer survivable for humans. To rephrase Napoleon, robots can be made to be killed. Military robots are also ethically a better alternative to the 'cyborgization’ of soldiers, which effectively turns humans into little more than sophisticated pieces of military equipment or government property. In the very long term, robotic weaponry could eventually make war impossible. Until then it will be crucial not to discard the human element in war and not to forget the moral responsibility one has, even toward their own the enemy.

Harry Truman wrote a note after watching the first nuclear test in New Mexico in 1945: ‘machines are ahead of morals by some centuries, and when morals catch up perhaps there'll be no reason for any of it' (quoted in Gaddis 2005, 53). In the context of the possible advent of strong Al and intelligent killer robots, Truman’s words seem menacingly true. The world was not prepared for the invention of the nuclear bomb and it is hardly prepared for the possibilities and temptations afforded by further runaway technological progress. There are good reasons to be concerned about military robotics and future ‘killer robots’ and it will be challenging to bypass the various roads to hell.

Robust IHRL regime key to resolve climate refugee crises

Docherty & Giannini 12 (Bonnie Docherty is a lecturer on law and senior clinical instructor in the Harvard Law School International Human Rights Clinic. Tyler Giannini is a clinical professor and clinical director of the Harvard Law School Human Rights Program, “YJIL Symposium: Human Rights and Climate Change Adaptation at the international Level” June 26, 2012,Yale Journal of International Law Volume 37, Issue 2 symposium, Opinio Juris)

In their thought-provoking article “Avoiding Apartheid: Climate Change Adaptation and Human Rights Law,” Margaux Hall and David Weiss argue that human rights law has more to offer climate change adaptation than mitigation. The authors also stress that unless a human rights approach is used, the specter of “adaptation apartheid” looms. They are not the first to apply human rights to adaptation, but they advance the discussion about why the rights framework is a better fit in this context. To prove their point, the authors focus primarily on examples of national adaptation policy and questions of legal liability. **Human rights law**, however, **can** also **bolster international adaptation efforts**, including the creation of new treaties.

Part of the article warns of the dangers of not using a human rights framework in the adaptation context. The title speaks of “apartheid,” and parts of the piece illustrate why particularly vulnerable populations are likely to suffer disproportionate harm from climate change. Hall and Weiss do not fully explore the legal and normative ramifications of bringing an apartheid framework to bear on the issue of climate change, however. It would be interesting to see the authors, perhaps in a follow-up article, unpack questions raised by the use of the word apartheid, which is most often associated with an institutionalized legal regime of separating the races for the purpose of systematic oppression. For example, how do discussions of the climate change legal regime and the disparate impacts along geographic and gender lines relate to traditional uses and understandings of the term apartheid?

The bulk of the authors’ text focuses on approaching the problem of climate change adaptation from a human rights perspective, highlighting national initiatives and touching on possible international ones. The issue of climate change refugees provides an excellent case study of how a human rights framework could work at the international level. **Experts predict that climate change will lead to the migration of tens, and maybe hundreds, of millions of people, many of whom will cross national borders**. The authors note that recognition of climate change refugees is an example of “how human rights could begin to play a concrete role in climate negotiations,” but they do not explore the topic in depth. In “Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees,” we lay out the components and negotiation process for a proposed instrument on climate change refugees. We also note that an integrated approach that blends efforts to mitigate and adapt is needed. The proposal draws on human rights for essential protections, assignment of state responsibility, and procedural elements.

Protecting human rights is an important part of our proposed international instrument. Borrowing from the Refugee Convention’s principles, we argue the instrument should guarantee civil and political rights, such as access to courts and freedom of association, which provide tools for refugees to protect their own interests. In addition, the instrument should articulate economic, social, and cultural rights, which are crucial for the refugees’ survival in their new home. These rights should ensure assistance ranging from rations to housing to education to employment benefits. Freedom of movement should also be guaranteed, and under the principle of non-refoulement, climate change refugees should not be forced to return to their home state. States parties should apply all of these provisions in a way that does not discriminate against members of particular groups, another key element of a human rights framework. Significantly, human rights law shifts the focus from relations between states to relations between states and individuals. Identifying discrimination between states, for example, requires a different analysis than examining whether there is discrimination (either de jure or de facto) against a particular group, such as women.

Our proposal’s model of shared responsibility also draws from **international human rights law**. Hall and Weiss argue that human rights law **is useful for adaption** in part **because it imposes “vertical” duties on a state to protect people within its borders**. Our proposal similarly recommends that the host state into which climate change refugees flee should bear primary responsibility for their care. At the same time, we call for international cooperation and assistance, which has some precedent in human rights law, to help spread the burden. Hall and Weiss discuss such “diagonal” responsibility in the mitigation context but question it there because it is difficult to enforce. We believe that diagonal responsibility should not be dismissed in the adaptation context, however, because it can bolster protections when it serves as a supplement to rather than substitute for vertical responsibility.

Finally, a human rights approach can inform the processes underlying an international climate change refugee instrument. Our proposal looks to participatory rights in multiple ways. We recommend creation of a coordinating agency to support implementation of the convention; the agency should not only work with governments, but should also consult with climate change refugees themselves and involve them in decision-making. In addition, our suggested treaty negotiation process would be an inclusive one that would rely heavily on the input of both civil society and affected individuals. Our proposal on this front echoes some of the advantages, discussed by Hall and Weiss, of applying a human rights approach to adaptation. In particular, the authors argue that a human rights framework would involve affected communities in decision-making and establish accepted standards that lead to political mobilization.

Creates international conflicts that result in extinction

Atapattu 8 (Sumudu, Associate Director, Global Legal Studies Center, University of Wisconsin Law School; Lead Counsel, Poverty and Human Rights, Center for International Sustainable Development Law, Montreal; formerly, Senior Lecturer, Faculty of Law, University of Colombo, Sri Lanka; and Consultant, Law & Society Trust, Colombo, Sri Lanka, “Article: Global Climate Change: Can Human Rights (and Human Beings) Survive this Onslaught?” Fall 2008, 20 COLO. J. INT'L ENVTL. L. & POL'Y 35)

Today, the occurrence of global climate change is no longer challenged. Rather, the debate in the global community now centers on "how much change" and "when will this change occur?" The present erratic climate patterns, including the increased incidence of hurricanes and storms, the melting of polar ice caps, and very warm summers have all been attributed to climate change. n3 While some of these changes may be the result of natural causes, there is no longer serious doubt that human activity has exacerbated this problem. n4

The human costs of global climate change will be astronomical. These range from the very survival of human beings to adapting to different livelihoods, crops, cultural practices, and different lifestyles, as well as displacement and migration on a massive scale. n5 Thus, a broad range of human rights may be violated as a result of global climate change. Moreover, **adaptation strategies** - as it is no longer possible to rely solely on mitigation measures - **must** themselves **be informed by a human rights approach in order to ensure that they do not further violate the protected rights of vulnerable communities**. n6 Despite the clear link between global climate change and human rights, it was not until recently that the debate on climate change has been framed within the human rights discourse. It was only in April 2008 that the United Nations Human Rights Council discussed the issue of climate change and requested that the Office of the High Commissioner for Human Rights [\*38] submit "a detailed analytical study of the relationship between climate change and human rights" to the Council prior to its tenth session. n7

This Article seeks to discuss the impact that global climate change has on the realization of human rights and its implications for international law. It discusses the potential rights violations resulting from climate change, the international community's response to this serious problem, the adequacy of that response, and how international law-makers must respond to the threat posed by climate change, particularly in relation to international peace and security. The increasing challenge posed by the emergence of a new category of displaced persons - environmental refugees who have become displaced as a result of either a natural disaster or who are fleeing a place that can no longer sustain them - will not be discussed in detail here as it has been covered elsewhere by the author. n8 It is also predicted that global climate change will play a major role in increasing the incidence of conflict, thereby undermining regional and/or international peace and security. n9 In short, global climate change can give rise to complex, interwoven issues at the international level. **The question is: can the present international legal order cope with these challenges?**

Given that these concerns cut across a wide spectrum of issues - environmental, economic and social - global climate change poses a [\*39] particular challenge to sustainable development. n10 In other words, climate change can undermine the very process of sustainable development that the international community endorsed at the Rio Conference on Environment and Development in 1992, n11 and reiterated at the World Summit on Sustainable Development in 2002. n12

The human focus of this paper should not be taken as an acknowledgement that other species or ecosystems are not important. While advocating for an ecocentric approach to environmental problems, n13 this paper focuses on human beings in order to draw attention to the devastating consequences of this human-made catastrophe. Drastic action is needed now to deal with the consequences of climate change, in the form of both mitigation and adaptation. n14

II. Global Climate Change - Facts and Myths n15

In a report released in 2006, the World Meteorological Organization ("WMO") stated that the "heat-trapping greenhouse gases in the atmosphere reached a record high in 2005 and are still increasing." n16 According to this report, there are no signs that increases in nitrous oxide or carbon dioxide levels are slowing down. Despite some attempt at reducing greenhouse gases, n17 such gases have continued to rise. As a [\*40] result of the accumulation of these gases the atmosphere has become like a greenhouse, trapping solar radiation and causing the temperature of the Earth to slowly rise over the years. The negative impacts of this gradual warming of the Earth's surface include: melting polar glaciers causing the sea level to rise; changes in the world's weather patterns, leading to an increased incidence of hurricanes, storms, and cyclones; increasing incidence of disease as a result of changing weather patterns and increased temperature; and increasing prevalence of many vector-borne, food-borne and water-borne infectious diseases which are sensitive to changes in climatic conditions - malaria and dengue are expected to increase along with heat-related deaths and illnesses, particularly in urban populations. n18

Furthermore, increased flooding will not only increase the risk of death by drowning, but also the risk of diarrhea and respiratory diseases, as well as hunger and malnutrition in developing countries. n19 Climate change is also projected to diminish crop yields and food production in some regions, particularly in the tropics, resulting in malnutrition, impaired child development, and in some cases, loss of livelihood which, in turn, would lead to other socioeconomic problems. Diminished crop yield will have implications for trade and economic development as well as for food security.

In a special report on global warming in April 2006, Time magazine warned that the Earth is at the tipping point. n20 According to the report, polar ice caps are melting faster than ever, more land is being devastated by drought, and rising waters are drowning low-lying communities:

From heat waves to storms to floods to fires to massive glacial melts, the global climate seems to be crashing around us. Scientists have been calling this shot for decades. This is precisely what they have been warning would happen if we continued pumping greenhouse gases into the atmosphere, trapping the heat that flows in from the sun and raising global temperatures. n21

Three factors point to the need for urgent action: "societies are becoming increasingly interdependent; the climate system is changing; [\*41] and losses associated with climatic hazards are rising." n22 Increased societal interdependency poses both positive and negative effects. Among the positive consequences are the increased mobility of societies and the easier movement of labor and products. Challenges are presented by the difficulty in containing environmental crises, as everything is interrelated and interdependent. Thus, a local environmental issue could become a global issue because of this interdependency. Global climate change is a prime example of this relationship. Two to three decades ago, the energy policy of a country was considered an internal matter. Deforestation, land use, industrial pollution, vehicular emissions, and farming industries were also considered internal issues. We now know that all these internal policies and activities have created a global "monster" - global climate change.

In its latest report, the IPCC stated unequivocally:

Global atmospheric concentrations of CO2 [carbon dioxide], methane (CH4) and nitrous oxide (N2O) have increased markedly as a result of human activities since 1750 and now far exceed pre-industrial values determined from ice cores spanning many thousands of years... . Global increases in carbon dioxide concentrations are due primarily to fossil fuel use, with land-use change providing another significant but smaller contribution. It is very likely that the observed increase in CH4 concentration is predominantly due to agriculture and fossil fuel use. n23

Thus, there seems to be little doubt that global climate change due to human activity is taking place today. However, most consequences of this change will be gradual and will be felt in years to come. It is not clear exactly what the consequences will be or when they will materialize. What seems certain, however, is that global climate change is taking place now and the poorer sectors of society will bear a disproportionate share of the burden. n24 Among those affected by climate change are indigenous communities, such as the Inuit in the Arctic. Thinning ice caused by rising arctic temperatures and shifting winds [\*42] have put the traditional hunting patterns of thousands of years in jeopardy. n25

The IPCC refers to some of the impacts of global climate change as follows: in Africa between seventy-five and 250 million people will be exposed to increased water stress by 2020; towards the end of the twenty-first century, large populations in low-lying coastal areas will be affected by sea-level rise, and the cost of adaptation could amount to at least five to ten percent of the Gross Domestic Product. In Asia, by 2050, the availability of freshwater will decrease, coastal areas will be at great risk due to increased flooding, and the pressures on natural resources will increase. In Latin America, by mid-century, an increase in temperature and a decrease in soil water could lead to the replacement of tropical forest by savanna. There are also significant risks of biodiversity loss and adverse consequences on food production due to decreased productivity of important crops and livestock. In addition, water availability for human consumption, agriculture and energy generation is projected to be significantly affected. n26

In a report on climate change and human health, the World Health Organization ("WHO"), the United Nations Environmental Program ("UNEP") and the WMO demonstrate the magnitude of the problem and the intrinsic links between the disparate impacts of climate change. This, in turn, highlights the need to adopt an integrated approach to climate change:

By contrast, the public health consequences of the disturbance of natural and managed food-producing ecosystems, rising sea-levels and of population displacement for reasons of physical hazard, land loss, economic disruption and civil strife may not become evident for up to several decades. n27

III. International Response

Two binding international instruments comprise the international legal framework governing climate change: the UN Framework [\*43] Convention on Climate Change n28 ("UNFCCC") adopted at the Rio Conference on Environment and Development in 1992 and the Kyoto Protocol n29 adopted in 1997. These documents reflect a trend in international environmental law of adopting a framework convention first with general objectives and principles followed by a protocol within that framework embodying more specific obligations. n30

The UNFCCC recognizes the need to protect human health and welfare in addition to protecting the environment from the adverse effects of climate change. Acknowledging that climate is "a common concern of humankind," n31 the main objective of the UNFCCC is to achieve the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropocentric interference with the climate system. n32 Particular emphasis is placed on the need to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Article 3 of the UNFCCC embodies the principles that guide the parties to the Agreement: the climate system shall be protected for the benefit of present and future generations of humankind; the special needs and circumstances of developing countries must be given full consideration; precautionary measures must be adopted to mitigate the adverse effects of climate change; and finally, the parties have a right to, and should, promote sustainable development. n33 The UNFCCC specifically notes that full account must be taken of "the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty." n34

The UNFCCC as a whole reflects the influence of sustainable development. n35 While almost all environmental treaties make the link [\*44] between environmental issues and human health, n36 only post-Rio instruments make a link between environmental issues and socioeconomic issues such as poverty and under-development. Participatory rights n37 also play an important role here. This is a direct result of the emergence of sustainable development as a framework governing the environmental decision-making process. While an in-depth discussion of sustainable development is beyond the scope of this paper, suffice it to note that sustainable development encompasses economic development, social development and environmental protection. n38 These three components are considered to be "interdependent and mutually reinforcing pillars of sustainable development." n39 There is no doubt that climate change threatens all three pillars.

Given its close link with economic development and its far-reaching and, in some instances, irreversible consequences on human beings and the environment, it seems that the climate change regime is not simply an environmental regime, but also a sustainable development regime. For this reason, climate change is a good case study of the impacts of a sustainable development regime on the environment, human beings and other species, and the economy. Since the present discussion is on the link between climate change and human rights, no detailed analysis will be made of the international instruments governing climate change other than to note that the international community will have to ensure that high greenhouse gas emitters - whether they are developing countries n40 [\*45] or developed countries - participate in the post-Kyoto regime. It is encouraging to note that at the UN Climate Change Conference in Bali in December 2007, all parties recognized that deep cuts in global emissions would be required to achieve the objective of the Convention. n41 Moreover, developing countries recognized for the first time the need to cut down on their greenhouse gas emissions, albeit in very cautious language. The parties decided to initiate enhanced national and international action on mitigation of climate change, including consideration of "nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner." n42

IV. Protected Rights Affected By Climate Change

Virtually the whole gamut of human rights protected under international law - civil and political rights; economic, social and cultural rights; and perhaps even third generation rights to the extent such rights are accepted by the international community - may be affected as a result of climate change. This section analyzes these rights and discusses some of the case law that has emerged in this area. Before doing so, however, it is necessary to discuss what a rights-based approach adds to the discussion on climate change.

A rights-based approach may provide a conceptual framework for policies on climate change, "which is normatively based on international human rights standards and which is practically directed to promoting and protecting human rights." n43 The added value of a rights-based approach is as follows: it gives a human face to the issue, focuses on excluded and marginalized groups, encourages accountability and transparency in policy decisions, encourages participatory and democratic processes, and provides sustainable outcomes by building on the capacity of key stakeholders. n44

 [\*46]

A. Right to Life

The most fundamental of all rights is the right to life. It is protected under Article 6 of the International Covenant on Civil and Political Rights n45 ("ICCPR"), as well as under regional human rights treaties, and is considered a peremptory norm of international law. n46 It is one of the few rights from which no derogation is possible, even in times of an emergency. n47 It is the right from which all other rights flow and is one of the rights that constitutes "the irreducible core of human rights." n48

The above discussion shows that as a result of climate change, the right to life of people all over the world will be at risk due to increased incidence of hurricanes, cyclones, flooding, heat waves, increased air pollution, and vector borne diseases. The Inuit case, which is discussed further in Part IV.F.2, highlights this link. The petitioners in this case - Inuit people from the United States and Canada - argued that they are facing extinction and have become endangered because of climate change. n49 Drawing a clear link between environmental degradation and their very survival, the petitioners further argued that:

One of the most significant impacts of warming in the Arctic has been on sea ice. Commonly observed changes include thinner ice, less ice, later freezes and earlier, more sudden thaws. Sea ice is a critical resource for the Inuit, who use it to travel to hunting and harvesting locations, and for communication between communities. Because of the loss in the thickness, extent and duration of the sea [\*47] ice, these traditional practices have become more dangerous, more difficult or, at times, impossible. In many regions, traditional knowledge regarding the safety of the sea ice has become unreliable. As a result, more hunters and other travelers are falling through the sea ice into the frigid water below. The shorter season for safe sea ice travel has also made some hunting and harvest activities impossible, and curtailed others. For the Inuit, the deterioration in sea ice conditions has made travel, harvest, and everyday life more difficult and dangerous. n50

Small island states are arguably the most at risk of being submerged as a result of climate change. In the Male Declaration on the Human Dimension of Global Climate Change, the Small Island Developing States expressed their concern as follows:

Concerned that climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life, the right to take part in cultural life, the right to sue and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health. n51

In other words, those who are living in these countries run the risk of a violation of their right to life. However, because this is a gradual process, we can reduce this risk by developing proper adaptation strategies which ensure the protection of the human rights of these vulnerable communities.

