## 1NC

### 1

Congressional consultation spill over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

That goes nuclear

**Li ‘9**

Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### 2

#### A. Interpretation –

#### Authority means expressly granted – assertions by the president don’t count

Words and Phrases, 4

(Volume 4a, Cumulative Supplement Pamphlet, p. 275)

U.S.N.Y. 1867. Under the federal judiciary act, giving the Supreme Court jurisdiction to review a final judgement or decree of a state court of last resort in any suit where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, it is held that the term “authority exercised under the United States” must be something more than a bare assertion of such authority, and must be an authority having a real existence derived from competent governmental power, and in this respect the word “authority” stands on the same footing with “treaty” or “statute.” Hence, where a party claimed authority under an order of a federal court which, when rightfully viewed, did not purport to confer any authority upon him, a writ of error to the Supreme Court has dismissed.—Milligar v. Hartupee, 73 U.S. 258, 6 Wall. 258, 18 L.Ed. 829

#### Presidential war powers authority is only Congressionally conferred

Telman, Associate, Sidley, Austin, Brown & Wood, New York, 1

(Jeremy, “ARTICLE: A Truism That Isn'T True? The Tenth Amendment and Executive War Power,” 51 Cath. U.L. Rev. 135, lexis, accessed 12-10-13, CMM)

The President's power as Commander-in-Chief is clearly a war power, but the Framers subordinated that power to congressional war powers by providing that the United States should not possess a standing army. The designation "Commander-in-Chief" may not have been intended to confer any substantive authority to use the Armed Forces except as directed by Congress. n228 It does not appear that the Framers contemplated any significant role for the President as Commander-in-Chief in peacetime. n229 Hamilton stated that "the President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union." n230 James Iredell, speaking in the North Carolina ratifying convention, reminded his colleagues that:¶ The President has not the power of declaring war by his own [\*183] authority, nor that of raising fleets and armies. These powers are vested in other hands . . . . With regard to the militia, it must be observed, that though he has command of them when called into the actual service of the United States, yet he has not the power of calling them out. The power of calling them out is vested in Congress. n231

#### B. Violation – the plan restricts self-defense, which is derived from Commander in Chief power, not war powers authority.

Stromseth, Associate Professor, Georgetown University Law Center, 96

(Jane, Book Review: Understanding Constitutional War Powers Today: Why Methodology MattersPresidential War Power. By Louis Fisher. \* Lawrence: University Press of Kansas, 1995. Pp. xvi, 245. $ 29.95 (hbk.), $ 14.95 (pbk.), 106 Yale L.J. 845, lexis, accessed 12-10-13, CMM)

Most other classicists view the President's authority more narrowly. Many contend that the President can only commit U.S. forces to combat unilaterally to repel actual attacks against the United States or its armed forces. n226 This seems to be Fisher's view as well. n227 As explained previously, however, I am not convinced that even the Founders understood the President's authority so narrowly. n228 At the very least, they likely viewed the Chief Executive and Commander in Chief as having power, comparable to that of the states, to take military action without prior authorization from Congress if the country was "actually invaded" or "in such imminent Danger as will not admit of delay." n229 Thus the President possesses the power not only to "repel" attacks but also to forestall imminent attacks against the United States and its armed forces. n230 In addition, as practice has confirmed, the President has the authority to take limited military action to rescue American citizens in imminent danger abroad. n231 While the Founders gave no clear indication of this power, "underlying the Constitutional language and [Madison's] explanatory clause is a long-range purpose that authorizes the President to protect Americans from external force in an emergency." n232

#### C. Vote neg –

1. Limits – including Commander in Chief powers or assertions of authority ruins any limit on the topic – justifies any restriction on the minutia of war tactics or any broad claims of presidential power that aren’t grounded in anything more than crazy OLC opinions – prevents clash.

2. Precision – the aff obscures a key Constitutional question which undermines actual legal knowledge on the topic.

#### T is a voting issue or the aff will read a new, uncontested aff every debate.

### 3

Obama has won the Iran sanctions fight for now—opposition is still working to exploit on-the-fence Dems

Greg Sargent, WaPo, 1/22/14, Another blow to the Iran sanctions bill, www.washingtonpost.com/blogs/plum-line/wp/2014/01/22/another-blow-to-the-iran-sanctions-bill/

Add two more prominent Senators to the list of lawmakers who oppose a vote on an Iran sanctions bill right now: Patty Murray and Elizabeth Warren.

Murray’s opposition — which she declared in a letter to constituents that was sent my way by a source — is significant, because she is a member of the Senate Dem leadership, which is now clearly split on how to proceed. While Chuck Schumer favors the Iran sanctions bill, Murray, Harry Reid and (reportedly) Dick Durbin now oppose it. T**his could make it less likely that it** ever **gets a vote.**

From Murray’s letter: Please know that I share your concerns about the Iranian government’s nuclear program. Like you, I am troubled by Iran’s nuclear enrichment program and their desire to enrich nuclear materials above levels required for energy production. That is why I was pleased to see Iran take measurable steps toward addressing the international community’s concerns by signing the Joint Plan of Action last fall…While I still remain concerned about Iran’s nuclear program, I believe this agreement could be an important step in our efforts to reach a diplomatic solution to this complicated issue. I believe the Administration should be given time to negotiate a strong verifiable comprehensive agreement. However, if Iran does not agree to a comprehensive agreement that is acceptable, or if Iran does not abide by the terms of the interim agreement, I will work with my colleagues to swiftly enact sanctions in order to increase pressure on the Iranian regime. This hits some of the key points: The mere possibility of a long term deal is worth trying for, and sanctions can always be imposed later if the talks go awry. Meanwhile, Elizabeth Warren is circulating a letter to constituents out there that also opposes a vote. Asked about the letter, Warren spokesperson Lacey Rose emails me: “Senator Warren believes we must exhaust every effort to resolve the Iranian nuclear issue through diplomacy, and she does not support imposing additional sanctions through new legislation while diplomatic efforts to achieve a long-term agreement are ongoing.” Warren’s pull with the Democratic base, of course, is largely rooted in her emphasis on economic issues, but there has been some chatter in liberal circles inquiring about her stance on Iran. Since a mobilized left is important in preventing a vote that could derail diplomacy, her opposition can only help.

The method by which both Senators declared their positions — letters to constituents, in response to questions perhaps stoked by pressure from outside groups — says something about the caution Dems are demonstrating when it comes to the domestic politics of engagement with Iran. Those who favored a vote were far more vocal at first — as of now, 16 Dem Senators have signed on. But the continued silence of many Dem Senators signaled a broad unwillingness to join the bill, even as many were unwilling to publicly declare this to be the case, since Dems apparently see allowing negotiations to proceed, without getting a chance to vote in favor of getting tougher on Iran, as a politically difficult position to take.

If current conditions remain, **a vote is starting to look less and less likely**. Right now, the bill has 58 co-sponsors. On the other side, 10 Dem Senate committee chairs have signed a letter opposing a vote. Around half a dozen Dem Senators subsequently came out against it. With Murray and Warren, the number of Dems against a vote has comfortably surpassed the number who want one.

Meanwhile, announcements like the one earlier this month indicating that the deal with Iran is moving forward make a vote still less likely. With Murray now opposed, that means virtually the whole Dem leadership is a No. On the other hand, **those who adamantly want a vote** — insisting it would only help the White House and make success more likely, despite what the White House itself wants – **will be looking for any hook they can find to reactivate pressure**.

**And it’s worth stressing that if this ever did come to a vote, it’s quite possible that many of the Dems still remaining silent could still vote Yes**. Those Democrats would be putting themselves in a ridiculous, untenable position if they did that, but since many appear convinced that the alternative is politically worse, it remains a very real possibility.

The plan’s authority restriction is a loss for Obama—causes defections

Dr. Andrew J. Loomis, Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, 3/2/2007, Leveraging legitimacy in the crafting of U.S. foreign policy, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

Those defections overwhelm Obama—results in new sanctions that collapse negotiations and cause war

William Davnie, Former State Dept Officer, Chief of State at Iraq provincial office, 1/5/14, Iran sanctions bill threatens progress; pressure is on Franken, Klobuchar, http://www.startribune.com/opinion/commentaries/238660021.html

The historic Geneva deal to limit Iran’s nuclear program is scheduled to go into effect later this month. Once it does, the world will be farther away from a devastating war and a nuclear-armed Iran. As U.S. Rep. Betty McCollum, D-Minn., rightly pointed out, “this initial deal is a triumph for engagement and tough diplomacy.” However, **the U.S. Senate could reverse that progress through a vote on new sanctions as early as this week,** putting the United States and Iran on a collision course toward war.

For the first time in a decade, the Geneva deal presses pause on Iran’s nuclear program, and presses the rewind button on some of the most urgent proliferation concerns. In exchange, the United States has committed to pause the expansion of its sanctions regime, and in fact rewind it slightly with limited sanctions relief. **Imposing new sanctions now would be just as clear a violation of the Geneva agreement as it would be for Iran to expand its nuclear program.**

That’s why the Obama administration has committed to vetoing any such measures and has warned that torpedoing the talks underway could put our country on a march toward war. A recent, unclassified intelligence assessment concurred with the White House’s caution, asserting that new sanctions “would undermine the prospects for a successful comprehensive nuclear agreement with Iran.”

However, in an open rebuke of the White House, the intelligence community and the 10 Senate committee chairs who cautioned against new sanctions, Sens. Robert Menendez, D-N.J.; Chuck Schumer, D-N.Y., and Mark Kirk, R-Ill., have introduced a bill (S. 1881) to impose new oil and financial sanctions on Iran.

Supporters of this measure stress that new sanctions would take effect only if Iran violates the Geneva agreement or fails to move toward a final deal at the end of the six-month negotiation period. And some dismiss this congressional threat as toothless, given President Obama’s vow to veto any sanctions legislation. But **simply passing these sanctions would dangerously escalate tensions with Iran**. U.S. Rep. Keith Ellison, D-Minn., put it best: “**New sanctions stand to kill any hope for diplomacy.”**

Already, anti-Geneva-deal counterparts in Iran’s parliament have responded with their own provocation, introducing legislation to require Iran to enrich near weapons grade if the United States imposes new sanctions.

Like the Senate sanctions bill, the Iranian parliament’s legislation would have a delayed trigger. Like the Senate bill, the mere introduction of this reckless legislation isn’t a violation of the letter of the Geneva agreement per se. But **both bills risk** restarting the vicious cycle of confrontation **that has defined the U.S.-Iran relationship for decades.**

Without a significant public outcry, **support for this sanctions bill could potentially reach a veto-proof majority** of 67 senators and 290 representatives in the House.

Minnesota could play an important role in this showdown between supporters of using hard-nosed diplomacy to avoid military action and reduce nuclear risk, and those who would upend sensitive negotiations and make war likely. About half of the senators have staked out their positions, but neither Sen. Amy Klobuchar nor Sen. Al Franken have yet taken a public stance.

Minnesota is one of just 10 states where neither senator has taken a public position on whether or not to sign onto **sanctions** that **would sink the deal — and** risk another war in the Middle East.

While some new-sanctions proponents are banking on partisan politics to earn support from Republicans, it would still take seven of the remaining 23 undecided Democrats, along with all Republicans, to reach a veto-proof majority. All eyes will be on those 23 undecided Democrats — including Klobuchar and Franken.

**Nuclear war**

James A. **Russell,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

### 4

LOAC is a neoliberal security governance strategy that necessitates un-ending violence against innocents and normalizes atrocities.

Dowdeswell ‘13

Tracey, PhD candidate at Osgoode Hall Law School at York University. Her research focuses on the impact of globalisation on the customary laws of war, “How Atrocity Becomes Law: The Neoliberalisation of Security Governance and the Customary Laws of Armed Conflict,” Journal of Critical Globalisation Studies , Issue 6 (2013)

Certain practices of contemporary warfare, such as pre-emptive attacks on civilians, house clearings, air strikes in residential neighbourhoods, **targeted killings,** and attacks on medical personnel and providers of humanitarian assistance, have become increasingly common in the War on Terror, in protest policing, and in counter-insurgent and **urban warfare.** This article will discuss the ways in which the ideologies and practices of neoliberal governance in the security sector are not only facilitating such practices, but are in fact facilitating their justification as lawful within the customary laws of armed conflict. Moreover, these are practices that until recently were **denounced as atrocities** and even prosecuted as war crimes. To a certain extent, it would seem reasonable to assume that modern States have ordinarily **sought to normalise** the atrocities that their security forces commit against civilians, preferring to use the language and logic **of the law** whenever possible to justify such actions. However, there is a distinct pattern to the tactics that are being normalised today, and this is due in part to the widespread adoption of neoliberal ideologies of governance and administration within the security sector. This is enabling the U.S. and its allies to institute what Agamben (2005) has discussed **as a permanent state of exception within the ordinary law,** and **the normalisation of atrocity is a key component of this.** The post-war period has seen an increase in attention to war crimes and the codification of the laws of war, and this has given us such instruments as the Rome Statute of the International Criminal Court, and the United Nations Responsibility to Protect Protocol (UN Res., 2009), as well as the International Committee of the Red Cross which continues to address pressing issues in humanitarian law (Melzer, 2008). At the same time, though, the neoliberalisation of security governance is significantly weakening protections for civilians by permitting and justifying attacks against them as being customary under the laws of armed conflict. There is very little that international law would have to offer such civilians if the harms they suffer are rendered lawful as customary practices of war. Yet, this is indeed what is happening, and one can canvass the above strategies and perceive that their impact on their target populations consists not only of intentional deaths, but also injuries, mayhem, and **widespread social dislocations** that serve to further fracture and marginalise such populations. Whether they are used to justify counter-insurgent strikes in Iraq or Afghanistan, military intervention in Libya, or protest policing in regimes experiencing the Arab Spring, the strategies of what Abrahamsen and Williams (2011) have termed “globalised security governance” are designed to be waged not against states and lawful combatants, but against **'failed States' and 'non-State actors'** – categories that are essentially euphemisms for civilians. The present article focuses on the neoliberal ideologies embedded within globalised governance, arguing that these are having **serious negative impacts** on the development of civil institutions and political mobilisation within a societies already fractured by conflict. Moreover, this development further reinforces the political power of the military hegemons that wield these strategies – whether these are the U.S. in Afghanistan and Iraq, NATO in Libya, or United Nations peacekeepers on the borders of Kosovo and Serbia. The article will first review the orthodox thinking concerning the customary laws of armed conflict, particularly the traditional 'two element' theory that posits that customary norms can be determined by examining the elements of actual state practice and the state's opinio juris that the norm is a legally binding one. It will then present critical alternatives to this view, which posit that customary law is a kind of discursive practice, where customary laws emerge from the overarching normative and ideological framework within which customary norms are articulated and by reference to which they are justified. The second section then describes how neoliberal ideologies of governance have shifted the normative framework within which we understand and justify the customary laws of war, and focuses in particular on how neoliberal ideologies of management have **radically decentralised and disaggregated** the traditional military chain-of-command. It is argued that neoliberal ideologies of individualisation, privatisation, and strategies of risk management are used to promote **the use of force against civilians** as seemingly legitimate acts of 'self-defence' against unknown and unknowable risks – risks that emerge from a conflict zone which the actions of the security forces themselves have **rendered endemically dangerous**. The third section will then illustrate this logic at work through reference to a specific case of atrocities committed against civilians, using the example of Collateral Murder, which is a piece video footage that was recorded by the U.S. First Air Cavalry Brigade in Iraq on 12 July 2007. This footage, which was released in April 2010 by WikiLeaks, depicts the killing of civilians, including civilians who were collecting bodies and aiding the wounded. This case study will then be supplemented by a range other examples which illustrate how justifications for civilian atrocities are **becoming increasingly widespread** throughout the security sector. The argument that I wish to make is not that such acts are illegal under the normative framework of the customary laws of war, but instead that this normative framework **itself is being shifted by neoliberal strategies of security governance** in such a way as **to normalise atrocities** within the customary laws of armed conflict. In order to make this argument, I will pull together diverse strands of thinking in the nature of customary law, the organising principles of the laws of war, and the history of the doctrine of the chain-of-command, and discuss how these **have all been disaggregated and reconfigured by the neoliberalisation of governance** in the security sector. The argument that is developed through the grasping together of these strands will then be illustrated through reference to the events depicted in Collateral Murder, and linked to broader set of examples from elsewhere in the security sector, so as to demonstrate the increasing extent to which these norms are shared. In so doing, I will be examining the problem of intentional – and seemingly justifiable – civilian atrocities from a number of different points of view. More specifically, though, the starting point will be a focus on the customary law principle of distinction, which requires that security forces distinguish between civilian and military targets. Civilians are liable to attack only for such time as they have taken up arms and are actively posing a threat, or if they are part of an organized armed group such that they perform a “continuous combat function” (Melzer, 2008). This article argues that the neoliberalisation of the security sector has shifted the criteria for attack from one based upon an individual's status as a combatant to one of defining and containing risk. Security forces in global war zones are thus shifting the criteria for attack to one in which they use armed force to **define** and then manage 'risky populations' in a way that **subverts** the ability of the **humanitarian law to regulate attacks** against civilians. Typically, violations of the principle of distinction and the killing of civilians have been all-to-commonplace, calling into question the ability of the humanitarian law to play such a regulatory role. However, with the transformations in the customary laws of war called into being by the neoliberalisation of security governance, what is at stake is **not merely the failure of** humanitarian **law** to protect civilians in conflict zones, **but its increasing use as an instrument of their violent repression**.

