# 1AC

## Plan

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

## 1AC Drones

#### Advantage one is Drones

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

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

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

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

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

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

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

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

#### That makes future terrorist attacks inevitable

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

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

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

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

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

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

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

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

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

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them.

My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants.

Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack.

Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists.

Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad.

What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland.

Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely.

Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult.

As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness.

The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

#### Drones are operationally effective and alternatives are worse—establishing a clear strike policy solves criticism.

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

Despite President Barack Obama’s recent call to reduce the United States’ reliance on drones, they will likely remain his administration’s weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage. So drone warfare is here to stay, and it is likely to expand in the years to come as other countries’ capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid. NOBODY DOES IT BETTER The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers. Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders. Critics of drone strikes often fail to take into account the fact that the alternatives are either too risky or unrealistic. To be sure, in an ideal world, militants would be captured alive, allowing authorities to question them and search their compounds for useful information. Raids, arrests, and interrogations can produce vital intelligence and can be less controversial than lethal operations. That is why they should be, and indeed already are, used in stable countries where the United States enjoys the support of the host government. But in war zones or unstable countries, such as Pakistan, Yemen, and Somalia, arresting militants is highly dangerous and, even if successful, often inefficient. In those three countries, the government exerts little or no control over remote areas, which means that it is highly dangerous to go after militants hiding out there. Worse yet, in Pakistan and Yemen, the governments have at times cooperated with militants. If the United States regularly sent in special operations forces to hunt down terrorists there, sympathetic officials could easily tip off the jihadists, likely leading to firefights, U.S. casualties, and possibly the deaths of the suspects and innocent civilians. Of course, it was a Navy SEAL team and not a drone strike that finally got bin Laden, but in many cases in which the United States needs to capture or eliminate an enemy, raids are too risky and costly. And even if a raid results in a successful capture, it begets another problem: what to do with the detainee. Prosecuting detainees in a federal or military court is difficult because often the intelligence against terrorists is inadmissible or using it risks jeopardizing sources and methods. And given the fact that the United States is trying to close, rather than expand, the detention facility at Guantánamo Bay, Cuba, it has become much harder to justify holding suspects indefinitely. It has become more politically palatable for the United States to kill rather than detain suspected terrorists. Furthermore, although a drone strike may violate the local state’s sovereignty, it does so to a lesser degree than would putting U.S. boots on the ground or conducting a large-scale air campaign. And compared with a 500-pound bomb dropped from an F-16, the grenade like warheads carried by most drones create smaller, more precise blast zones that decrease the risk of unexpected structural damage and casualties. Even more important, drones, unlike traditional airplanes, can loiter above a target for hours, waiting for the ideal moment to strike and thus reducing the odds that civilians will be caught in the kill zone. Finally, using drones is also far less bloody than asking allies to hunt down terrorists on the United States’ behalf. The Pakistani and Yemeni militaries, for example, are known to regularly torture and execute detainees, and they often indiscriminately bomb civilian areas or use scorched-earth tactics against militant groups.

Risk of nuclear terrorism is real and high now

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

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

#### Extinction

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

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

#### Causes US-Russia miscalc—extinction

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

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

## 1AC Legal Regimes

#### Advantage two is legal regimes

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

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

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

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

One overarching concern is the conflation in general of jus ad bellum and jus in bello. The former is the law governing the resort to force—sometimes called the law of self-defense—and the latter is the law regulating the conduct of hostilities and the protection of persons in conflict—generally called the law of war, the law of armed conflict, or international humanitarian law. International law reinforces a strict separation between the two bodies of law, ensuring that all parties have the same obligations and rights during armed conflict to ensure that all persons and property benefit from the protection of the laws of war. For example, the Nuremberg Tribunal repeatedly held that Germany’s crime of aggression neither rendered all German acts unlawful nor prevented German soldiers from benefitting from the protections of the jus in 6bello.9 More recently, the Special Court for Sierra Leone refused to reduce the sentences of Civil Defense Forces fighters on the grounds that they fought in a “legitimate war” to protect the government against the rebels.10 The basic principle that the rights and obligations of jus in bello apply regardless of the justness or unjustness of the overall military operation thus remains firmly entrenched. Indeed, if the cause at arms influenced a state’s obligation to abide by the laws regulating the means and methods of warfare and requiring protection of civilians and persons hors de combat, states would justify all departures from jus in bello with reference to the purported justness of their cause. The result: an invitation to unregulated warfare.11

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.1.1 Decreased likelihood of ‘desirable wars’

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

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

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

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

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

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

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

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

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

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

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

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

1. Effect on Domestic Law and Policy

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

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

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

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

2. Effect on the International Law of Self-Defense

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

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

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

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

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

#### Law of armed conflict controls deterrence—collapse causes global WMD conflict

Delahunty, associate prof – U St. Thomas Law, and Yoo, law prof – UC Berkeley, ‘10

(Robert and John, 59 DePaul L. Rev. 803)

Finally, the extension of IHRL to armed conflict may have significant consequences for the success of international law in advancing global welfare. Rules of the LOAC represent the delicate balancing between the imperatives of combat and the humanitarian goals in wartime. The LOAC has been remarkably successful in achieving compliance from warring nations in obeying these rules. This is most likely due to the reciprocal nature of the obligations involved. Nations treat prisoners of war well in order to guarantee that their own captive soldiers will be treated well by the enemy; nations will refrain from usingweapons of mass destruction because they are deterred by their enemy's possession of the same weapons. It has been one of the triumphs of international law to increase the restrictions on the use of unnecessarily destructive and cruel weapons, and to advance the norms of distinction and the humane treatment of combatants and civilians in wartime.