Thus, while the right to life of people will be violated in extreme cases related to climate change - and in the case of the Inuit this is already happening - we could minimize these violations with proper adaptation strategies and proactive measures.

B. Right to Health

While the link between climate and human health has been recognized for centuries, the present debate is centered on the scale of the change and the man-made nature of the problem. Although there have been many historical accounts of famines and malnutrition associated with climatic fluctuations, the present situation must be [\*48] distinguished from these past fluctuations. n52 Global climate change will permanently increase the global temperature by a few degrees, resulting in catastrophic consequences.

The WHO defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." n53 Upon ratifying the WHO Constitution, states accept a set of nine principles that are basic to the happiness, harmonious relations and security of all peoples. Two such principles are:

1. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

2. The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States. n54

Thus, health has been defined widely, encompassing physical, mental and social well-being. The WHO Constitution also recognizes the link between health, peace and security, as well as happiness and harmonious relations. n55 The objective of the WHO is for all peoples to attain the highest possible level of health. n56 In recent years, the WHO has interpreted its mandate widely by taking into account the link between health, socioeconomic development, and human security. n57 The following issues are identified as forming part of the WHO agenda: promoting development; fostering health security; strengthening health [\*49] systems; harnessing research, information and evidence; enhancing partnerships; and improving performance. n58

The agenda also recognizes the vicious cycle of poverty: poverty contributes to poor health and "poor health anchors large populations in poverty." n59 The WHO agenda stresses that health development must be based on equity: "access to life-saving or health-promoting interventions should not be denied for unfair reasons." n60 In addition, health services must reach poor and marginalized populations.

Article 12 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") embodies the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. n61 This right differs considerably from the definition of health in the WHO Constitution, as Article 12 makes no reference to social wellbeing, although Article 11 enshrines the right of everyone to an adequate standard of living. n62 It is not clear whether this amounts to social wellbeing. However, whatever the precise content of the right, it is clear that the right to health under ICESCR will be jeopardized as a result of climate change.

The WHO has clearly recognized the health risks associated with climate change:

The first detectable changes in human health may well be alterations in the geographic range (latitude and altitude) and seasonality of certain vector-borne infectious diseases. Summer-time food-borne infections (e.g., salmonellosis) may show longer-lasting annual peaks. There has been debate, as yet unresolved, over whether recent increases of malaria and dengue in highland regions around the world may be due to climate factors or other factors ... Hot weather would amplify the production of noxious photochemical smog in urban areas, and warmer summers would increase the incidence of food poisoning. n63

 [\*50] The range of health effects that may be caused by climate change clearly shows that the right to mental and physical health will be affected as a result of climate change. While the link between climate change and health has been recognized for sometime by the WHO, n64 it is only recently that climate change has been considered a global health problem with ethical dimensions. n65

C. Right to Food and Water

Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living including adequate food, clothing, and housing, and to the continuous improvement of living conditions. n66 It also refers to the fundamental right of everyone to be free from hunger. While water is not specifically mentioned here, people cannot survive without water, and in 2002 the United Nations Human Rights Committee recognized that access to water is a basic human right as well. n67

As noted above, the IPCC has determined that millions of people in Africa, Asia, and Latin America will be subject to water stress as a result of climate change. n68 World crop production, particularly cereal production, would be severely affected as a result of climate-related change in water availability, which, in turn, will have impacts on health - in the form of malnutrition and disease - as well as on economic development and trade. Water is essential to life, yet it is becoming increasingly scarce. Climate change will exacerbate the situation. The United Nations Development Program ("UNDP") noted the seriousness of the situation:

Water, the stuff of life and a basic human right, is at the heart of a daily crisis faced by countless millions of the world's most vulnerable people - a crisis that threatens life and destroys livelihoods on a devastating scale.

Unlike wars and natural disasters, the global crisis in water does not make media headlines. Nor does it galvanize concerted international [\*51] action. Like hunger, deprivation in access to water is a silent crisis experienced by the poor and tolerated by those with the resources, the technology and the political power to end it. Yet this is a crisis that is holding back human progress, consigning large segments of humanity to lives of poverty, vulnerability and insecurity. This crisis claims more lives through disease than any war claims through guns. n69

The UNDP excerpt highlights the magnitude of the problem that undermines the realization of many protected rights, including the rights to water, food, health, development, environment, and livelihood. Similar to human security, n70 the debate on water has been moving towards accepting the concept of "water security," which seeks to ensure that every person has "reliable access to enough safe water at an affordable price to lead a healthy, dignified and productive life, while maintaining the ecological systems that provide water and also depend on water." n71

The statistics are staggering: 1.8 million children die each year as a result of diseases associated with unclean water and poor sanitation. n72 The number of people that die as a result of violent conflict and natural disasters - disturbing as the numbers are - is minuscule compared to the number of people that die as a result of water-borne diseases. The saddest part is that these deaths are easily preventable. While public health pandemics such as HIV/AIDS and avian flu have received considerable international attention, the crisis of water-borne disease has received minimal attention. n73 The UNDP posits this may be due to the fact that this is a primarily poverty-related issue occurring in poor countries. n74

Recognizing the magnitude of the problem, the international community pledged in the United Nations Millennium Development Goals to halve the number of people without access to clean drinking water and sanitation by 2015. Although we are past the half-way mark towards the deadline, there is little evidence that much progress has been made in addressing the problem. It is also necessary to recognize how this goal relates to other goals in the Millennium Declaration. For example, having access to clean water and sanitation would save the [\*52] lives of many children, support progress in education as many children miss school due to ill-health and their learning capacity becomes diminished, n75 and free people from illnesses that perpetuate their poverty.

The UNDP report highlights that "apart from the highly visible destructive impacts on people, water insecurity violates some of the most basic principles of social justice." n76 These principles are equal citizenship, the social minimum, equality of opportunity, and fair distribution of resources.

So how does climate change affect this picture? Climate change will alter weather patterns, with more land being devastated by drought on the one hand, and rising waters drowning low-lying communities on the other. Both scenarios will lead to water scarcity and disease, if not death, in some cases. It is not difficult to see how the right to water and food would be affected as a result of climate change.

D. Right to a Livelihood

The right to a livelihood is codified in Article 6 of the ICESCR, which recognizes the right of everyone to work, n77 while Article 7 refers to the universal right to the enjoyment of just and favorable working conditions. n78

It is generally accepted that drought and flooding resulting from climate change will force people to abandon livelihoods such as fishing, farming, and agricultural or livestock businesses. This is likely to result in people abandoning their land, forcing them into poverty which, in turn, will lead to conflict over scarce natural resources and eventually migration. n79 This situation will be exacerbated for indigenous groups [\*53] who depend on their land for survival. The Inuit case, discussed below, also highlights the link between climate change, cultural rights, and the increasing risk posed by climate change to indigenous peoples' survival and traditional practices. n80

E. Right Not to be Displaced

Article 12 of the International Covenant on Civil and Political Rights recognizes the right of everyone to the freedom of movement and choice of residence. n81 Again, it is easy to envision how climate change will restrict the freedom of movement of people as well as their right to choose their place of residence. Warming temperatures, coupled with erratic weather patterns and rising sea levels that result in flooding, will severely restrict people's movement and force them to leave their homes in search of safer places to live. This will most often lead to displacement and migration within an affected country, but sometimes will create cross-border movement as well. The consequences of this displacement are readily apparent. Many poor countries can barely look after their own populations, let alone the millions of people that will be forced to flee rising sea levels and inundation of their homelands. It has been predicted that "environmental refugees" will cause the next wave of conflict in developing countries, particularly in sub-Saharan Africa. n82

F. Other Rights

The list of rights discussed above is not an exhaustive enumeration of rights that will be affected by climate change. Others include the right to culture, the right to a healthy environment, and the right to [\*54] development, to the extent that these rights are recognized under international law.

1. Right to a Healthy Environment

The right to a healthy environment is recognized in two regional human rights treaties, n83 and there is some debate as to whether such a right exists, or is only emerging, under general international law. n84 The African Commission on Human and People's Rights ("Commission") recognized the link between environmental degradation and human rights in the case of The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria. n85 The Commission held that the defendant company's disposal of oil into waterways, oil production, and disposal of toxic wastes into the environment and local waterways made Nigeria's Ogoniland a nightmarish place to live. The Commission held that the government's failure to take action against these environmental abuses amounted to a violation of the Ogoni people's rights to life, health, property, free disposal of natural resources, freedom from discrimination, and a healthy environment. n86 While the case did not involve the impact of climate change on indigenous communities, it is nonetheless important for its discussion on the link between environmental degradation and human rights.

The Commission, in holding that the Republic of Nigeria was in violation of Articles 2, n87 4, n88 14, n89 16, n90 18(1), n91 21, n92 and 24 n93 of the [\*55] African Charter on Human and People's Rights, noted that "these rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual:" n94

The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. n95

While this case applies only regionally, the recognition that the right to a satisfactory environment imposes clear obligations on government is significant. These obligations range from taking reasonable measures to prevent pollution to promoting conservation to securing sustainable development. It is no longer possible for states to dismiss this obligation as empty and devoid of content.

From this general recognition of the link between environmental degradation and human rights, we now turn to a case that specifically deals with the impact of climate change on indigenous communities.

2. Right to Culture: Climate Change and Indigenous Communities

Article 15 of the ICESCR recognizes the right of everyone to take part in cultural life. n96 This has become particularly sensitive to some communities, such as the Inuit, whose culture is intrinsically linked to nature. Climate change is threatening Inuit cultural practices which, in turn, may lead to a violation of their right to life.

Because global warming has particular impacts on indigenous peoples, it was argued that the relationship between human rights and global warming needs to be evaluated in the context of indigenous rights: n97

 [\*56]

Because indigenous peoples' traditional lands and natural resources are essential to their physical and cultural survival, the Commission and the Court have acknowledged that environmental damage - like that being caused by global warming - can interfere with the rights of indigenous peoples to life and to cultural integrity. n98

One of the rights guaranteed under the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights is the right to use and enjoy property. n99 In the context of indigenous communities, this right entitles these communities to use those lands to which they have historically enjoyed access for their traditional activities and livelihoods. n100 Climate change affects the enjoyment of the right to property in many ways - in some instances, the property may literally disappear. For example, the Inuit have lost sea ice due to melting and other peoples have lost land due to erosion and submersion. Moreover, the enjoyment of the right to property may be diminished as a result of increases in severe storms or the destruction of natural resources essential to the survival of indigenous communities.

In Yanomami, the Inter-American Commission on Human Rights ("Inter-American Commission") recognized that by allowing the construction of a highway through indigenous territory, the Brazilian government failed to protect the integrity of the land, thereby violating indigenous rights to life, liberty, and personal security. n101

Testifying before the Inter-American Commission, Martin Wagner argued in the Inuit case that the realization of the right to life is necessarily related to and dependent upon one's physical environment. n102 [\*57] The Inuit fall through the ice to their death more frequently because of the thinner ice in the Arctic caused by global climate change.

The petition also referred to the right of all peoples to subsistence, which is recognized in both international covenants as inherent to the right to life and to the right to enjoy the benefits of culture. n103 The latter is particularly relevant to indigenous populations. In the Belize Maya case, the Inter-American Commission noted that "the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities." n104 Climate change is destroying land and ecosystems that have been used for centuries by indigenous communities. Faced with a lack of subsistence, these communities may be forced to assimilate in order to survive. Forced assimilation directly contradicts the right to culture.

The Arctic region is particularly vulnerable to climate change, as its annual average temperate is increasing more than twice as fast as that in the rest of the world. n105 According to the Arctic Climate Impact Assessment: n106

The Arctic is extremely vulnerable to observed and projected climate change and its impacts. The Arctic is now experiencing some of the most rapid and severe climate change on Earth. Over the next 100 years, climate change is expected to accelerate, contributing to major physical, ecological, social and economic changes, many of which have already begun. n107

In addition to melting snow and ice, sea-level rise and changed weather patterns, changes in species habitat and forest loss due to drought and fires are wreaking havoc on people's lives. Humans are not the only species undergoing hardship, however. Marine mammals, coral reefs, and other sensitive ecosystems are all affected by climate change. n108 In short, it is hard to find a species that is not affected by climate change.

Additionally, some indigenous communities, such as those in the Andes, depend on the melting ice and snow for drinking water. The disappearance of the glaciers will cause severe water shortages for such communities. In the Arctic, where warming is evident in changes in sea [\*58] ice thickness and seasonal melting patterns, "some coastal Inuit communities are being completely uprooted, forced to move inland as their land literally disappears under their feet." n109

The Inuit experience presents an example of the impact of climate change on indigenous culture. The effect of climate change on the Inuit people is summarized as follows:

The environmental changes resulting from global warming have devastating effects on the Inuit, indigenous peoples inhabiting the Artic regions of northern and western Alaska, northern Canada, Greenland and Chukotka in the eastern Russian Federation. The ability of the Inuit to continue their unique, traditional culture depends on the snow and ice, which determines how the Inuit hunt, fish, travel and maintain homes. The Arctic ice cap normally shrinks each summer and expands each winter but dramatic shrinking that has recently been observed with the 2005 summer setting a record low at 20% below the average minimum ice extent measured between 1978 and 2000. Depletion of the sea ice, cause by increasing temperatures, reinforces the warming, as large stretches of dark water open up and the reflective ability of the bright white ice is lost. n110

The Inuit have argued before the Inter-American Commission that they are facing extinction and are endangered. They pointed out that the international community is worried about the polar bears becoming extinct due to climate change, but scant attention has been paid to the Inuit community, which is facing extinction for the same reasons. The Inter-American Commission dismissed the application by the Inuit, but held a hearing on the issue - the Commission's main concern was that liability is tied to the common but differentiated responsibility principle. n111 If the Commission were to find the U.S. government liable under international law, it would have had to do so under the common but differentiated responsibility principle. n112 This poses particular problems for international law.

In another suit, a tiny Alaskan village sued several oil, power, and coal companies in February 2008 "claiming that the large amounts of greenhouse gases [the companies] emit contribute to global warming that [\*59] threatens the community's existence." n113 The city of Kivalina and a federally recognized Indian tribe sued "Exxon Mobil Corporation, eight other oil companies, fourteen power companies and one coal company in a lawsuit filed in federal court in San Francisco." n114 The petitioners argued that their village was eroding into the Arctic Ocean due to global climate change, thereby threatening the community's existence, because of these companies' large emissions of greenhouse gases. In 2006, the U.S. Army Corps of Engineers concluded that the Kivalina area would soon become uninhabitable due to global warming and melting ice. Although plans were drawn to re-locate the community, these efforts have met delays. n115 It will be interesting to see how this lawsuit is viewed by the federal court. n116

It is necessary, in this context, to discuss the relevant provisions of the UN Declaration on Indigenous Peoples ("Declaration") adopted by the UN General Assembly in 2007. n117 The Declaration embodies most rights in the International Bill of Human Rights, but also affirms certain rights that are specific to indigenous peoples. Article 11 of the Declaration affirms their right to culture and provides: "Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures." n118 Their participatory rights are also affirmed in the Declaration:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as [\*60] well as to maintain and develop their own indigenous decision-making institutions. n119

Furthermore, indigenous people have a right to the lands, territories and resources that they have traditionally owned, occupied, or otherwise used or acquired. n120 Article 29 provides that indigenous peoples have the right to the conservation and protection of the environment. Under Article 21, indigenous peoples have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge and traditional cultural expressions. Of course, being a soft law instrument, the document is not binding; however, it is a cause for concern that two countries with large indigenous populations - Canada and the United States - did not sign the Declaration. This will have implications if its provisions are to be embodied in a binding instrument in the future.

V. Implications for International Law

As the above discussion illustrates, climate change poses a significant challenge to international law. **International law must** not only **find a legal solution to the problem within existing structures of governance** - which it has already sought to do rather unsuccessfully due to the non-cooperation of some significant contributors to the problem - but the very structures of international law may be in jeopardy. Never before has the international system encountered such a pervasive problem as global climate change. This phenomenon endangers not only the present generation, but also generations to come; it threatens species as well as entire ecosystems; and it has impacts on international trade, the world economy, and international peace and security. **Never before has the international system been faced with a threat to** the very existence of human beings on Earth. While it is true that the World Wars may have posed a similar threat to the very core of the international structure, the problems facing the international community today are worse in many respects - some of the predicted consequences are still invisible and will only materialize after the generation that caused them is gone, having neither experienced the consequences nor having been held accountable for their actions. From this point of view, the issue becomes one of equity. The debates on sustainable development and intergenerational equity assume a different light. The following section discusses the threat that climate change poses to international peace and security, the increase in conflict, and how international law should respond to the phenomenon of climate change. It will also briefly discuss the common [\*61] but differentiated responsibility principle and its implications for liability because the Inuit case revolved around that issue.