Try or die

Shor 10

<http://www.stateofnature.org/locatingTheContemporary.html>

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Attributing the debilitation of the U.S. economy to a mortgage crisis or the collapse of the housing market misses the truly epochal crisis in the world economy and, indeed, in capitalism itself. As economist Michael Hudson contends, "the financial 'wealth creation' game is over. Economies emerged from World War II relatively free of debt, but the 60-year global run-up has run its course. Financial capitalism is in a state of collapse, and marginal palliatives cannot revive it." According to Hudson, among those palliatives is an ironic variant of the IMF strategies imposed on developing nations. "The new twist is a variant on the IMF 'stabilization' plans that lend money to central banks to support their currencies - for long enough to enable local oligarchs and foreign investors to move their savings and investments offshore at a good exchange rate." The continuity between these IMF plans and even the Obama administration's fealty to Wall Street can be seen in the person of Lawrence Summers, now the chief economic advisor to Obama. As further noted by Hudson, "the Obama bank bailout is arranged much like an IMF loan to support the exchange rate of foreign currency, but with the Treasury supporting financial asset prices for U.S. banks and other financial institutions ... Private-sector debt will be moved onto the U.S. Government balance sheet, where "taxpayers" will bear losses." [4] So, here we have another variation of the working poor getting sapped by the economic elite! In fact, one estimate of U.S. federal government support to the elite financial institutions is in the range of $10 trillion dollars, a heist of unimaginable proportions. [5] Given the massive indebtedness of the United States, its reliance of foreign support of that debt by countries like China, which has close to $2 trillion tied up in treasury bills and other investments, a long-term crisis of profitability, overproduction, and offshoring of essential manufacturing, it does not appear that the United States and, perhaps, even the capitalist system can avoid collapse. Certainly, there are Marxist economists and world-systems analysts who are convinced that the collapse is inevitable, albeit it may take several generations to complete. The question becomes whether a dying system can be resuscitated or, if something else can be put in its place. One of the most prominent world systems scholars, Immanuel Wallerstein, puts the long-term crisis of capitalism and the alternatives in the following perspective: Because the system we have known for 500 years is no longer able to guarantee long-term prospects of capital accumulation, we have entered a period of world chaos. Wild (and largely uncontrollable) swings in the economic, political, and military situations are leading to a systemic bifurcation, that is, to a world collective choice about the kind of new system the world will construct over the next fifty years. The new system will not be a capitalist system, but it could be one of two kinds: a different system that is equally or more hierarchical and inequalitarian, or one that is substantially democratic and equalitarian. [6] What Wallerstein overlooks is the possibility that a global crisis of capitalism with its continuous overexploitation and maldistribution of essential resources, such as water, could lead to a planetary catastrophe. [7] While Wallerstein and many of the Marxist critics of capitalism correctly identify the long-term structural crisis of capitalism and offer important insights into the need for more democratic and equalitarian systems, they often fail to realize other critical predicaments that have plagued human societies in the past and persist in even more life-threatening ways today. Among those predicaments are the power trips of civilization and environmental destructiveness. Such power trips can be seen through the sedimentation of power-over in the reign of patriarchal systems and an evolutionary selection for that power-over which contaminates society and social relationships. Certainly, many of those predicaments can also be attributed to a 5000 year history of the intersection of empire and civilization. Anthropologist Kajsa Ekholm Friedman analyzes that intersection and its impact in the Bronze Age as an "imperialist project..., dependent upon trade and ultimately upon war." [8] However, over the long rule of empire and especially within the last 500 years of the global aspirations of various empires, "no state or empire," observes historian Eric Hobsbawm, "has been large, rich, or powerful enough to maintain hegemony over the political world, let alone to establish political and military supremacy over the globe." [9] While war and trade still remain key components of the imperial project today and pretensions for global supremacy persist in the United States, what is just as threatening to the world as we know it is the overexploitation and abuse of environmental resources. Jared Diamond brilliantly reveals how habituated attitudes and values precluded the necessary recognition of environmental degradation which, in turn, led to the collapse of vastly different civilizations, societies, and cultures throughout recorded history. [10] He identifies twelve contemporary environmental challenges which pose grave dangers to the planet and its inhabitants. Among these are the destruction of natural habitats (rainforests, wetlands, etc.); species extinction; soil erosion; depletion of fossil fuels and underground water aquifers; toxic pollution; and climate change, especially attributable to the use of fossil fuels. [11] U.S. economic imperialism has played a direct role in environmental degradation, whether in McDonald's resource destruction of rainforests in Latin America, Coca-Cola's exploitation of underground water aquifers in India, or Union Carbide's toxic pollution in India. Beyond the links between empire and environmental destruction, unless we also clearly understand and combat the connections between empire and unending growth with its attendant "accumulation by dispossession", we may very well doom ourselves to extinction. According to James Gustave Speth, Dean of the Yale School of Forestry and Environmental Studies, the macro obsession with growth is also intimately related to our micro habituated ways of living. "Parallel to transcending our growth fetish," Speth argues, "we must move beyond our consumerism and hyperventilating lifestyles ... This reluctance to challenge consumption has been a big mistake, given the mounting environmental and social costs of American "affluenza," extravagance and wastefulness." [12] Of course, there are significant class and ethnic/racial differences in consumerism and lifestyle in the United States. However, even more vast differences and inequities obtain between the U.S. and the developing world. It is those inequities that lead Eduardo Galeano to conclude that "consumer society is a booby trap. Those at the controls feign ignorance, but anybody with eyes in his head can see that the great majority of people necessarily must consume not much, very little, or nothing at all in order to save the bit of nature we have left." [13] Finally, from Vandana Shiva's perspective, "unless worldviews and lifestyles are restructured ecologically, peace and justice will continue to be violated and, ultimately, the very survival of humanity will be threatened." [14] For Shiva and other global agents of resistance, the ecological and peace and justice imperatives require us to act in the here and now. Her vision of "Earth Democracy" with its emphasis on balancing authentic needs with a local ecology provides an essential guidepost to what we all can do to stop the ravaging of the environment and to salvage the planet. As she insists, "Earth Democracy is not just about the next protest or next World Social Forum; it is about what we do in between. It addresses the global in our everyday lives, our everyday realities, and creates change globally by making change locally." [15] The local, national, and transnational struggles and visions of change are further evidence that the imperial project is not only being contested but also being transformed on a daily basis. According to Mark Engler, "The powerful will abandon their strategies of control only when it grows too costly for them to do otherwise. It is the concerted efforts of people coming together in local communities and in movements spanning borders that will raise the costs. Empire becomes unsustainable ... when the people of the world resist." [16] Whether in the rural villages of Brazil or India, the jungles of Mexico or Ecuador, the city squares of Cochabama or Genoa, the streets of Seattle or Soweto, there has been, and continues to be, resistance around the globe to the imperial project. If the ruling elite and many of the citizens of the United States have not yet accepted the fact that the empire is dying and with it the concentric circles of economic, political, environmental, and civilizational crises, the global multitudes have been busy at work, digging its future grave and planting the seeds for another possible world. [17]

Vote negative to delegitimize the use of force—otherwise international law has no meaning

Dowdeswell ‘13

Tracey, PhD candidate at Osgoode Hall Law School at York University. Her research focuses on the impact of globalisation on the customary laws of war, “How Atrocity Becomes Law: The Neoliberalisation of Security Governance and the Customary Laws of Armed Conflict,” Journal of Critical Globalisation Studies , Issue 6 (2013)

Conclusion

The principle of distinction under the customary laws of armed conflict requires that security forces distinguish between civilian and military targets, but this is now being reconfigured as a principle that permits security personnel to use force pre-emptively whenever they perceive there to be a risk of harm to themselves or to their colleagues. With the ‘inherent right of **self-defense’** taking over the principle of distinction, there has been a significant weakening of protections for civilians versus combatants in their liability to be attacked in the conflict zone. The Statist view of the laws of armed conflict has long justified the use of armed force as part of the sovereign prerogative, so long as it emanates from a legitimate public authority, yet there is very little that can be characterised as 'public' in this sense about the individualised and privatised methods of self-interest and self-defence with which security personnel are now making decisions to employ lethal force. **This collapse of the public/private distinction** that has long been the **central organising logic** of the laws of armed conflict is not only leaving us with a legal vacuum vis-à-vis the protection of civilians, but has also effectively created a vacuum in the fundamental legal justifications for **the use of armed force ab origine** . Moreover, neoliberal ideologies of governance – and the practices used to enforce these ideologies on the ground – have not only generated this vacuum, but have also made use of it to produce plausible legal justifications for the commission of atrocities. Hitherto, the international humanitarian law has enjoyed a certain degree of moral force, and this has given it at least some power in the discourse surrounding the killing of civilians in war. However, neoliberal ideologies of security governance have the potential to dissolve the international humanitarian law from the inside out, and it will progressively lose its moral force the more it is used to justify atrocities against civilians. Furthermore, if the state has given away its monopoly on the legitimate use of force – what has long formed the basis of the laws of armed conflict – then there appears little left to justify either that force or the laws that purport to regulate it. All of this leaves us at somewhat of a crossroads as far as the customary laws of armed conflict are concerned. There is the potential either for us to wind up **squarely in the realm of imperial power politics**, backed up by **an ever-growing and increasingly empowered security apparatus**, **or for us to open up new avenues to** wholly **de-legitimate the use of force** **as a tool of international relations in the global age.**

### 5

Clear self-defense authority for targeted killing is key to prevent safe havens and fight future terrorism—ambiguity collapses strike programs

Anderson ‘10

Kenneth, professor of law at Washington College of Law, American University; a visiting fellow of the Hoover Institution and member of its Task Force on National Security and Law; and a non-resident senior fellow of the Brookings Institution, “Self Defense and Non-International Armed Conflict in Drone Warfare,” <http://www.volokh.com/2010/10/22/self-defense-and-non-international-armed-conflict-in-drone-warfare/>

So, I have been strongly identified with, and have been robustly urging, that one possible ground justifying the use of drone warfare and targeted killing, as well as setting rules for its conduct, is the international law of self defense. I maintain, and certainly continue to maintain, that there are circumstances in which the use of targeted killing can and as a proper legal description should be understood to be the use of force as a lawful act of self defense even though it takes place outside of an armed conflict, and even though that use itself does not create an armed conflict. It seems to me, before as now, **crucial** to be clear of the existence of this category of the use of force as a lawful possibility for the **U**nited **S**tates, particularly looking down the road to conditions and situations that do not implicate the current struggle with Al Qaeda, has nothing to do with 9/11, is not covered by the AUMF – a new terrorist group with different terrorist aims, for example, emerging in Latin America or somewhere in Asia twenty-five years from now, and having **no connection** to any of today’s issues. I have suggested that this is an appropriate way of characterizing the legal status of attacks carried out by the US in Yemen or Somalia, or elsewhere that terrorists might go in seeking **safe haven,** or by new groups emerging that increasingly are not directly linked to AQ even if they take inspiration and aims from it. I have queried at what point jihadist groups threatening the US become only “notionally Al Qaeda” and part of our existing legal framework of a non-international armed conflict only in theory, increasingly remote from the reality. Territory or legal geography of conflict matters in that, not because the armed conflict is inherently bound to a territory or geography, but instead because the group at issue is only tenuously connected to the group initially defined as part of the armed conflict – partly under domestic law considerations and partly under international law considerations. The non-international armed conflict goes where the participants go; and likewise if new groups engage in co-belligerent action, then they become part of the armed conflict. But it has seemed to me in the past several years that some of these groups are in other places and not obviously connected, except by a forced abstraction, to the groups under the AUMF. I still think that is a perfectly good way to see the use of force. The new groups present a threat; they present a threat in a place where the armed conflict is **not actually underway** with respect to them; the US targets them as self-defense in the absence of an armed conflict. Alternatively, however, if you think either that the people you are targeting are part of the armed conflict to start with because they are linked sufficiently to AQ and the authors of 9/11, or even more directly because they are AQ or affiliates fleeing Pakistan or Afghanistan in search of new safe havens, then the case for viewing this as simply the continuation of the existing non-international armed conflict is also highly plausible. I view these rationales as permissive, rather than a forced choice between them, and think that each is a perfectly plausible and justifiable way of looking at current actions in Yemen or Somalia. With regards to Pakistan, insofar as those being targeted are as part of the counterterrorism campaign, that seems to me unremarkably part of the on-going armed conflict, albeit one that has broadened out to include Pakistan Taliban and various terrorist groups in Pakistan that have allied themselves with AQ. The point, however, is that the question of whether the proper framework for legal analysis is armed conflict or self-defense begins not from geography but instead from **the identity of whom you fight;** if it is a genuinely unrelated group and, even more plainly as a hypothetical, a genuinely unrelated issue – a new form of transnational Maoism in the Andes, say – then the question of legal geography comes into play to ask whether hostilities of sufficient intensity, etc., suffice to evidence a non-international armed conflict. This is a change in emphasis for me, and in part a shift in view; in the past I have emphasized far more the geography as to where hostilities are underway, but I am persuaded that the correct analytic frame is to ask “who” and then whether, “where” the fighting takes place, the threshold of sufficient hostilities has been met. But this is in the context of understanding that in places such as Yemen, it seems to me the facts can be plausibly understood to fit either view. Indeed, an important shift in my view concerning Yemen in particular is that as we understand better the relationships between Al Qaeda in the Arabian Peninsula and other groups in Yemen and AQ proper, the facts increasingly suggest that both in the past and even more strongly today, the best – and not merely a decently plausible – characterization is to understand them as part of the non-international armed conflict. It seems to me that there are good legal grounds to understand Somalia and Yemen as attacks as individual acts of self-defense, but as I read the Woodward book and what John Brennan in particular says about the movement of AQ operatives into those new safe havens, and talk with well-informed reporters, those factual descriptions are persuading me that the better of the two views is to see attacks there as part of the on-going non-international armed conflict. That would include the targeting al Al Aulaqi. I also understand that the Obama administration has reasons grounded in domestic law for preferring to see the best international legal frame as non-international armed conflict in Yemen or Somalia. This arises from its view that for domestic law purposes, the terms of the conflict are set by the AUMF, and not the discretionary scope of the executive. I think this is perfectly plausible as an international law rationale – either seems to me available to it – and in any case, my reading of the facts on the ground in those places suggest that the administration is not simply making a “notional” argument by any means for how it sees attacks in Yemen or Somalia. The Obama administration is on sound grounds in saying that the non-international armed conflict goes where those who participate go, and extends to groups that co-participate with them. But that is a shift in my read of the facts from two years ago, and it is also a shift in emphasis as to taking geography into account. As one government lawyer put it to me, the administration’s view is that, yes, it does have independent grounds for self-defense, exactly as Harold Koh said, and in an appropriate circumstance will invoke it nakedly, **without recourse to an armed conflict**. But it also holds the view that once parties initiated a non-international armed conflict, and met the thresholds of intensity and all that, the same non-international armed conflict goes where they go, irrespective of geography. As he immediately added, with notable weariness, this does not mean Predators over Paris, whether France or Texas; Yemen is not France. Territorial integrity is an important, vitally important principle of international law – but it can be overcome where a state either cannot or will not control its territory – which is to say, assert the lawful sovereignty over territory for which it has both a privilege but an obligation. No safe havens has also been a bedrock qualification on territorial integrity of states, as a matter of self defense and consistent state practice. I am (still) completing a new essay on the operational roles of drones, a roster of strategic uses, one that leaves aside the legal issues in favor of trying to get an analytic handle on the increasingly variegated uses of drones and targeted killing. It seems to me important for legal analysis because the variations are sufficiently great at this stage that different uses suggest different legal frameworks – some are involved in armed conflict, for example, and some might not be. But as the argument over the use of drones in Afghanistan, Pakistan, Yemen, and beyond intensifies, I thought it would be worth taking a moment both to clarify and advance my own baseline legal position. Thus: Although asserting the **framework of self defense,** and elaborating its constraints based in necessity, discrimination, and proportionality **is crucial,** because not all uses of force by the United States will always and forever be instances of armed conflict, it does seem to me plausible and – given the current understanding of facts on the ground in Yemen and Somalia – the best understanding of who is being targeted to regard those uses of force as part of the on-going non-international armed conflict.

#### 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.

### 6

The executive branch of the United States Federal Government should cease justifying instances of targeted killing within an armed conflict based on the doctrine of self-defense.

Solves the aff—the executive’s claim to dual authority is the problem—renouncing it solves—their author

Blank ‘12

Laurie, Director, International Humanitarian Law Clinic, Emory University School of Law, “Presidential Foreign Policy: An Opportunity for International Law Education,” Case Western Reserve Journal of International Law Volume 45 Fall 2012

The Obama Administration has seemed outwardly to take a **wholly opposite tack,** especially in the past few years. At the beginning of his first term, President Obama regularly referred—at least in broad strokes—to international principles when announcing efforts to close the Guantanamo Bay detention center or to eliminate all coercive forms of interrogation, for example.15 The exponential increase in the use of drone strikes, however, produced the most notable and comprehensive engagement with international law of President Obama’s first term. Beginning with then-Legal Advisor Koh’s speech in March 2010 and culminating in a series of speeches by senior Obama Administration officials throughout 2011 and 2012, the President appeared to offer extensive explanation of the international legal principles governing the use of drone strikes against al-Qaeda operatives in various locations around the globe. At first, the Administration announced that the **U**nited **S**tates was using targeted strikes because it “is engaged in an armed conflict or [is acting] in legitimate self-defense.”16 Subsequent addresses by Department of Defense General Counsel Jeh Johnson,17 Attorney General Eric Holder,18 and senior counterterrorism advisor John O. Brennan19 continued this same theme of a combination of law of war and jus ad bellum paradigms to justify and explain the parameters for the use of targeted strikes. On first glance, these speeches seem to accomplish precisely the same purpose and effect as the 1991 speech by President Bush noted above: clear statements of international law and reasons for US action. However, the United States’ insistence on referring to both legal paradigms as justification for individual attacks and the broader program of targeted strikes **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**.20 In reality, therefore, **the series of speeches ultimately undermined the educational possibilities in the service of a specific policy goal.** Notwithstanding political pressures and the broader needs of policy, it is possible to conceive of an effective educational role for the President and his surrogates in the executive branch with regard to international law. Indeed, in the current environment in which the United States is engaged in extensive, wide-ranging, and challenging military operations against diverse foes, this educational role has **significant potential** in the arena of the law of armed conflict. President George W. Bush’s approach suggested a disregard for law and morality in the conduct of military operations—a message that was loudly and clearly communicated to the public, whether by word or by deed. President Obama’s approach suggests a much greater comfort level with international law and willingness to reference and rely on international legal principles for policy purposes, but evinces an **unfortunate manipulation of the law** that can have problematic effects over time. In an ideal world, the President can communicate three effective messages with regard to international law, **particularly** the **law of armed conflict**, to the public through a much more focused and proactive view of the President as an educator in this area.

### allies adv

Drones and detention aren’t key, and the squo solves—here’s some context from their article

Annegret Bendiek 11, Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, At the Limits of the Rule of Law: EU-US Counter- Terrorism Cooperation, http://www.swp-berlin.org/fileadmin/contents/products/research\_papers/2011\_RP05\_bdk\_ks.pdf

1. The essential difference between the United States and the EU is that the United States sees itself at war against al-Qaeda and its terrorist affiliates, whereas the EU and its member states base their counter-terrorism efforts primarily upon policing measures and intelligence services. This is why the transatlantic partners differ markedly also in their interpretations of threat situations and their choices of measures in the fight against terrorism. The socalled Obama factor has not helped to overcome the conflicts that were provoked under the Bush administration. Its only noticeable impact has been limited to the area of data protection. Although most EU member states support US policy on the fight against terrorism or follow an approach that differs only slightly from it, there are, nevertheless, fundamental differences concerning the objective of data protection and the passenger data agreement, extraordinary renditions of suspected terrorists, as well as the closure of the detention facilities in Guantánamo and Bagram. The more that the parliaments get involved in transatlantic relations, the less cooperation there is, as the political assessments of the legislative chambers on both sides of the Atlantic regarding the adequate means to combat international terrorism are **more divergent than ever.** 2. An overview of the areas of cooperation between the United States and the EU shows that this cooperation can take very different forms. It also demonstrates that transatlantic cooperation does not necessarily improve the conditions for complying with the principles of the rule of law. As far as terrorist lists and data protection are concerned, the EU’s standards of legal protection have been set high. The Union has also been dealing – albeit hesitantly – with the issue of taking in Guantánamo inmates. On the other hand, EU member states prefer to turn a blind eye on extraordinary renditions and secret detention centres in Europe. In addition, many member states have been providing indirect support to the United States in detaining and killing terror suspects – amongst them also EU citizens – in Afghanistan. 3. There is a deep division in approaches to transatlantic counter-terrorism policy when it comes to dealing with human and civil rights. Most measures listed in the Stockholm Programme and concerning the internal space of the European Union aim at ensuring that listed terrorist suspects have the right of access to a court. However, outside Europe and North America, one can observe that the protection of fundamental rights of EU citizens has deteriorated and basic human rights are being disregarded – the practices used in the United States detention facility on the Bagram airbase in Afghanistan as well as drone attacks on suspected terrorists are examples of this trend. The EU and its member states have by no means taken on the role of firm defenders of human rights, but instead have either passively accepted US policy or even actively supported it.