IHRL norms, on the other hand, may suffer from much lower rates of compliance. This may be due, in part, to the non-reciprocal nature of the obligations. One nation's refusal to observe freedom of speech, for example, will not cause another country to respond by depriving its own citizens of their rights. If IHRL norms--which were developed without much, if any, consideration of the imperatives of combat--merge into the LOAC, it will be likely that compliance with international law will decline. If nations must balance their security [\*849] needs against ever more restrictive and out-of-place international rules supplied by IHRL, we hazard to guess that the latter will give way. Rather than attempt to superimpose rules for peacetime civilian affairs on the unique circumstances of the "war on terror," a better strategy for encouraging compliance with international law would be to adapt the legal system already specifically designed for armed conflict.

#### LOAC key to regulate cyber development—prevents spillover of the Stuxtnet precedent

Jeremy Richmond, J.D., March 2012, NOTE: EVOLVING BATTLEFIELDS DOES STUXNET DEMONSTRATE A NEED FOR MODIFICATIONS TO THE LAW OF ARMED CONFLICT?, 35 Fordham Int'l L.J. 842

Stuxnet almost certainly foreshadows a fundamental change in modern warfare. It demonstrates that a well-orchestrated CNA can strike a target with greater precision, greater damage to the enemy, and less collateral loss of life and property than a kinetic weapon. Will the change in warfare, [\*894] however, be so drastic that it also necessitates a change in the LOAC? The answer appears to be both "yes" and "no."

The principles of distinction, discrimination, and proportionality, when applied to Stuxnet, further the LOAC policy goals of reducing overall destruction in warfare and reducing unnecessary harm to civilians and civilian property. Further, evidence that Stuxnet's programmers may have designed it to conform with the LOAC, and the subsequent benefits that that conformity brought, demonstrates that compliance with the LOAC is possible, practical, and beneficial. In this respect, the LOAC seems to adequately regulate Stuxnet. Stuxnet therefore should be considered a piece of evidence that fundamental alterations to the LOAC are not necessary to regulate cyber weapons.

#### Solves extinction

**Guterl 12**, executive editor – Scientific American, 11/28/’12

(Fred, “Armageddon 2.0,” Bulletin of the Atomic Scientists)

The world lived for half a century with the constant specter of nuclear war and its potentially devastating consequences. The end of the Cold War took the potency out of this Armageddon scenario, yet the existential dangers have only multiplied.

Today the technologies that pose some of the biggest problems are not so much military as commercial. They come from biology, energy production, and the information sciences -- and are the very technologies that have fueled our prodigious growth as a species. They are far more seductive than nuclear weapons, and more difficult to extricate ourselves from. The technologies we worry about today form the basis of our global civilization and are essential to our survival.

The mistake many of us make about the darker aspects of our high-tech civilization is in thinking that we have plenty of time to address them. We may, if we're lucky. But it's more likely that we have less time than we think. There may be a limited window of opportunity for preventing catastrophes such as pandemics, runaway climate change, and cyber attacks on national power grids.

Emerging diseases. The influenza pandemic of 2009 is a case in point. Because of rising prosperity and travel, the world has grown more conducive to a destructive flu virus in recent years, many public health officials believe. Most people probably remember 2009 as a time when health officials overreacted. But in truth, the 2009 virus came from nowhere, and by the time it reached the radar screens of health officials, it was already well on its way to spreading far and wide.

"H1N1 caught us all with our pants down," says flu expert Robert G. Webster of St. Jude Children's Research Hospital in Memphis, Tennessee. Before it became apparent that the virus was a mild one, health officials must have felt as if they were staring into the abyss. If the virus had been as deadly as, say, the 1918 flu virus or some more recent strains of bird flu, the result would have rivaled what the planners of the 1950s expected from a nuclear war. It would have been a "total disaster," Webster says. "You wouldn't get the gasoline for your car, you wouldn't get the electricity for your power, you wouldn't get the medicines you need. Society as we know it would fall apart."

Climate change. Climate is another potentially urgent risk. It's easy to think about greenhouse gases as a long-term problem, but the current rate of change in the Arctic has alarmed more and more scientists in recent years. Tim Lenton, a climate scientist at the University of Exeter in England, has looked at climate from the standpoint of tipping points -- sudden changes that are not reflected in current climate models. We may already have reached a tipping point -- a transition to a new state in which the Arctic is ice-free during the summer months.

Perhaps the most alarming of Lenton's tipping points is the Indian summer monsoon. Smoke from household fires, and soot from automobiles and buses in crowded cities, rises into the atmosphere and drifts out over the Indian Ocean, changing the atmospheric dynamics upon which the monsoon depends -- keeping much of the sun's energy from reaching the surface, and lessening the power of storms. At the same time, the buildup of greenhouse gases -- emitted mainly from developed countries in the northern hemisphere -- has a very different effect on the Indian summer monsoon: It makes it stronger.

These two opposite influences make the fate of the monsoon difficult to predict and subject to instability. A small influence -- a bit more carbon dioxide in the atmosphere, and a bit more brown haze -- could have an outsize effect. The Indian monsoon, Lenton believes, could be teetering on a knife's edge, ready to change abruptly in ways that are hard to predict. What happens then? More than a billion people depend on the monsoon's rains.

Other tipping points may be in play, says Lenton. The West African monsoon is potentially near a tipping point. So are Greenland's glaciers, which hold enough water to raise sea levels by more than 20 feet; and the West Antarctic Ice Sheet, which has enough ice to raise sea levels by at least 10 feet. Regional tipping points could hasten the ill effects of climate change more quickly than currently projected by the Intergovernmental Panel on Climate Change.