A. Increased Conflict and the Implications for International Peace and Security

While environmental stress has rarely been the sole cause of conflicts in and between states, **the intrinsic link between access to resources** - particularly water - **and conflict is increasingly recognized. Global climate change will exacerbate this problem**. Faced with increased temperatures, erosion, desertification, deforestation, flooding, rising sea levels, forest fires, loss of species, and increased incidence of disease, environmental stress may well become the main cause of conflict in the coming years.

While wars and conflicts have forced many people to abandon their homes and flee to relatively safe areas, we are now faced with a situation where people may flee their homes for environmental reasons. People who do so have been termed "environmental refugees," and it is estimated that in 1984-1985 some ten million Africans fled their homes due to reasons connected with environmental degradation. n121 Many of these refugees moved across national boundaries thereby increasing tension in the receiving countries. Most receiving countries can barely cope with their own problems and when more people seek access to quickly dwindling resources, **conflicts are bound to increase.**

The World Commission on Environment and Development ("WCED") described the relationship between environmental degradation and conflict as follows:

As unsustainable forms of development push individual countries up against environmental limits, major differences in environmental endowment among countries, or variations in stocks of usable land and raw materials, could precipitate and exacerbate international tension and conflict. And **competition for use of the global commons**, such as ocean fisheries and Antarctica, **or for** use of more **localized common resources in fixed supply**, such as rivers and coastal waters, **could escalate to the level of international conflict and so threaten international peace and security**. n122

If one also considers the inherent injustices in developing countries, prevailing extreme socioeconomic inequality, and corruption and [\*62] poverty, the situation becomes bleak indeed. The WCED recognized the link between global warming and conflict as follows:

Environmental threats to security are now beginning to emerge on a global scale. The most worrisome of these stem from the possible consequences of global warming... Any such climatic change would quite probably be unequal in its effects, disrupting agricultural systems in areas that provide a large proportion of the world's cereal harvests and perhaps triggering mass population movements in areas where hunger is already endemic. Sea levels may rise during the first half of the next century enough to radically change the boundaries between coastal nations and to change the shapes and strategic importance of international waterways - effects both likely to increase international tension. The climatic and sea-level change are also likely to disrupt the breeding grounds of economically important fish species. Slowing, or **adapting to, global warming is becoming an essential task to reduce the risks of conflict.** n123

### 1AC Solvency

#### Congressional limits of self-defense authority within armed conflict is necessary to resolve legal ambiguity

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of selfdefense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law.

This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. The gatekeeper of these Presidential powers and the prevention of their overreach is Congress. The Constitution demands nothing less, but thus far, Congress’s silence is deafening.

History of Targeted Killing During the Cold War, the United States used covert operations to target certain political leaders with deadly force.8 These covert operations, such as assassination plots against Fidel Castro of Cuba and Ngo Dinh Diem of South Vietnam, came to light in the waning days of the Richard Nixon administration in 1974. In response to the public outrage at this tactic, the Senate created a select committee in 1975, chaired by Senator Frank Church of Idaho, to “Study Government Operations with Respect to Intelligence Activities.”9 This committee, which took the name of its chairman, harshly condemned such targeting, which is referred to in the report as assassination: “We condemn assassination and reject it as an instrument of American policy.”10 In response to the Church Committee’s findings, President Gerald R. Ford issued an Executive order in 1976 prohibiting assassinations: “No employee of the United States Government shall engage in, or conspire to engage in political assassination.”11 The order, which is still in force today as Executive Order 12333, “was issued primarily to preempt pending congressional legislation banning political assassination.”12 President Ford did not want legislation that would impinge upon his unilateral ability as Commander in Chief to decide on the measures that were necessary for national security. 13 In the end, no legislation on assassinations was passed; national security remained under the President’s purview. Congress did mandate, however, that the President submit findings to select Members of Congress before a covert operation commences or in a timely fashion afterward.14 This requirement remains to this day. Targeted killings have again come to center stage with the Barack Obama administration’s extraordinary step of acknowledging the targeting of the radical Muslim cleric Anwar al-Awlaki, a U.S. citizen who lived in Yemen and was a member of an Islamic terrorist organization, al Qaeda in the Arabian Peninsula.15 Al-Awlaki played a significant role in an attack conducted by Umar Farouk Abdulmutallab, the Nigerian Muslim who attempted to blow up a Northwest Airlines flight bound for Detroit on Christmas Day 2009.16 According to U.S. officials, al-Awlaki was no longer merely encouraging terrorist activities against the United States; he was “acting for or on behalf of al-Qaeda in the Arabian Peninsula . . . and providing financial, material or technological support for . . . acts of terrorism.”17 Al-Awlaki’s involvement in these activities, according to the United States, made him a belligerent and therefore a legitimate target. The context of the fierce debates in the 1970s is different from the al-Awlaki debate. The targeted killing of an individual for a political purpose, as investigated by the Church Committee, was the use of lethal force during peacetime, not during an armed conflict. During armed conflict, the use of targeted killing is quite expansive.18 But in peacetime, the use of any lethal force is highly governed and limited by both domestic law and international legal norms. The presumption is that, in peacetime, all use of force by the state, especially lethal force, must be necessary. The Law Enforcement Paradigm Before 9/11, the United States treated terrorists under the law enforcement paradigm—that is, as suspected criminals.19 This meant that a terrorist was protected from lethal force so long as his or her conduct did not require the state to respond to a threat or the indication of one. The law enforcement paradigm assumes that the preference is not to use lethal force but rather to arrest the terrorist and then to investigate and try him before a court of law.20 The presumption during peacetime is that the use of lethal force by a state is not justified unless necessary. Necessity assumes that “only the amount of force required to meet the threat and restore the status quo ante may be employed against [the] source of the threat, thereby limiting the force that may be lawfully applied by the state actor.”21 The taking of life in peacetime is only justified “when lesser means for reducing the threat were ineffective.”22 Under both domestic and international law, the civilian population has the right to be free from arbitrary deprivation of life. Geoff Corn makes this point by highlighting that a law enforcement officer could not use deadly force “against suspected criminals based solely on a determination an individual was a member of a criminal group.”23 Under the law enforcement paradigm, “a country cannot target any individual in its own territory unless there is no other way to avert a great danger.”24 It is the individual’s conduct at the time of the threat that gives the state the right to respond with lethal force. The state’s responding force must be reasonable given the situation known at the time. This reasonableness standard is a “commonsense evaluation of what an objectively reasonable officer might have done in the same circumstances.”25 The U.S. Supreme Court has opined that this reasonableness is subjective: “[t]he calculus of reasonableness must embody allowances for the fact that police officers often are forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation.”26 The law enforcement paradigm attempts to “minimize the use of lethal force to the extent feasible in the circumstances.”27 This approach is the starting point for many commentators when discussing targeted killing: “It may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.”28 The presumption is that intentional killing by the state is unlawful unless it is necessary for self-defense or defense of others.29 Like the soldier who acts under the authority of self-defense, if one acts reasonably based on the nature of the threat, the action is justified and legal. What the law enforcement paradigm never contemplates is a terrorist who works outside the state and cannot be arrested. These terrorists hide in areas of the world where law enforcement is weak or nonexistent. The terrorists behind 9/11 were lethal and lived in ungovernable areas; these factors compelled the United States to rethink its law enforcement paradigm. The Law of War Paradigm The damage wrought by the 9/11 terrorists gave President George W. Bush the political capital to ask Congress for authorization to go to war with these architects of terror, namely al Qaeda. Seven days later, Congress gave the President the Authorization for the Use of Military Force (AUMF) against those “nations, organizations, or persons [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.”30 For the first time in modern U.S. history, the country was engaged in an armed conflict with members of an organization, al Qaeda, versus a state. The legal justification to use force, which includes targeted killings, against al Qaeda, the Taliban, and associated forces is twofold: self-defense and the law of war.31 In armed conflict, the rules governing when an individual can be killed are starkly different than in peacetime. The law enforcement paradigm does not apply in armed conflict. Rather, designated terrorists may be targeted and killed because of their status as enemy belligerents. That status is determined solely by the President under the AUMF. Unlike the law enforcement paradigm, the law of war requires neither a certain conduct nor an analysis of the reasonable amount of force to engage belligerents. In armed conflict, it is wholly permissible to inflict “death on enemy personnel irrespective of the actual risk they present.”32 Killing enemy belligerents is legal unless specifically prohibited—for example, enemy personnel out of combat like the wounded, the sick, or the shipwrecked.33 Armed conflict also negates the law enforcement presumption that lethal force against an individual is justified only when necessary. If an individual is an enemy, then “soldiers are not constrained by the law of war from applying the full range of lawful weapons.”34 Now the soldier is told by the state that an enemy is hostile and he may engage that individual without any consideration of the threat currently posed. The enemy is declared hostile; the enemy is now targetable. Anticipatory Self-defense

This paradigm shift is novel for the United States. The President’s authority to order targeted killings is clear under domestic law; it stems from the AUMF. Legal ambiguity of the U.S. authority to order targeted killings emerges, however, when it is required to interpret international legal norms like self-defense and the law of war. The United States has been a historic champion of these international norms, but now they are hampering its desires to target and kill terrorists.

Skeptics of targeted killing admit that “[t]he decision to target specific individuals with lethal force after September 11 was neither unprecedented nor surprising.”35 Mary Ellen O’Connell has conceded, for example, that targeted killing against enemy combatants in Afghanistan is not an issue because “[t]he United States is currently engaged in an armed conflict” there.36 But when the United States targets individuals outside a zone of conflict, as it did with alAwlaki in Yemen,37 it runs into turbulence because a state of war does not exist between the United States and Yemen.38 A formidable fault line that is emerging between the Obama administration’s position and many academics, international organizations,39 and even some foreign governments40 is where these targeted killings can be conducted.41

According to the U.S. critics, if armed conflict between the states is not present at a location, then the law of war is never triggered, and the state reverts to a peacetime paradigm. In other words, the targeted individual cannot be killed merely because of his or her status as an enemy, since there is no armed conflict. Instead, the United States, as in peacetime, must look to the threat the individual possesses at the time of the targeting. There is a profound shift of the burden upon the state: the presumption now is that the targeted killing must be necessary. When, for example, the United States targeted and killed six al Qaeda members in Yemen in 2002, the international reaction was extremely negative: the strike constituted “a clear case of extrajudicial killing.”42

The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44

A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer.

The administration is blurring the contours of the right of the state to act in Yemen under self-defense and the law of war protections afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya?

If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder. In order to alleviate both of these quandaries, Congress must step in with legislative guidance. Congress has the constitutional obligation to fund and oversee military operations.46 The goal of congressional action must not be to thwart the President from protecting the United States from the dangers of a very hostile world. As the debates of the Church Committee demonstrated, however, the President’s unfettered authority in the realm of national security is a cause for concern. Clarification is required because the AUMF gave the President a blank check to use targeted killing under domestic law, but it never set parameters on the President’s authority when international legal norms intersect and potentially conflict with measures stemming from domestic law.

#### That clarity over legal authority is necessary to solve

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

As noted in the introduction to this article, maintaining the separation between and independence of jus ad bellum and jus in bello is vital for the effective application of the law and protection of persons in conflict. The discussion that follows will refer to both the LOAC and the law of self-defense extensively in a range of situations in order to analyze and highlight the risks of blurring the lines between the two paradigms. However, it is important to note that the purpose here is not to conflate the two paradigms, but to emphasize the risks inherent in blurring these lines. Preserving the historic separation remains central to the application of both bodies of law, to the maintenance of international security, and to the regulation of the conduct of hostilities.

III. BLURRING THE LINES

The nature of the terrorist threat the United States and other states face does indeed raise the possibility that both the armed conflict and the self-defense paradigms are relevant to the use of targeted strikes overall. The United States has maintained for the past ten years that it is engaged in an armed conflict with al Qaeda66 and, notwithstanding continued resistance to the notion of an armed conflict between a state and a transnational terrorist group in certain quarters, there is general acceptance that the scope of armed conflict can indeed encompass such a state versus non-state conflict. Not all U.S. counterterrorism measures fit within the confines of this armed conflict, however, with the result that many of the U.S. targeted strikes over the past several years may well fit more appropriately within the self-defense paradigm. The existence of both paradigms as relevant to targeted strikes is not inherently problematic. It is the United States’ insistence on using reference to both paradigms as justification for individual attacks and the broader program of targeted strikes that raises significant concerns for the use of international law and the protection of individuals by blurring the lines between the key parameters of the two paradigms.

A. Location of Attacks: International Law and the Scope of the Battlefield

The distinct differences between the targeting regimes in armed conflict and in self-defense and who can be targeted in which circumstances makes understanding the differentiation between the two paradigms essential to lawful conduct in both situations. The United States has launched targeted strikes in Afghanistan, Pakistan, Yemen, Somalia, and Syria during the past several years. The broad geographic range of the strike locations has produced significant questions—as yet mostly unanswered— and debate regarding the parameters of the conflict with al Qaeda.67 The U.S. armed conflict with al Qaeda and other terrorist groups has focused on Afghanistan and the border regions of Pakistan, but the United States has launched an extensive campaign of targeted strikes in Yemen and some strikes in Somalia in the past year as well. In the early days of the conflict, the United States seemed to trumpet the notion of a global battlefield, in which the conflict with al Qaeda extended to every corner of the world.68 Others have argued that conflict, even one with a transnational terrorist group, can only take place in limited, defined geographic areas.69 At present, the United States has stepped back from the notion of a global battlefield, although there is little guidance to determine precisely what factors influence the parameters of the zone of combat in the conflict with al Qaeda.70

Traditionally, the law of neutrality provided the guiding framework for the parameters of the battlespace in an international armed conflict. When two or more states are fighting and certain other states remain neutral, the line between the two forms the divider between the application of the laws of war and the law of neutrality.71 The law of neutrality is based on the fundamental principle that neutral territory is inviolable72 and focuses on three main goals: (1) contain the spread of hostilities, particularly by keeping down the number of participants; (2) define the legal rights of parties and nonparties to the conflict; and (3) limit the impact of war on nonparticipants, especially with regard to commerce.73 In this way, neutrality law leads to a geographic-based framework in which belligerents can fight on belligerent territory or the commons, but must refrain from any operations on neutral territory. In essence, the battlespace in a traditional armed conflict between two or more states is anywhere outside the sovereign territory of any of the neutral states.74 The language of the Geneva Conventions tracks this concept fairly closely. Common Article 2, which sets forth the definition of international armed conflict, states that such conflict occurs in “all cases of declared war or . . . any other armed conflict which may arise between two or more of the High Contracting Parties.”75 In Common Article 3, noninternational armed conflicts include conflicts between a state and non-state armed groups that are “occurring in the territory of one of the High Contracting Parties.”76 Both of these formulations tie the location of the armed conflict directly to the territory of one or more belligerent parties.

The neutrality framework as a geographic parameter is left wanting in today’s conflicts with terrorist groups, however. First, as a formal matter, the law of neutrality technically only applies in cases of international armed conflict.77 Even analogizing to the situations we face today is highly problematic, however, because today’s conflicts not only pit states against non-state actors, but because those actors and groups often do not have any territorial nexus beyond wherever they can find safe haven from government intrusion. As state and non-state actors have often shifted unpredictably and irregularly between acts characteristic of wartime and those characteristic of not-wartime[, t]he unpredictable and irregular nature of these shifts makes it difficult to know whether at any given moment one should understand them as armies and their enemies or as police forces and their criminal adversaries.78

Simply locating terrorist groups and operatives does not therefore identify the parameters of the battlefield—the fact that the United States and other states use a combination of military operations and law enforcement measures to combat terrorism blurs the lines one might look for in defining the battlefield. In many situations, “the fight against transnational jihadi groups . . . largely takes place away from any recognizable battlefield.”79

Second, a look at U.S. jurisprudence in the past and today demonstrates a clear break between the framework applied in past wars and the views courts are taking today. U.S. courts during World War I viewed “the port of New York [as] within the field of active [military] operations.”80 Similarly, a 1942 decision upholding the lawfulness of an order evacuating JapaneseAmericans to a military area stated plainly that the field of military operation is not confined to the scene of actual physical combat. Our cities and transportation systems, our coastline, our harbors, and even our agricultural areas are all vitally important in the all-out war effort in which our country must engage if our form of government is to survive.81

In each of those cases, the United States was a belligerent in an international armed conflict; the law of neutrality mandated that U.S. territory was belligerent territory and therefore part of the battlefield or combat zone. The courts take a decidedly different view in today’s conflicts, however, consistently referring to the United States as “outside a zone of combat,”82 “distant from a zone of combat,”83 or not within any “active [or formal] theater of war,”84 even while recognizing the novel geographic nature of the conflict. Even more recently, in Al Maqaleh v. Gates, both the District Court and the Court of Appeals distinguished between Afghanistan, “a theater of active military combat,”85 and other areas (including the United States), which are described as “far removed from any battlefield.”86 In a traditional belligerency-neutrality framework, one would expect to see U.S. territory viewed as part of the battlefield; the fact that courts consistently trend the other way highlights both the difference in approach and the uncertainty involved in defining today’s conflicts.