[NU card begins]

4. The relationship between security and the rule of law will remain precarious as long as the EU cooperates with a partner that fights a non-state actor by military means. In the medium term, the constant manoeuvring at the limits of the rule of law is bound to impact the credibility of European Justice and Home Affairs policy. For this reason, it is important to clarify the status of the principles of the rule of law in transatlantic counter-terrorism cooperation. Three options for determining the relationship between international and transnational cooperation, on the one hand, and the rule of law, on the other, are conceivable. The first one consists in focussing strictly on security and strengthening the executive actors in Europe. The second option emphasises adherence to the principles of the rule of law, accompanied by a full parliamentarisation of this policy area. However, considering the fact that close cooperation with the United States is a cornerstone of both German and European policy, a third option – sensitive management of the emerging legal grey areas – seems most likely to be chosen. A first step in this direction would be for the member state to openly name the grey areas and publicly thematise the impact these have on transatlantic counter-terrorism cooperation.

[NU card ends]

Multiple other issues undermines EU rule of law leadership

Thorsten Wetzling 11, non-resident fellow at the Center for Transatlantic Relations at the Paul H. Nitze School of Advanced International Studies (SAIS), PhD in Political Science, “What role for what rule of law in EU-US counterterrorism cooperation?”, <http://transatlantic.sais-jhu.edu/publications/articles/Chapter1_EUISS_ChaillotPaper127_WETZLING.pdf>

**\*\*note: table is reproduced since I couldn’t copy and paste it w/ correct formatting**

Sources of concern for the rule of law

It is beyond the scope of this chapter to evaluate the quality of all pertinent counterterrorism laws and to assess the performance of the principal actors in each constitutive layer of the rule-of-law protection in the US, the EU Member States and the EU. Instead, the remainder of this chapter concentrates on three specific ‘problem children’ for rule-oflaw protection in transatlantic counterterrorism. Naturally, given this selective focus, the text may only draw limited inferences from these specific cases to the broader spectrum of EU-US counterterrorism cooperation.

**[NU’s card begins]**

Having said this, it is instructive to recall David Cole’s observation that

‘the rule of law may be tenacious when it is supported, but violations of

it that go unaccounted corrode its very foundation’.17 Thus, while a more

balanced depiction of ‘compatible’ and ‘incompatible’ counterterrorism

practices may be required to substantiate broader claims, it is also true

that a few severely misguided counterterrorism practices suffice to

discredit the ever-present promise of ‘full respect for our obligations under

applicable international and domestic constitutional law’.18 In the light

of the potentially contagious effect of individual rule-of-law deviations

on the entire collaborative effort, the actual percentage of incompatible

practices among the grand total of transatlantic counterterrorism

activities appears secondary.

**[NU’s card ends]**

Each selected case (see the overview table on the next page) focuses on one particular counterterrorism practice and highlights the most pressing rule-of-law issues commonly associated with it. Knowing that laws and conventions can only go so far to ensure the compatibility of political practice with the rule of law, the focus then extends to parliamentary oversight and judicial review. Each miniature study also briefly outlines a transatlantic partner’s reaction to the rule-of-law defence or its forbearance across the pond.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Level  | Practice | Issue | Rule of LawDefenderFocus | CooperationPartnerFocus |
| EU – US CT  | **Exchange****of European****SWIFT data** toUS TFTP | **Data Privacy** | Europol JSB/EuropeanParliament | US Congress |
| EU MS – USCT | **Extraordinary****rendition** | **Prohibition of****torture** | BritishParliament& High Court | US Govt |
| US CT  | Capture-or-killraids | **Due Process****Right to life** | US Congress& US Courts | German Govt |

No impact and collapse inevitable

**Leonard 12** (Mark Leonard is co-founder and director of the European Council on Foreign Relations, the first pan-European think tank., 7/24/2012, "The End of the Affair", www.foreignpolicy.com/articles/2012/07/24/the\_end\_of\_the\_affair)

But Obama's stellar personal ratings in Europe hide the fact that the Western alliance has never loomed smaller in the imagination of policymakers on either side of the Atlantic. Seen from Washington, there is not a single problem in the world to be looked at primarily through a transatlantic prism. Although the administration looks first to Europeans as partners in any of its global endeavors -- from dealing with Iran's nuclear program to stopping genocide in Syria -- it no longer sees the European theater as its core problem or seeks a partnership of equals with Europeans. It was not until the eurozone looked like it might collapse -- threatening to bring down the global economy and with it Obama's chances of reelection -- that the president became truly interested in Europe. Conversely, Europeans have never cared less about what the United States thinks. Germany, traditionally among the most Atlanticist of European countries, has led the pack. Many German foreign-policy makers think it was simply a tactical error for Berlin to line up with Moscow and Beijing against Washington on Libya. But there is nothing accidental about the way Berlin has systematically refused even to engage with American concerns over German policy on the euro. During the Bush years, Europeans who were unable to influence the strategy of the White House would give a running commentary on American actions in lieu of a substantive policy. They had no influence in Washington, so they complained. But now, the tables are turned, with Obama passing continual judgment on German policy while Chancellor Angela Merkel stoically refuses to heed his advice. Europeans who for many years were infantilized by the transatlantic alliance, either using sycophancy and self-delusion about a "special relationship" to advance their goals or, in the case of Jacques Chirac's France, pursuing the even more futile goal of balancing American power, have finally come to realize that they can no longer outsource their security or their prosperity to Uncle Sam. On both sides of the Atlantic, the ties that held the alliance together are weakening. On the American side, Obama's biography links him to the Pacific and Africa but not to the old continent. His personal story echoes the demographic changes in the United States that have reduced the influence of Americans of European origin. Meanwhile, on the European side, the depth of the euro crisis has crowded out almost all foreign policy from the agenda of Europe's top decision-makers. The end of the Cold War means that Europeans no longer need American protection, and the U.S. financial crisis has led to a fall in American demand for European products (although U.S. exports to Europe are at an all-time high). What's more, Obama's lack of warmth has precluded him from establishing the sorts of human relationships with European leaders that animate alliances. When asked to name his closest allies, Obama mentions non-European leaders such as Recep Tayyip Erdogan of Turkey and Lee Myung-bak of South Korea. And his transactional nature has led to a neglect of countries that he feels will not contribute more to the relationship -- within a year of being elected, Obama had managed to alienate the leaders of most of Europe's big states, from Gordon Brown to Nicolas Sarkozy to Jose Luis Rodriguez Zapatero. Americans hardly remember, but Europe's collective nose was put out of joint by Obama's refusal to make the trip to Europe for the 2010 EU-U.S. summit. More recently, Obama has reached out to allies to counteract the impression that the only way to get a friendly reception in Washington is to be a problem nation -- but far too late to erase the sense that Europe matters little to this American president. Underlying these superficial issues is a more fundamental divergence in the way Europe and the United States are coping with their respective declines. As the EU's role shrinks in the world, Europeans have sought to help build a multilateral, rule-based world. That is why it is they, rather than the Chinese or the Americans, that have pushed for the creation of institutionalized global responses to climate change, genocide, or various trade disputes. To the extent that today's world has not collapsed into the deadlocked chaos of a "G-zero," it is often due to European efforts to create a functioning institutional order. To Washington's eternal frustration, however, Europeans have not put their energies into becoming a full partner on global issues. For all the existential angst of the euro crisis, Europe is not as weak as people think it is. It still has the world's largest market and represents 17 percent of world trade, compared with 12 percent for the United States. Even in military terms, the EU is the world's No. 2 military power, with 21 percent of the world's military spending, versus 5 percent for China, 3 percent for Russia, 2 percent for India, and 1.5 percent for Brazil, according to Harvard scholar Joseph Nye. But, ironically for a people who have embraced multilateralism more than any other on Earth, Europeans have not pooled their impressive economic, political, and military resources. And with the eurozone's need to resolve the euro crisis, the EU may split into two or more tiers -- making concerted action even more difficult. As a result, European power is too diffuse to be much of a help or a hindrance on many issues. On the other hand, Obama's United States -- although equally committed to liberal values -- thinks that the best way to safeguard American interests and values is to craft a multipartner world. On the one hand, Obama continues to believe that he can transform rising powers by integrating them into existing institutions (despite much evidence to the contrary). On the other, he thinks that Europe's overrepresentation in existing institutions like the World Bank and the International Monetary Fund is a threat to the consolidation of that order. This is leading a declining America to increasingly turn against Europe on issues ranging from climate change to currencies. The most striking example came at the 2009 G-20 in Pittsburgh, when Obama worked together with the emerging powers to pressure Europeans to give up their voting power at the IMF. As Walter Russell Mead, the U.S. international relations scholar, has written, "[I]ncreasingly it will be in the American interest to help Asian powers rebalance the world power structure in ways that redistribute power from the former great powers of Europe to the rising great powers of Asia today." But the long-term consequence of the cooling of this unique alliance could be the hollowing out of the world order that the Atlantic powers have made. The big unwritten story of the last few decades is the way that a European-inspired liberal economic and political order has been crafted in the shell of the American security order. It is an order that limits the powers of states and markets and puts the protection of individuals at its core. If the United States was the sheriff of this order, the EU was its constitutional court. And now it is being challenged by the emerging powers. Countries like Brazil, China, and India are all relatively new states forged by movements of national liberation whose experience of globalization has been bound up with their new sense of nationhood. While globalization is destroying sovereignty for the West, these former colonies are enjoying it on a scale never experienced before. As a result, they are not about to invite their former colonial masters to interfere in their internal affairs. Just look at the dynamics of the United Nations Security Council on issues from Sudan to Syria. Even in the General Assembly, the balance of power is shifting: 10 years ago, China won 43 percent of the votes on human rights in the United Nations, far behind Europe's 78 percent. But in 2010-11, the EU won less than 50 percent to China's nearly 60 percent, according to research by the European Council on Foreign Relations. Rather than being transformed by global institutions, China's sophisticated multilateral diplomacy is changing the global order itself. As relative power flows Eastward, it is perhaps inevitable that the Western alliance that kept liberty's flame alight during the Cold War and then sought to construct a liberal order in its aftermath is fading fast. It was perhaps inevitable that both Europeans and Americans should fail to live up to each other's expectations of their respective roles in a post-Cold War world. After all, America is still too powerful to happily commit to a multilateral world order (as evidenced by Congress's reluctance to ratify treaties). And Europe is too physically safe to be willing to match U.S. defense spending or pool its resources. What is surprising is that the passing of this alliance has not been mourned by many on either side. The legacy of Barack Obama is that the transatlantic relationship is at its most harmonious and yet least relevant in 50 years. Ironically, it may take the election of someone who is less naturally popular on the European stage for both sides to wake up and realize just what is at stake.

This is about US SSR, not Europe—it’s also too late

Nicholas J. Armstrong 11, "Afghan Security Force Assistance or Security Sector Reform? Despite Recent Improvements in the Afghan Security Forces, More Emphasis on Ministerial Development and Police Reform is Needed", INSCT on Security, Institute for National Security and Counterterrorism Syracuse University, December 21, insct.org/commentary-analysis/2011/12/21/afghan-security-force-assistance-or-security-sector-reform-despite-recent-improvements-in-the-afghan-security-forces-more-emphasis-on-ministerial-development-and-police-reform-is-needed/

A recent policy recommendation by retired Army LTG David Barno, Dr. Andrew Exum, and Matthew Irvine at the Center for New American Security calls for a more accelerated change of mission to ‘security force assistance’ (SFA) to begin pushing the ANSF to the fore as its country’s lead security provider. The current approach features NATO forces leading COIN operations as the main effort supported by the NATO Training Mission in Afghanistan (NTM-A), responsible for rapidly growing and fielding the ANSF to partner with, and eventually replace, NATO units in the field. As the authors of this brief suggest, accelerating the shift to SFA, with a greater number of Afghan units in the field supported by embedded advisors, certainly assumes a greater risk to Afghanistan’s security in the short run. Yet, providing Afghan units greater opportunities to learn and gain valuable field experience now with the bulk of NATO resources still in country – as opposed to a rapid security handover in the final months before the 2014 transition – will increase the likelihood that the ANSF will hold on to their hard fought security gains and allow some space for institution building and economic development beyond 2014. It now appears the mission is headed in this direction with the announcement of four U.S. Army brigades to deploy as Security Force Assistance Teams.

**[NU’s card begins]**

Security force assistance is the next logical step in the triage of armed statebuilding in Afghanistan. But the ‘train and equip’ model of security assistance runs against the grain of long term SSR goals. SSR involves the cultural and structural transformation – and construction where absent – of a state’s core security actors into effective, professional, and accountable agents under civilian control. Training security forces (e.g., SFA) is a core element of SSR, but doing it without an equal emphasis on developing civilian capacity and control and oversight mechanisms in the ministries of defense and interior and in the judicial system may be dangerous. It may, in fact, militarize the security sector to the point of entrenching an imbalance in civil-military relations that would make the challenges of fighting corruption and preventing human rights abuses, or worse, coup attempts all the more difficult.

NTM-A has made significant progress in building the size and capabilities of the ANSF since its inception in 2009, increasing the Afghan National Army and Police by roughly 75,000 and 40,000, respectively. Likewise, NTM-A is on track to meet its November 2012 ANSF end strength target of 352,000 as well. For now it remains unclear, however, how NATO’s efforts to date, focused mainly on the uniformed services, will influence broader institutional reform across the Afghan security sector.

First, the Afghan National Police are currently trained and employed – mostly by U.S. military personnel – to fill a COIN role in local communities, serving essentially as paramilitary forces focused on citizen protection and holding territory cleared by NATO and Afghan Army units. But as Robert Perito of the U.S. Institute of Peace indicates in a recent interview, to be sustainable the Afghan police still needs significant training to provide regular civilian police functions, such as crime prevention, emergency management, and traffic regulation, critical functions for demonstrating the legitimacy of the Afghan state. Additionally, more must be done to bring the Afghan Local Police (ALP) – a community based initiative started in 2010 to increase security by paying armed locals to protect themselves – into the fold under the supervision of the Afghan government and NTM-A. While the ALP has proven valuable in COIN efforts against the Taliban, a recent Human Right Watch report recommends improved mechanisms to vet, train and monitor the ALP following reports of abusive and criminal behavior.

#### No escalation

Adusei, energy expert – Swedish University of Agricultural Sciences, 1/6/’12

(Lord Aikins, “Global Energy Security and Africa's rising Strategic Importance,” <http://www.modernghana.com/news/370533/1/global-energy-security-and-africas-rising-strategi.html>)

Additionally, the prospect of major inter-state conflict in Africa involving the use of deadly weapons that could destabilise oil and gas supply looks relatively distant. Few African countries possess the destructive war machines that Middle Eastern countries have acquired over the last 10 to 20 years. In 2010 for example Saudi Arabia purchased $60 billion worth of U.S. military hardware which experts believe is geared towards countering Iran's arms build up. Again most of Africa's oil is located offshore and could be exploited and transported relatively easily with very little contact with the local population. By way of distance the parts of Africa where most of the oil and gas are located is relatively closer to the U.S. making cost of transportation and the security associated with it relatively less expensive. These factors make oil and gas from Africa more reliable than say the Middle East and remain some of the main reasons why Africa's strategic importance is growing among oil and gas importers.

### self-defense adv

No impact—only leads to emphasis on in bello principles and creates legal clarity which turns and solves the case

Osterdahl ‘10

Inger, Professor, Public International Law, Uppsala University, “Dangerous Liaison? The Disappearing Dichotomy between Jus ad Bellum and in Bello,” Nordic Journal of International Law 78 (2010) 553-566

6. Conclusion

It is almost **irrefutable** that there is interaction between jus ad bellum and jus in bello. There is, however, **no reason to fear** that such interaction necessarily must lead to destruction ofjus in bello, or for that matter to the destruction ofjus ad bellum. Contrary to what is argued by many who are afraid that the disappearance of the distinction between jus ad bellum andjus in bello will inevitably lead to the subordination ofjus in bello to jus ad bellum, it has been argued in this article that the disappearing distinction might just as well lead to the opposite result: that jus ad bellum is subordinated to jus in bello. This, moreover, would seem to be the more likely development given the current focus on the law in war and on the suffering of the civilian population during war. It would seem strange if the current wave of **human rights** and humanitarian **concerns** generally in international law would not lead to the definitive rise of jus in bello. Given the recent change of tone in international political relations one may hope that the aggressive tendencies tending to favour jus ad bellum at the expense ofjus in bello **will fade away** and that this will also make its mark on just war theorising.3 2 In order to fit today's reality, jus in bello can hardly stay intact as there are too many aspects of the Geneva Conventions that are too hard to reconcile with the changing realities. Whether the tension between IHL and real circumstances on the ground can be solved through the application and reinterpretation of the current treaties and protocols remains to be seen, but it would seem unlikely." Apart from the strong humanitarian concern imbuing IHL, many other aspects of the way war is regulated seems unfit to cope with the problems of today. Perhaps **it is time** **to start thinking** not in terms of two or even three bodies of law relating to war - however, these may or may not be inter-related - but to think **in terms of one body of law covering** the **war** situation **from its beginning to its end with** as **strong** an **emphasis** as possible **on humanitarian concerns** for the benefit, primarily, of the civilian population and others hors de combat. There may even be reasons to go further; maybe the entire idea of having one set of laws for peace and another set of laws for war is outmoded not least because the difference between the two conditions seems to diminish in reality. Also, because having one set of laws for war implies recognising the legitimacy of war as a state of things whereas today's increasingly humanitarian international law is perhaps ripe for removing that mantle of legitimacy from war as such. Maybe "war" should be seen as a crisis of peace and the law should come in to protect the civilians to the largest possible extent during the transition from peace through crisis to peace.