Computer hacking. The computer industry has already made it possible for computers to handle a variety of tasks without human intervention. Autonomous computers, using techniques formerly known as artificial intelligence, have begun to exert control in virtually every sphere of our lives. Cars, for instance, can now take action to avoid collisions. To do this, a car has to make decisions: When does it take control? How much braking power should be applied, and to which wheels? And when should the car allow its reflex-challenged driver to regain control? Cars that drive themselves, currently being field tested, could hit dealer showrooms in a few years.

Autonomous computers can make our lives easier and safer, but they can also make them more dangerous. A case in point is Stuxnet, the computer worm designed by the US and Israel to attack Iran's nuclear fuel program. It is a watershed in the brief history of malware -- the Jason Bourne of computer code, designed for maximum autonomy and effectiveness. Stuxnet's creators gave their program the best training possible: they stocked it with detailed technical knowledge that would come in handy for whatever situation Stuxnet could conceivably encounter. Although the software included rendezvous procedures and communication codes for reporting back to headquarters, Stuxnet was built to survive and carry out its mission even if it found itself cut off.

The uranium centrifuges that Stuxnet attacked are very similar in principle to the generators that power the US electrical grid. Both are monitored and controlled by programmable-logic computer chips. Stuxnet cleverly caused the uranium centrifuges to throw themselves off-balance, inflicting enough damage to set the Iranian nuclear industry back by 18 months or more. A similar piece of malware installed on the computers that control the generators at the base of the Grand Coulee Dam would likewise cause them to shake, rattle, and roll -- and eventually explode.

If Stuxnet-like malware were to insinuate itself into a few hundred power generators in the United States and attack them all at once, the damage would be enough to cause blackouts on the East and West Coasts. With such widespread destruction, it could take many months to restore power to the grid. It seems incredible that this should be so, but the worldwide capacity to manufacture generator parts is limited. Generators generally last 30 years, sometimes 50, so normally there's little need for replacements. The main demand for generators is in China, India, and other parts of rapidly developing Asia. That's where the manufacturers are -- not in the United States. Even if the United States, in crisis mode, put full diplomatic pressure on supplier nations -- or launched a military invasion to take over manufacturing facilities -- the capacity to ramp up production would be severely limited. Worldwide production currently amounts to only a few hundred generators per year.

The consequences of going without power for months, across a large swath of the United States, would be devastating. Backup electrical generators in hospitals and other vulnerable facilities would have to rely on fuel that would be in high demand. Diabetics would go without their insulin; heart attack victims would not have their defibrillators; and sick people would have no place to go. Businesses would run out of inventory and extra capacity. Grocery stores would run out of food, and deliveries of all sorts would virtually cease (no gasoline for trucks and airplanes, trains would be down). As we saw with the blackouts caused by Hurricane Sandy, gas stations couldn't pump gas from their tanks, and fuel-carrying trucks wouldn't be able to fill up at refueling stations. Without power, the economy would virtually cease, and if power failed over a large enough portion of the country, simply trucking in supplies from elsewhere would not be adequate to cover the needs of hundreds of millions of people. People would start to die by the thousands, then by the tens of thousands, and eventually the millions. The loss of the power grid would put nuclear plants on backup, but how many of those systems would fail, causing meltdowns, as we saw at Fukushima? The loss in human life would quickly reach, and perhaps exceed, After eight to 10 days, about 72 percent of all economic activity, as measured by GDP, would shut down, according to an analysis by Scott Borg, a cybersecurity expert.

TK self-defense norms modeled globally --- causes global war

Fisk & Ramos 13 (Kerstin Fisk --- PhD in Political Science focusing on interstate war @ Claremont Graduate University, Jennifer M. Ramos-- PhD in Polisci and Professor @ Loyola Marymount focusing on norms and foreign policy, including drone warfare and preventative use of force, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm” 15 APR 2013, International Studies Perspectives (2013), 1–23)

Conclusion

Preventive self-defense entails waging a war or an attack by choice, in order to prevent a suspected enemy from changing the status quo in an unfavorable direction. Prevention is acting in anticipation of a suspected latent threat that might fully emerge someday. One might rightfully point out that preventive strikes are nothing new—the Iraq War is simply a more recent example in a long history of the preventive use of force. The strategic theorist Colin Gray (2007:27), for example, argues that “far from being a rare and awful crime against an historical norm, preventive war is, and has always been, so common, that its occurrence seems remarkable only to those who do not know their history.” Prevention may be common throughout history, but this does not change the fact that it became increasingly difficult to justify after World War II, as the international community developed a core set of normative principles to guide state behavior, including war as a last resort. The threshold for war was set high, imposing a stringent standard for states acting in self-defense. Gray concedes that there has been a “slow and erratic, but nevertheless genuine, growth of a global norm that regards the resort to war as an extraordinary and even desperate measure” and that the Iraq war set a “dangerous precedent” (44). Although our cases do not provide a definitive answer for whether a preventive self-defense norm is diffusing, they do provide some initial evidence that states are re-orienting their military and strategic doctrines toward offense. In addition, these states have all either acquired or developed unmanned aerial vehicles for the purposes of reconnaissance, surveillance, and/or precision targeting.

Thus, the results of our plausibility probe provide some evidence that the global norm regarding the use of force as a last resort is waning, and that a preventive self-defense norm is emerging and cascading following the example set by the United States. At the same time, there is variation among our cases in the extent to which they apply the strategy of self-defense. China, for example, has limited their adaption of this strategy to targeted killings, while Russia has declared their strategy to include the possibility of a preventive nuclear war. Yet, the preventive self-defense strategy is not just for powerful actors. Lesser powers may choose to adopt it as well, though perhaps only implementing the strategy against actors with equal or lesser power. Research in this vein would compliment our analyses herein.