The current U.S. approach of using both the armed conflict paradigm and the self-defense paradigm as justifications for targeted strikes without further clarification serves to exacerbate the legal challenges posed by the geography of the conflict, at both a theoretical and a practical level. First, at the most fundamental level, uncertainty regarding the parameters of the battlefield has significant consequences for the safety and security of individuals. During armed conflict, the LOAC authorizes the use of force as a first resort against those identified as the enemy, whether insurgents, terrorists or the armed forces of another state. In contrast, human rights law, which would be the dominant legal framework in areas where there is no armed conflict, authorizes the use of force only as a last resort.87 Apart from questions regarding the application of human rights law during times of war, which are outside the scope of this article, the distinction between the two regimes is nonetheless starkest in this regard. The former permits targeting of individuals based on their status as members of a hostile force; the latter—human rights law—permits lethal force against individuals only on the basis of their conduct posing a direct threat at that time. The LOAC also accepts the incidental loss of civilian lives as collateral damage, within the bounds of the principle of proportionality;88 human rights law contemplates no such casualties. These contrasts can literally mean the difference between life and death in many situations. Indeed, “If it is often permissible to deliberately kill large numbers of humans in times of armed conflict, even though such an act would be considered mass murder in times of peace, then it is essential that politicians and courts be able to distinguish readily between conflict and nonconflict, between war and peace.”89 However, the overreliance on flexibility at present means that U.S. officials do not distinguish between conflict and non-conflict areas but rather simply use the broad sweep of armed conflict and/or self-defense to cover all areas without further delineation.

Second, on a broader level of legal application and interpretation, the development of the law itself is affected by the failure to delineate between relevant legal paradigms. “Emerging technologies of potentially great geographic reach raise the issue of what regime of law regulates these activities as they spread,”90 and emphasize the need to foster, rather than hinder, development of the law in these areas. Many argue that the ability to use armed drones across state borders without risk to personnel who could be shot down or captured across those borders has an expansive effect on the location of conflict and hostilities. In effect, they suggest that it is somehow “easier” to send unmanned aircraft across sovereign borders because there is no risk of a pilot being shot down and captured, making the escalation and spillover of conflict more likely.91 Understanding the parameters of a conflict with terrorist groups is important, for a variety of reasons, none perhaps more important than the life-and-death issues detailed above. By the same measure, understanding the authorities for and limits on a state’s use of force in self-defense is essential to maintaining orderly relations between states and to the ability of states to defend against attacks, from whatever quarter. The extensive debates in the academic and policy worlds highlight the fundamental nature of both inquiries. However, the repeated assurances from the U.S. government that targeted strikes are lawful in the course of armed conflict or in exercise of the legitimate right of self-defense—without further elaboration and specificity—allows for a significantly less nuanced approach. As long as a strike seems to fit into the overarching framework of helping to defend the United States against terrorism, there no longer would be a need to carefully delineate the parameters of armed conflict and self-defense, where the outer boundaries of each lie and how they differ from each other. From a purely theoretical standpoint, this limits the development and implementation of the law. Even from a more practical policy standpoint, the United States may well find that the blurred lines prove detrimental in the future when it seeks sharper delineations for other purposes.

#### Executive “clarification” is insufficient

Laurie Blank, Emory International Humanitarian Law Clinic Director, Professor, 10/10/13, “Raid Watching” and Trying to Discern Law from Policy, today.law.utah.edu/projects/raid-watching-and-trying-to-discern-law-from-policy/

Trying to identify and understand the legal framework the United States believes is applicable to counterterrorism operations abroad sometimes seems quite similar to “Fed watching,” the predictive game of trying to figure out what the Federal Reserve is likely to do based on the hidden meaning behind even the shortest or most cryptic of comments from the Chairman of the Federal Reserve. With whom exactly does the United States consider itself to be in an armed conflict? Al Qaeda, certainly, but what groups fall within that umbrella and what are associated forces? And to where does the United States believe its authority derived from this conflict reaches?

On Saturday, U.S. Special Forces came ashore in Somalia and engaged in a firefight with militants at the home of a senior leader of al Shabaab; it is unknown whether the target of the raid was killed. I must admit, my initial reaction was to wonder whether official information about the raid would give us any hints — who was the target and why was he the target? What were the rules of engagement (ROE) for the raid (in broad strokes, because anything specific is classified, of course)? And can we make any conclusions about whether the United States considers that its armed conflict with al Qaeda extends to Somalia or whether it believes that al Shabaab is a party to that armed conflict or another independent armed conflict?

The reality, however, is that this latest counterterrorism operation highlights once again the conflation of law and policy that exemplifies the entire discourse about the United States conflict with al Qaeda and other U.S. counterterrorism operations as well. And that using policy to discern law is a highly risky venture.

The remarkable series of public speeches by top Obama Administration legal advisors and national security advisors, the Department of Justice White Paper, and the May 2013 White House fact sheet on U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities all appear to offer extensive explanations of the international legal principles governing the use of drone strikes against al-Qaeda operatives in various locations around the globe, as well as related counterterrorism measures. In actuality, they offer an excellent example of the conflation of law and policy and the consequences of that conflation.

Policy and strategic considerations are without a doubt an essential component of understanding contemporary military operations and the application of international law. However, it is equally important to distinguish between law and policy, and to recognize when one is driving analysis versus the other.

The law regarding the use of force against an individual or group outside the borders of the state relies on one of two legal frameworks: the law of armed conflict (LOAC) and the international law of self-defense (jus ad bellum). During armed conflict, LOAC applies and lethal force can be used as a first resort against legitimate targets, a category that includes all members of the enemy forces (the regular military of a state or members of an organized armed group) and civilians who are directly participating in hostilities. Outside of armed conflict, lethal force can be used in self-defense against an individual or group who has engaged in an armed attack – or poses an imminent threat of such an attack, where the use of force is necessary and proportionate to repel or deter the attack or threat.

The United States has consistently blurred these two legal justifications for the use of force, regularly stating that it has the authority to use force either as part of an ongoing armed conflict or under self-defense, without differentiating between the two or delineating when one or the other justification applies. From the perspective of the policymaker, the use of both justifications without further distinction surely offers greater flexibility and potential for action in a range of circumstances. From the perspective of careful legal analysis, however, it can prove problematic.

In effect, it is U.S. policy to eliminate “bad guys” — whether by use of lethal force or detention — who are attacking or posing a threat to the United States or U.S. interests. Some of these “bad guys” are part of a group with whom we are in an armed conflict (such as al Qaeda); some pose an imminent threat irrespective of the armed conflict; some are part of a group that shares an ideology with al Qaeda or is linked in some more comprehensive way. Drone strikes, Special Forces raids, capture — each situation involves its own tactical plans and twists.

But do any of these specific tactical choices tell us anything in particular about whether LOAC applies to a specific operation? Whether the United States believes it applies? Unfortunately, not really. Take Saturday’s raid in Somalia, for example. Some would take the use of lethal force by the United States against a member of al Shabaab in Somalia to suggest that the United States views al Shabaab as part of the conflict with al Qaeda, or that the United States views the geographical arena of the conflict as extending at least into Somalia. Others analyze it through the lens of self-defense, because news reports suggest that U.S. forces sought to capture the militant leader and used deadly force in the process of trying to effectuate that capture.

Ultimately, however, the only certain information is that the United States viewed this senior leader of al Shabaab as a threat – but whether that threat is due to participation in an armed conflict or due to ongoing or imminent attacks on the United States is not possible to discern. Why? Because more than law guides the planning and execution of the mission. Rules of engagement (ROE) are based on law, strategy and policy: the law forms the outer parameters for any action; ROE operate within that framework to set the rules for the use of force in the circumstances of the particular military mission at hand, the operational imperatives and national command policy.

The fact that the operation may have had capture as its goal, if feasible, does not mean that it could only have occurred outside the framework of LOAC. Although LOAC does not include an obligation to capture rather than kill an enemy operative — it is the law enforcement paradigm applicable outside of armed conflict that mandates that the use of force must be a last resort — ROE during an armed conflict may require attempt to capture for any number of reasons, including the desire to interrogate the target of the raid for intelligence information. Likewise, the use of military personnel and the fact that the raid resulted in a lengthy firefight does not automatically mean that armed conflict is the applicable framework — law enforcement in the self-defense context does narrowly prescribe the use of lethal force, but that use of force may nonetheless be robust when necessary.

“Raid-watching” — trying to predict the applicable legal framework from reports of United States strikes and raids on targets abroad — highlights the challenges of the conflation of law and policy and the concomitant risks of trying to sift the law out from the policy conversation. First, determining the applicable legal framework when two alternate, and even opposing, frameworks are presented as the governing paradigm at all times is extraordinarily complicated. This means that assessing the legality of any particular action or operation can be difficult at best and likely infeasible, hampering efforts to ensure compliance with the rule of law. Second, conflating law and policy risks either diluting or unnecessarily constraining the legal regimes. The former undermines the law’s ability to protect persons in the course of military operations; the latter places undue limits on the lawful strategic options for defending U.S. interests and degrading or eliminating enemy threats. Policy can and should be debated and law must be interpreted and applied, but substituting policy for legal analysis ultimately substitutes policy’s flexibility for the law’s normative foundations.

## 2AC

### At: Sloane

This is aff uniqueness – the plan’s delineation solves – this is the conclusion they are the intro

Sloane 9 (Robert, Associate Professor of Law, Boston University School of Law, 2009, “The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War,” Yale Journal of International law, http://www.yale.edu/yjil/files\_PDFs/vol34/Sloane)

V. CONCLUSION: THE DUALISTIC AXIOM IN THE TWENTY-FIRST CENTURY Law can control conduct by, among other strategies, prohibition and regulation. The law of war, including the jus ad bellum and the jus in bello, uses both strategies. The jus ad bellum tries to minimize resort to force in the first place by prohibiting it except for self-defense and force authorized by the Security Council. 359 But contemporary international law recognizes that, historically, the prohibition strategy has been—at best and charitably— partially successful. Since the late nineteenth century, the law of war has therefore focused increasingly on regulation: first, by elaborating flexible in bello principles of military necessity, proportionality, and discrimination; second, by dictating that, whatever the utilitarian calculi, some tactics, such as torture, should be absolutely prohibited; and third, by regulating the scope or intensity of force by means of customary principles of ad bellum necessity and proportionality.360 **The dualistic axiom is indispensable to the efficacy of the law of war**, such as it may be, because it theoretically ensures that relatively common, though debatable, ad bellum violations (that is, violations of the prohibition strategy) do not obviate or diminish the force of the regulatory strategy. As this Article suggests, however, modernity has witnessed an erosion of the dualistic axiom. In part, **this reflects the practical pressures brought to bear on the law of war by advances in technology, geopolitical reconfiguration following the Cold War, and evolution in the nature of war itself.** To retain relevance and potential efficacy, **the law must candidly acknowledge and adapt to these changes**, not elide them, as has the ICJ. It must also clarify the law’s regulatory constraints, especially proportionality, with far more analytic rigor than it has to date.

### at: dworkin

#### Obama conflates justifications

Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

US officials have at times offered two different legal justifications for the use of lethal force without being clear about the precise boundary between them. The first and most important justification relies on the claim that the US is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces, authorised for the purpose of US domestic law by a Congressional resolution (the Authorization for Use of Military Force, or AUMF) passed on 14 September 2001. While administration officials admit that the international laws governing such a conflict against an external non-state group are unclear, they contend that the rules should be understood by analogy with more traditional forms of conflict to allow the targeting of all members of enemy forces wherever they are found. At the same time, they recognise that other parts of international law, concerning state sovereignty, limit the scope for US action: when alleged enemy fighters are located on the territory of a state with whom the US is not at war, strikes can only be carried out with the consent of that state, or when it is unable or unwilling to suppress the threat posed by the fighters itself.

At times, however, administration officials have appeared to add an additional or alternative justification: the US can act in self-defence against imminent threats to its national security. For example, John Brennan, at the time Obama’s top counterterrorism adviser, said in April 2012 that “the United States is in an armed conflict with al-Qaida, the Taliban, and associated forces, in response to the 9/11 attacks, and we may also use force consistent with our inherent right of national self-defence” (emphasis added). This justification seems to address situations where the US feels the need to use lethal force outside the boundaries of an existing armed conflict; it looks back to earlier cases where the US used military force in response to terrorist acts, such as President Ronald Reagan’s strike against Libya in 1986 and President Bill Clinton’s attack on supposed al-Qaeda facilities in Sudan and Afghanistan in 1998. However, in the present context, it appears to intermingle or conflate a number of different notions: first, the concept of self-defence under the principles of jus ad bellum (the laws governing the use of force between states) as a justification for violating the sovereignty of another state, traditionally assessed by reference to the so-called “Caroline criteria” elaborated by the US in 1842; second, the threat to innocent life as a justification for the deliberate killing of an individual person (perhaps with reference to some conception of human rights law or principles); third, perhaps, some idea that an actual or imminent armed attack by a non-state group provides a justification for the targeted state to use force against that group as a collective entity.

Because the administration has not been clear about the precise justification for the strikes it has carried out so far, we cannot be certain whether all of them fall within the scope of the “armed conflict” justification. Some scholars who have followed the administration’s pronouncements closely believe this to be the case.22 Another possible explanation for the apparent ambiguity in the US position is that there were disagreements within the administration about the scope of the alleged armed conflict, and that the formula of alternative justifications was chosen to allow flexibility between differing views.23 In any case, the question of who can lawfully be targeted under the armed conflict justification has been left vague in two crucial respects. First, the administration has given little indication of how it assesses membership of the enemy forces, a concept that is far from clear in the case of non-military organisations such as al-Qaeda.24 Second, the administration has given very little information about how it defines the “associated forces” that are said to be part of the enemy in the armed conflict against al-Qaeda. The testimony of senior US military officers before a recent hearing of the Senate Committee on Armed Services revealed a remarkable degree of confusion on this question, including on whether such forces had merely to be affiliated to al-Qaeda or had also to be involved in planning attacks against the US.25 It is through the concept of “associated forces” that the targeted killing campaign has been extended to Yemen and Somalia, where the core al-Qaeda grouping responsible for the September 11 attacks has no presence.

The significance of the distinction between the armed conflict and self-defence justifications can best be understood with reference to the different paradigms to which they appeal. The armed conflict justification is based on what could be described as a logic of collective membership: individuals can be targeted on the basis of their status as members of a group against which the US is engaged in hostilities. The self-defence justification is based on a logic of individual threat: individuals can be killed only after a determination in their individual case that a strike is necessary to avoid an imminent threat to life that cannot be prevented in any other way. The second justification thus seems to entail a significantly higher threshold to be met before targeted killing can be authorised – though the Obama administration’s use of behavioural criteria to determine membership of al-Qaeda and its associated forces means the distinction is not in practice a hard-and-fast one.

### at: circumvent

#### Obama complies with war power statutes

Beau Barnes, J.D., Boston University School of Law, Spring 2012, REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE, https://www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/20a66345129fe3d885256e5b00571830/b7396120928e9d5e85257a700042abb5/$FILE/By%20Beau%20D.%20Barnes.pdf

Unsurprisingly, this article embraces an interpretation of the Constitution that is at odds with the Vesting Clause thesis, and instead hews closer to the view expressed in Justice Robert Jackson’s concurrence in the 1952 Steel Seizure case.13 The Constitution explicitly empowers Congress in the area of foreign affairs to, among other actions, approve treaties,14 declare war,15 and regulate the armed forces.16 These textual grants of authority would be vitiated if Congress were unable, in the exercise of these powers, to “wage a limited war; limited in place, in objects, and in time.”17 A full exposition of this oft-addressed topic is beyond the scope of this article, however, and it suffices for present purposes to merely align it with the overwhelming majority of scholars who conceive of a Constitution where Congress may authorize limited military force in a manner which is binding on the Executive Branch.18

Furthermore, the Vesting Clause thesis and all-powerful views of the Commander in Chief Clause have been rejected in large part by the judiciary and the current administration.20 Indeed, **one significant reason for considering the AUMF to be an actual limit on Presidential power, and a relevant subject for legal analysis, is because that is how the Obama Administration understands the statute**. State Department Legal Adviser Harold Koh, in his March 25, 2010, speech to the American Society of International Law, clarified that “as a matter of domestic law” the Obama Administration relies on the AUMF for its authority to detain and use force against terrorist organizations.21 Furthermore, Koh specifically disclaimed the previous administration’s reliance on an expansive reading of the Constitution’s Commander in Chief Clause.22 Roughly stated, the AUMF matters, at least in part, because the Obama Administration says it matters.

The scope of the AUMF is also important for any future judicial opinion that might rely in part on Justice Jackson’s Steel Seizure concurrence.23 Support from Congress places the President’s actions in Jackson’s first zone, where executive power is at its zenith, because it “includes all that he possesses in his own right plus all that Congress can delegate.”24 Express or implied congressional disapproval, discernible by identifying the outer limits of the AUMF’s authorization, would place the President’s “power . . . at its lowest ebb.”25 In this third zone, executive claims “must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”26 Indeed, Jackson specifically rejected an overly powerful executive, observing that the Framers did not intend to fashion the President into an American monarch.27

Jackson’s concurrence has become the most significant guidepost in debates over the constitutionality of executive action in the realm of national security and foreign relations.28 Indeed, some have argued that it was given “the status of law”29 by then-Associate Justice William Rehnquist in Dames & Moore v. Regan.30 Speaking for the Court, Rehnquist applied Jackson’s tripartite framework to an executive order settling pending U.S. claims against Iran, noting that “[t]he parties and the lower courts . . . have all agreed that much relevant analysis is contained in [Youngstown].”31 More recently, Chief Justice John Roberts declared that “Justice Jackson’s familiar tripartite scheme provides the accepted framework for evaluating executive action in [the area of foreign relations law].”32 Should a future court adjudicate the nature or extent of the President’s authority to engage in military actions against terrorists, an applicable statute would confer upon such executive action “the strongest of presumptions and the widest latitude of judicial interpretation.”33 The AUMF therefore exercises a profound legal influence on the future of the United States’ struggle against terrorism, and its precise scope, authorization, and continuing vitality matter a great deal.