**No modeling – US signals are dismissed**

**Zenko 13** [Micah, Council on Foreign Relations Center for Preventive Action Douglas Dillon fellow, "The Signal and the Noise," Foreign Policy, 2-2-13, www.foreignpolicy.com/articles/2013/02/20/the\_signal\_and\_the\_noise, accessed 6-12-13, mss]

Later, Gen. Austin observed of cutting forces from the Middle East: "Once you reduce the presence in the region, you could very well signal the wrong things to our adversaries." Sen. Kelly Ayotte echoed his observation, claiming that President Obama's plan to withdraw 34,000 thousand U.S. troops from Afghanistan within one year "leaves us dangerously low on military personnel...it's going to send a clear signal that America's commitment to Afghanistan is going wobbly." Similarly, during a separate House Armed Services Committee hearing, Deputy Secretary of Defense Ashton Carter ominously warned of the possibility of sequestration: "Perhaps most important, the world is watching. Our friends and allies are watching, potential foes -- all over the world." These routine and unchallenged assertions highlight what is perhaps the most widely agreed-upon conventional wisdom in U.S. foreign and national security policymaking: the inherent power of signaling. This psychological capability rests on two core assumptions: All relevant international audiences can or will accurately interpret the signals conveyed, and upon correctly comprehending this signal, these audiences will act as intended by U.S. policymakers. Many policymakers and pundits fundamentally believe that the Pentagon is an omni-directional radar that uniformly transmits signals via presidential declarations, defense spending levels, visits with defense ministers, or troop deployments to receptive antennas. A bit of digging, however, exposes cracks in the premises underlying signaling theories. There is a half-century of social science research demonstrating the cultural and cognitive biases that make communication difficult between two humans. Why would this be any different between two states, or between a state and non-state actor? Unlike foreign policy signaling in the context of disputes or escalating crises -- of which there is an extensive body of research into types and effectiveness -- policymakers' claims about signaling are merely made in a peacetime vacuum. These signals are never articulated with a precision that could be tested or falsified, and thus policymakers cannot be judged misleading or wrong. Paired with the faith in signaling is the assumption that policymakers can read the minds of potential or actual friends and adversaries. During the cycle of congressional hearings this spring, you can rest assured that elected representatives and expert witnesses will claim to know what the Iranian supreme leader thinks, how "the Taliban" perceives White House pronouncements about Afghanistan, or how allies in East Asia will react to sequestration. This self-assuredness is referred to as the illusion of transparency by psychologists, or how "people overestimate others' ability to know them, and...also overestimate their ability to know others." Policymakers also conceive of signaling as a one-way transmission: something that the United States does and others absorb. You rarely read or hear critical thinking from U.S. policymakers about how to interpret the signals from others states. Moreover, since U.S. officials correctly downplay the attention-seeking actions of adversaries -- such as Iran's near-weekly pronouncement of inventing a new drone or missile -- wouldn't it be safer to assume that the majority of U.S. signals are similarly dismissed? During my encounters with foreign officials, few take U.S. government pronouncements seriously, and instead assume they are made to appease domestic audiences.

**US action not key to foreign use of preemption**

Keir A. Lieber 2, Assistant Professor of Political Science, University of Notre Dame and Robert J. Lieber, Professor of Government and Foreign Service, Georgetown University, December 2002, <http://164.109.48.86/journals/itps/1202/ijpe/pj7-4lieber.htm>

Some analysts believe that it is counterproductive to make explicit the conditions under which America will strike first, and there are compelling reasons for blurring the line between preemption and prevention. The attacks of September 11th demonstrate that terrorist organizations like al Qaeda pose an immediate threat to the United States, are not deterred by the fear of U.S. retaliation, and would probably seize the opportunity to kill millions of Americans if WMD could effectively be used on American soil. A proactive campaign against terrorists thus is wise, and a proclaimed approach toward state sponsors of terrorism might help deter those states from pursuing WMD or cooperating with terrorists in the first place. Other critics have argued that the Bush NSS goes well beyond even the right to anticipatory self-defense that has been commonly interpreted to flow from Article 51 of the U.N. Charter, and thus the Bush strategy will undermine international law and lead other states to use U.S. policy as a pretext for aggression. The most common examples are that the broad interpretation of legitimate preemption could lead China to attack Taiwan, or India to attack Pakistan. This logic is not compelling, however, as these states are not currently constrained from taking action by any norm against preemption, and thus will not be emboldened by rhetorical shifts in U.S. policy.

No adventurism – We won’t start wars just because we can

Brooks 12 (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51

temptation. For many advocates of retrenchment, the mere possession of peerless, globe-girdling military capabilities leads inexorably to a dangerous expansion of U.S. definitions of national interest that then drag the country into expensive wars. 64 For example, sustaining ramified, long-standing alliances such as NATO leads to mission creep: the search for new roles to keep the alliance alive. Hence, critics allege that NATO’s need to “go out of area or out of business” led to reckless expansion that alienated Russia and then to a heedless broadening of interests to encompass interventions such as those in Bosnia, Kosovo, and Libya. In addition, peerless military power creates the temptation to seek total, non-Clausewitzian solutions to security problems, as allegedly occurred in Iraq and Afghanistan. 65 Only a country in possession of such awesome military power and facing no serious geopolitical rival would fail to be satisfied with partial solutions such as containment and instead embark on wild schemes of democracy building in such unlikely places. In addition, critics contend, the United States’ outsized military creates a sense of obligation to use it if it might do good, even in cases where no U.S. interests are engaged. As Madeleine Albright famously asked Colin Powell, “What’s the point of having this superb military you’re always talking about, if we can’t use it?” Undoubtedly, possessing global military intervention capacity expands opportunities to use force. If it were truly to “come home,” the United States would be tying itself to the mast like Ulysses, rendering itself incapable of succumbing to temptation. Any defense of deep engagement must acknowledge that it increases the opportunity and thus the logical probability of U.S. use of force compared to a grand strategy of true strategic disengagement. Of course, if the alternative to deep engagement is an over-the-horizon intervention stance, then the temptation risk would persist after retrenchment. The main problem with the interest expansion argument, however, is that it essentially boils down to one case: Iraq. Sixty-seven percent of all the casualties and 64 percent of all the budget costs of all the wars the United States has fought since 1990 were caused by that war. Twenty-seven percent of the causalities and 26 percent of the costs were related to Operation Enduring Freedom in Afghanistan. All the other interventions—the 1990–91 Persian Gulf War, the subsequent airstrike campaigns in Iraq, Somalia, Bosnia, Haiti, Kosovo, Libya, and so on—account for 3 percent of the casualties and 10 percent of the costs. 66 Iraq is the outlier not only in terms of its human and material cost, but also in terms of the degree to which the overall burden was shouldered by the United States alone. As Beckley has shown, in the other interventions allies either spent more than the United States, suffered greater relative casualties, or both. In the 1990–91 Persian Gulf War, for example, the United States ranked fourth in overall casualties (measured relative to population size) and fourth in total expenditures (relative to GDP). In Bosnia, European Union (EU) budget outlays and personnel deployments ultimately swamped those of the United States as the Europeans took over postconflict peacebuilding operations. In Kosovo, the United States suffered one combat fatality, the sole loss in the whole operation, and it ranked sixth in relative monetary contribution. In Afghanistan, the United States is the number one financial contributor (it achieved that status only after the 2010 surge), but its relative combat losses rank fifth. 67 In short, the interest expansion argument would look much different without Iraq in the picture. There would be no evidence for the United States shouldering a disproportionate share of the burden, and the overall pattern of intervention would look “unrestrained” only in terms of frequency, not cost, with the debate hinging on whether the surge in Afghanistan was recklessly unrestrained. 68 How emblematic of the deep engagement strategy is the U.S. experience in Iraq? The strategy’s supporters insist that Iraq was a Bush/neoconservative aberration; certainly, there are many supporters of deep engagement who strongly opposed the war, most notably Barack Obama. Against this view, opponents claim that it or something close to it was inevitable given the grand strategy. Regardless, the more important question is whether continuing the current grand strategy condemns the United States to more such wars. The Cold War experience suggests a negative answer. After the United States suffered a major disaster in Indochina (to be sure, dwarfing Iraq in its human toll), it responded by waging the rest of the Cold War using proxies and highly limited interventions. Nothing changed in the basic structure of the international system, and U.S. military power recovered by the 1980s, yet the United States never again undertook a large expeditionary operation until after the Cold War had ended. All indications are that Iraq has generated a similar effect for the post–Cold War era. If there is an Obama doctrine, Dominic Tierney argues, it can be reduced to “No More Iraqs.” 69 Moreover, the president’s thinking is reflected in the Defense Department’s current strategic guidance, which asserts that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations.” 70 Those developments in Washington are also part of a wider rejection of the Iraq experience across the American body politic, which political scientist John Mueller dubbed the “Iraq Syndrome.” 71 Retrenchment advocates would need to present much more argumentation and evidence to support their pessimism on this subject.

#### No war – deterrence checks escalation

Ganguly, 8

[Sumit Ganguly is a professor of political science and holds the Rabindranath Tagore Chair at Indiana University, Bloomington. “Nuclear Stability in South Asia,” International Security, Vol. 33, No. 2 (Fall 2008), pp. 45–70]

As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan’s acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article’s analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan’s willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India’s internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability.

Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground ªre.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India’s first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People’s Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993:.

The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its “Operation Gibraltar” and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87

China won’t attack

**Zenko and Cohen 12** (Micah Zenko, Fellow in the Center for Preventive Action at the Council on Foreign Relations, and MIchael Cohen, Senior Fellow at the American Security Project, serves on the board of the National Security Network and has taught at Columbia University’s School of International and Public Affairs, served in the U.S. Department of State, former Senior Vice President at the strategic communications firm of Robinson, Lerer and Montgomery, bachelor’s degree in international relations from American University and a master’s degree from Columbia University, 3/14/2012, "Clear and Present Safety", yaleglobal.yale.edu/content/clear-and-present-safety)

As the threat from transnational terrorist groups dwindles, the United States also faces few risks from other states. China is the most obvious potential rival to the United States, and there is little doubt that China’s rise will pose a challenge to U.S. economic interests. Moreover, there is an unresolved debate among Chinese political and military leaders about China’s proper global role, and the lack of transparency from China’s senior leadership about its long-term foreign policy objectives is a cause for concern. However, the present security threat to the U.S. mainland is practically nonexistent and will remain so. Even as China tries to modernize its military, its defense spending is still approximately one-ninth that of the United States. In 2012, the Pentagon will spend roughly as much on military research and development alone as China will spend on its entire military. While China clumsily flexes its muscles in the Far East by threatening to deny access to disputed maritime resources, a recent Pentagon report noted that China’s military ambitions remain dominated by “regional contingencies” and that the People’s Liberation Army has made little progress in developing capabilities that “extend global reach or power projection.” In the coming years, China will enlarge its regional role, but this growth will only threaten U.S. interests if Washington attempts to dominate East Asia and fails to consider China’s legitimate regional interests. It is true that China’s neighbors sometimes fear that China will not resolve its disputes peacefully, but this has compelled Asian countries to cooperate with the United States, maintaining bilateral alliances that together form a strong security architecture and limit China’s room to maneuver. The strongest arguments made by those warning of Chinese influence revolve around economic policy. The list of complaints includes a host of Chinese policies, from intellectual property theft and currency manipulation to economic espionage and domestic subsidies. Yet none of those is likely to lead to direct conflict with the United States beyond the competition inherent in international trade, which does not produce zero-sum outcomes and is constrained by dispute-resolution mechanisms, such as those of the World Trade Organization. If anything, China’s export-driven economic strategy, along with its large reserves of U.S. Treasury bonds, suggests that Beijing will continue to prefer a strong United States to a weak one.

No escalation – disagreements remain limited

Weitz 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>)

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized**. Russia and the West **do not have fundamentally conflicting vital interests of the kind countries would go to war over**. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

Distinction is bad—it naturalizes war, collapses nuclear deterrence, is immoral, and turns the case

Sharma ‘8

Serena, London School of Economics Department of Political Science, “Reconsidering the Jus Ad Bellum/Jus in Bello Distinction,” in *Jus Post Bellum Towards a Law of Transition From Conflict to Peace*, ed. Carsten Stahn / Jann K. Kleffner

2.1 The 'legalist paradigm'

While the developments of the 20\* century are often hailed as a triumph from the perspective of international law, something significant appears to have been sacrificed along the way. In the preamble to the UN Charter avoidance of war takes precedence over all other matters, as Josef Kunz argues: 'Two World Wars and the fear of more catastrophic wars have made the avoidance of war more important than the achievement of justice ... [which is] not the philosophy underlying the bellum juslum doctrine.'44 According to James Turner Johnson, 'What is lost here is the just war tradition's realistic focus on the possibility of genuine order, justice, and peace ... and the tradition's effort to define the use of armed force in terms of the responsibility of the sovereign to protect the common good.'45 With this in mind, Johnson has been highly critical of modem writers who neglect to engage with the classical just war model;46 nevertheless, in his own work Johnson adheres to a conceptualization of the jus ad bellum and jus in bello wholly sympathetic to modem understandings: 'In just war reasoning, the justice of the decision to resort to armed force is distinct from the justice of how justified armed force is used. A just war in the former sense may be unjustly carried out; conversely, a war undertaken unjustly may be carried out justly.\*47 As we have seen, there is nothing reminiscent of the classical model in this approach. What Johnson neglects to appreciate is the way in which the ad bellum/in bello distinction **reaffirms the biases of the contemporary international legal order.** Indeed, the categorical acceptance of the ad bellum/in bello distinction - **a purely legal innovation** - has given contemporary deliberations on the use of force an **undeniably juristic flavor.** The recent debate over the use of force in Iraq is a case in point, wherein the main point of contention, particularly in the United Kingdom, revolved around the subject of legality. Nicholas Rengger has commented on this phenomenon: 'what was perhaps oddest, at least to my eye, was that the general discussion both amongst politicians and in the media, and independently of what particular position was taken ... was almost exclusively focused on whether or not the war was "legal". \* Further to this, Rengger has observed what was glaringly absent in the Iraq debate: “**At no point** that I am aware of, **did anyone seriously discuss the surely related question that even if it was legal, was it morally justified**?'48 The nature of the debate over Iraq is not an isolated incident, but rather characteristic of how the contemporary use of force is evaluated. The extent to which a legal framework tends to dominate the moral appraisal of war is captured by Walter's treatment of the contemporary jus ad bellum under the banner of the aptly named: 'legalist paradigm". Relying predominately on the concept of legality to determine the merits of a prospective use of force is, however, rather limited. Nowhere is this more apparent than the pride of place endowed to the state in contemporary international law. The melding of the criterion of proper authority with the legal personality of the state was a logical step in the development of the jus ad bellum, and an important precursor to the establishment of an independent jus in bello. Nevertheless, in recent years this foregrounding of the state in contemporary jus ad bellum has come under increased scrutiny. The stale-centric approach constitutes a major defect in the current international legal structure, as George Lucas has argued: 'While it provides appropriate analysis and response to the behaviour of "rogue" or "criminal" states, the legalist model of international relations is largely ineffective in delineating appropriate response to "failed states", and utterly collapses in the case of "inept states".\*49 By way of accepting the ad bellum/in bello distinction, and its implicitly juristic reading of these categories, just war thinking has been hard pressed to respond to some of the most pressing conflicts of the day. The debates surrounding NATO's intervention in Kosovo offer a revealing demonstration of the juristic model's limitations. This was particularly evident in the report of the Independent International Commission on Kosovo which was forced to reach the conclusion that NATO's military intervention in Kosovo was 'illegal but legitimate ... illegal because it did not receive prior approval from the United Nations Security Council ... [yet] ...intervention was justified ...because [it] had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.'50 As the Commission rightly noted, there were ethical reasons for intervening in Kosovo; however, given the absence of UN Security Council approval, NATO was exposed to the charge of illegality. With the Kosovo intervention in mind. Ken Booth has argued the following: 'The presumption should always be against war, both in general and in particular ... War can be necessary or excusable; it is such when it is fought clearly in self-defense of with the endorsement of the UN Security Council. This is not perfect, but it is the best that can be done at this stage of world society.\*51 Despite his admission that the current structure is 'not perfect'. Booth continues to accept it. In this respect Booth offers little more than a restatement of the prevailing juristic model - a mere description of how things are. Clearly, such an approach is more interested in dealing with the legal consequences of war than bringing **moral weight to bear on the use of force.** As the debate over NATO's intervention demonstrates, there are moral/ ethical considerations, which must be brought to bear in any evaluation of the use of force; yet, (his moral/ethical dimension is by no means sufficiently captured within the framework of contemporary international law. The precise relationship between the law of armed conflict and the just war tradition is, indeed, a complex one. Certainly there is a degree of overlap between the two, and one could make the case that the law of armed conflict is, in essence, a codification just war principles; yet, there are important variations between them, as Brian Orend has noted: "... most times just war theory and the laws of armed conflict run together and are mutually confirming ... But other times they are not and I'm more concerned to defend and forward just war theory when that happens. Why? First, because just war theory explains its values whereas international law merely asserts them. Secondly, because international law (like all law) lags behind the times sometimes whereas our theories need not. Third, because international law is the product of state consensus, and sometimes consensus is wrong. Sometimes the laws of armed conflict enshrine bad law, or tail to include a good law. Just war theory, better than any other, helps guide international law towards correction in this regard.'53 As Orend makes clear, it is crucial that just war theory retain its independence in order to 'fill in the gaps' - so to speak - of international law. Through its **uncritical acceptance** of the **ad bellum/in bello distinction,** the **just war tradition has been unable to function** in this capacity. This becomes even more apparent when we examine the practical application of just war criteria within the context of a distinction. The key word in Rengger's remark is the need to 'weigh', that is find a balance between the ad bellum and in bello. Given the pervasiveness of the ad bellum/in bello distinction, this emphasis on balance has **been lost** in most contemporary just war discussions. Instead, the conventional approach - set in the framework of the ad bellum/in bello distinction - is to view the resort to force and questions of conduct as operating in an adversarial relationship. When put into context it becomes an issue of jus ad bellum versus jus in bello, in which, one is promoted at the expense of the other. More often than not, when it comes to the push and pull of ad bellum versus in bello, it is typically the **jus ad bellum** that is given priority, and the principle of just cause in particular. Modem just war discussions are littered with instances where just cause has been elevated above all other principles.54 The adversarial aspect of the ad bellum/in bello distinction begins to manifest in cases where the principle of just cause takes over **the entire deliberation**, **to the detriment of** jus in bello restraint.55 Placing just cause in a contest with in bello is precisely the type of calculation Walzer takes up in his discussion of supreme emergency, wherein he permits the war convention (jus in bello) to be overridden in cases of overwhelming necessity (jus ad bellum). The **abandonment of restraint** owing to just cause **is** **particularly ironic** given that one of the declared rationales for a distinction is the facilitation of **proper conduct**. Given such an obvious inconsistency, it is no wonder that the notion of supreme emergency has been so heavily criticized.' One of the sharpest criticisms has come from John Howard Yoder, who refers to this tendency of elevating certain just war principles at the expense of others as 'category slide'. As Yoder contends: \*It may be a weakness of the entire just-war tradition that it permits such a selective application.'5 The jus ad bellum versus jus in bello tendency can also apply in the reverse direction, wherein the jus in bello is emphasized in way that negates the jus ad bellum. Noting the prevalence of this approach during the Cold War, where it was argued that the **indiscriminate and disproportionate nature of nuclear weapons** instinctively **ruled out** any **prospective use of force**, Ramsey pejoratively labeled this tendency the ''jus contra bellum\*.'\* According to Ramsey, the jus contra bellum approach constitutes a bellum contra bellum jus turn— a war against just war - given its deliberate elevation of the jus in bello at the expense of the jus ad bellum. Elevating certain just war criteria in this manner is, however, a natural consequence of perceiving the ad bellum and in bello in a state of tension - a perception, **which is no doubt fostered by the ad bellum/in bello distinction.**

## 2NC

### AT: EU-US Relations

#### Fluctuations in relations won’t lead to conflict

Kristin **Archick,** Analyst in European Affairs Foreign Affairs, Defense, and Trade Division December 28, 20**04** “The United States and Europe: Possible Options for U.S. Policy” CRS Report for Congress

 Historically, U.S.-European relations have experienced numerous ups and downs. During the Cold War, even with the unifying pressure of a common military threat, transatlantic tensions flared from time to time over controversial issues such as Vietnam and the stationing of U.S. ballistic missiles in Europe. Ineffective and tentative international responses to the Balkan conflicts in the early 1990s prompted serious questioning of NATO’s role in the post-Cold War era, and of Europe’s ability to manage crises on the European continent. Proponents of the alliance have always stressed, however, the underlying solidity of the transatlantic relationship given its basis in common values and shared interests. Thus, conventional wisdom dictates that frictions merely represent disagreements among friends characteristic of U.S.- European “business as usual.” Many Europeans acknowledge that criticism of U.S. policies in Iraq and the Middle East has been fierce recently, but claim that they have only felt free to express their views because U.S.-European relations are so close, and honesty is a hallmark of true friendship.