With the proliferation of technology in a globalized world, it seems only a matter of time before countries that do not have drone technology are in the minority. While preventive self-defense strategies and drones are not inherently linked, current rhetoric and practice do tie them together. Though it is likely far into the future, it is all the more important to consider the final stage of norm evolution—internalization—for this particular norm. While scholars tend to think of norms as “good,” this one is not so clear-cut. If the preventive self-defense norm is taken for granted, integrated into practice without further consideration, it inherently changes the functioning of international relations. And unmanned aerial vehicles, by reducing the costs of war, make claims of preventive self-defense more palatable to the public. Yet a global norm of preventive self-defense is likely to be destabilizing, leading to more war in the international system, not less. It clearly violates notions of just war principles—jus ad bellum. The United States has set a dangerous precedent, and by continuing its preventive strike policy it continues to provide other states with the justification to do the same.

China models US self-defense precedent --- they’ll strike in the South China Sea

Fisk & Ramos 13 (Kerstin Fisk --- PhD in Political Science focusing on interstate war @ Claremont Graduate University, Jennifer M. Ramos PhD in Polisci and Professor @ Loyola Marymount focusing on norms and foreign policy, including drone warfare and preventative use of force, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm” 15 APR 2013, International Studies Perspectives (2013), 1–23)

China

Though scholars debate the strategic culture of China, the dominant view has been one that emphasizes the defensive nature of Chinese military strategy (for an alternative view, see Johnston 1995; Feng 2007; Silverstone 2009). In this view, China prefers diplomacy over the use of force to achieve its objectives, and is more focused on defending against aggressors than acting as one. Seemingly consistent with this view, in 2003, China publically declared its position against states seeking to legitimize preventive self-defense. From China's perspective, the US-led war in Iraq was an example of America's hegemonic lust for power (Silverstone 2009). It was an act of aggression that violated the international norm that China holds dear—the norm of sovereignty. **However, the country's position on this may be evolving**, or at least **contingent on its own geo-political interests**. In 2005, the People's Congress of China passed an anti-secession law, clearly with an eye toward Taiwan. This law includes language that allows “non-peaceful means” in the case that reunification goals are not achieved (Reisman and Armstrong 2006). This suggests that China leaves open the possibility of some kind of military action to thwart Taiwan's formal secession—a preventive move. Still, China considers the Taiwan “problem” a domestic issue, thus the anti-secession law is not compelling evidence that China is buying into the norm of preventive self-defense.

Indeed, a year later (in 2006), China released a national defense report that articulates a strategy of “active defense” for the twenty-first century, in which China moves to an offensive defensive strategy (Yang 2008). Within this report, China declares a policy that prohibits the first use of nuclear weapons “at any time and under any circumstances.” This is consistent with its general orientation against preventive strikes, though it only specifies this idea with regard to nuclear weapons, and may leave the door open to a first use strategy with other types of weapons, but it is not clear from the report. China is likely to be tested in several key areas beyond the Taiwan situation mentioned earlier.71 China is quite aggressive regarding its claims to territories in the South China Sea. One of the most hotly disputed assertions is its sovereignty over the Spratly Islands and areas close to the Philippine island of Palawan, which is contested by the Philippines among other countries (Beckman 2012). With Chinese Premier Wen Jiabao's recent statement regarding the necessity of possessing a military that could win “local wars under information age conditions,” it is not surprising that states in the region are on edge.72 Last October, Chinese news reported that states with which China has territorial disputes should “mentally prepare for the sounds of cannons.”73

Beyond the territorial disputes, also consider the recent terrorist attacks within China and their connection to Pakistan and Afghanistan. The East Turkistan Islamic Movement (ETIM) is responsible for several deadly attacks in the Chinese province of Xinjiang, driving Chinese officials to “go all out to counter the violence” that originates from both ETIM terrorist training camps in Pakistan and remote areas in Xinjiang.74 The significance of these threats to China is reflected in its continuing military modernization efforts, including increasing defense spending by more than 11%.75 Amid investment in aircraft carriers and stealth fighter jets, China is focused on the development of drone technology, hoping to rival that of the United States.76 Such technology would likely be used in preventive self-defense against terrorists along China's borders.77 Reports suggest that after seeing the critical use of drones by the United States in its engagements abroad, China has prioritized drone technology acquisition and production. 78 In sum, these developments in Chinese defense strategy point to a quite offensive posture—one consistent with a commitment to a norm of preventive use of force (though not as clear-cut as in the India and Russia cases).

In each of the cases under review, the military has shifted in its orientation from defense to offense. In India, for example, where UAV development is further along compared to the other cases, there have been notable changes in defense strategy. The strategies in all four cases are tied to a concurrent trend toward states’ acquiring unmanned systems, or drones for precision strikes and real-time surveillance. Political and military elites have demonstrated a desire to successfully harness sophisticated new RMA technology, after having observed US success in this area.

Alongside our analysis of state rhetoric, these changes in strategies and high-tech tactical weaponry suggest the diffusion of a preventive use of force norm across cases, though to varying degrees, depending on their geostrategic interests. India is largely focused on fighting terrorism abroad, whereas Russia's main terrorist concern is within its own borders. China is concerned about terrorism from domestic and foreign sources. Thus, India is more compelled to espouse the norm of preventive self-defense as a legitimate norm governing international state behavior than Russia. China's commitment to such a norm is evolving, perhaps somewhere in between that of Russia and India. Unlike the cases of India, Russia, and China, Germany's military modernization and interest in drones stems largely from pressure from the United States to take on a larger, global role in promoting security and stability, particularly within NATO. In 2008, for example, US Secretary of Defense Robert Gates scolded “defensive players” who “sometimes…have to focus on offense.”79 At the time, Germany had troops in Afghanistan—but they were located in the safest part of the country (the north) while the United States, Canada and Britain fought in the volatile south. Directing his criticism toward Germany in particular, Gates stated, “In NATO, some allies ought not to have the luxury of opting only for stability and civilian operations, thus forcing other allies to bear a disproportionate share of the fighting and dying.”79 As stated above, one of the ways in which norm entrepreneurs promote norms is by invoking a state's reputation or “international image.” This has certainly been the case with Germany, which took on a direct role in combat operations in Afghanistan in 2009—by borrowing American drones.