#### Congressional statutes are effective for simple constraints like the plan

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 12-13

Without a credible threat of congressional action, why would presidents incorporate congressional preferences, either expressed or anticipated, into their strategic calculations? They will do so only if Congress is able to affect the costs and benefits more broadly that presidents stand to reap first for launching and then for continuing a military action. This book argues that through a variety of formal and informal actions taken on the chamber floors, in the committee rooms, and on the airwaves, members of Congress can affect both the political and the strategic costs of military action for the president, even when they cannot legally compel him to alter his preferred policy course.22 For example, by introducing legislation authorizing or seeking to curtail a use of force, holding oversight hearings, and engaging the debate over military policymaking in the public sphere, members of Congress can play a critically important role in shaping the public's reaction to a military mission. Congressional support can provide the president with invaluable political cover either to launch a new or to continue a current use of force. Conversely, vocal opposition to the president's policies from Capitol Hill can both forestall a rally in popular support behind a proposed military venture and erode public support for an ongoing overseas deployment. In these and other ways, Congress may play a critical role in either raising or lowering the domestic political costs the president stands to reap from his preferred military policy course.

In a similar vein, highly visible congressional actions send important signals of domestic resolve or unease to the target of a threatened or ongoing military action. The leaders of the target state can then incorporate this information about the state of the political climate in Washington into their strategic calculations when deciding whether to capitulate to or resist the president's demands. In this way, even informal actions taken in Congress may unintentionally shape the strategic costs of different military policy options for the president through their influence on the calculus of target state leaders. Finally, because presidents recognize the political and strategic costs that congressional opposition may generate, even when it cannot legislatively compel the administration to alter its preferred policy course, they face strong incentives to anticipate Congress's likely reaction to different policy options and to adjust their conduct of military policymaking accordingly. When making these calculations, Congress's partisan composition provides perhaps the best insight into its likely response.

Through each of these mechanisms, Congress and its members can serve as an important constraint on presidential policymaking and can retain a significant measure of influence over both the initiation and subsequent conduct of major military ventures. The empirical analyses in the chapters that follow **marshal extensive empirical, historical, and archival data** to examine these indirect pathways of congressional influence and the conditions in which Congress has proved most effective at exercising them to shape the course of American military policymaking from the end of Reconstruction to the ongoing war in Iraq.

### at: t – prohibit

#### “Restrictions” are on time, place, and manner

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

Throughout Amebrican history, Congress has placed restrictions on the President’s power as Commander in Chief to conduct warfare. On numerous occasions, **Congress has authorized the President to conduct warfare but placed significant restrictions on the time**, **place and manner of warfare**. Congress has regulated the tactics the President could employ, the armed forces he could deploy, the geographical area in which those forces could be utilized, and the time period and specific purposes for which the President was authorized to use force. Its regulations have both swept broadly and set forth detailed instructions and procedures for the President to follow. This historical practice is consistent with the Constitution’s text and Framers’ intent, which made clear that the President was not to have the broad powers of the British King, but was subject to the control and oversight of Congress in the conduct of warfare.

#### “On” means there’s no limits disad

Dictionary.com, http://dictionary.reference.com/browse/on

On

preposition

1.so as to be or remain supported by or suspended from: Put your package down on the table; Hang your coat on the hook.

2.so as to be attached to or unified with: Hang the picture on the wall. Paste the label on the package.

### at: t – authority

#### Their restrict evidence begs the question of what we have to restrict--Authority is a question of jurisdiction

Random House Dictionary, 2013, http://dictionary.reference.com/browse/authority

au·thor·i·ty [uh-thawr-i-tee, uh-thor-] Show IPA noun, plural au·thor·i·ties. 1. the power to determine, adjudicate, or otherwise settle issues or disputes; jurisdiction; the right to control, command, or determine. 2. a power or right delegated or given; authorization: Who has the authority to grant permission?

#### War powers authority refers to the President’s authority to execute warfighting operations—that includes self-defense justifications

Manget, law professor at Florida State and formerly in the Office of the General Counsel at the CIA, No Date

(Fred, “Presidential War Powers,” http://media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf)

**The President has constitutional authority to order defensive military action in response to aggression without congressional approval**. This theory of **self-defense has justified many military actions**, from the Barbary Coast to the Mexican-American War to the Tonkin Gul£. 29 The Supreme Court has agreed. In The Prize Cases, it found that President Lincoln had the right to blockade southern states without a congressional declaration of war: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. " 30 In a case arising out of the Vietnam war, the defendant claimed that draft law was unconstitutionally applied to him because Congress had not declared war. The court rejected that claim, stating that on the basis of the Commander in Chief power, "Unquestionably the President can start the gun at home or abroad to meet force with force. " 3 1 **When the President acts in defense of the nation**, **he acts under war powers authority**.

3. Protection of Life and Property

The President also has the power to order military intervention in foreign countries to protect American citizens and property without prior congressional approval.32 This theory has been cited to justify about 200 instances of use of force abroad in the last 200 years.33 The theory was given legal sanction in a case arising from the bombardrment of a Nicaraguan court by order of the President in 1854, in retaliation for an attack on an American consul. The court stated that it is the President to whom ".. . citizens abroad must look for protection of person and property. . . . The great object and duty of Government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home.'3~Other cases have been in accord.35 The President may use force or any other means to protect American citizens in foreign countries under his war powers authority. This extends even to a retaliatory military strike against a country supporting terrorist acts against Americans, which occurred in April1986 when US Navy and Air Force aircraft bombed the modern Barbary Coast nation of Libya.

4. Collective Security

The President may also authorize military operations without prior congressional approval pursuant to collective security agreements such as NA TO or OAS treaties. Unilaterial presidential action under these agreements may be justified as necessary for the protection of national security even though hostilities occur overseas and involve allies.36

5. National Defense Power

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. "3; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything reQuired to wage war successfully.3H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means."39

Thus, the Executive Branch 's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

6. Role of the Military

The fundamental function of the armed forces is to fight or to be ready to fight wars. 40 The Supreme Court has recognized the existence of limited, partial, and undeclared wars:41 Thus, there is a judicially recognized and legitimate activity of the armed services in times of no armed conflict that stems directly from **the war powers authority of the President**. That activity is the preparation for the successful waging of war, which may come in any form or level of conflict. **Any actions of the Executive Branch that** are part of the fundamental functions of the armed services in **ready**ing **for any type of hostility are based on** constitutional **war powers authority of the President**.

#### The “war powers authority” of the President is his Commander-in-Chief authority

Gallagher, Pakistan/Afghanistan coordination cell of the U.S. Joint Staff, Summer 2011

(Joseph, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication,” *Parameters*, http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf)

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.4

The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to war powers authority**, **the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief**.6 This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

### 2ac congress key

#### Congress necessary to provide legal clarity on the limits of armed conflict

Kenneth Anderson, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 5/11/2009, Targeted Killing in U.S. Counterterrorism Strategy and Law, http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf

**The single most important role for Congress to play** in addressing targeted killings, therefore, is the open, unapologetic, plain insistence that the American understanding of international law on this issue of self-defense is legitimate. The assertion, that is, that the United States sees its conduct as permissible for itself and for others. And it **is the** putting of congressional strength behind the official statements of the executive branch as the opinio juris of the United States, **its authoritative view of what international law is on this subject**. If this statement seems peculiar, that is because the task—as fundamental as it is—remains unfortunately poorly understood.

Yet if it is really a matter of political consensus between Left and Right that targeted killing is a tool of choice for the United States in confronting its non-state enemies, then this is **an essential task for Congress to play in support of** the **Obama** Administration **as it seeks to** speak with a single voice **for the United States** to the rest of the world. The Congress needs to backstop the administration in asserting to the rest of the world— including to its own judiciary—how the United States understands international law regarding targeted killing. And it needs to make an unapologetic assertion that its views, while not dispositive or binding on others, carry international authority to an extent that relatively few others do—even in our emerging multi-polar world. International law traditionally, after all, accepts that states with particular interests, power, and impact in the world, carry more weight in particular matters than other states. The American view of maritime law matters more than does landlocked Bolivia’s. American views on international security law, as the core global provider of security, matter more than do those of Argentina, Germany or, for that matter, NGOs or academic commentators. But it has to speak—and speak loudly—if it wishes to be heard. It is an enormously important instance of the need for the United States to re-take “ownership” of international law— not as its arbiter, nor as the superpower alone, but as a very powerful, very important, and very legitimate sovereign state.

Intellectually, **continuing to squeeze** all forms and instances of targeted killing **by standoff platform** under the law of IHL armed conflict **is** probably **not** the most analytically **compelling** way to proceed. It is certainly not a practical long-term approach**.** Not everyone who is an intuitively legitimate target from the standpoint of self-defense or vital national security, after all, will be already part of an armed conflict or combatant in the strict IHL sense. Requiring that we use such IHL concepts for a quite different category is likely to have the deleterious effect of deforming the laws of war, over the long term—starting, for example, withtheidea of a “global war,” which is itself a certain deformation of the IHL concept of hostilities and armed conflict.

#### Clear congressional signals key to LOAC and international law

Peter Margulies, Roger Williams University Law Professor, Summer 2012, Article: THE FOG OF WAR REFORM: CHANGE AND STRUCTURE IN THE LAW OF ARMED CONFLICT AFTER SEPTEMBER 11, 95 Marq. L. Rev. 1417

Institutions that promote sound temporal judgment would be of little use without the means to communicate those judgments to others. In a world of imperfect information and faulty inference, n159 each party relies on signals that provide otherwise unavailable information about the other's specific intentions and general dispositions. n160 Signaling is particularly important when a party wants to convey sincerity to others, either to promote a common enterprise or avoid a conflict. n161 Signaling that is misunderstoodor deceptive undermines common projects **and prompts needless friction**. n162 The fluid nature and **high stakes of armed conflicts combine to make signaling crucial**.

Signals come in two varieties: transactional or holistic. A transactional signal seeks to provide information to another party about a particular situation. In contrast, a holistic signal, while it may arise in a particular context, tries to convey information about the underlying habits and dispositions of the sender. In LOAC, both kinds of signals are necessary.

As an example of a transactional signal, consider the white flag of surrender. A fighter who flies the white flag is signaling that he will forego hostilities in exchange for being captured instead of being killed. If parties to an armed conflict did not recognize this signal, the attacking party would lack the reassurance that it needs to stop its attack. Moreover, the white flag of surrender is what theorists call a "costly signal." n163 The sender incurs opportunity costs, because flying the white flag requires that the sender simultaneously give up the chance to kill more of his opponents. Incurring this cost is a token of the sender's sincerity. n164 The receiver, who in the heat of battle cannot conduct a more extended analysis of the sender's sincerity, accepts the white flag as a proxy.

Holistic signaling does not hinge on reciprocity in a narrow sense, but rather on a party's recognition that it participates in a system of shared understandings. n165 While transactional signaling is bilateral in nature, holistic signaling is multilateral. A party may not benefit from holistic signaling in the short term, if its adversary in an armed conflict does not reciprocate. For example, Al Qaeda would not hesitate to harm captives, even if the United States at all times refrained from doing so. In the real world, however, no conflict is ever purely bilateral. Failure to comply with LOAC yields externalities, as a state's reputation declines. n166 Multilateral **implications are rife in global counterterrorism** [\*1455] **efforts**. A state combating terrorism needs allies in the ranks of foreign leaders, transnational organizations, and global publics. Holistic signaling yields benefits in this more spacious arena. n167

Major state players, such as **the U**nited **S**tates, **signal not only** their own **dispositions but** their **commitment to the overall LOAC framework**. This systemic signaling has been a cornerstone of American law since the Founding Era. **The Constitution** expressly empowers Congress to make laws defining violations of the law of nations n168 and courts to hear cases involving foreign diplomats. n169 Congress in 1789 granted federal courts jurisdiction over torts in violation of the law of nations. n170 The Supreme Court during this period adopted a canon of interpretation to avoid conflicts between legislation and international law. n171 These measures went far beyond the narrowly instrumental calculations of those who wished to avoid foreign entanglements. n172 The chief players of the Founding Era also saw the United States, with its distinctive system of judicial review, as a model for governance with global impact. n173 American innovations that won approval from global audiences could exert a positive influence on customary international law, while heedless decisions could adversely affect the progress of self-governance. By publicly practicing habits of deliberation, the United States sent a message to other states that cultivating such habits is worthwhile. Later leaders like Lincoln and Roosevelt stressed the United States' role in promoting more equitable governance throughout [\*1456] the world. n174 The United States' founding role in the United Nations manifested this same intent. n175

Holistic signaling is in the interest of the United States today in a more tangible respect. Because America has participated in military intervention when nations' commitment to the rule of law breaks down, as in Kosovo and Libya, the United States has a vested interest in enhancing the appeal of the global rule of law so that it can reduce calls for its military capabilities. Moreover, American military personnel developing relationships with their counterparts count on that reputation as a crucial signal of their discipline and professionalism. n176 **American defection from global rules particularly those venerable norms embedded in customary international law** therefore **has ruinous consequences not merely for the global system, but for America itself.** Because the United States has a stake in the integrity of the international system, n177 it cannot isolate the benefits it may receive from [\*1457] defection, and cannot successfully free ride for long on disregard of international norms.

### at: flex / safe havens nb

We don’t mandate fewer strikes – their circumvention args prove Obama can kill the same people using the LOAC-based OR self-defense justification, but not both

Robert Chesney, 10/4/13, Would Abandoning the War Model of Counterterrorism Make a Difference from a Legal Perspective?, www.newrepublic.com/article/114995/would-abandoning-war-model-counterterrorism-make-difference

What’s more, the convergence of current targeting policies and the pre-9/11 model is a two-way street. Though the government continues to maintain the relevance of the war model to this day, it has made clear that it now embraces—as a matter of policy discretion—constraints on the use of lethal force outside the Afghan combat zone that replicate the elements of the continuing-and-imminent threat model (of course, even Afghanistan may soon be categorized as something other than a zone of combat, given the accelerating momentum toward the withdrawal of most if not all American combat forces). Not that this means that the constraints are all that restrictive; one must bear in mind that the continuing-and-imminent model does not require the sort of literal-immediacy one might associate with police uses of force during, say, a hostage crisis. The model instead treats the imminence element as satisfied on an ongoing basis when a fleeting window of opportunity emerges to carry out an attack against a group or individual that already has demonstrated the capacity and will to kill Americans, at least where a capture mission is not feasible in the circumstances. This helps explain why the government, though still maintaining the relevance of the armed-conflict model as a formal matter, already was willing to return to the continuing-and-imminent threat model as a matter of policy: There just isn’t much cost to doing so in terms of lost operational flexibility. The same will be true postwar, at least insofar as the legal architecture is concerned.

No impact to prez powers

**Healy 11**

Gene Healy is a vice president at the Cato Institute and the author of The Cult of the Presidency, The CATO Institute, June 2011, "Book Review: Hail to the Tyrant", http://www.cato.org/publications/commentary/book-review-hail-tyrant

Legal checks “have been relaxed largely because of the need for centralized, relatively efficient government under the complex conditions of a modern dynamic economy and a highly interrelated international order.” What’s more, the authors insist, America needs the legally unconstrained presidency both at home (given an increasingly complex economy) and abroad (given the shrinking of global distances).

These are disputed points, to say the least. If Friedrich Hayek was at all correct about the knowledge problem, then if anything increasing economic complexity argues for less central direction. Nor does the fact that we face “a highly interrelated international order” suggest that we’re more vulnerable than we were in 1789, as a tiny frontier republic surrounded by hostile tribes and great powers. Economic interdependence — and the rise of other modern industrial democracies — means that other players have a stake in protecting the global trading system.

Posner and Vermuele coin the term “tyrannophobia,” which stands for unjustified fear of executive abuse. That fear is written into the American genetic code: the authors call the Declaration of Independence “the ur-text of tyrannophobia in the United States.” As they see it, that’s a problem because “the risk that the public will fail to trust a well-motivated president is just as serious as the risk that it will trust an ill-motivated one.” They contend that our inherited skepticism toward power exacerbates biases that lead us to overestimate the dangers of unchecked presidential power. Our primate brains exaggerate highly visible risks that fill us with a sense of dread and loss of control, so we may decline to cede more power to the president even when more power is needed.

Fair enough in the abstract — but Posner and Vermuele fail to provide a single compelling example that might lead you to lament our allegedly atavistic “tyrannophobia.” And they seem oblivious to the fact that those same irrational biases drive the perceived need for emergency government at least as much as they do hostility towards it. Highly visible public events like the 9/11 attacks also instill dread and a perceived loss of control, even if all the available evidence shows that such incidents are vanishingly rare. The most recent year for which the U.S. State Department has data, 2009, saw just 25 U.S. noncombatants worldwide die from terrorist strikes. I know of no evidence suggesting that unchecked executive power is what stood between us and a much larger death toll.

Posner and Vermuele argue that only the executive unbound can address modernity’s myriad crises. But they spend little time exploring whether unconstrained power generates the very emergencies that the executive branch uses to justify its lack of constraint. Discussing George H.W. Bush’s difficulties convincing Congress and the public that the 1991 Gulf War’s risks were worth it, they comment, “in retrospect it might seem that he was clearly right.” Had that war been avoided, though, there would have been no mass presence of U.S. troops on Saudi soil — “Osama bin Laden’s principal recruiting device,” according to Paul Wolfowitz — and perhaps no 9/11.

Posner and Vermuele are slightly more perceptive when it comes to the home front, letting drop as an aside the observation that because of the easy-money policy that helped inflate the housing bubble, “the Fed is at least partly responsible for both the financial crisis of 2008-2009 and for its resolution.” Oh, well — I guess we’re even, then.