#### Relations will never collapse

Frank-Walter Steinmeier, Foreign Minister-Germany, Fall, ‘8 (Harvard Int’l Review, Vol. 30, Iss. 3, p. 78)

Could you characterize the transatlantic relationship between the United States and the European Union?

To start with, no other relationship in the world rests on such a solid foundation: the United States and the European Union are each other's number one partner. For the past 60 years the transatlantic relationship has been the world's transformative partnership. America's relationship with Europe-more than with any other part of the world-enables both of us to achieve goals that neither of us could achieve alone. This is what makes the transatlantic relationship unique. When we agree, we are the core on any effective global coalition; when we disagree, no global coalition is likely to be effective.

Transatlantic trade and investment outnumber all similar relationships by a wide margin: US$4 trillion per year in commercial sales. Over this decade, US companies invested three times more in Germany than in China. And the Euro became one of the world's strongest currencies-as Americans sadly discover when traveling to Europe these days.

### AT: Afghan Instability

#### Regional cooperation deescalates conflict

Innocent, foreign policy – Cato, ‘9

(Malou, <http://www.cato.org/pubs/wtpapers/escaping-graveyard-empires-strategy-exit-afghanistan.pdf>)

Additionally, regional stakeholders, especially Russia and Iran, have an interest in a stable Afghanistan. Both countries possess the capacity to facilitate development in the country and may even be willing to assist Western forces. In July, leaders in Moscow allowed the United States to use Russian airspace to transport troops and lethal military equipment into Afghanistan. Yet another relevant regional player is the Collective Security Treaty Organization, made up of Russia, Kazakhstan, Tajikistan, Kyrgyzstan, Uzbekistan, Armenia, and Belarus. At the moment, CSTO appears amenable to forging a security partnership with NATO. CSTO secretary general Nikolai Bordyuzha told journalists in March 2009 of his bloc’s intention to cooperate. “The united position of the CSTO is that we should give every kind of aid to the anti-terror coalition operating in Afghanistan. . . . The interests of NATO and the CSTO countries regarding Afghanistan conform unequivocally.”83

Mutual interests between Western forces and Afghanistan’s surrounding neighbors can converge on issues of transnational terrorism, the Caspian and Central Asia region’s abundant energy resources, cross-border organized crime, and weapons smuggling. Enhanced cooperation alone will not stabilize Afghanistan, but engaging stakeholders may lead to tighter regional security.

#### Collapse inevitable

Arbour, president – International Crisis Group, 12/27/’11

(Louise, “Next Year’s Wars,” Foreign Policy)

A decade of major security, development, and humanitarian assistance from the international community has failed to create a stable Afghanistan, a fact highlighted by deteriorating security and a growing insurgent presence in previously stable provinces over the past year. In 2011, the capital alone saw a barrage of suicide bombings, including the deadliest attack in the city since 2001; multiple strikes on foreign missions in Kabul, the British Council, and U.S. Embassy; and the assassination of former president and chief peace negotiator Burhanuddin Rabbani. The prospects for next year are no brighter, with many key provinces scheduled for transfer to the ill-equipped Afghan security forces by early 2012.

The litany of obstacles to peace, or at least stability, in Afghanistan is by now familiar. President Hamid Karzai rules by fiat, employing a combination of patronage and executive abuse of power. State institutions and services are weak or nonexistent in much of the country, or else so riddled with corruption that Afghans want nothing to do with them. Dari-speaking ethnic minorities remain skeptical about the prospects for reconciliation with the predominately Pashtun Taliban insurgency, which enjoys the backing of Pakistan's military and intelligence services. The Taliban leadership in Quetta seem to reason that victory is within reach and that they have simply to bide their time until the planned U.S. withdrawal in 2014.

### AT: Middle East Instability

#### No impact

Fettweis, Asst Prof Poli Sci – Tulane, Asst Prof National Security Affairs – US Naval War College, ‘7

(Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98)

Without the US presence, a second argument goes, nothing would prevent Sunni-Shia violence from sweeping into every country where the religious divide exists. A Sunni bloc with centres in Riyadh and Cairo might face a Shia bloc headquartered in Tehran, both of which would face enormous pressure from their own people to fight proxy wars across the region. In addition to intra-Muslim civil war, cross-border warfare could not be ruled out. Jordan might be the first to send troops into Iraq to secure its own border; once the dam breaks, Iran, Turkey, Syria and Saudi Arabia might follow suit. The Middle East has no shortage of rivalries, any of which might descend into direct conflict after a destabilising US withdrawal. In the worst case, Iran might emerge as the regional hegemon, able to bully and blackmail its neighbours with its new nuclear arsenal. Saudi Arabia and Egypt would soon demand suitable deterrents of their own, and a nuclear arms race would envelop the region. Once again, however, none of these outcomes is particularly likely.

Wider war

No matter what the outcome in Iraq, the region is not likely to devolve into chaos. Although it might seem counter-intuitive, by most traditional measures the Middle East is very stable. Continuous, uninterrupted governance is the norm, not the exception; most Middle East regimes have been in power for decades. Its monarchies, from Morocco to Jordan to every Gulf state, have generally been in power since these countries gained independence. In Egypt Hosni Mubarak has ruled for almost three decades, and Muammar Gadhafi in Libya for almost four. The region's autocrats have been more likely to die quiet, natural deaths than meet the hangman or post-coup firing squads. Saddam's rather unpredictable regime, which attacked its neighbours twice, was one of the few exceptions to this pattern of stability, and he met an end unusual for the modern Middle East. Its regimes have survived potentially destabilising shocks before, and they would be likely to do so again.

The region actually experiences very little cross-border warfare, and even less since the end of the Cold War. Saddam again provided an exception, as did the Israelis, with their adventures in Lebanon. Israel fought four wars with neighbouring states in the first 25 years of its existence, but none in the 34 years since. Vicious civil wars that once engulfed Lebanon and Algeria have gone quiet, and its ethnic conflicts do not make the region particularly unique.

The biggest risk of an American withdrawal is intensified civil war in Iraq rather than regional conflagration. Iraq's neighbours will likely not prove eager to fight each other to determine who gets to be the next country to spend itself into penury propping up an unpopular puppet regime next door. As much as the Saudis and Iranians may threaten to intervene on behalf of their co-religionists, they have shown no eagerness to replace the counter-insurgency role that American troops play today. If the United States, with its remarkable military and unlimited resources, could not bring about its desired solutions in Iraq, why would any other country think it could do so?17

Common interest, not the presence of the US military, provides the ultimate foundation for stability. All ruling regimes in the Middle East share a common (and understandable) fear of instability. It is the interest of every actor - the Iraqis, their neighbours and the rest of the world - to see a stable, functioning government emerge in Iraq. If the United States were to withdraw, increased regional cooperation to address that common interest is far more likely than outright warfare.

#### Empirics go neg

Kevin Drum, Staff Writer for the Washington Monthly, 9/9/’7

(<http://www.washingtonmonthly.com/archives/individual/2007_09/012029.php>)

Having admitted, however, that the odds of a military success in Iraq are almost impossibly long, Chaos Hawks nonetheless insist that the U.S. military needs to stay in Iraq for the foreseeable future. Why? Because if we leave the entire Middle East will become a bloodbath. Sunni and Shiite will engage in mutual genocide, oil fields will go up in flames, fundamentalist parties will take over, and al-Qaeda will have a safe haven bigger than the entire continent of Europe. Needless to say, this is nonsense. Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the second half the 20th century. Result: no regional conflagration. The Soviets fought in Afghanistan and then withdrew. No regional conflagration. The U.S. fought the Gulf War and then left. No regional conflagration. Algeria fought an internal civil war for a decade. No regional conflagration.

#### Conflicts are localized

**Ferguson 06** – Professor of History @ Harvard

Niall, LA Times, July 24, lexis

Could today's quarrel between Israelis and Hezbollah over Lebanon produce World War III? That's what Republican Newt Gingrich, the former speaker of the House, called it last week, echoing earlier fighting talk by Dan Gillerman, Israel's ambassador to the United Nations.

Such language can -- for now, at least -- safely be dismissed as hyperbole. This crisis is not going to trigger another world war. Indeed, I do not expect it to produce even another Middle East war worthy of comparison with those of June 1967 or October 1973. In 1967, Israel fought four of its Arab neighbors -- Egypt, Syria, Jordan and Iraq. In 1973, Egypt and Syria attacked Israel. Such combinations are very hard to imagine today.

Nor does it seem likely that Syria and Iran will escalate their involvement in the crisis beyond continuing their support for Hezbollah. Neither is in a position to risk a full-scale military confrontation with Israel, given the risk that this might precipitate an American military reaction.

Crucially, Washington's consistent support for Israel is not matched by any great power support for Israel's neighbors. During the Cold War, by contrast, the risk was that a Middle East war could spill over into a superpower conflict. Henry Kissinger, secretary of State in the twilight of the Nixon presidency, first heard the news of an Arab-Israeli war at 6:15 a.m. on Oct. 6, 1973. Half an hour later, he was on the phone to the Soviet ambassador in Washington, Anatoly Dobrynin. Two weeks later, Kissinger flew to Moscow to meet the Soviet leader, Leonid Brezhnev.

The stakes were high indeed. At one point during the 1973 crisis, as Brezhnev vainly tried to resist Kissinger's efforts to squeeze him out of the diplomatic loop, the White House issued DEFCON 3, putting American strategic nuclear forces on high alert. It is hard to imagine anything like that today.

§ Marked 10:29 § In any case, this war may soon be over. Most wars Israel has fought have been short, lasting a matter of days or weeks (six days in '67, three weeks in '73). Some Israeli sources say this one could be finished in a matter of days. That, at any rate, is clearly the assumption being made in Washington.

Secretary of State Condoleezza Rice has been in no hurry to get to the scene (she is due to arrive in Israel today). Nor has she scheduled any visits to Arab capitals. Compare this leisurely response to the frenetic shuttle diplomacy of the Kissinger era. While striving to secure a settlement between Israel and Syria, Rice's predecessor traveled 24,230 miles in just 34 days.

And yet there are other forms that an escalation of the Middle East conflict could conceivably take. A war between states may not be in the cards, much less a superpower conflict. What we must fear, however, is a spate of civil wars -- to be precise, ethnic conflicts -- across the region.

### adv 2

### No conflation

Necessity and proportionality are inevitable

Empirics disprove and self-interest always guarantees compliance

Ohlin ‘13

Jens, Associate Professor of Law, Cornell Law School; member, Editorial Committee, “Is Jus in Bello in Crisis?,”

Most of the legal issues raised by the American drone campaign are, predictably, alleged **jus in bello violations**, though a few issues sound in jus ad bellum. For example, human rights critics and other commentators occasionally complain that the asymmetrical nature of the lethal force of drones makes the resort to force too easy.3 Since drones are remotely piloted, attacking forces can neutralize their intended target and risk no loss of life when their drones are deployed. The question becomes whether the asymmetrical nature of the risk offends, on a conceptual level, the basic paradigm of coequal belligerents who meet each other on the battlefield and run the reciprocal risk of killing and dying – a paradigm encapsulated by the chivalric conception of warfare, a conception already placed under pressure by the development, in World War II, of aerial bombardment, but whose pressure has been inflated into pure displacement now that pilots are remotely housed out of harm’s way. The issue of aerial risk received widespread notice when NATO required its pilots to fly above 15,000 feet when bombing Serbian targets during the conflict over Kosovo – a decision that allegedly prioritized force protection over civilian collateral damage. Indeed, not a single pilot died during the conflict, and critics complained that NATO’s obsession with zero casualties impermissibly prioritized the lives of soldiers over the lives of civilians. That being said, there would be something odd about a putative rule of international law that prevented an attacking force from lowering the risk to its own personnel, as it does with drones, when lowering the risk to one’s own personnel does not increase the risk of collateral damage to enemy civilians as it might have in Serbia.4 On a more practical level, the question is whether the asymmetrical use of force, and the low risk of civilian casualties, will erode one of the automatic enforcement mechanisms of the **Article 2** prohibition on the use of force in the UN Charter. In the past, the aggressive use of force in contravention of the Charter was only possible when a country risked its own personnel, thus providing a self-interested reason to comply with the legal prohibition on the use of force, in addition to more principled reasons for compliance. If aggressive force can be deployed without risk, will more nations ignore the Charter (and customary law) prohibition on the use of force? In this vein, it is perhaps sufficient to note that **the problem is not new** and that nuclear weapons may also be used without risk. The solution to the nuclear dilemma was the deterrent rationale expressed in the Mutually Assured Destruction Doctrine, which became a reality once nuclear weapons proliferated. The coming proliferation of drone technology may well solve the same issue again and provide an internal check on over-deployment of drone technology. Turning now to jus in bello problems raised by targeted killings, the issues can be classified into five discrete categories: (1) the existence of a putative armed conflict with al-Qaeda; (2) **the contentious relationship between IHL and IHRL;** (3) whether targeted terrorists are civilians or combatants; (4) whether drone operators enjoy the privilege of combatancy; and (5) **the nature of proportionality calculations when civilians are collateral victims.** Each category will be addressed in order to express the full landscape of legal dispute and evaluate whether jus in bello is truly in crisis. The resulting portrait will reveal that **most of these fissures** **pre-date the development of drone technology** and are simply **emblematic of a pre-existing disunity** **that consistently threatens the underlying reciprocity of IHL.**

Human rights integration makes their impact inevitable

Osterdahl ‘10

Inger, Professor, Public International Law, Uppsala University, “Dangerous Liaison? The Disappearing Dichotomy between Jus ad Bellum and in Bello,” Nordic Journal of International Law 78 (2010) 553-566

**The strong advance of human rights** and IHL may thus contribute to restricting the possibilities to launch just wars even more than under the current law in force. Given the strengthened position of human rights generally, it is difficult to imagine that a war, even if carried out in self-defence, would be regarded as just if human rights were systematically violated by the party that initially was considered just in resorting to armed force (the war of the wrong side would not be considered just under any circumstances). The same would go for jus in bello; the current concern for human rights and human security most likely strengthens IHL as well and large scale violations of IHL, should they occur, are likely to colour also the eventual evaluation of the justification of war in an international context as well as in a domestic one.26 The emerging jus post bellum with its emphasis on humanitarian values and human rights serves to further strengthen the human side of armed conflict. 27 This, most immediately, would point tojuspost bellum strengthening the position ofjus in bello relative to jus ad bellum.

Case-by-case determinations and lex specialis provisions solve the impact

Matthews ‘13

Hannah, School of Advanced Study, Institute of Commonwealth Studies , University of London, “The interaction between international human rights law and international humanitarian law: seeking the most effective protection for civilians in non-international armed conflicts,” The International Journal of Human Rights, 17:5-6, 633-645

Relationship between IHL and IHRL

**At first glance**, it seems impossible to synthesise the two bodies of law. IHRL has, as a primary principle, the right to life,27 while IHL allows killing in specific circumstances. Indeed the genuine disparity between IHL and law enforcement lies in the legitimacy for the state to use force. In the law of armed conflict, legitimacy derives from the person’s status as an enemy combatant, whereas in peacetime it derives from the law-enforcement model; legitimacy is drawn from the fact that the targeted person poses a threat.28 The conflicting aims of these two branches of international law appear incompatible, especially given the debate over whether human rights can ever be respected in armed conflict at all. However, throughout the twentieth century, a gradual shift in the law of armed conflict has taken place, with an emphasis on the protection of those who find themselves victims of conflict despite lack of direct participation and involvement. Both IHL and IHRL have a shared philosophical underpinning, sharing the common humanist ideas of dignity and integrity at their core.29 **It is now generally accepted**, **and evident in state practice**, that IHRL and IHL are cooperative, even interrelated, regimes, and despite their distinct character as bodies of law, the complementarity between them must be acknowledged.30 IHRL and IHL are not two separate realms of law, but rather two expressions of the **same corpus juris** that grows in a continuous exercise of reciprocal nourishment.31 The ICRC delegate at the International Conference on Human Rights in Tehran in 1968 noted, [the laws of war are] . . . based on certain of the fundamental rights proclaimed in the UDHR – respect for the human person, protection against torture and against cruel, inhuman or degrading punishments or treatment . . . the UDHR and the Geneva Conventions are both derived from one and the same ideal, which humanity pursues increasingly in spite of passions and political strife and which it must not despair of attaining – namely, that of freeing human beings and nations from the suffering of which they are often at once the authors and the victims. Indeed it has been argued that the rapid growth of the human rights culture opened the door to what has been defined as an ‘age of rights’,32 where the traditional separation between IHL and IHRL is fading away. Both the International Criminal Tribunals for the Former Yugoslavia and for Rwanda (ICTY and ICTR) noted, The general principle of respect for human dignity is the basic underpinning and indeed the very raison d’eˆtre of IHL and IHRL; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law.33 IHL now acknowledges the proximity of IHRL. The ICRC Commentary to CA3 affirms that the legal standard ‘merely ensures respect for the few essential rules of humanity which all civilised nations consider as valid everywhere and under all circumstances and as being above and outside war itself’.34 When addressing the interaction between IHL and IHRL and the way in which they might be used in conjunction to protect civilians, the ICJ stated, Some rights may be exclusively matters of IHL; others may be exclusively matters of IHRL; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely IHRL and as lex specialis, IHL.35 Given international law has no clear hierarchy of norms, when two bodies of law relate to the same area, one is considered the lex generalis, which is overridden by the more specific and specialist, lex specialis, in order to avoid norm conflict. IHRL applies at all times and in all territories so is thus the lex generalis. IHL only applies in the specific and unique circumstances of conflict so can be interpreted as the lex specialis. The Study Group of the United Nations International Law Commission on Fragmentation of International Law distinguishes two meanings of this principle, In the first instance, a special rule could be considered to be an application, elaboration or updating of a general standard. In the second instance, a special rule is taken, instead, as a modification, overruling or setting aside of the general standard (i.e. lex specialis is an exception to the general rule). It was often impossible to say whether a rule should be seen as an ‘application’ or ‘setting aside’ of another rule.36 As the IHL treaty law on NIACs is comparatively sparse, comprising just CA3 and APII, IHRL must assist in the regulation of conduct during conflicts. The most adequate conception of the principle of lex specialis is to see it as a **tool of interpretation among different rules** that interrelate in a relation of complementarity. Therefore, although the principle of lex specialis assumes that one body of law will be superior to another in specific circumstances, this does not always have to be the case.37 Consequently, the whole set of IHL rules is not always lex specialis and does not automatically replace IHRL in contexts of conflict; the determination of the applicable provisions must be made on a more carefully analysed **case-by-case basis.** The Inter-American Court of Human Rights in the Coard case clearly supports the lex specialis approach.38 The International Commission of Inquiry on Darfur presided over by Professor Antonio Cassese who states that the two bodies of law are complementary, highlighting their similar aims to ‘protect human life and dignity, prohibit discrimination on various grounds, and protect against torture and other cruel, inhuman and degrading treatment’. 39 Therefore, visible both theoretically and through state practice, the complementarity between the two bodies of law means that if the state, within which the NIAC is taking place, has consented to be bound by IHRL, this continues to apply in situations of peace and conflict, and IHL will be considered the lex specialis, applicable solely when a norm conflict arises in a conflict situation. IHL does not preclude the applicability of IHRL, however. Indeed, international judicial and quasi-judicial bodies have acknowledged the place of human rights law in times of armed conflict. The ICJ’s Legality of the Threat or Use of NuclearWeapons 1996 Advisory Opinion noted that ‘the protection of the ICCPR does not cease in times of war, except by operation of Article 4 of the Covenant’. The Advisory Opinion on the Wall case40 also confirmed the applicability of IHRL, stating that IHRL is not displaced by the outbreak of an armed conflict, and that it may be directly applied in such situations. Ayear later, the court delivered a binding judgment in the Armed Activities in the Territory of the Congo case,41 where it applied IHRL to an occupation, citing the findings from its 2004 Wall Advisory Opinion.42 The ECtHR has applied the European Convention on Human Rights in the Russian Federation43 and to the Turkish occupation of Northern Cyprus.44 The Inter-American Court on Human Rights has also applied IHRL in conflict situations such as Guatemala, stating, The Court considers that it has been proved that, at the time of the facts of this case, an internal conflict was taking place in Guatemala . . . Instead of exonerating the State from its obligations to respect and guarantee human rights, this fact obliged it to act in accordance with such obligations.45 Global jurisprudence has thus acknowledged the necessity to take the two bodies of law, IHL and IHRL, into account when addressing the protection of civilians. **It should never be an either/or choice** as IHRL prevails as the lex generalis at all times, and should complement and inform decisions made under the guidance of the lex specials, IHL.