Taken together, though, in terms of their position on the idea of preventive self-defense, our findings suggest two similarities. First, in all four cases reviewed here, leaders invoked the US example to justify their actions. Particularly in India, similarities to 9/11 were drawn in an effort to legitimize moves toward offensive strategies. Second, asymmetric tactics are not only a tool of the weak, but also of stronger states. We found a strong correlation between strategies of preventive self-defense and the acquisition of drone technology. Because of their precision-strike capability, drones are an obvious choice for states committed to preventive self-defense.

SCS conflict causes extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", www.huntingtonnews.net/14446)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

## 1AC Solvency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. BLURRING THE LINES

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

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

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

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

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

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

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

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

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

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

#### Executive “clarification” is insufficient

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

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

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

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

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

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

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

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

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

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

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

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

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

# 2AC

## Case

Specifically drones are patient and careful – we can minimize civilian deaths

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The U.S. use of armed drones has two unique advantages over manned aircraft, distant missile strikes, and special operations raids when it comes to destroying targets. First, drones allow for sustained persistence over potential targets. The existing U.S. arsenal of armed drones—primarily the Predator and Reaper—can remain aloft, fully loaded with munitions, for over fourteen hours, compared to four hours or less for F-16 fighter jets and A-10 ground attack aircraft.5 And unlike manned aircraft or raids, drones fly directly over hostile territory without placing pilots or ground troops at risk of injury, capture, or death. Second, drones provide a near-instantaneous responsiveness— dramatically shrinking what U.S. military targeting experts call the “find-fix-finish” loop—that most other platforms lack. For example, a drone-fired missile travels faster than the speed of sound, striking a target within seconds—often before it is heard by people on the ground. This ability stands in stark contrast to the August 1998 cruise missile salvo targeting Osama bin Laden, which had to be programmed based on projections of where he would be in four to six hours, to allow time to analyze the intelligence, obtain presidential authorization, program the missiles, and fly them to the target.6 Intercontinental ballistic missiles (ICBMs) loaded with conventional munitions can reach distant targets much faster than cruise missiles, but they carry the dire risk of misattribution as a U.S. nuclear first strike against Russia or China, for instance. Finally, drone-fired missiles can be—and have been—diverted at the last moment if noncombatants enter the likely blast radius.7 Altogether, such advantages result in far less collateral damage from drones than other weapons platforms or special operations raids, according to U.S. military officials.8 However, drones suffer two limitations. First, the precision and discrimination of drones are only as good as the supporting intelligence, which is derived from multiple sources. In the tribal areas along the border of Afghanistan and Pakistan, for instance, the Central Intelligence Agency (CIA) reportedly maintains a paramilitary force of three thousand ethnic Pashtuns to capture, kill, and collect intelligence.9 The CIA and U.S. military also cooperate with their Pakistani counterparts to collect human and signals intelligence to identify and track suspected militants.10 In addition, the Pakistani army clears the airspace for U.S. drones, and when they inadvertently crash, Pakistani troops have repeatedly fought the Taliban to recover the wreckage.11 In states without a vast network of enabling intelligence, the CIA or Joint Special Operations Command (JSOC) have significantly less situational awareness and precise targeting information for drones. Second, U.S. drones have benefited from host-state support, which the United States has helped to secure with extensive side payments in foreign aid and security assistance. The few hundred Predator and Reaper drones that currently conduct distant airstrikes leverage a system-wide infrastructure that includes host-state permission to base drones and associated launch and recovery persconnel, overflight rights in transit countries, nearby search-and-rescue forces to recover downed drones, satellites or assured access to commercial satellite bandwidth to transmit command-and-control data, and human intelligence assets on the ground to help identify targets.12 To this end, the United States takes advantage of relatively permissive environments, largely unthreatened by antiaircraft guns or surface-to-air missiles, in the countries where nonbattlefield targeted killings have occurred. According to Lieutenant General David Deptula, former Air Force deputy chief of staff for intelligence, “Some of the [drones] that we have today, you put in a high-threat environment, and they’ll start falling from the sky like rain.” In fact, in 1995, relatively unsophisticated Serbian antiaircraft guns shot down two of the first three Predator drones deployed outside of the United States, and Iraqi jet fighters shot down a Predator in 2002.13 Although the next generation of armed drones should be more resilient, current versions lack the speed, stealth, and decoy capabilities to protect themselves against even relatively simple air defense systems. The combination of persistence and responsiveness, high-quality intelligence infrastructures, and tacit host-state support have made drones the preeminent tool for U.S. lethal operations against suspected terrorists and militants where states are unable to singlehandedly deal with the threat they pose. As a result, drones are not just another weapons platform. Instead, they provide the United States with a distinct capability that significantly reduces many of the inherent political, diplomatic, and military risks of targeted killings. Compared to other military tools, the advantages of using drones— particularly, that they avoid direct risks to U.S. servicemembers— vastly outweigh the limited costs and consequences. Decision-makers are now much more likely to use lethal force against a range of perceived threats than in the past. Since 9/11, over 95 percent of all nonbattlefield targeted killings have been conducted by drones—the remaining attacks were JSOC raids and AC-130 gunships and offshore sea- or air-launched cruise missiles. And the frequency of drone strikes is only increasing over time. George W. Bush authorized more nonbattlefield targeted killing strikes than any of his predecessors (50), and Barack Obama has more than septupled that number since he entered office (350). Yet without any meaningful checks—imposed by domestic or international political pressure—or sustained oversight from other branches of government, U.S. drone strikes create a moral hazard because of the negligible risks from such strikes and the unprecedented disconnect between American officials and personnel and the actual effects on the ground.14 However, targeted killings by other platforms would almost certainly inflict greater collateral damage, and the effectiveness of drones makes targeted killings the more likely policy option compared to capturing suspected militants or other nonmilitary options.