Sometimes, the authors are so enamored with the elegant economic models they construct that they can’t be bothered to check their work against observable reality. At one point, attempting to show that separation of powers is inefficient, they analogize the Madisonian scheme to “a market in which two firms must act in order to supply a good,” concluding that “the extra transaction costs of cooperation” make “the consumer (taxpayer) no better off and probably worse off than she would be under the unitary system.”

But the government-as-firm metaphor is daffy. In the Madisonian vision, inefficiency isn’t a bug, it’s a feature — a check on “the facility and excess of law-making … the diseases to which our governments are most liable,” per Federalist No. 62. If the “firm” in question also generates public “bads” like unnecessary federal programs and destructive foreign wars — and if the “consumer (taxpayer)” has no choice about whether to “consume” them — he might well favor constraints on production.

From Franklin Roosevelt onward, we’ve had something close to vertical integration under presidential command. Whatever benefits that system has brought, it’s imposed considerable costs — not least over 100,000 U.S. combat deaths in the resulting presidential wars. That system has also encouraged hubristic occupants of the Oval Office to burnish their legacies by engaging in “humanitarian war” — an “oxymoron,” according to Posner. In a sharply argued 2006 Washington Post op-ed, he noted that the Iraq War had killed tens of thousands of innocents and observed archly, “polls do not reveal the opinions of dead Iraqis.”

#### No impact – every actor has incentives to overstate consequences

**Farley 11**, assistant professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, (Robert, "Over the Horizon: Iran and the Nuclear Paradox," 11-16, [www.worldpoliticsreview.com/articles/10679/over-the-horizon-iran-and-the-nuclear-paradox](http://www.worldpoliticsreview.com/articles/10679/over-the-horizon-iran-and-the-nuclear-paradox))

But states and policymakers habitually overestimate the impact of nuclear weapons. This happens among both proliferators and anti-proliferators. Would-be proliferators seem to expect that possessing a nuclear weapon will confer “a seat at the table” as well as solve a host of minor and major foreign policy problems. Existing nuclear powers fear that new entrants will act unpredictably, destabilize regions and throw existing diplomatic arrangements into flux. These predictions almost invariably turn out wrong; nuclear weapons consistently fail to undo the existing power relationships of the international system.

The North Korean example is instructive. In spite of the dire warnings about the dangers of a North Korean nuclear weapon, the region has weathered Pyongyang’s nuclear proliferation in altogether sound fashion. Though some might argue that nukes have “enabled” North Korea to engage in a variety of bad behaviors, that was already the case prior to its nuclear test. The crucial deterrent to U.S. or South Korean action continues to be North Korea’s conventional capabilities, as well as the incalculable costs of governing North Korea after a war. Moreover, despite the usual dire predictions of nonproliferation professionals, the North Korean nuclear program has yet to inspire Tokyo or Seoul to follow suit. The DPRK’s program represents a tremendous waste of resources and human capital for a poor state, and it may prove a problem if North Korea endures a messy collapse. Thus far, however, the effects of the arsenal have been minimal.

Israel represents another case in which the benefits of nuclear weapons remain unclear. Although Israel adopted a policy of ambiguity about its nuclear program, most in the region understood that Israel possessed nuclear weapons by the late-1960s. These weapons did not deter Syria or Egypt from launching a large-scale conventional assault in 1973, however. Nor did they help the Israeli Defense Force compel acquiescence in Lebanon in 1982 or 2006. Nuclear weapons have not resolved the Palestinian question, and when it came to removing the Saddam Hussein regime in Iraq, Israel relied not on its nuclear arsenal but on the United States to do so -- through conventional means -- in 2003. Israeli nukes have thus far failed to intimidate the Iranians into freezing their nuclear program. Moreover, Israel has pursued a defense policy designed around the goal of maintaining superiority at every level of military escalation, from asymmetrical anti-terror efforts to high-intensity conventional combat. Thus, it is unclear whether the nuclear program has even saved Israel any money.

The problem with nukes is that there are strong material and normative pressures against their use, not least because states that use nukes risk incurring nuclear retaliation. Part of the appeal of nuclear weapons is their bluntness, but for foreign policy objectives requiring a scalpel rather than a sledgehammer, they are useless. As a result, states with nuclear neighbors quickly find that they can engage in all manner of harassment and escalation without risking nuclear retaliation. The weapons themselves are often more expensive than the foreign policy objectives that they would be used to attain. Moreover, normative pressures do matter. Even “outlaw” nations recognize that the world views the use of nuclear -- not to mention chemical or biological -- weapons differently than other expressions of force. And almost without exception, even outlaw nations require the goodwill of at least some segments of the international community.

Given all this, it is not at all surprising that many countries eschew nuclear programs, even when they could easily attain nuclear status. Setting aside the legal problems, nuclear programs tend to be expensive, and they provide relatively little in terms of foreign policy return on investment. Brazil, for example, does not need nuclear weapons to exercise influence in Latin America or deter its rivals. Turkey, like Germany, Japan and South Korea, decided a long time ago that the nuclear “problem” could be solved most efficiently through alignment with an existing nuclear power.

Why do policymakers, analysts and journalists so consistently overrate the importance of nuclear weapons? The answer is that everyone has a strong incentive to lie about their importance. The Iranians will lie to the world about the extent of their program and to their people about the fruits of going nuclear. The various U.S. client states in the region will lie to Washington about how terrified they are of a nuclear Iran, warning of the need for “strategic re-evaluation,” while also using the Iranian menace as an excuse for brutality against their own populations. Nonproliferation advocates will lie about the terrors of unrestrained proliferation because they do not want anyone to shift focus to the manageability of a post-nuclear Iran. The United States will lie to everyone in order to reassure its clients and maintain the cohesion of the anti-Iran block.

None of these lies are particularly dishonorable; they represent the normal course of diplomacy. But they are lies nevertheless, and serious analysts of foreign policy and international relations need to be wary of them.

Nonproliferation is a good idea, if only because states should not waste tremendous resources on weapons of limited utility. Nuclear weapons also represent a genuine risk of accidents, especially for states that have not yet developed appropriately robust security precautions. Instability and collapse in nuclear states has been harrowing in the past and will undoubtedly be harrowing in the future. All of these threats should be taken seriously by policymakers. Unfortunately, as long as deception remains the rule in the practice of nuclear diplomacy, exaggerated alarmism will substitute for a realistic appraisal of the policy landscape.

### 2ac politics

No risk of protectionism and no impact

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

A closer look, however, reveals that warnings about an increase in protectionism have been vastly overstated. The surge in nontariff barriers following the 2008 financial crisis quickly receded; indeed, as Figure 3 shows, the surge never came close to peak levels of these cases. By 2011, antidumping initiations had declined to their lowest levels since the founding of the wro in 1995. Both countervailing duty complaints and safeguards initiations have also fallen to precrisis levels. Some post-2008 measures are not captured in these traditional metrics of nontariff barriers, but similar results hold. Most temporary trade barriers were concentrated in countries such as Russia and Argentina that had already erected higher barriers to global economic integration.50 Even including these additional measures, the combined effect of protectionist actions for the first year after the peak of the financial crisis affected less than 0.8 percent of global trade.51 Furthermore, the use of these protectionist measures declined further in 2010 to cover only 0.2 percent of global trade. Five years after the start of the Great Recession, the effect of these measures remains modest, affecting less than 4 percent of global trade flows. The wro's June 2013 estimate is that the combined effect of all postcrisis protectionist measures by the G20 had reduced trade flows by a total of 0.2 percent.52 The wro estimate jibes with academic estimates of post-2008 trade protectionism playing a minimal role in affecting cross-border exchange. The overwhelming consensus is that "the Great Recession of 2009 does not coincide with any obvious increase in protectionism."53 The quick turnaround and growth in trade levels further show that these measures have not seriously impeded market access.54 The multilateral trade system played a significant role in this outcome. The wto's dispute-settlement mechanism helped to contain the spread of protectionist measures that the Great Recession triggered; there is no evidence that compliance with these rulings waned after 2008.55 This is consistent with research that shows membership in the wto and related organizations acted as a significant brake on increases in tariffs and nontariff barriers.56 The major trading jurisdictions—the United States, the European Union, and China—adhered most closely to their wto obligations. As Alan Beattie acknowledged: "The 'Doha Round' of trade talks may be dead, but the wto's dispute settlement arm is still playing a valuable role."5/ The wto's Government Procurement Agreement (gpa) helped to blunt the most blatant parts of the "Buy American" provisions of the 2009 fiscal stimulus, thereby preventing; a cascade of "fiscal protectionism." Policy advocates of trade liberalization embrace the "bicycle theory" —the belief that unless multilateral trade liberalization moves forward, the entire global trade regime will collapse because of a lack of forward momentum.58 The last four years suggest that there are limits to that rule of thumb. The Financial T/w^/Economist Intelligence Unit surveys of global business leaders reveal that concerns about protectionism have stayed at a low level. Figure 4 shows that compared with popular concerns about economic and political uncertainty, corporate executives were far less concerned about either protectionism or currency volatility. Reviewing the state of world trade, Uri Dadush and his colleagues conclude: "The limited resort to protectionism was a remarkable aspect of the Great Recession."59 Former US trade representative Susan Schwab concurs, noting, "Although countries took protectionist measures in the wake of the crisis, the international community avoided a quick deterioration into a spiral of beggar-thy-neighbor actions to block imports."60 At a minimum, the bicycle of world trade is still coasting forward. From the earliest stages of the financial crisis, there was also concerted and coordinated action among central banks to ensure both discounting and countercyclical lending. Indeed, even global governance skeptics acknowledge the success of global economic governance on this point.61 As the extent of the subprime mortgage crisis became clear, central banks of the major economies slowly cut interest rates in the fall of 2007. A few months later, the central banks of the United States, Canada, the United Kingdom, Switzerland, and the eurozone announced currency swaps to ensure liquidity.62 By the fall of2008 they were cutting rates ruthlessly and in a coordinated fashion—"the first globally coordinated monetary easing in history," as one assessment put it.63 Global real interest rates fell from an average of 3 percent prior to the crisis to zero in 2012—in the advanced industrialized economies, the real interest rate was effectively negative.64 Not content with lowering interest rates, most of the major central banks also expanded emergency credit facilities and engaged in more creative forms of quantitative easing. Between 2007 and 2012, the balance sheets of the central banks in the advanced industrialized economies more than doubled. The Bank for International Settlements acknowledged in its 2012 annual report that "decisive action by central banks during the global financial crisis was probably crucial in preventing a repeat of the experiences of the Great Depression."65 Central banks and finance ministries also took coordinated action during the fall of 2008 to try to ensure that cross-border lending would continue, so as to avert currency and solvency crises. In October of that year, the G7 economies plus Switzerland agreed to unlimited currency swaps in order to ensure that liquidity would be maintained in the system. The United States then extended its currency-swap facility to Brazil, Singapore, Mexico, and South Korea. The European Central Bank expanded its swap arrangements for euros with Hungary, Denmark, and Poland. China, Japan, South Korea, and the asean economies broadened the Chang Mai Initiative into an $80 billion swap arrangement to ensure liquidity. The International Monetary Fund also negotiated emergency financing for Hungary, Pakistan, Iceland, and Ukraine. In the ten months after September 2008, the IMF executed more than $140 billion in stand-by arrangements to seventeen countries.66 Over the longer term, the great powers bulked up the resources of the international financial institutions to provide for further countercyclical lending. In 2009 the G20 agreed to triple the imf's reserves to $750 billion. In 2012, in response to the worsening European sovereign debt crisis, G20 countries combined to pledge more than $430 billion in additional resources. The Fund created multiple new credit facilities for its least developed members and established a flexible credit line that enabled members to sign up for precautionary arrangements without triggering market panic. Multiple outside reviews of the imf's performance concluded that the IMF response to the Great Recession "was larger in magnitude, was more rapid, and carried fewer conditions" than in prior crises.67 The World Bank's International Development Association (ida), which offers up the most concessionary form of lending, also increased its resources. The sixteenth ida replenishment in December 2010 was a record $49.3 billion, an 18 percent increase of ida resources from three years earlier. Using Kindleberger's criteria, global economic governance worked rather well in response to the 2008 financial crisis. To be sure, there are global public goods that go beyond Kindleberger's initial criteria, as Kindleberger and successive ipe scholars have observed. Macroeconomic policy coordination would be an additional area of possible cooperation, as would coordinating and clarifying crossborder financial regulations. Again, however, the international system acted in these areas after 2008. Between late 2007 and the June 2010 G20 Toronto summit, the major economies agreed on the need for aggressive and expansionary fiscal and monetary policies in the wake of the financial crisis. Even reluctant contributors like Germany—whose finance minister blasted the "crass Keynesianism" of these policies in December 2008—eventually bowed to pressure from economists and G20 peers. Indeed, in 2009 Germany enacted the third largest fiscal stimulus in the world.68 Germany's actions, which contravened its ordoliberal preferences, are an example of global economic governance leading to greater policy coordination.69

TTIP talks fail - slew of reasons

Brattberg 14

Erik Brattberg, Visiting Fellow at the Center for Transatlantic Relations at the Johns Hopkins School of Advanced International Studies, HuffPo, January 10, 2014, "Is 2014 the Transatlantic Trade Deal's 'Make-or-Break' Year?", http://www.huffingtonpost.com/erik-brattberg/is-2014-the-transatlantic\_b\_4577270.html

Progress on the current negotiations has been made. In December, U.S. and EU officials completed their third round of TTIP negotiations. The fourth round is scheduled in March following a review session between U.S. and EU trade representatives. However, as negotiations now begin in earnest, more controversial issues will likely begin to surface, including divergent approaches to legislation, standards and regulations. Vested interests and looming protectionism on both sides of the Atlantic remain strong. There is also some fear in Europe that the trade deal would disproportionately favor American business interests at the expense of European ones.

As negotiations enter into the next phase, pressure from environmental groups, labor unions and consumer advocates will also increasingly be felt. Many of these groups have recently stepped up their criticism of TTIP. While this debate is of course essential, it also puts a heavier burden on proponents of the trade deal to explain TTIP's potential benefits and debunk skeptics' criticisms.

On top of this, the NSA scandal has already threatened to derail the TTIP negotiation process or at least divert attention away from it. Although EU officials claim that data protection and privacy issues lie outside the realm of the current trade negotiations, European outrage over the Edward Snowden revelations could still spill over into adversely affecting the TTIP negotiations. A final potential obstacle is the upcoming elections in both the EU and the United States this year. Both the election to the European Parliament in May and the midterm elections to the U.S. Congress in November could give populist groups like Europe's anti-immigration parties and the Tea Party movement more of a say over trade policy.

NSA thumps the disad or disproves the logic of the link.

Feaver 1/17/14

Peter, Foreign Policy, “Obama Finally Joins the Debate He Called For,” http://shadow.foreignpolicy.com/posts/2014/01/17/obama\_finally\_joins\_the\_debate\_he\_called\_for

Today President Barack Obama finally **joins the national debate he called for** a long time ago but then abandoned: the debate about how best to balance national security and civil liberty. As I outlined in NPR's scene-setter this morning, this debate is a **tricky** one for a president who wants to lead from behind. The public's view shifts markedly in response to perceptions of the threat, so a political leader who is only following the public mood will **crisscross himself repeatedly**. Changing one's mind and shifting the policy is not inherently a bad thing to do. There is no absolute and timeless right answer, because this is about trading off different risks. The risk profile itself shifts in response to our actions. When security is improving and the terrorist threat is receding, one set of trade-offs is appropriate. When security is worsening and the terrorist threat is worsening, another might be. It is likely, however, that the optimal answer is not the one advocated by the most fringe position. A National Security Agency (NSA) hobbled to the point that some on the far left (and, it must be conceded, the libertarian right) are demanding would be a mistake that the country would regret every bit as much as we would regret an NSA without any checks or balances or constraints. Getting this right will require **inspired and active political leadership.** **To date**, Obama has preferred to stay far removed from the debate swirling around the Snowden leaks. This president relishes opportunities to spend **political capital** on behalf of policies that disturb Republicans, but, as former Defense Secretary Robert Gates's memoir details, Obama **has** been very reluctant to expend **political capital** on behalf of national security policies that disturb his base. Today Obama is finally engaging. It will be interesting to see how he threads the political needle and, just as importantly, how much political capital he is willing to spend in the months ahead to defend his policies.

Won't pass

Zeese 1/21/14

 Kevin Zeese and Margaret Flowers, Truthout, January 21, 2014, "People Pressure Is Making Fast-Tracking the TPP Politically Toxic", http://truth-out.org/news/item/21354-people-pressure-is-making-fast-tracking-the-tpp-politically-toxic

Backlash in Congress to Fast Track

Baucus announced last March that he would deliver Fast Track by June. Pressure delayed it so that now the bill is being introduced in the beginning of an election year. Election years are a terrible time to pass anything controversial.

The TPP is becoming politically toxic. Over the last year there has been a steady stream of emails and phone calls to Congress. Members have faced constituent meetings and protests where TPP is being raised. Some examples of protests: Los Angeles, Seattle, Washington, DC, Salt Lake City, Minneapolis, US Trade Rep Office, Vancouver, Leesburg, New York City, . . . we could go on. Americans have sent a clear message to Congress members that they better not be associated with the TPP in an election year.

When Fast Track was introduced there was a backlash, according to public reports, of angry Democrats. Rep. Earl Blumenauer (D-OR) told Huffington Post: “I’m a little disappointed that something’s dropped that was never discussed with Democrats in the House. As I understand it, it wasn’t actually discussed with Democrats in the Senate.”

Five members of the Senate Finance Committee told US Trade Representative Mike Froman they will not support the Baucus Fast Track bill because Congress needs to be involved throughout the process not just in an up or down vote after it is completed.

During a hearing on Fast Track on Thursday protesters were there expressing their displeasure.