### 2NC No Modeling

Modeling fails – different cultures and resources

Jeremy **Rabkin 13**, Professor of Law at the George Mason School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, [www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations](http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations)

Even when people are not ambivalent in their desire to embrace American practices, they may not have the wherewithal to do so, given their own resources. That is true even for constitutional arrangements. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. You might think it is enviable to have a broad respect for free debate and tolerance of difference, but that doesn’t mean you can wave a wand and supply it to your own population. We can’t think of most constitutional practices as techniques or technologies which can be imported into different cultures as easily as cell phones or Internet connections.

**No human rights modeling**

**Moravcsik 2** (Andrew, Professor of Government – Harvard University, Multilateralism & U.S. Foreign Policy: Ambivalent Engagement, Ed. Patrick and Forman, p. 365)

There is little evidence that Rwandan, Serbian, or Iraqi leaders would have been more humane if the United States had submitted to more multilateral human rights commitments. The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. In sum, the consequences of U.S. nonadherence to global norms, while signaling a weakening in theory, is probably of little import in practice.

### china

**about bush—inev**

Sloane 8 -- 1AC Author – Sloane, Associate Professor of Law, Boston University School of Law, 2008 (Robert, Boston University Law Review, April, 88 B.U.L. Rev. 341, Lexis)

Many states took note, for example, when in the 2002 National Security Strategy of the United States ("NSS"), President Bush asserted that the United States had the right under international law to engage in preventive wars of [\*350] self-defense. n57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS's robust claims of a right to engage in preventive wars of self-defense. n58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as "rogue states," such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan. n59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century.

### 2nc turns case—legal regime

Collapses the entire legal architecture

Diamond ‘10

Eitan, Legal Adviser, International Committee of the Red Cross (ICRC) Delegation in Israel and the

Occupied Territories, “BEFORE THE ABYSS: RESHAPING INTERNATIONAL

HUMANITARIAN LAW TO SUIT THE ENDS OF POWER,” ISRAEL LAW REVIEW Vol. 43:414 2010

LEA gives the second principle priority over the first and advocates that belligerent actors be permitted to exercise judgment even in relation to acts absolutely prohibited under the law. To put this point differently, LEA is built upon two premises: P1: In applying IHL the law’s underlying purpose should be given precedence over conflicting formal rules P2: IHL’s underlying purpose is to minimize human suffering The contention here is that accepting the conclusion arising from these premises would render IHL less objective and determinate than it is at present and would therefore **undermine its capacity to regulate** situations of **armed conflict effectively**. Section D below reinforces this contention and demonstrates that accepting P1 would lead to undesirable outcomes and **that LEA should therefore be rejected even by those who accept P2 and embrace utilitarian thinking.** Section E takes issue with P2 arguing that LEA’s dismissal of IHL’s deontological foundations would radically disrupt **the law’s designs.**

### 2nc ethics—overview

It’s a decision rule—utilitarian conceptions of IHL turn on their own ends, cause extinction, and turns the case

Diamond ‘10

Eitan, Legal Adviser, International Committee of the Red Cross (ICRC) Delegation in Israel and the

Occupied Territories, “BEFORE THE ABYSS: RESHAPING INTERNATIONAL

HUMANITARIAN LAW TO SUIT THE ENDS OF POWER,” ISRAEL LAW REVIEW Vol. 43:414 2010

E. BEYOND CALCULATION

IHL seeks to lessen the evils of armed conflict, but the lesser evil is not its only structural principle. At its very core IHL is about preserving **the fundamental value** **of human dignity** that mandates that people be treated as an end unto themselves.121 Accordingly, there are certain acts which IHL prohibits **no matter what the expected outcome**. Civilians and civilian objects may not be made the target of an attack, protected persons may not be used as a human shield or compelled to serve in the forces of a hostile Power, captured combatants may not be denied quarter, and no one may be raped, tortured or otherwise subjected to inhumane treatment. **These** and other absolute **prohibitions** form red lines that may not be transgressed even in pursuit of the lesser evil.122 IHL then reflects a marriage of two distinct moral outlooks. When it instructs belligerents to balance expected military gains against humanitarian costs, as it often does, it calls for consequentialist, utilitarian thinking. Its absolute prohibitions, on the other hand, derive (in many if not all cases) from non-consequentialist, deontological considerations that delineate boundaries beyond which utilitarian calculations are no longer permitted.123 Thus, for example, a party to an armed conflict would be absolutely prohibited from holding a person hostage and subjecting her to rape or torture even if this act would enable it to avert an alternative course of action that might cost many lives (including those of civilians affiliated with the opposing party). LEA ignores IHL’s **deontological foundations** and seeks to breach its red lines and make it utilitarian **all the way through**.124 To support such an argument is, therefore, **to support a radical change in the law.** However, Blum does not acknowledge the radical nature of her argument and instead insists that it “works within the legal framework of IHL.”125 She concedes, as she must, that LEA is incompatible with deontology,126 but does not present a substantial argument to refute deontological objections to her approach. As elsewhere in her argument, instead of contending with the question of what ought to be, Blum bypasses it by making an observation about what is. In this case, the observation she presents is a misguided account of IHL. She mistakenly asserts that IHL’s overriding purpose is to minimize human suffering,127 while failing to note that IHL also seeks to preserve human dignity and that it in fact gives the latter goal priority over utilitarian considerations.128 By disregarding IHL’s deontological structural principle, Blum is able to maintain that even while it is incompatible with deontology, LEA is compatible with IHL and that deontological objections to LEA need not be considered because deontology and IHL are in any case “hard to square.”129 Blum presents four points in support of her claim that deontology and IHL are incompatible: (1) war makes an uneasy fit for deontology; (2) deontology cannot account for all IHL rules; (3) the degree to which deontology could ever be assigned as a moral paradigm to governments, as opposed to individuals, is under much debate; (4) all but the very pure deontologists recognize that in extreme cases of weighing harms, absolute principles must make way for some consequentialist calculations. None of these four points in fact supports the claim that there is no room for deontology in IHL. The first two reflect faulty logic. It is indeed true that deontological principles are compromised by war130 and that IHL contains rules that reflect utilitarian rather than deontological reasoning. However, all that can be deduced from these observations is that not all of IHL is deontological. It does not follow from this that none of it is deontological. In the same manner, it could be inferred from the fact that IHL contains absolute prohibitions, which do not allow for consequentialist considerations, that not all of IHL is utilitarian, but this would not give valid grounds to conclude that none of it is. Whatever validity the third point might have in other contexts, it is irrelevant to IHL. States conduct war through human agents and it is these individuals who are bound by deontological requirements. Here, as elsewhere, Blum’s argument selectively shifts focus from governments to their individual agents. If—as she implies here as well as when she speaks of governments’ superior capacity to make choice-of-evils decisions— it is governments who are charged with implementing IHL, then it is even more difficult to understand why Blum advocates introducing a lesser-evil justification designed to exculpate individuals. As for the fourth point, it should be noted, first, that Blum is not advancing an argument to explain that LEA is valid even though incompatible with deontology, but is merely pointing to authorities who—she claims—share her view that deontology can sometimes be overlooked. Rather than mentioning that there are threshold deontologists, Blum ought to have focused on their arguments and, if she agrees with them, she ought to have given reasons why. Moreover, threshold deontologists recognize that there might be place for an exception to absolute prescriptions only in “extreme” cases. Blum is quick to note that “extreme” is a “subjective determination,”131 however it is clear from the examples Blum herself cites that not all threshold deontologists would be receptive to LEA. Walzer, for example, has this to say: Utilitarian calculation can force us to violate the rules of war only when we are face-to-face not merely with defeat but with a defeat likely to bring disaster to a political community. But these calculations have no similar effects when what is at stake is only the speed or the scope of victory. They are relevant only to the conflict between winning and fighting well, not to the internal problems combat itself. Whenever that conflict is absent, calculation is stopped short by the rules of war and the rights they are designed to protect. Confronted by those rights, we are not to calculate consequences, or figure relative risks, or compute probable casualties, but simply to stop short and turn aside.132 Clearly, the threshold that Walzer is referring to here is several orders higher than that which Blum advocates incorporating into the law. The difference between the approaches is not simply quantitative, Walzer in fact **directly negates cost-accounting of the kind inherent in LEA**. It is one thing to say that in times of “supreme emergency”133 absolute prohibitions may give way to “overpoweringly weighty and extremely certain”134 utilitarian considerations. It is quite another to accept an argument that would normalize and make a legal rule of the exception. The balance that IHL strikes between competing moral outlooks may not be perfect. Perhaps it retreats too quickly from absolutism and perhaps it does not do so quickly enough. However, because so much is at stake, any decision to shift the balance ought to be based on careful consideration of the arguments that pull in each direction. Blum’s LEA does not satisfy this requirement. It considers the issue **only** in light of the utilitarian goal of minimizing human suffering. This is not enough. Human dignity must be accounted for as well. Without such an account, there is no reason to concede “the only barrier before the abyss of utilitarian apologetics.”135

Extinction!

Diamond ‘10

Eitan, Legal Adviser, International Committee of the Red Cross (ICRC) Delegation in Israel and the

Occupied Territories, “BEFORE THE ABYSS: RESHAPING INTERNATIONAL

HUMANITARIAN LAW TO SUIT THE ENDS OF POWER,” ISRAEL LAW REVIEW Vol. 43:414 2010

Contemporary armed conflicts, particularly asymmetric confrontations between States and non-State armed groups, wage on well beyond the battlefield. Subjected to intense and relentless scrutiny by their own nationals, by their allies and by influential third parties (“background elites”),137 much of the warring parties’ efforts are invested in a struggle for legitimacy. As a result, humanitarian concerns no longer function merely as rival considerations to be balanced against military necessity. To the contrary, since ignoring them might well doom a campaign to failure, they can almost be seen as a military necessity in themselves. The humanitarian project obviously stands much to gain from these developments, but there are also dangers that must be guarded against. This is particularly apparent in relation to humanitarian law. Seen as a yardstick for legitimacy, IHL has been gaining greater clout and is becoming an integral and ever more central part of military strategy. There is reason to hope that by thus internalizing the law military forces will become more attentive to its requirements and that as a consequence human dignity will be better protected and human suffering reduced. However, there are also grounds for concern that as belligerents come to master IHL they will not necessarily be more inclined to act justly, but will instead become **more adept** at justifying their actions and that as a consequence **more**, rather than less, **violence will be carried out**. LEA provides particularly striking illustration of how embracing IHL might enable belligerent States to **perpetrate acts of violence they would otherwise avoid.** Accepting that “no state or individual may violate the laws of war in the name of military necessity—i.e., in the name of promoting the effectiveness of the military operation—since that necessity has already been incorporated into the balance struck by the legal rules,”138 LEA seeks to justify violations by appealing not to military considerations but to the law’s underlying humanitarian drive. By placing humanitarian considerations alongside considerations for using force, LEA proposes to tip the balance in a way which purely military considerations could never accomplish. To deliberately kill hundreds of thousands of civilians for the sake of military advantage is clearly indefensible, but when such killing is said to have been perpetrated for “humanitarian” reasons, to avoid a greater evil, it is less plainly so. LEA asserts that in such circumstances an act—even one violating the most fundamental humanitarian values and causing devastating humanitarian consequences—**should not only be deemed forgivable, but ought to be considered lawful as well.** As this Article has shown, there are pressing reasons to reject such argument. It would replace clear cut rules of law with a utilitarian cost benefit analysis, opening space for discretion and thereby undermining the law’s § Marked 10:34 § objectivity **and rendering it less determinate.** Placing misguided faith on the judgment of belligerent parties and failing duly to consider possibilities of abuse and misuse, it **is likely to lead to the greater rather than lesser evil and therefore falls flat even on its own utilitarian logic**. Moreover, it rests on a mistaken account of IHL, failing to recognize that alongside the goal of minimizing human suffering IHL’s core purpose is to safeguard human dignity. Thus, despite its advocates’ claims that it would advance the law’s humanitarian purpose, LEA in fact threatens to disrupt IHL’s structural principles and to flout the humanitarian project. It would free belligerents **from crucial constraints and unleash violence** perfidiously assuming the guise of legitimacy. Those who wish to guard humanity must deny warring powers any such guise.

### 2nc at compliance

Yes compliance—emphasis on in bello principles and unifying the legal code cause universal compliance—sharma and osterdahl—their warrant assumes complete collapse which all of our evidence refutes

### AT: Russia – US War

No nuclear strike

Graham 7 (Thomas Graham, senior advisor on Russia in the US National Security Council staff 2002-2007, 2007, "Russia in Global Affairs” The Dialectics of Strength and Weakness http://eng.globalaffairs.ru/numbers/20/1129.html)

An astute historian of Russia, Martin Malia, wrote several years ago that “Russia has at different times been demonized or divinized by Western opinion less because of her real role in Europe than because of the fears and frustrations, or hopes and aspirations, generated within European society by its own domestic problems.” Such is the case today. To be sure, mounting Western concerns about Russia are a consequence of Russian policies that appear to undermine Western interests, but they are also a reflection of declining confidence in our own abilities and the efficacy of our own policies. Ironically, this growing fear and distrust of Russia come at a time when Russia is arguably less threatening to the West, and the United States in particular, than it has been at any time since the end of the Second World War. Russia does not champion a totalitarian ideology intent on our destruction, its military poses no threat to sweep across Europe, its economic growth depends on constructive commercial relations with Europe, and its strategic arsenal – while still capable of annihilating the United States – is under more reliable control than it has been in the past fifteen years and the threat of a strategic strike approaches zero probability. Political gridlock in key Western countries, however, precludes the creativity, risk-taking, and subtlety needed to advance our interests on issues over which we are at odds with Russia while laying the basis for more constructive long-term relations with Russia.

### AT: Indo-Pak War

#### Won’t escalate globally

The Hamilton Spectator, 2002

For those who do not live in the subcontinent, the most important fact is that the damage would be largely confined to the region. The Cold War is over, the strategic understandings that once tied India and Pakistan to the rival alliance systems have all been cancelled, and no outside powers would be drawn into the fighting. The detonation of a hundred or so relatively small nuclear weapons over India and Pakistan would not cause grave harm to the wider world from fallout. People over 40 have already lived through a period when the great powers conducted hundreds of nuclear tests in the atmosphere, and they are mostly still here.

## 1NR

### ov

It’s the root cause of preemption – the alt solves better

Massumi 7

(Brian, a professor in the Communication Department of the Université de Montréal, “Potential Politics and the Primacy of Preemption”, Theory & Event, Vol. 10, Iss. 2, ProQuest)

The fall of the Soviet Union made containment a thing of the past. Its necessary condition of balancing polarity no longer obtains. Asymmetrical warfare has come out from under the overcoding of deterrence. Now, after 9-11, anomaly is everywhere. The war on terror is back with a vengeance, thriving in an irreparably threat-o-genic environment. The Long War is off and running, in preemptive self-perpetuation. Proliferation rules. It is in the global context of this self-perpetuating logic that the ascension of North Korea to nuclear State status must be understood. It is precisely in that context that the unrepentant neoconservatives in the US who were behind the Iraq invasion are in fact approaching it. The November 2006 issue of one of the main organs of neoconservative thought, the magazine Commentary, contains a special issue on the current geopolitical situation. You would hardly know that North Korea's announcement of its nuclear capacity had taken place in the previous month. It is mentioned only in passing, and then only in order to justify a military attack on ... Iran. The thinking is that North Korea will use its capabilities to proliferate the nuclear threat by assisting Iran in transforming its civilian nuclear program into a military one. North Korea could well become a breeding ground for nuclear terrorism. Let's see, where have we heard that argument before? Could have, would have...we will have been right to bomb Iran. The neoconservative's main interest in the North Korean situation is indirect. What they are most interested in is using the issue of nuclear proliferation on the Korean peninsula as leverage for proliferating preemption elsewhere -- for staying the overall strategic course even as tactical adjustments are made in Iraq. North Korea is hardly on their map, outside of this connection. That is because what is on their map is oil. The ultimate reason Iran must be attacked is because, nuclearly emboldened, it might well put a "choke hold" on the Straits of Hormuz in order to block oil deliveries to the West and thereby endanger the economy. This potential threat makes preemption right all over again. Regime change is once again conditionally "necessary" in the Middle East, to make the region safe for American capitalism.12 In this climate of uncertainty, it is by no means a foregone conclusion that an attack will be launched against Iran, or what in the end the exact response of the West will be to North Korea (joined as it is to Iran at the affective hip by the "axis of evil"). Months or years from this writing (November 2006), the necessity of an attack on Iran may well not have become the recursive truth of the situation. Traditional pressure tactics and diplomatic efforts may remain the tactic as regards North Korea, as preemption flows elsewhere. None of this changes the global situation that in this brave new world of potential politics the most sweeping of operative logics renders only one thing certain: that the preemptive adventure has yet to run its course. Rest asymmetrically assured of the future affective fact that somewhere, things will go proliferatingly kinetic again. The self-perpetuating nature of the logic of preemption should be a subject of intense concern. It means that situations like the one in North Korea today will tend in one way or another to feed an operative **war logic** that is constitutively off-balance and thrives **globally** under far-from-equilibrium conditions. Racing headlong into a warlike future on the threat-edge of chaos is a hard way to live the present. It is imperative to find a new operative logic capable of disarming preemption. Returning to old logics, like prevention or deterrence, will not work. Voting a particular administration out of office is important, but in the end only a palliative. The search for an alternative will have to come to grips with this radical assessment of the situation in which the world finds itself, penned by one of the inventors of the concept of asymmetrical warfare.