## T

The plan restricts armed conflict authority, which the AUMF is a subset of—we are a specific statute that applies to the AUMF—they are just a bad spec arg

Jack Goldsmith, Harvard Law School, 9/1/2013, A Quick Primer on AUMFs, www.lawfareblog.com/2013/09/a-quick-primer-on-aumfs/

Via Ilya Somin at Volokh, I see that the administration has proffered its proposed Authorization for the Use of Military Force (AUMF) for Syria. Now it is Congress’s turn to decide what proposal(s) it wants to debate and possibly approve. And it appears that the scope of the authorization will be an issue in Congress. For example, Senators Graham and McCain have announced that they will not support a narrow AUMF supporting only isolated strikes, and some members of Congress surely will not support one that is that broad.

An article that I wrote with Curt Bradley, which examined AUMFs throughout American history, provides a framework for understanding AUMFs. (And the Lawfare Wiki collects many historical AUMFs and declarations of war, here.) AUMFs can (as Bradley and I argued on pp. 2072 ff.) be broken down into five analytical components:

(1) the authorized military resources;

(2) the authorized methods of force;

(3) the authorized targets;

(4) the purpose of the use of force; and

(5) the timing and procedural restrictions on the use of force

Most AUMFs in U.S. History – for example, AUMFs for the Quasi-War with France in the 1790s, for repelling Indian tribes, for occupying Florida, for using force against slave traders and pirates, and many others – narrowly empower the President to use particular armed forces (such as the Navy) in a specified way for limited ends. At the other extreme, AUMFs embedded within declarations of war (here is the one against Germany in World War II) typically authorize the President to employ the entire U.S. armed forces without restriction except for the named enemy. The Gulf of Tonkin Resolution for Vietnam was also famously broad, as was the 2002 AUMF for Iraq, although the latter did require the President to make certain diplomatic and related determinations, and to report to Congress. Narrower AUMFs in the post-World War II era include the one in 1955 for Taiwan (narrow purpose and timing limitations) and the 1991 Iraq AUMF (narrow purpose and many procedural restrictions). Narrower yet were AUMFs for Lebanon in 1983 and Somalia in 1993, both of which had a very narrow and restrictive purpose, and which contained time limits on the use of force. And of course there is the relatively broad AUMF that everyone knows, from September 18, 2001.

Bradley and I summarized historical AUMFs as follows:

This survey of authorizations to use force shows that Congress has authorized the President to use force in many different situations, with varying resources, an array of goals, and a number of different restrictions. All of the authorizations restrict targets, either expressly (as in the Quasi-War statutes’ restrictions relating to the seizure of certain naval vessels), implicitly (based on the identified enemy and stated purposes of the authorization), or both. Such restrictions may be constitutionally compelled. Congress’s power to authorize the President to use force, whatever its scope, arguably could not be exercised without specifying (at least implicitly) an enemy or a purpose.

The primary differences between limited and broad authorizations are as follows: In limited authorizations, Congress restricts the resources and methods of force that the President can employ, sometimes expressly restricts targets, identifies relatively narrow purposes for the use of force, and sometimes imposes time limits or procedural restrictions. In broad authorizations, Congress imposes few if any limits on resources or methods, does not restrict targets other than to identify an enemy, invokes relatively broad purposes, and generally imposes few if any timing or procedural restrictions.

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

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

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

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

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

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

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

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

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

3. Protection of Life and Property

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

4. Collective Security

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

5. National Defense Power

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

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

6. Role of the Military

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

“Restrictions” are on time, place, and purpose – this includes the plan

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

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

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

Substantially is subjective

Hopkins 9

Starting and Managing a Nonprofit Organization: A Legal Guide, p. google books

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The\* true\* measure of substantiality remains elusive. In reports accompanying tax legislation over the years, the Senate Finance Committee has characterized the state of affairs well. In 1969, the Committee wrote that the "standards as to the permissible level of (legislative) activities under the present law are so vague as to encourage subjective application of the sanction." Liter, in iy7t>, the Finance Committee portrayed the dilemma Litis way: "Many believe that tine standards as to the permissible level of (legislative] activities under present law are too vague and thereby tend to encourage subjective and selective enforcement."

## 2AC Soft Law CP

Links to politics

Jacob Gerson, U. Chicago Ast. Professor Law, Eric Posner, U. Chicago Law Professor, December 2008, Article: Soft Law: Lessons from Congressional Practice, 61 Stan. L. Rev. 573

But why is Congress's statement credible? Maybe Congress does not really mean that it disapproves of the Iraq war, but is trying to obtain some short-term political advantage by pandering to temporary passions. Perhaps the legislature is exploiting a transient public mood in the hope of pressuring the President to yield in some other political disputes between the two branches.¶ [\*589] A standard insight of the signaling theory literature in economics is that as a general matter, a statement is credible when it is accompanied by a costly action in particular, an action that is more costly for a dishonest speaker to engage in**.** n66 Passing resolutions is costly: it takes time that could be used for other things passing legislation, engaging in constituent service, meeting supporters, enjoying leisure. These other activities benefit members of Congress either directly or by improving their chances for reelection. If Congress spends resources to enact a resolution disapproving the Iraq war, observers will rationally infer that Congress cares more about this issue than it cares about other issues for which it does not enact resolutions. In turn, people who are taking actions with an eye toward how Congress might, in the future, regulate the Iraq intervention or other military interventions would do well to take note of the resolution.