Baucus says he will not be holding a mark-up of the bill because of the divisions on the Finance Committee. Sen Ron Wyden (D-OR) who will be taking Baucus’ place told Politico there was “broad frustration” with the lack of transparency. And. Majority Leader Reid said that he may not even bring the bill to the Senate Floor if it passes out of committee.

As bad as the senate sounds for the administration, the House is even worse. Opposition has been building in recent months with Democrats and Republicans writing President Obama opposing Fast Track.

They could not find a Democratic co-sponsor and now Politico reports, that Speaker Boehner says he will not bring the bill to the floor for a vote unless 50 Democrats support it.

State of the Union: Last Stand for Fast Track of TPP?

The president’s TPA month is off to a bad start, so he has to make a big pitch in his upcoming State of the Union on January 28. If he doesn’t, it is a sign he has given up and is distancing himself from defeat. He’s not only going to have to persuade almost every Republican to support him (that would be a first for his presidency), he’s going to have to convince every Democrat who has not taken a position, and change the minds of many who have already publicly said they oppose Fast Track.

The problem is Members of Congress know that if they get on the wrong side of corporate trade agreements, it will hurt them politically. The public is angry about this job-killing trade deal, even Minority Leader Pelosi has had her events interrupted by TPP protesters. The social movement against corporate trade is coming across loud and clear leading top House Dems to describe it as “dead on arrival” if it does not protect labor and the environment.

#### Obama fails

Darrell Delamaide, MarketWatch, 1/22/13, Congress won’t give Obama blank check on trade deals, www.marketwatch.com/story/congress-wont-give-obama-blank-check-on-trade-deals-2014-01-22/print?guid=36CFCBB4-82D0-11E3-948D-00212803FAD6

Detractors say the agreement has little to do with expanding trade and more with weakening labor and environmental standards through a back-door race to the bottom.

Both may be right, but the issues are certainly controversial enough to merit debate.

That is not what the administration is seeking, however, as it asks for fast-track authority to get the eventual agreement through Congress with a simple up-or-down vote — no debate, no amendments, no second thoughts.

The conventional wisdom is that trade agreements are so complex and delicately balanced after sensitive negotiations over months and years that letting Congress muck around with it would make it impossible to ever get a trade pact finished.

So instead Congress is invited, on behalf of the American people, to buy a pig in a poke.

The administration is saying, as have previous administrations that sought and won fast-track authority, “Trust me.”

The problem is that trust is not a very plentiful commodity in today’s Washington. President Barack **Obama’s low approval ratings are evidence that, after his misfires on health care, budget, immigration and foreign policy, neither Democrats nor Republicans are eager to give him a blank check for trade or anything else.**

While a bill introduced earlier this month to grant Obama trade promotion authority is labeled “bipartisan,” that fig leaf comes only from including Sen. Max Baucus as sponsor, though the Montana Democrat will be leaving the Senate soon to take up his appointment as ambassador to China.

No other Democrats in the House or Senate are lending their names to the bill, complaining that it does too little to keep lawmakers informed about negotiations or let them provide input.

The only other Senate sponsor so far is Orrin Hatch, R-Utah, ranking member of the Senate Finance Committee. The bill was introduced in the House by Rep. Dave Camp, R-Mich., chairman of the House Ways and Means Committee, and he has so far found only two other Republican congressmen to get on board.

Perhaps the oddest twist in the current White House campaign for fast-track authority is linking the trade pacts (the U.S. is also pushing a similar agreement with the European Union) to the issue du jour in Washington — income inequality.

“I can tell you that trade promotion authority, TPA, is a key part of a comprehensive strategy of the president’s to increase exports and support more American jobs at higher wages,” White House press secretary Jay Carney said at a press briefing last week.

This in spite of the fact that the North American Free Trade Pact (NAFTA), which turned 20 on Jan. 1, has resulted in a net depletion of American jobs.

In a recent editorial supporting TPP and fast-track authority , the Washington Post tried to claim that the Pacific trade pact hardly included any low-wage countries, glossing over the fact that most of the countries involved, including the populous Malaysia and Vietnam, have much lower wages than the U.S.

It’s hard to square an agenda of boosting American wages, including the minimum wage, with introducing new competition with low-wage countries.

A dozen senators in the Democratic caucus wrote a letter to Senate Majority Leader Harry Reid of Nevada calling fast-track authority as described in the Camp-Baucus bill “outdated and inadequate,” and Reid indicated that no TPA bill would be coming to the Senate floor any time soon, given the controversy.

Obama is expected to bring up the trade pacts once again in his State of the Union address next week because he views both TPP and the Transatlantic Trade and Investment Partnership as potentially signature accomplishments for his legacy.

But it looks increasingly like he will be faced with a stark choice — he must abandon plans to get a classic fast-track approval and opt for a more consultative process, or forget about any wide-ranging trade agreements.

Even if it passes - added conditions will kill any trade deals

Herman 14

Lawrence L. Herman, Herman & Associates, Toronto, is a senior fellow at the C.D. Howe Institute and former counsel at Cassels Brock & Blackwell LLP, Financial Post, January 10, 2014, "Darkening clouds threaten Trans-Pacific Partnership deal", http://opinion.financialpost.com/2014/01/10/darkening-clouds-threaten-trans-pacific-partnership-deal/

The long-delayed fast-track bill was introduced in both the Senate and House of Representatives on Thursday, but indications are that its passage will be held up by partisan wrangling, hostage to the toxic political atmosphere in Washington.

With the spectre of the failed WTO Doha Round hovering in the background, the TPP agenda is unfortunately over-layered with extreme complexity. As well, many of the twelve participating countries have deeply entrenched and diametrically opposed positions, all of which is frustrating consensus.

Second, the talks are over-weighted by the dominance of the United States, which has a highly aggressive agenda of its own. This doesn’t set the stage for the normal give-and-take and consensus building in trade talks.

Another problem, at least up to now, has been the lack of President Obama’s trade negotiating authority – which must be bestowed by the Congress.

Officially called Trade Promotion Authority or TPA (but more often called “fast-track”), negotiating authority is absolutely critical for the American team. Fast-track authorizes Obama to conclude a deal but prevents the Congress from later demanding that provisions be re-negotiated as a price for its approval. Under fast-track, the only thing the Congress can do is accept the deal as signed or reject it entirely.

Without fast-track authority, there’s no guaranty that any Trans-Pacific deal struck with the Americans will get the necessary Congressional approval. No country would be foolish enough to sign off on any agreement with the U.S. in the absence of the fast-track guaranty.

The fast-track bill was introduced on Thursday, but passage is far from certain.

It’s unusual that the TPP negotiations have proceeded thus far without the American team having fast-track authority. Other TPP countries have been negotiating basically on faith, assuming that fast-track will one day be forthcoming.

An unfortunate development is that the chair of the critical Senate Finance Committee, Max Baucus of Montana, has been designated by President Obama as the next U.S. ambassador to China. With Baucus’ impending departure, a major force in channelling fast track through the Congress will be gone, causing uncertainties over the ultimate fate of the legislation.

There’s another problem. While fast-track will give the US executive its negotiating mandate, the price for getting the bill through Washington’s byzantine legislative maze will be the tacking on of many conditions. For example, even now, the bills refer to “currency manipulation” as one requirement for Congressional approval of a TPP deal. Other conditions will be added on as the bills proceed through Congress.

Congress’ clamp on the U.S. negotiating position adds to concern about whether a final trans-Pacific deal can be successfully pulled off.

### morrocco

IHRL collapse legitimizes Moroccan colonization --- destabilizes North Africa and causes WW3

Epstein 9 (Pamela, LLM – Golden Gate University, JD – University of La Verne, “BEHIND CLOSED DOORS: "AUTONOMOUS COLONIZATION" IN POST UNITED NATIONS ERA-THE CASE FOR WESTERN SAHARA” Spring, 2009, 15 Ann. Surv. Int'l & Comp. L. 107)

In dealing with the case of Western Sahara, the U.N. has allowed itself to be a geopolitical pawn in the maneuverings of two minor regional powers: Morocco and Algeria. "Every State has the duty to refrain from organizing, instigating assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territorial directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." n177 Member states are under a duty to bring about a speedy end to [\*136] colonialism, including due regard for the freely expressed will of the peoples concerned. n178 States' attitudes toward self-determination shift and change depending on the impact it could have on a State's self-interested agenda. Under the U.N.'s Friendly Relations Declaration, "strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another since the practice of any form of intervention not only violates the spirit and letter of the Charter, **but also leads to the creation of situations which threaten international peace and security**." n179

As two of the five permanent members with vetoing power of the U.N. Security Council, France and the U.S. have blocked the Council from enforcing its resolutions in regard to Western Sahara. n180 Both countries have perceived a historical need to strengthen the Moroccan monarchy as a barrier against Communism and radical Arab nationalism during the Cold War. n181 More recently, Morocco has served as an important ally in the battle against Islamic extremism. n182 The U.N. has been an abysmal failure in regard to Western Sahara. The resolution should have been tailor-made for the U.N. - hold a referendum to allow the people of Western Sahara to decide whether to be free or integrate with Morocco. Yet, after the cease-fire, and MINURSO with a staggering operational budget of six hundred million dollars, the referendum has gone nowhere. n183 It is an ironclad stalemate. Moreover, the referendum process as whole has been met with gross irregularities and improprieties. The chief setback relates to the misuse of administrative control, on paper this task is assigned to MINURSO, on the ground a different story emerges, the referendum or lack thereof has been strictly controlled by the Moroccan government. n184

**The U.S. has not made any attempt to distinguish itself by setting a higher standard**. From the beginning U.S. power politics affected its duty under international customary law. U.N. Ambassador Daniel [\*137] Moynihan recounted his job during the Cold War years, as a duty to oppose an independent state for the Saharawi's. n185 "No new Angola on the west coast of Africa n186 was his instruction from then Secretary of State Henry Kissinger. According to declassified White House documents, Kissinger is cited as saying in reference to Morocco's unsanctioned and illegal entry into the Western Sahara during the 1975 "Green March," "if we had prevented it we would have destroyed our relationship with Morocco." n187 The U.S. has proven by its actions, they are not abiding by the principles enumerated within the Friendly Relations Declaration cited above. Despite the termination of the Cold War, the U.S. still refuses to use its favored relationship with Morocco or its position as a vetoing member on the Security Council to ensure Sahrawi people are provided the right of self-determination, one of the most important and basic human rights the U.N. was created to protect. This U.S.'s behavior is in starch contradiction to its origins as a colony breaking away from its colonial master, England, in its inalienable right to freedom through self-determination.

As indicated above, both the U.S. and France have attempted to utilize their close relationship with Morocco to exploit Western Sahara for its resources: oil and fish stocks. France, as a vetoing member on the U.N. Security Council, has close political ties to Morocco as its foremost trading partner and provider of developmental aid. France's close relationship to Morocco has led France in successfully preventing condemnation by the Security Council of the human right violations committed by Morocco. n188 Their relationship has additionally prevented the expansion of the MINURSO mandate to include human rights monitoring in the occupied territories, thereby forcing MINURSO to stand idly by as a silent witness to the continuing human rights violations. n189

Furthermore, Spain unlike its neighbor Portugal, who played a leadership role in supporting the liberation of East Timor from Indonesian [\*138] occupation as the former colonial power has played no such role and, in fact, has done quite the opposite. Spain has placed a higher value on maintaining good neighborly relations with Morocco. A strong motivator behind the controversial 2006 fishing agreement, previously mentioned, between the European Union and Morocco was the advancement of friendly relations and monetary gain. From these incidents alone it is enough to conclude that the duties and responsibilities of member states of the U.N., the principles and norms of international customary law, and the right to self-determination have taken a back seat to power politics and nation-state self-interest.

PART FIVE: MOROCCO'S 2007 PLAN AND FUTURE CONSEQUENCES

A.Morocco's 2007 Plan

"The Moroccan autonomy plan aims at legitimatizing the occupation..." n190 Falling well below what is required to bring about a peaceful resolution to the conflict is Morocco's 2007 Autonomy Plan supported by the U.S. and France was cited as "serious and credible" and a "constructive contribution to finding a solution to the conflict." n191 **Irreparable damage will occur if the proposal is implemented, as it stands the plan would** categorically alter the foundation **of the** post-World War II international legal system. **The autonomy plan**, which **re-legitimizes colonization through military occupation**, is premised on the notion that Western Sahara is part of Morocco-a view strongly contested by the U.N. Charter, the ICJ, the African Union, and various other international sources. Acceptance of the autonomy plan would be the first time since the founding of the U.N. and the ratification of its Charter more than sixty years ago, the international community would be endorsing the expansion of a country's territory by military force, resulting in a dangerous and destabilizing precedent. n192

Further complicating the situation is the lack of an enforcement mechanism provided in the proposal, and Morocco has a history of breaking its promises to the international community in regards to the U.N.-mandated referendum for the Western Sahara. n193 Upon closer [\*139] inspection, the proposal is offering limited autonomy at best, particularly in regards to natural resources and law enforcement beyond local matters. n194 According to Article 19 of Morocco's constitution, the Sultan (King) of Morocco is ultimately vested with absolute authority and, therefore, the autonomy proposal insist Moroccan "keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King." n195 Unmistakably giving the monarch considerable leeway in interpretation of the plan and control over its autonomous "colony" Western Sahara.

B.Consequences of not granting full independence

Further aggravation and acceleration of human rights violations, **the** **destabilization of an already unstable region with** global implications, as well as setting a bad legal precedent as described above is just the tip of the iceberg if self-determination of Western Sahara is not advanced. It is time to heed the lessons from the past which clearly demonstrate that any solution against or ignoring the right of self-determination and reinstitution of colonization is not built for longevity. The tragic and bloodstained universal truth is that **not granting a people's right to self-determination is a** major cause of wars **and revolutions**. n196 Historically, centralized autocratic governments seldom ever respect the autonomy of regional jurisdictions, **which classically lead to violent conflict and genocides**. n197 For example, in 1952 the U.N. granted the British protectorate and former Italian colony of Eritrea autonomous status federated with Ethiopia. n198 Ethiopia's emperor in 1961 revoked Eritrea's [\*140] autonomous status, annexing it as his empires new province. n199 The result was a thirty-nine year battle marked by death and violence. n200

Western Sahara is a clear cut case of self-determination for a people struggling against foreign military occupation. The Polisario Front has already offered guarantees to protect Moroccan strategic and economic interest if allowed full independence. To insist that the people of Western Sahara give up their moral and legal right to a genuine and free referendum, is not a formula for conflict resolution, but rather a recipe for a far more serious conflict in the future. Now is the "most opportune time to break the cycle of compromise and accommodation, of realpolitik and to adopt a no-nonsense attitude to the issue." n201

CONCLUSION: AN ARGUMENT FOR CHAPTER 7 USE OF FORCE

The subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality. n202

Any attempt aimed at the partial or total disruption other than national unity and territorial integrity of a State or country or in regard to political independence is incompatible with the purposes and principles of the U.N. Charter. n203 [\*141]

Every state has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes. n204 Every Member State, including Morocco, has a duty to refrain from any forcible action which deprives other peoples' rights of equality and self-determination synonymous with their freedom and independence. n205 Furthermore, as members of the U.N., each state is obligated to promote the realization of self-determination and to respect that right in accordance with the provisions of the U.N. Charter. n206 All obligations that deal with preemptory and customary law, such as the right to self-determination, are applied erga omnes in relation to all-not just between parties. n207 All states must then do what is in their power to make the parties respect their obligations. In light of the articles on state responsibility, individual states have a "duty of non-recognition" of gross violations of international law. The lack of political will and nation-state self-interest has corrupted the foundational Charter of the U.N. and made it possible for Morocco to continue denying the Sahrawi's their right to self-determination.

The U.N. Security Council's involvement in using force to implement the referendum and its outcome is restricted to its powers of collective security found in Chapter 7 of the U.N. Charter. n208 In order to call upon this power, the Council must first satisfy Article 39, indentifying either a salient threat to the peace, a breach of the peace or an act of aggression. n209 A mounting salient threat has been established-by occupying Western Sahara and blocking the referendum from allowing any choice of independence, Morocco actions are identical to the role of a colonial power. Morocco has also violated international law by invading Western Sahara by force in the 1975 "Green March." This one action translates to a cognizable breach of international peace and security, violating the U.N. Charter invoking Chapter 7 Security Council powers. n210 To further support the "Green March" as an act of aggressive [\*142] force on the part of Morocco, Special Rapporteur Cristescu states, "The use of force against another State may take various forms: for instance, actions conducted by regular or irregular forces; by forces of volunteers or by armed bands; acts of reprisal; invasion; or pressure or coercion of various kinds." n211

In U.N. resolution 1783, n212 which again extended the mandate of MINURSO, the U.N. Secretary General noted there was a conspicuous increase in violence in Western Sahara not seen in years past. n213 The U.N. has been denied access to Morocco's military installations within the occupied territory of Western Sahara. n214 This lack of access traditionally has been associated with rising tensions as a precursor to violence. n215 The Security Council has previously utilized its Chapter 7 powers to terminate conflicts which are not forthcoming and where the situation is classified as threat to international peace and security. n216 For example, the case of Iraqi occupation of Kuwait in 1990 when the Security Council invoked Chapter 7 and went to the military defense of Kuwait. Since 1990, over 1000 resolutions have been adopted by the Security Council in accordance with Chapter 7. However, the Security Council is unwilling to do the same for Western Sahara. Ultimately, unless war breaks out, no international actor in the current situation seems able, or willing to initiate a lasting resolution to the conflict. **Another outbreak of war is not implausible. In fact, it is highly probable, carrying with it the ability to** further destabilize the Northern Africa region **and involves the U.S., France, and other countries providing the potential for** a world war scenario**.**

## 1AR

### T

“War powers authority” covers operations

Oxford International Encyclopedia of Legal History 2012

(Oxford University Press via Oxford Reference, Georgetown University library)

**The War Power in the Twenty-First Century**.

The presumption of a dual war-making role appears to have been eclipsed since 2001, during which time it has been argued by some that the president stands supreme in his war-making capacity as **commander in chief** and that he has no obligation to share such power with Congress. This view assumes that the president has all the requisite and necessary **authority to order whatever he deems necessary in terms of military operations** and that Congress can claim only the power to declare war; the resulting operational conduct is strictly a presidential prerogative. Opponents of this interpretation point to all the additional powers dealing with the military that are vested in Congress.