### fw

The ballot should prioritize ethical configurations that underpin legal restrictions—the plan is relevant but the ethics of war should be the primary impact question.

Luban ‘12

David, Georgetown University Law Center, “Military Lawyers and the Two Cultures Problem,” Georgetown Public Law and Legal Theory Research Paper No. 12-057

2. Lawyers as advisors

The cleavage between visions of the law not only mirrors the cleavage in professional cultures, the two reinforce each other. Organizational cultures are **interpretive communities**; lawyers in them develop their own lore about what the law means and how to read it. That generates a problem for the professional responsibilities of lawyers. Among lawyers’ most important roles is that of legal advisor and what is often labeled ‘compliance counselor’ who reviews client plans to ensure their legality. In military organizations, the advisor’s role appears in several disparate guises. At the upper echelons, military lawyers write manuals, directives, and operational handbooks that are, in effect, book-length advice on what the law means. Within combat units, military lawyers help train soldiers in the laws of war, a rather different form of legal advice. And in operations, lawyers provide case by case oral advice to commanders. The legal advisor’s **basic ethical obligation** is to offer independent and candid advice on what the law requires—not frivolous advice, not farfetched advice, and above all not advice that simply tells the client what he wants to hear.10 A lawyer who blesses whatever transactions the client wants to undertake, and in the process writes a get-out-of-jail-free card for the client, **is** an **unethical** lawyer. The problem is that the two visions of the law of war reflect a practical indeterminacy in the law, in which military lawyers and humanitarian lawyers sometimes systematically disagree about what independent, candid legal advice would say.11 I call the indeterminacy ‘practical’ in that it would remain a stumbling block even if, like Ronald Dworkin, you believe on theoretical grounds that legal questions have unique right answers. An answer that cannot persuade someone because her interpretive community rejects your basic assumptions will be practically indeterminate even if in some ultimate sense it is right.12 Interpretive communities set the inarticulate boundaries of legitimate legal disagreement, **beyond which a legal opinion will seem frivolous or even outrageous**. But what if the interpretive community itself has split into two interpretive communities? Then the views of each may seem outrageous to the other. The natural impulse of each will be to reject the other’s conclusions more or less wholesale. That creates a problem of what role the alternative vision plays in the advice they offer their clients. **Legal advising is the most important thing** that **lawyers do**, **and lawyer advice**, rather than judicial decisions, **defines the law**.13 Each year, in hundreds of millions of confidential lawyer-client interactions that are almost never reviewed by anyone else, lawyers advise their clients about what the law requires of them. These conversations are the mosaic tiles that make up the law. **Theorists err when they focus on judicial decisions as the heart of the law.** Think of Holmes’s famous dictum that ‘prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law’.14 Judge-centered theorists focus on ‘what the courts will do in fact’, as though the courts pervade the law—which they do not, **especially in the law of war** where litigation is extraordinarily sparse. A better reading of Holmes’s dictum notices that, literally, he is saying that ‘prophecies of what the courts will do in fact’ are what he means by the law. Holmes makes clear that the prophecies he has in mind take place in the lawyer’s office, not the courtroom, whenever the lawyer discusses legality with her client. This comes closer to recognizing the law-defining role of lawyer advice, but even Holmes focuses too much on predicting what judges will do and not enough on the lawyer’s own choices—a point that will prove important in what follows, where the focus will be very much on lawyers’ own choices. Given the central importance of legal advising to the law itself, **the ethics of legal advice turns out to have** major significance for the integrity of law.15 The crucial requirement is one I mentioned earlier: the legal advisor is supposed to be candid and independent, and the ethical requirement of candor and independence is the same for military and civilian lawyers. Candor implies at the very least that the advisor gives the client her best interpretation of the law. It may require more than that, because if the lawyer’s best interpretation of the law is controversial, and particularly if it represents a minority view, the lawyer must alert the client of that fact, for that too is part of candor. Independence reinforces the demands of candor: it means not tailoring the advice to what the client wants to hear.16 The advisor has to have the guts to say no to clients, to give them unwelcome legal news. That makes the **advisor’s** approach to legal interpretation very different from the **advocate’s**. For those of us accustomed to thinking of lawyers as courtroom advocates, who resolve every uncertainty in favor of their clients and who argue forcefully for whatever interpretation of the law helps the client prevail, candor and independence from the client seem like unusual requirements.17 Yet without them, **the law will be twisted and subverted**; it will barely exist.

### inev

LOAC is a result of contingent historical choices that the alternative problematizes—the alternative’s new power relations solve

Jochnick and Normand ‘94

Chris, J.D., Harvard Law School; Director of Projects, Center for Economic & Social Rights, Roger, J.D., Harvard Law School; M.T.S., Harvard Divinity School; Director of Policy, Center for Economic & Social Rights, “The Legitimation of Violence: A Critical History of the Laws of War,” 35 Harv. Int'l. L. J. 49 1994

The present relationship between law and war is neither necessary nor natural; it has been constructed piece by piece in response to a series of **particular**, **historically contingent** events. The fact that nations have adopted a legal framework that allows them to conduct wars relatively uninhibited by humanitarian constraints **does not preclude** the development of alternative legal frameworks that effectuate different values and yield different results. The evolution of internationalism presents **critical opportunities** and obstacles for those seeking to reform belligerent conduct. The fate of legal reform will be determined by a series of conflicts over the distribution of rights and power in the international system. The outcome of these power struggles will be inscribed in the legal and political framework within which future wars will be fought, to the benefit or detriment of those caught in the violence.

### perm

Cooption

Knox ‘12

Robert, PhD Candidate, London School of Economics and Political Science. !is paper was presented at the Fourth Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law and the Towards a Radical International Law workshop, “Strategy and Tactics,”

this warning is of great relevance to the type of ‘strategic’ interventions advocated by the authors. there are serious perils involved in making any intervention in liberal-legalist terms for critical scholars. the first is that – as per their own analysis – liberal legalism is not a neutral ground, but one which is likely to favour certain claims and positions. Consequently, it will be incredibly difficult to win the argument. Moreover, **even if** the argument is won, the victory is likely to be a very particular one – inasmuch as **it will foreclose any wider consideration of the structural or systemic causes** of any particular ‘violation’ of the law. All of these issues are to some degree considered by the authors.44 However, given the way in which ‘strategy’ is understood, the effects of these issues are generally confined to the immediate, conjunctural context. As such, the emphasis was placed upon the way that the language of liberal legalism blocked effective action and criticism of the war.45 Much less consideration is placed on the way in which advancing such argument impacts upon the long term effectiveness of achieving the strategic goals outlined above. Here, the problems become even more widespread. Choosing to couch the intervention in liberal legal terms ultimately reinforces the structure of liberal legalism, rendering it more difficult to transcend these arguments.46 In the best case scenario that such an intervention is victorious, this victory would precisely seem to underscore the liberal position on international law. Given that international law is in fact bound up with processes of exploitation and domination on a global scale, such a victory contributes to the legitimation of this system, **making it very difficult to argue against its logic.** this process takes place in three ways. Firstly, by intervening in the debate on its own terms, critical scholars reinforce those very terms, as their political goals are incorporated into it.47 It can then be argued the law is in fact neutral, because it is able to encompass such a wide variety of viewpoints. Secondly, in discarding their critical tools in order to make a public intervention, these scholars abandon their structural critique **at the very moment when they should hold to it most strongly**. that is to say, that at the point where there is actually a space to publicise their position, they choose instead to cleave to liberal legalism. thus, even if, in the ‘purely academic’ context, they continue to adhere to a ‘critical’ position, in public political terms, they advocate liberal legalism. Finally, from a purely ‘personal’ standpoint, in advocating such a position, they undercut their ability to articulate a critique in the future, precisely because they will be contradicting a position that they have already taken. the second point becomes increasingly problematic absent a guide for when it is that liberal legalism should be used and when it should not. Although the ‘embrace’ of liberal legalism is always described as ‘temporary’ or ‘strategic’**,** there is actually very little discussion about the specific conditions in which it is prudent to adopt the language of liberal legalism. It is simply noted at various points that this will be determined by the ‘context’.48 As is often the case, the term ‘context’ is invoked49 without specifying precisely which contexts are those that would necessitate intervening in liberal legal terms. Traditionally, such a context would be provided by a strategic understanding. that is to say, that the specific tactics to be undertaken in a given conjunctural engagement would be understood by reference to the larger structural aim. But here, there are simply no considerations of this. It seems likely therefore, that again context is understood in purely **tactical terms.** Martti Koskenniemi can be seen as representative in this respect, when he argued: What works as a professional argument depends on the circumstances. I like to think of the choice lawyers are faced with as being not one of method (in the sense of external, determinate guidelines about legal certainty) but of language or, perhaps better, of style. the various styles – including the styles of ‘academic theory’ and ‘professional practice’ – are neither derived from nor stand in determinate hierarchical relationships to each other. the final arbiter of what works is nothing other than the context (academic or professional) in which one argues.50 On this reading, the ‘context’ in which prudence operates seems to the immediate circumstances in which an intervention takes place. this would be consistent with the idea, expressed by the authors, that the ‘strategic’ context for adopting liberal legalism was that the debate was conducted in these terms. But the problem with this understanding is surely evident. As critical scholars have shown time and time again, the contemporary world is one that is deeply saturated with, and partly constituted by, **juridical relations**.51 Accordingly, there are really very few contexts (indeed perhaps none) in which political debate is not conducted in juridical terms. A brief perusal of world events would bear this out.52 the logical conclusion of this would seem to be that in terms of abstract, immediate effectiveness, the ‘context’ of public debate will almost always call for an intervention that is couched in liberal legalist terms. This raises a final vital question about what exactly distinguishes critical scholars from liberal scholars. If the above analysis holds true, then the ‘strategic’ interventions of critical scholars in legal and political debates will almost always take the form of arguing these debates in their own terms, and simply picking the ‘left’ side. thus, whilst their academic and theoretical writings and interventions may (or may not) retain the basic critical tools, the public political interventions will basically be ‘liberal’. The question then becomes, in what sense can we really characterise such interventions (and indeed such scholars) as ‘critical’? The practical consequence of understanding ‘strategy’ in essentially tactical terms seems to mean always struggling within the coordinates of the existing order. Given the exclusion of strategic concerns as they have been traditionally understood, **there is no practical account for how these coordinates will ever be transcended** (or how the debate will be reconfigured). As such, **we have a group of people struggling within liberalism, on liberal terms,** who may or may not also have some ‘critical’ understandings which are never actualised in public interventions. We might ask then, apart from ‘good intentions’ (although liberals presumably have these as well) what differentiates these scholars from liberals? Because of course liberals too can sincerely believe in political causes that are ‘of the left’. It seems therefore, that just as – in practical terms – strategic essentialism collapses into essentialism, so too does ‘strategic’ liberal legalism collapse into plain old liberal legalism.53

### kels

Society has always had laws of war and they never work—their scholarship is poor.

Jochnick and Normand ‘94

Chris, J.D., Harvard Law School; Director of Projects, Center for Economic & Social Rights, Roger, J.D., Harvard Law School; M.T.S., Harvard Divinity School; Director of Policy, Center for Economic & Social Rights, “The Legitimation of Violence: A Critical History of the Laws of War,” 35 Harv. Int'l. L. J. 49 1994

Modern legal scholars generally adhere to the view that past societies conducted wars without law, leaving the strong free to devastate the weak.34 According to this view, as civilization progressed through the Enlightenment, the laws of war balanced the traditional demands of military necessity with developing considerations of humanity. This process culminated in the codification of the modern laws of war in the nineteenth century, which supposedly achieved a decisive humanitarian advance from earlier custom and practice, bringing the horrors of war under the rule of law.3 5 This standard view **denies and distorts** the historical record. In fact, belligerents throughout history have created and recognized war codes. These laws, like the modern laws of war, failed to impose humanitarian limits on military action. By ignoring these consistent historical trends, the modern view **falsely promotes** the present laws of war as a humanitarian break from the "savage" past. 2. Ancient Legal Codes A cursory review of history contradicts the view that ancient wars were lawless. 36 Ancient societies had legal codes with humanitarian provisions similar to those found in the modern laws of war, including requirements that belligerents distinguish between combatants and civilians, spare prisoners of war, and avoid inflicting undue suffering. 37 However, these legal standards failed to prevent the frequent commission of wartime atrocities. 38 B. Laws of War Before the Modern Era The modern laws of war claim precedent in the chivalric practices of Medieval Christian Europe. A more critical view of this era, however, finds the same coexistence of law and atrocities. 39 The development of the "just war" doctrine in the Middle Ages dovetailed neatly with the standard medieval practice of slaughtering the enemy.40 Only when its political and economic interests were at risk did the Church attempt to regulate conduct during war. For example, in 1139, the Church intervened to protect its patron class, wealthy knights and nobles, denouncing the crossbow as deadly and "odious to God" because it was used by peasants to cut down knights and nobles at long range.41 Although the modern view deplores an overt license to massacre, it nonetheless claims romanticized chivalric ideals, such as justice and mercy, as its humanitarian ancestors. 42 This view obscures the fact that chivalric rules actually served to protect the lives and property of privileged knights and nobles, entitling them to plunder and kill peasant soldiers, non-Christian enemies, and civilians of all religions and ethnicities.43 The laws of war remained tied to religious particularism until the Enlightenment, when a prominent group of jurists and theologians, the "publicists," helped shift the source of legal authority from God to reason.44 In De jure Belli ac Pacis Libri Tres, a three-volume work on the laws of war, Hugo Grotius concluded that the practice of states reflected natural law through the reasoned judgment of men.45 Most important from the modern perspective, he insisted that war should be governed by a strict set of laws.4 6 Grotius maintained that violence beyond that necessary to secure the military goal was not justified, and that suffering should be minimized within the parameters of mill- tary requirements.47 A century later, Jean-Jacques Rousseau reaffirmed these principles, stressing that "the nature of things" required belligerents to distinguish combatants from non-combatants and limit attacks to armed enemies.48 The modern view hails the publicists for laying the foundation of the laws of war, a triumph of reason over barbarity.49 But the triumph was **in word only**., The enlightened theories of the publicists did not influence the practice of emerging European nation-states busily engaged in the imperial conquest, massacre, and enslavement of millions in the Americas, Africa, and Asia. The modern view, holding that the work of the publicists divides a lawless age of warfare from the modern age of legal restraint, **serves to mystify and legitimate the current legal regime.** A more accurate portrayal would place the laws of war within a historical continuum of unsuccessful attempts to limit wartime conduct.

### elshtain

We are not pacifism as per elshtain – we argue for repturing assymetric violence against the global poor, which causes a rev against of neoliberal governmentality

Denike ‘8

Margaret, Centre for Law, Gender, and Sexuality Studies at the University of Kent, “The Human Rights of Others: Sovereignty, Legitimacy, and “Just Causes” for the “War on Terror”,” Hypatia vol. 23, no. 2 (April-June 2008)

A NEW SOVEREIGNTY?

The revolutionary import and triumphant character of human rights is generally seen to reside in the challenge they pose to the principle of territorial sovereignty, That is, to a principle of noninterference that is as old and dear as the ethical tradition of just war doctrine. This principle is enshrined in the UN Charter, animating its prohibition on the use of force.” The promise of human rights inheres in the possibility “that states could no longer shelter behind the fig leaf of sovereignty for violations committed against individuals” (Kapur 2006, 669), as international statutes promise to hold state actors accountable to external agencies. For many internationalists, the “triumph” of human rights means that “the fortress walls of sovereignty, long enjoyed by states, **are crumbling**” (Carlson 2003, 196). In its place is a “new sovereignty,” as Kofi Annan (2000) optimistically described it, a sovereignty not of the state but **of the individual** in relation to the (responsible and responsive) state; one that promises to look not to states’ interests against external agencies but to the individual members of global community against state actors.12 The triumph of human rights, as the story goes, displaces the untouchable tyranny of rogue states and its illegitimate leaders with accountability to rights-respecting, legitimate ones. There is, however, **another side to this story**-the shadier features of which have been exposed by various commentators-that concerns the processes by which Western imperialism operates to sustain and reinforce itself and its powerful states as sovereign, and legitimate, still bounded and impermeable behind their fortresses, while applauding the permeability and dissolution of others on the so-called axis of evil as a “triumph”; one that, as Ratna Kapur describes it, renders human rights complicit “in making the world **less stable, less peaceful, more divisive, more polluted and more violent**” (2006,683-84). In other words, the triumph of human rights spells **not the end of sovereignty** but its Western reentrenchment in security states. This is done in part by tactics such as making a state’s dubious treatment of “their women” a measure of its legitimacy and its humanity; by demonizing “their men”-as political, cultural, and religious enemies-as imminent threats to world peace and security, and by circumscribing women within normative paternalist discourses as being in need of salvation or liberation. As exemplified by the utilization of immigration and refugee law and policy by which much of the “war on terror” has been legislatively fought, it is preoccupied with its borders and margins, and particularly with intruders and “aliens” in “our” midst, effectively delineating the difference between “us” (as sovereign, protectionist states, invariably on the side of the good) and “them” (as “rogue” states, run by illegitimate rulers and tyrants who harbor terrorists). As Costas Douzinas (2000), David Chandler (2001), and Anne Orford (2003) have noted, the acceptance of this “new humanitarianism” marks a significant transformation “from a discourse of rebellion and dissent into that of state legitimacy’’ (Douzinas quoted in Orford 2003,202); humanitarian wars have a way of “legitimizing a **certain** image of **sovereignty**” (Douzinas 2002,29), as the human rights discourse turns the “expression of **empathy for common humanity**” into “a **lever for strategic aims** drawn up and acted upon by external agencies” (Chandler 2001,760; Orford 2003,202).13 The porousness of the human rights discourse means that the interventions and exercises of state authority it legitimates “are more likely to **track political interests** than its own emancipatory goals” (Kennedy 2002,981 ), interests that include the corporate capitalization **on the militarized destruction and subsequent reconstruction projects**, **as well as the imposition of a Western imperial social, political, and economic order**, with its attendant sexual and racial colonization. Such is the “darker side” (Kapur 2006,666) of human rights narratives, the shadows of which haunt all of the celebrated promises of an abstract “humanity’s” triumph.