Hard law is necessary to solve clarity for international legal regimes and norms

Gregory Shaffer, Professor of Law, University of Minnesota Law School, and Mark Pollack, Professor of Political Science and Jean Monnet Chair, Temple University., Sept 2011, ARTICLE: HARD VERSUS SOFT LAW IN INTERNATIONAL SECURITY, 52 B.C. L. Rev 1147

This view of soft law as crystallizing into hard law has its parallels in the view of state practice evolving into customary international law. But now the process takes place in a world in which written international law has proliferated and somewhat displaced the role of customary international law.55 Similarly, moving from hard treaty law as a starting point, we shall see below that both scholars and advocates of specific causes, such as humanitarian intervention, have depicted soft law instruments as supplementing, elaborating, and progressively developing existing hard law. Soft law, in this sense, represents a modern variant of the “law to be made,” lex ferenda, which reflects the aspiration of law’s progressive development.56

This Article aims to deepen our understanding of the interaction of international legal instruments in a world of fragmented international legal fora and regimes in which legal instruments have varied distributive consequences for different states. Our framework has its predecessor in legal realist analysis of the development of customary international law—that of the New Haven School of international law.57 As Myres McDougal classically wrote in respect of customary international law, it develops through a process of continuous interaction, of continuous demand and response, in which the decision-makers of particular nation states unilaterally put forward claims of the most diverse and conflicting character . . . and in which other decisionmakers . . . weigh and appraise these competing claims in terms of the interests of the world community and of the rival claimant, and ultimately accept or reject them.58

International law in this view is a process of making claims and responding to them. In our contemporary world of written instruments, the interaction of hard and soft law should be viewed in this light.

With this background, we now turn to clarify the definition of hard and soft law, and elaborate the conventional depictions of their respective advantages and complementary interaction. We then turn to address the scope conditions under which states and other actors deploy hard and soft law as complements or antagonists, and the hypotheses derived from our theoretical framework.

B. Defining Hard and Soft Law Along a Spectrum

In our previous scholarship, we have demonstrated the complexities inherent in defining hard and soft law.59 The definitions applied in the existing literature have tended to split across positivist–realist lines.60 Many positivist legal scholars, for instance, frame the distinction between hard and soft law using a simple, binary binding/non-binding divide.61 Some such scholars take this further still, finding the very concept of soft law to be illogical because law by definition cannot be “more or less binding.”62

In the world of practice, however, actors are faced not with a binary choice, but with a range of legal options to structure their interactions. It is well documented that actors’ use of international agreements has proliferated over the last decades, representing a legalization of international relations.63 These actors use different types of international agreements with distinct characteristics to further their particular aims. Kenneth Abbott and Duncan Snidal advance a concept of legalization that provides a useful tool for understanding actors’ choices in terms of an agreement’s characteristics.64 International agreements, they maintain, can be usefully viewed as varying across three dimensions: (1) obligation, (2) precision of rules, and (3) delegation to a third-party decision-maker. Taken together, these characteristics can give an agreement a “harder” or “softer” legal character.65

Hard and soft law can thus be distinguished in terms of variation along a spectrum. Hard law, as an ideal type, “refers to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law.”66 By contrast, “[t]he realm of ‘soft law’ begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.”67 Because international agreements almost invariably exhibit different weaknesses along one or more of these dimensions, they can be viewed in terms of having harder or softer law characteristics. For instance, if an agreement is not formally binding on the parties, it is softer in this first sense. If a formally binding agreement is vague, however, it exhibits softer characteristics along the precision dimension because it enables the parties to exercise almost complete discretion as to its implementation.68 Finally, if an agreement fails to provide a monitoring or enforcement mechanism, then the agreement is softer along this third dimension because there is no third-party to resolve interpretive disputes arising out of the agreement’s implementation.69 Without a thirdparty interpreting the legal provisions which govern a dispute, the parties to the dispute can discursively justify their acts more easily in legalistic terms, and with less consequence, whether in terms of reputational costs or other sanctions.70 Such a third party could, at a minimum, provide a “focal point” around which parties can reassess their positions.71

Although some scholars have questioned this characterization of law in terms of these three attributes,72 we believe that this framework provides a clear, nuanced, and theoretically neutral framework for operationalizing the hardand soft-law distinction in terms of international law’s development.73 Their conceptualization presents a spectrum of choices facing state and non-state actors, as opposed to a binary one, and it does not prejudge the value or effectiveness of these choices, all of which renders it particularly useful for our analyses of how hard and soft law interact.74

C. Hard and Soft Law as Alternatives, Complements, and Antagonists

This Section summarizes our existing argument about the three manners in which actors may deploy hard and soft law.75 First, we examine how these two forms of law may exist as alternatives, exploring the relative advantages and weaknesses of both hard and soft law.76 We next explore the use of hard and soft law as complements, whereby soft law either evolves into hard law or is used to fill gaps in hard-law instruments.77 Finally, we consider a scenario commonly overlooked by other scholars in the field: the deliberate use of hard and soft law as

antagonists.78

1. As Alternatives

To effect specific policy goals, state and private actors increasingly turn to legal instruments that are harder or softer in manners that best align with such proposals. n79 These variations in precision, obligation, and third-party delegation can be used strategically to advance both international and domestic policy goals. Much of the existing literature examines the relative strengths and weaknesses of hard and soft law for the states that make it. It is important, for our purposes, to address these purported advantages in order to assess the implications of the interaction of hard and soft law on each other.