Proves they limit out all TK affs

Marcy Wheeler 13, founder of EmptyWheel – a national security blog, PhD in comparative lit, The AUMF Fallacy, <http://www.emptywheel.net/2013/02/18/the-aumf-fallacy/>

And ultimately, we should look to what Stephen Preston — the General Counsel of the agency that actually carried out the Awlaki killing — has to say about where the CIA gets its authorization to engage in lethal covert operations.

Let’s start with the first box: **Authority to Act under U.S. Law**.

First, we would confirm that **the contemplated activity is authorized by the President in the exercise of his powers under Article II of the U.S. Constitution, for example, the President’s responsibility as Chief Executive and Commander-in-Chief to protect the country from an imminent threat of violent attack**. This would not be just a one-time check for legal authority at the outset. Our hypothetical program would be engineered so as to ensure that, through careful review and senior-level decision-making, each individual action is linked to the imminent threat justification.

### trade impact

#### Trade doesn’t solve war

Martin et. al. 8(Phillipe, University of Paris 1 Pantheon—Sorbonne, Paris School of Economics, and Centre for Economic Policy Research; Thierry MAYER, University of Paris 1 Pantheon—Sorbonne, Paris School of Economics, CEPII, and Centre for Economic Policy Research, Mathias THOENIG, University of Geneva and Paris School of Economics, The Review of Economic Studies 75)

Does globalization pacify international relations? The “liberal” view in political science argues that increasing trade flows and the spread of free markets and democracy should limit the incentive to use military force in interstate relations. This vision, which can partly be traced back to Kant’s Essay on Perpetual Peace (1795), has been very influential: The main objective of the European trade integration process was to prevent the killing and destruction of the two World Wars from ever happening again.1 Figure 1 suggests2 however, that during the 1870–2001 period, the correlation between trade openness and military conflicts is not a clear cut one. The first era of globalization, at the end of the 19th century, was a period of rising trade openness and multiple military conflicts, culminating with World War I. Then, the interwar period was characterized by a simultaneous collapse of world trade and conflicts. After World War II, world trade increased rapidly, while the number of conflicts decreased (although the risk of a global conflict was obviously high). There is no clear evidence that the 1990s, during which trade flows increased dramatically, was a period of lower prevalence of military conflicts, even taking into account the increase in the number of sovereign states.

Democratization doesn’t solve war

Kupchan, Professor of International Affairs – Georgetown University, April ‘11

(Charles A, “Enmity into Amity: How Peace Breaks Out,” <http://library.fes.de/pdf-files/iez/07977.pdf>)

Second, contrary to conventional wisdom, democracy is not a necessary condition for stable peace. Although liberal democracies appear to be better equipped to fashion zones of peace due to their readiness to institu­tionalize strategic restraint and their more open societies – an attribute that advantages societal integration and narrative/identity change – regime type is a poor predic­tor of the potential for enemies to become friends. The Concert of Europe was divided between two liberalizing countries (Britain and France) and three absolute monar­chies (Russia, Prussia, and Austria), but nevertheless pre­served peace in Europe for almost four decades. Gen-eral Suharto was a repressive leader at home, but after taking power in 1966 he nonetheless guided Indonesia toward peace with Malaysia and played a leading role in the founding of ASEAN. Brazil and Argentina embarked down the path to peace in 1979 – when both countries were ruled by military juntas. These findings indicate that non-democracies can be reliable partners in peace and make clear that the United States, the EU, and de­mocracies around the world should choose enemies and friends on the basis of other states’ foreign policy behav-ior, not the nature of their domestic institutions.

No impact to economic decline – prefer new data

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

### 1ar nsa—divides dems

Congressional-Executive fight over NSA—divides Dems—it won’t stop

Chuck Todd, 1/17/14, First Thoughts: Obama tries to stake middle ground in NSA debate, firstread.nbcnews.com/\_news/2014/01/17/22337778-first-thoughts-obama-tries-to-stake-middle-ground-in-nsa-debate?lite

\*\*\* Obama tries to stake middle ground in NSA debate: In his 11:00 am ET speech on reforming the NSA in the wake of the Edward Snowden disclosures, President Obama will say that the federal government should no longer be the entity holding on to the bulk of phone and internet records, or metadata. NBC's Kristen Welker has learned that Obama will ask Attorney General Eric Holder and the intelligence community how the United States can preserve this program but outside the federal government, and he will ask Congress for its input as well. This is Classic Obama -- staking a middle ground that tries to stay consistent with the values he campaigned on in 2008, but that also recognizes that his duty is to protect the country from national-security threats. Of course, when you take the middle road, you often end up pleasing no one (in this case, privacy advocates who want the program ended or national security-hawks who believe it shouldn’t be changed). So what Obama will be proposing as it relates to the NSA’s metadata program will likely be judged two different ways. Supporters will argue he’s trying to change the program as much as he can, given the competing privacy and national-security concerns. Detractors -- from both the right and left -- will contend that all he’s doing is punting, and there’s no immediate answer where the bulk data should live. It’s all in the eye of the beholder. \*\*\* Who will hold the metadata? Again, the president is NOT going to be calling the end of bulk data collection; he simply doesn’t believe the government should hold that data. So who holds the data? The phone/tech companies don’t want to do it. So if a third party does it, will the public consider that government or not? Obviously, it’s also important to note that the president will be ending any warrantless searches of this collection. But again, the core issue that blew up in the public -- mass collection of data by the government -- is not ending. And now it’s up to Congress to come up with a Plan B. \*\*\* But it won’t end the debate: Yet **if the Obama administration’s goal was to put this issue behind them, proposing this middle ground isn’t going to do this**. Bottom line: **The debate won’t end, and** now it will involve Congress -- and maybe even the 2016 field. Indeed, how Republicans react will be fascinating to watch. You will see the Rand Pauls vs. the Peter Kings (and maybe even the Chris Christie’s). **This issue could be** a pretty **divisive one in a Dem primary**, too but if there’s no serious contender to Hillary Clinton, she might not have to deal with it in the same vein that the candidates on the GOP side will.

### 1ar at speech solves

Speech didn’t resolve anything

Quaid 1/19/14

Libby, associated press, “LAWMAKERS SAY OBAMA SURVEILLANCE IDEA WON'T WORK,” http://bigstory.ap.org/article/senator-concerned-about-change-nsa-data-storage

A chief element of President Barack Obama's attempt to overhaul U.S. surveillance **will not work**, leaders of Congress' intelligence committees said Sunday, pushing back against the idea that the government should cede control of how Americans' phone records are stored. Obama, **under pressure to calm the** controversy over government spying, said Friday he wants bulk phone data stored outside the government to reduce the risk that the records will be abused. The president said he will require a special judge's advance approval before intelligence agencies can examine someone's informations and will force analysts to keep their searches closer to suspected terrorists or organizations. "And I think that's a very difficult thing," Sen. Dianne Feinstein, who chairs the Senate Intelligence Committee, said Sunday. "Because the whole purpose of this program is to provide instantaneous information to be able to disrupt any plot that may be taking place." Under the surveillance program, the NSA gathers phone numbers called and the length of conversations, but not the content of the calls. Obama said the NSA sometimes needs to tap those records to find people linked to suspected terrorists. But he said eventually the bulk data should be stored somewhere out of the government's hands. That could mean finding a way for phone companies to store the records, though some companies have balked at the idea, or it could mean creating a third-party entity to hold the records. Feinstein, D-Calif., said many Americans don't understand that threats persist a dozen years after the 9/11 terrorist attacks. "New bombs are being devised. New terrorists are emerging, new groups. Actually, a new level of viciousness. And I think we need to be prepared," Feinstein said. Rep. Mike Rogers, chairman of the House Intelligence Committee, said Obama had **intensified** a sense of **uncertainty** about the country's ability to root out terrorist threats. Obama didn't say who should have control of Americans' data; he directed the attorney general and director of national intelligence to find a solution within 60 days. "**We really did need a decision on Friday**, and what we got was lots of uncertainty," Rogers, R-Mich., said. "And just in my conversations over the weekend with intelligence officials, this new level of uncertainty is **already having** a bit of **an impact** on our ability to protect Americans by finding terrorists who are trying to reach into the United States."

Speech only aggravated people

Blake 1/21/14

Aaron, Washington Post, “Americans unmoved by Obama’s NSA speech,” <http://www.washingtonpost.com/blogs/post-politics/wp/2014/01/21/americans-unmoved-by-obamas-nsa-speech/?tid=up_next>

If President Obama thought he was going to move the needle with his **speech** on the National Security Agency's surveillance programs last week, **he was sorely mistaken**. A new Pew Research Center poll shows not only that most Americans didn't pay attention, but also that **those who did don't think Obama's proposals will change anything.** According to the poll, only 8 percent of Americans have "heard a lot" about Obama's proposals, while 41 percent have "heard a little." If you only ask these two groups of people, 73 percent say Obama's changes will have no impact on protecting people's privacy, and 79 percent say they won't make it more difficult to fight terrorism. In addition, **Americans continue to grow more skeptical of the NSA's phone and Internet surveillance programs,** with 53 percent disapproving and 40 percent approving. **Even a plurality of Democrats disapprove** (48-46), after previously backing the Obama administration.

### 1ar no tpa

BTS says he SHOULD use PC—he wont

James Politi, Finacial Times, 1/5/13, Obama challenge on selling trade deals to resurgent left, www.ft.com/cms/s/0/ae053274-7604-11e3-b028-00144feabdc0.html#axzz2pf2zyet3

Mr Obama is likely to reprise the themes from that speech in his State of the Union address in late January, which will probably be more geared towards energising his supporters ahead of congressional midterm elections in November than finding common ground with Republicans. But it is far from clear that this growing emphasis on economic populism can be squared with the president’s ambitious second-term trade agenda, including massive deals with other 11 Pacific nations and the EU that could well be sealed within the coming year. From the days of the North American Free Trade Agreement, launched 20 years ago, trade has always been a tough sell politically in the US – and, for a Democratic president, it means taking on allies among labour, environmental and consumer groups who are often staunchly opposed to the agreements. Their scepticism about trade boils down to a belief that the US too often negotiates trade deals for the benefit of its multinational corporations, rather than ordinary workers, exacerbating wage stagnation and income inequality. Mr Obama – and his top administration officials – do not see it that way by any stretch. Many on the economic team – from Gene Sperling and Jason Furman at the White House to US trade representative Mike Froman – are instinctive supporters of further trade liberalisation. They acknowledge that US trade policy has had problems in the past, but have vowed to do things differently this time, by insisting on tougher standards on workers’ rights, environmental regulations, the role of state-owned enterprises and intellectual property protections. They say these will help “level the playing field” in the global economy in a way that can be squared with what the president has described as his “north star” of improving the lives of middle-class Americans. But Mr Obama has been relatively timid about making that case in a detailed, specific and convincing way. He made a fleeting reference in his December 4 speech to the need for “a trade agenda that grows exports and works for the middle class”. And he had been only slightly more expansive in a speech a month earlier from the port of New Orleans when he praised trade deals with Panama, Colombia and South Korea that were renegotiated and enacted under his watch but first signed by George W Bush. That shyness surrounding Mr Obama’s public pronouncements on trade may have to be shed soon. In the next few weeks, the leaders of the Senate finance committee, who generally support Mr Obama’s trade policy, are expected to unveil legislation that would ensure a much smoother ride on Capitol Hill for trade deals. Known as “Trade Promotion Authority”, this legislation could prove critical to ensuring the agreements do no get caught in political gridlock in Washington. This will be the first big political test for Mr Obama on trade – and it may take a much higher level of engagement from him to get it passed. Mr Obama could succeed. Liberal critics, including labour unions, remain unconvinced that the administration’s approach to the negotiations, particularly with regard to the more controversial Trans-Pacific Partnership, is really any different than what has been done in the past. But they could still change their minds, or not fight as ardently as expected. And moderate, pro-trade Democrats may well come on board enthusiastically. Meanwhile, business groups will lobby feverishly for the deals. In addition, geopolitical arguments rather than economic ones can help carry the day on Capitol Hill. The TPP is seen as essential to Mr Obama’s “pivot to Asia” and could help bolster strategic ties with Japan and others to help contain China. The EU deal could revive transatlantic relations and help set new standards for global trade that may ultimately apply to emerging markets such as China in the future. But for now, Mr **Obama’s trade agenda seems to be sitting rather uncomfortably alongside his party’s tilt to the left** – and one of his missions for 2014 will be to reconcile the two.

Democrats will never ge ton board

Amie Parnes, The Hill, 1/21/14, Obama: Give me fast track trade, thehill.com/homenews/administration/195858-white-house-works-to-convince-dems-to-give-obama-fast-track-on-trade

The **Democratic opposition makes it highly unlikely the trade promotion authority bill**, in its current form at least, **will go anywhere**.

One big problem is that it was negotiated by Baucus, who is about to leave the Senate to become ambassador to China.

Baucus will be replaced by Sen. Ron Wyden (Ore.), who is said to disagree with the approach taken by his predecessor. Democratic aides predict the legislation, which Majority Leader Harry Reid (D-Nev.) called “controversial” last week, would have to be completely redone to gain traction among lawmakers in their party.

Some Democrats might see a disconnect between the White House’s push for trade and it’s separate push on income inequality, which has been embraced by the party.

TPPs failure kills TPA as well—proves no impact

Patrice Hill, Washington Times, 12/22/13, Congress puts Obama on bumpy road for fast-track trade deals, www.washingtontimes.com/news/2013/dec/22/congress-puts-obama-on-bumpy-road-for-fast-track-t/?page=all

The White House push for fast-track authority got more difficult last month after WikiLeaks leaked a copy of a draft TPP agreement on intellectual property.

Trade analyst Clyde Prestowitz said the leaked document shows that U.S. negotiators appear to have been “captured” by the lobbying of large multinational corporations that are trying to protect and expand their patented monopolies on drugs and other intellectual property rather than promote open trade. The draft trade deal, for example, contains protections for patented drugs that the pharmaceutical industry has been unable to get through Congress, he said.

“**This is something very unlikely to survive open debate in the U.S. Congress**,” he said, contending that Congress should reject the fast-track bill unless the trans-Pacific draft agreement is changed substantially. “Clearly what is afoot is that the non-transparent TPP talks are being used to make an end run around the Congress and the parliaments and publics of many countries to achieve far-reaching special rights [for big business] in the guise of free trade,” he said.

Mr. Prestowitz and others say fast-track authority is not needed to make trade deals. They point out that it wasn’t needed to enact the trade deals with South Korea, Colombia and Panama during Mr. Obama’s first term. But those deals were negotiated mostly by the George W. Bush administration and had overwhelming Republican support — something that any deals negotiated Mr. Obama may lack, other analysts say.

While trade deals generally have resulted in large U.S. trade deficits in recent decades, agreements passed without congressional amendment under fast-track procedures have resulted in 38 percent slower export growth than trade deals that weren’t fast-tracked through Congress, according to the U.S. Business and Industry Council, which represents U.S. manufacturers hurt by past trade deals.

Liberal groups that oppose free trade have seized on the Wikileaks disclosures, predicting that they will be critical in turning opinion in Congress against giving the president fast-track authority.

“Fast-track is history,” said Lori Wallach, director of Public Citizen's Global Trade Watch, who said the draft intellectual property agreement poses “threats to affordable medicine and Internet freedom” that would be unacceptable to Congress.

Momentum against trade was strong among Democrats and Republicans before the leaks and has only grown § Marked 15:52 § since then, she said.

“Polls show that opposition to more-of-the-same trade deals is one of the few issues that unite Americans across party lines,” she said. “It’s not really surprising that there is bipartisan congressional opposition to fast-track.”

## 2AR

### Card

Chesney cites footnote 5 for his assertion that congress didn’t authorize the president to use self defense—footnote 5 *proves our argument*

Chesney et al., professor at the University of Texas School of Law, 13

(Robert, nonresident senior fellow of the Brookings Institution, distinguished scholar at the Robert S. Strauss Center for International Security and Law, Jack Goldsmith is the Henry L. Shattuck Professor of Law at Harvard Law School and a member of the Hoover Institution’s Jean Perkins Task Force on National Security and Law, served in the Bush administration as assistant attorney general, Office of Legal Counsel, from 2003 to 2004 and as special counsel to the general counsel from 2002 to 2003, Matthew C. Waxman is a professor of law at Columbia Law School, an adjunct senior fellow at the Council on Foreign Relations, and a member of the Hoover Institution’s Jean Perkins Task Force on National Security and Law, Benjamin Wittes is a senior fellow in governance studies at the Brookings Institution, a member of the Hoover Institution’s Jean Perkins Task Force on National Security and Law, 2-25-13, “A Statutory Framework for Next-Generation Terrorist Threats,” http://media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf, accessed 6-14-13, CMM)

5. The Bush administration initially requested from Congress the authority to “deter and pre-empt any

Future acts of terrorism or aggression against the

united States.”

David Abramowitz, “The President, the Congress, and

use of Force: Legal and Political Considerations in Authorizing

use of Force Against

international Terrorism,” 43 Harv.int’l L.J. 71, 73 (2002). After negotiations with the White House,

however, Congress declined to authorize this use of military force, though it did in the AuMF recognize

that “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.