### ridley

Their data systematically discounts the periphery

Monthly Review 12

<http://monthlyreview.org/2012/07/01/the-gdp-illusion>

HISTORY — In May 1949 Monthly Review began publication in New York City, as cold war hysteria gathered force in the United States. The first issue featured the lead article Why Socialism? by Albert Einstein. From the first Monthly Review spoke for socialism and against U.S. imperialism, and is still doing so today. From the first Monthly Review was independent of any political organization, and is still so today. The McCarthy era inquisition targeted Monthly Review’s original editors Paul Sweezy and Leo Huberman, who fought back successfully. In the subsequent global upsurge against capitalism, imperialism and the commodification of life (in shorthand “1968”) Monthly Review played a global role. A generation of activists received no small part of their education as subscribers to the magazine and readers of Monthly Review Press books. In the intervening years of counter-revolution, Monthly Review has kept a steady viewpoint. That point of view is the heartfelt attempt to frame the issues of the day with one set of interests foremost in mind: those of the great majority of humankind, the propertyless.

The “GDP Illusion” is a fault in perception caused by defects in the construction and interpretation of standard economic data. Its main symptom is a systematic underestimation of the real contribution of low-wage workers in the global South to global wealth, and a corresponding exaggerated measure of the domestic product of the United States and other imperialist countries. These defects and distorted perceptions spring from the neoclassical concepts of price, value, and value added which inform how GDP, trade, and productivity statistics are devised and comprehended. The result is that supposedly objective and untarnished raw data on GDP, productivity, and trade are anything but; and standard interpretations conceal at least as much as they reveal about the sources of value and profit in the global economy. Three archetypical examples of the “global commodity”—the iPhone, the T-shirt, and the cup of coffee—validate and illustrate this argument; their diversity serves to highlight what is universal to them and to all other products of globalized production processes. All data and experience, except for economic data, points to a significant contribution to the profits of Apple Inc. and other western firms by the workers who work long, hard, and for low wages to produce their commodities. Yet economic data show no sign of any such contribution; instead, the bulk of the value realized in the sale of these commodities, and all of the profits reaped by Apple and Starbucks from them, appear to originate in the country where they are consumed. These three global commodities are in turn representative of broader transformations in capitalist production. Economic statistics and their standard interpretation also obscure the relation of exploitation in the relations between northern firms and southern producers. This relation of exploitation does not disappear entirely but remains partially visible in the paradoxes and anomalies which infest standard accounts of global political economy. These paradoxes and anomalies are like blemishes in a distorting lens that alert observers to its existence, making it necessary to identify and characterize this distortion so that the world can be seen as it is. This distortion is the misrepresentation of value captured as value added.

### enviro

#### Environmental resilience theory gets co-opted by corporate elites and is wrong—justifies regulatory rollback and liability limitation while ignoring the timescape clash between fast extraction and slow recovery

Nixon ’11 (Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pgs. 21-22)

That said, we need to be cautious about romanticizing the noncompliance that may inhere in a targeted resource: relative to the accelerated plunder involved, say, in the "second scramble" for Africa-as American, Australian, Chinese, European, and South African corporations cash in on resource-rich, regulation-poor, war-fractured societies-the resistance posed by nature itself should not be overstated. The recent turn within environmental studies toward celebrating the creative resilience of ecosystems can be readily hijacked by politicians, lobbyists, and corporations who oppose regulatory controls and strive to minimize pollution liability. Co-opting the "nature-and-time-will-heal" argument has become integral to attempts to privatize profits while externalizing risk and cleanup, both of which can be delegated to "nature's business." This was dramatically illustrated by the Deepwater Horizon disaster- in the laxity that contributed to the blowout and in the aftermath. Big Oil and government agencies both invoked natural resilience as an advance strategy for minimizing oversight. Before the blowout, the Minerals Management Service of the U.S. Interior Department had concluded that "spills in deep water are not likely to affect listed birds .... Deepwater spills would either be transported away from coastal habitats or prevented, for the most part, from reaching coastal habitats by natural weathering processes.?" Even after the disaster, this line of reasoning persisted. Oil industry apologist Rep. Don Young (R-AK), testifying at congressional hearings on the blowout, knew exactly how to mine this "natural agency" logic: the Deepwater Horizon spill was "not an environmental disaster," he declared. "I will say that again and again because it is a natural phenomenon. Oil has seeped into this ocean for centuries, will continue to do it.... We will lose some birds, we will lose some fixed sea-life, but overall it will recover.?" BP spokesman John Curry likewise explained how industrious microbes would cleanse the oil from the gulf: "Nature," he concluded sanguinely, "has a way of helping the situation.'" BP representatives repeatedly invoked the capacity of marine life to metabolize hydrocarbons and the dispersing powers of microbial degradation. But in conscripting nature as a volunteer clean up crew, BP and its Washington allies downplayed the way ravenous microbes, in consuming oxygen, thereby starved other organisms and exacerbated expanding oceanic dead zones." What will be the long-term cascade effect of the slow violence, the mass die-offs, of phyloplankton at the food chain base? It is far too early to tell. In short, the very environment that high-risk, deep-water drilling endangered was conscripted by industry through a kind of natural outsourcing. And so Big Oil's invocation of nature's healing powers needs to be recognized as part of a broader strategy of image management and liability limitation by greenwashing. Natural agency can indeed take unexpected, sometimes heartening forms, but we should be alert to the ways corporate colossi and governments can hijack that logic to grant themselves advance or retrospective absolution. Crucially, for my arguments about slow violence, the time frames of damage assessment and potential recovery are wildly out of sync. The deep-time thinking that celebrates natural healing is strategically disastrous if it provides political cover for reckless corporate short-termism.47

### impacts

#### Multiple feedback loops hollow out the system and ensure extinction—we control try or die

Li ‘8 (Minqi, professor of economics at the University of Utah, “An Age of Transition: The United States, China, Peak Oil, and the Demise of Neoliberalism,” http://monthlyreview.org/2008/04/01/an-age-of-transition-the-united-states-china-peak-oil-and-the-demise-of-neoliberalism, AM)

The global capitalist economy depends on fossil fuels (oil, natural gas, and coal) for 80 percent of the world’s energy supply. Oil accounts for one-third of the total energy supply and 90 percent of the energy used in the transportation sector. Oil is also an essential input for the production of fertilizers, plastics, modern medicine, and other chemicals. Oil is a nonrenewable resource. In a recent study, the German Energy Watch Group points out that world oil discoveries peaked in the 1960s and world crude oil production has probably already peaked and will start to decline in the coming years. Outside OPEC, oil production in twenty-five major oil producing countries or regions has already peaked, and only nine countries or regions still have growth potential. All the major international oil companies are struggling to prevent their oil production from declining.3 Colin Campbell of the Association for the Study of Peak Oil and Gas estimates that the world production of all liquids (including crude oil, tar sands, oil shales, natural gas liquids, gas-to-liquids, coal-to-liquids, and biofuels) is likely to peak around 2010. After the peak, the world oil production will fall by about 25 percent by 2020 and by about two-thirds by 2050. Campbell also estimates that the world natural gas production will peak by 2045. In an earlier study, the German Energy Watch Group expects the world coal production to peak by 2025.4 Nuclear energy and many renewable energy sources (such as solar and wind), in addition to their many other limitations, cannot be used to make liquid and gaseous fuels or serve as inputs in chemical industries. Biomass is the only renewable energy source that can be used as a substitute for fossil fuel in the making of liquid or gaseous fuels. But large-scale production of biomass could lead to many serious environmental problems, and the potential of biomass is limited by the available quantity of productive land and fresh water. Ted Trainer, an Australian eco-socialist, estimates that meeting the current U.S. demand for oil and gas would require that the equivalent of nine times all U.S. crop land or eight times all currently forested U.S. land be fully devoted to production of biomass. Trainer concludes that “there is no possibility that more than a quite small fraction of liquid fuel and gas demand could be met by biomass sources.”5 If world oil production and the production of other fossil fuels reach their peak and start to decline in the coming years, then the global capitalist economy will face an unprecedented crisis that it will find difficult to overcome. The rapid depletion of fossil fuels is only one among many serious environmental problems the world is confronting today. The capitalist economic system is based on production for profit and capital accumulation. In a global capitalist economy, the competition between individual capitalists, corporations, and capitalist states forces each of them constantly to pursue accumulation of capital on increasingly larger scales. Therefore, under capitalism, there is a tendency for material production and consumption to expand incessantly. After centuries of relentless accumulation, the world’s nonrenewable resources are being rapidly depleted and the earth’s ecological system is now on the verge of collapse. The survival of the human civilization is at stake.6 Some argue that because of technological progress, the advanced capitalist countries have become “dematerialized” (decreasing the throughput of materials and energy per unit of output) as economic growth relies more upon services than traditional industrial sectors, thus making economic growth less detrimental to the environment. In fact, many of the modern services sectors (such as transportation and telecommunication) are highly energy and resource intensive. Despite such claims regarding dematerialization, the advanced capitalist countries are ecologically much more wasteful than the periphery, with per capita consumption of energy and resources and a per capita ecological footprint far higher than the world average. According to the Living Planet Report, North America has a per capita ecological footprint of 9.4 global hectares, more than four times the world average (2.2 global hectares). The supposedly environmentally friendly European Union has a per capita ecological footprint of 4.8 global hectares, or more than twice the world average. Cuba, the only country that remains committed to socialist goals among the historical socialist states, is the only country that has accomplished a high level of human development (with a human development index greater than 0.8) while having a per capita ecological footprint smaller than the world average.7 Claims of the advanced capitalist economies to dematerialization in the wider, more meaningful sense of declining overall environmental impact are in fact refuted by the Jevons Paradox, which says that increased efficiency in the throughput of energy and materials normally leads to an increase in the scale of operations, thereby enlarging the overall ecological footprint. This has been a normal pattern throughout the history of capitalism.8 Moreover, part of what is referred to as dematerialization arises from the relocation of industrial capital from the advanced capitalist countries to the periphery in pursuit of cheap labor and low environmental standards. The dramatic rise of Chinese capitalism partly results from this global capital relocation. Although the advanced capitalist countries may have become slightly “dematerialized” in this sense, the capitalists and the so-called middle classes in China, India, Russia, and much of the periphery are emulating and reproducing the very wasteful capitalist “consumerist” life style on a massively enlarged scale. Global capitalism as a whole continues to move relentlessly toward global environmental catastrophe. The Demise of Neoliberalism and the Age of Transition On February 1, Immanuel Wallerstein, the leading world system theorist, in his biweekly commentaries pronounced the year 2008 to be the year of the “Demise of the Neoliberal Globalization.” Wallerstein begins by pointing out that throughout the history of the capitalist world-system, the ideas of free market capitalism with minimal government intervention and the ideas of state regulated capitalism with some social protection have been in fashion in alternating cycles. In response to the worldwide profit stagnation in the 1970s, neoliberalism became politically dominant in the advanced capitalist countries, in the periphery, and eventually in the former socialist bloc. However, neoliberalism failed to deliver its promise of economic growth, and as the global inequalities surged, much of the world population suffered from declines in real incomes. After the mid-1990s, neoliberalism met with growing resistance throughout the world and many governments have been under pressure to restore some state regulation and social protection. Confronted with economic crisis, the Bush administration has simultaneously pursued a further widening of inequality at home and unilateral imperialism abroad. These policies have by now failed decisively. As the United States can no longer finance its economy and imperialist adventure with increasingly larger foreign debt, the U.S. dollar, Wallerstein believes, faces the prospect of a free fall and will cease to be the world’s reserve currency. Wallerstein concludes: “The political balance is swinging back….The real question is not whether this phase is over but whether the swing back will be able, as in the past, to restore a state of relative equilibrium in the world-system. Or has too much damage been done? And are we now in for more violent chaos in the world-economy and therefore in the world-system as a whole?”9 Following Wallerstein’s arguments, in the coming years we are likely to witness a major realignment of global political and economic forces. There will be an upsurge in the global class struggle over the direction of the global social transformation. If we are in one of the normal cycles of the capitalist world-system, then toward the end of the current period of instability and crisis, we probably will observe a return to the dominance of Keynesian or state capitalist policies and institutions throughout the world. However, too much damage has been done. After centuries of global capitalist accumulation, the global environment is on the verge of collapse and there is no more ecological space for another major expansion of global capitalism. The choice is stark—either humanity will permit capitalism to destroy the environment and therefore the material basis of human civilization, or it will destroy capitalism first. The struggle for ecological sustainability must join forces with the struggles of the oppressed and exploited to rebuild the global economy on the basis of production for human needs in accordance with democratic and socialist principles. In this sense, we have entered into a new age of transition. Toward the end of this transition, one way or the other we will be in a fundamentally different world and it is up to us to decide what kind of world it turns out to be.

#### Neolib triggers global war, especially in the Middle East

Smith 8

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The point is not that geopolitics is somehow obsolete—one look at newspaper headlines and a glance at U.S. behavior in the Middle East would assuage any such concern. Rather, however much geopolitics remains a tactical arsenal for global conflict—and the Israel-Palestine-Syria-Iraq-Iran nexus is a superb example—the underlying rationale for conflict today increasingly conforms to a geoeconomic more than geopolitical logic. This is not to say that war in Iraq, or more broadly in the Middle East, has been simply about oil. Such an assumption represents an elemental mistake by the political left, assuming a geopolitical as much as geoeconomic rationale. Rather, war in the Middle East is very much about completing the strategy of globalization by attempting to bring the last major recalcitrant region into line with U.S. global ambition. That most of the world's oil supplies lie there is not at all coincidental, but it is not the only, and probably not even the central, question. To the extent that the political left sees Middle East strife as a war for oil, it remains stuck in an obsolescent geopolitical mindset. Having said this, it seems clear that as we head into the second decade of the twenty-first century, geopolitical calculation is likely to be very much on the front page of newspapers, perhaps as testimony to the failure of the third moment—after Wilson, after Roosevelt—in the U.S. ambition to get beyond geography and create a flat global world. Geopolitics, and the resort to a largely self-inflicted nationalism, were the downfall of global ambition in these earlier moments and they seem on track to repeat the fiasco. Quite how that undoing will happen is not clear but the 2007 crisis in the global financial markets of the United States and Europe, rooted appropriately in a long history of speculative mortgage investments, suggests that the crisis of 1997-98 has migrated economically and geographically. That crisis manifested itself first in the overproduction of semiconductors in Thailand, eventually effecting the value of Thai currency, the baht, and spreading from there. Ten years later, the crisis seems to emanate from the belly of the beast, its most cherished right, the U.S. mortgage. That it has not remained in the mortgage sector but become generalized is precisely the nature of a globalized capitalism. And that powerful state intervention, up to and including bank nationalization, was required to deal with the crisis, completely contradicts the dogmas of neoliberalism.

This cements global neoliberal society and a system of preemptive violence.

Dowdeswell ‘13

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The Normative Framework of Neoliberal Security Governance

On the basis of the above reading, the normative framework of neoliberal security governance is **at the heart** of understanding how and why new customary laws are arising within – and being justified by reference to – its overarching structure and normative values. This section will first address the privatisation of what was formerly conceived as the application of public force, which it argues has **fundamentally altered** the legal justifications of the use of force at the core of the customary laws of war. This privatisation has been effected through the **disaggregation and decentralisation of the chain-ofcommand**, which has placed the responsibility for making decisions to apply force within the hands of front-line security providers, such as soldiers, peacekeepers, and private contractors, who are **all** now encouraged to subjectively assess the risks they face in the conflict zone, and to defend themselves accordingly. This shift towards risk management is a **direct result** of the assumption of neoliberal ideologies of administration that have taken hold of the security sector, which began in the 1980s, but which gained their most significant traction after the institution of counter-insurgent wars in Iraq and Afghanistan, and the revolutions in military doctrine that govern them. Moreover, it is this development that enables a proper understanding of why and how the soldiers of the U.S. Air Cavalry Brigade committed the killings in New Baghdad on 12 July 2007. Specifically, such a backdrop draws attention not only to how these soldiers were trained to do this, but also to the manner in which the military investigators constructed their justifications of the killings, and to how these acts were considered lawful under the customary laws of armed conflict and the U.S. military’s own Rules of Engagement. Here I focus on the U.S. as the dominant military hegemon and leader in the neoliberalisation of security governance, and then go to argue that from here these strategies are gaining ground in a variety of other contexts. Security governance – which may be defined as the institutions, technologies and practices that are used to govern security forces and to promote secure environments (Johnson & Shearing, 2003, pp. 7-8) – emanates from the centres of power and embodies many of the values, mentalities of governance, and forms of social ordering of the society within which it arises. This in turn gives rise to the institutional and normative framework within which the customary laws of armed conflict are generated and understood. Distinctions between public and private forces, foreign and local forces, as well as between military, police, and other State intelligence and national security services have all been disaggregated and reassembled into the new global security assemblages that are used to enforce security within and against civilian populations (Abrahamsen & Williams, 2011). As Saskia Sassen states, the “epochal transformation we call globalization is taking place inside the national to a far larger extent than is usually recognized. It is here that the most complex meanings of the global are being constituted, and the national is also often one of the key enablers and enactors of the emergent global scale” (Sassen, 2006, p. 1). The globalisation of security governance is therefore not merely about the changing nature of the threats posed by weak and failed states and nonstate actors, nor is it simply about the growth of private actors and security companies; instead, it concerns the **fundamental restructuring of power**, **mentalities of governance**, **and forms of social ordering that are taking shape in the late modern age**. U.S. military doctrine states that building a legitimate political process and local capacities for security governance are the core objectives of its counter-insurgency strategy, a realisation that has been embodied in its 2006 Counterinsurgency Field Manual (Department of the Army, 2006). This has come as a result of military authorities reflecting upon their failures to contain insurgent movements in the post-war era despite their military superiority, including particularly the failures of the U.S. military in Vietnam, and subsequently in Lebanon, Somalia and occupied Iraq, as well as the failures of the French in Indochina and Algeria (see Klein, 2005; Peterson, 2003). Military authorities attribute these failures largely to the ineffectiveness of the tactics of conventional warfare, and to the inability of the military to modernise itself to wage unconventional war against non-State actors. **Yet as in times past,** the restructuring of the security sector heralds a shift in the broader political and economic structures of society; it is influenced by those shifts at the same time that it serves to reinforce them through the strategic **use of** coercive **force**. The increasing institutionalisation of the strategies of neoliberal security governance, when taken as a whole, indicate the emergence of new and transnational technologies of political and economic power, which are being employed to shape the **broader economic, social and normative orders** § Marked 10:44 § that are emerging alongside of them. This is justified by authorities as an attempt to **modernise security governance** in order to reduce the threats posed by terrorists and armed insurgents, yet **its overall effects** are to justify and increase the use of force and coercion against civilian populations. This exposes a fundamental inconsistency at the core of globalised security governance and its claims to efficacy: its strategies are designed to justify the use of force against non-State actors, i.e. civilians, in order to build legitimate governance, yet the prospects of building stable and legitimate governance among the civilian population **are decreased** to the extent that force and coercion are deployed against them. Here I focus on the decentralisation of the chain-of-command and on strategies of risk management, which I argue are the two facets of neoliberal security governance most relevant to the intentional killing of civilians in war zones, and which are exemplified by the actions of the Air Cavalry Brigade in Collateral Murder . These serve to **justify and increase** the **subjective and pre-emptive use of force** in 'self-defense' as a shortterm measure, but in so doing they feed back into a cycle of violence that will necessarily supersede the long-term projects of reconstruction, democratisation, and securing the well being of the affected community.