Hard law as an institutional form features a number of advantages. n80 Hard law instruments, for example, allow states to commit themselves more credibly to international agreements by increasing the costs of reneging. They do so by imposing legal sanctions or by raising the costs to a state's reputation where the state has acted in violation of its legal commitments. n81 In addition, hard law treaties may have the advantage of creating direct legal effects in national jurisdictions, again increasing the incentives for compliance. n82 They may solve problems of incomplete contracting by creating mechanisms for the interpretation and elaboration of legal commitments over time, n83 including through the use of dispute settlement bodies such as courts. n84 In different ways, they thus permit states to monitor, clarify, and enforce their commitments. Hard law, as a result, can create more legal certainty. States, as well as private actors working with and through state representatives, [\*1163] should use hard law where "the benefits of cooperation are great but the potential for opportunism and its costs are high." n85

## 2ac giroux

2) That’s the best way to determine if an approach has value

**Donohue 13** Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11**/**13**,** National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations.

The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material.

The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos.

The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166

A. Course Design

The central idea in structuring the NSL Sim 2.0 course **was to bridge the gap between theory and practice by conveying** doctrinal **material and** creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking).

Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168

Additionally, **while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage**. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting.

NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux.

A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise.

In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0.

The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law.

Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media).

A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers.

The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed.

The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session.

To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain.

Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced.

Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals.

Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient.

The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future.

B. Substantive Areas: Interstices and Threats

As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. **This is the most important determination, because the substance of the** doctrinal portion of the course and the **simulation follows from this decision**. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. **This**, then, **becomes a guide for the** doctrinal part of the **course, as well as the grounds on which the specific scenarios developed for the simulation** are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course.

The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life.

For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like.

The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression.

C. How It Works

As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play.

Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site.

For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis.

The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication.

As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities.

At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively.

Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172

Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests.

CONCLUSION

The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same.

**The one-size fits all approach** currently **dominating the conversation in legal education, however, appears ill-suited to address the concerns raised** in the current conversation. **Instead of looking at law across the board, greater insight can be gleaned by looking at** the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach.

With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field.

The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion **simulations**, which have not yet been addressed in the secondary literature for civilian education in national security law, may **provide an important way forward**. Such **simulations** also **cure shortcomings in other areas of experiential education**, such as clinics and moot court.

It is in an effort to address these concerns that I developed **the simulation model** above. NSL Sim 2.0 certainly is not the only solution, but it **does provide a** starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. **It makes use of technology and physical space to engage students in a multi-day exercise, in which** they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

6) Method focus undermines scholarly action

**Jackson 11**, associate professor of IR – School of International Service @ American University, ‘11 (Patrick Thadeus, The Conduct of Inquiry in International Relations, p. 57-59)

Perhaps the greatest irony of this instrumental, decontextualized importation of “falsification” and its critics into IR is the way that an entire line of thought that privileged disconfirmation and refutation—no matter how complicated that disconfirmation and refutation was in practice—has been transformed into a license to **worry endlessly about foundational assumptions.** At the very beginning of the effort to bring terms such as “paradigm” to bear on the study of politics, Albert O. **Hirschman** (1970b, 338) **noted this very danger**, suggesting that without “a little more ‘reverence for life’ and a little less straightjacketing of the future,” the **focus on** producing internally **consistent** packages of **assumptions instead of** actually examining **complex empirical situations would result in scholarly paralysis.** Here as elsewhere, Hirschman appears to have been quite prescient, inasmuch as the major effect of paradigm and research programme language in IR seems to have been a series of debates and discussions about whether the fundamentals of a given school of thought were sufficiently “scientific” in their construction. Thus **we have debates about how to evaluate scientific progress**, and attempts to propose one or another set of research design principles **as uniquely scientific**, and inventive, “reconstructions” of IR schools, such as Patrick James’ “elaborated structural realism,” supposedly for the purpose of placing them on a **firmer scientific footing** by making sure that they have all of the required elements of a basically Lakatosian19 model of science (James 2002, 67, 98–103).

The bet with all of this scholarly activity seems to be that if we can just get the fundamentals right, then scientific progress will inevitably ensue . . . even though this is the precise opposite of what Popper and Kuhn and Lakatos argued! In fact, all of this obsessive interest in foundations and starting-points is, in form if not in content, a lot closer to logical positivism than it is to the concerns of the falsificationist philosophers, despite the prominence of language about “hypothesis testing” and the concern to formulate testable hypotheses among IR scholars engaged in these endeavors. That, above all, is why I have labeled this methodology of scholarship neopositivist. While it takes much of its self justification as a science from criticisms of logical positivism, in overall sensibility it still operates in a visibly positivist way, attempting to construct knowledge from the ground up by getting its foundations in logical order before concentrating on how claims encounter the world in terms of their theoretical implications. This is by no means to say that neopositivism is not interested in hypothesis testing; on the contrary, neopositivists are extremely concerned with testing hypotheses, but **only after the fundamentals have been** soundly **established.** Certainty, not conjectural provisionality, seems to be the goal—a goal that, ironically, Popper and Kuhn and Lakatos would all reject.

Non-unique, no link and alt fails – the part of the Giroux article they don’t cut says that movies, homelessness laws and the internet are the cause, not the plan

**Giroux 12** (Henry A Giroux, Frequent author on pedagogy in the public sphere, Truthout, “Youth in Revolt: The Plague of State-Sponsored Violence,” March 14, 2012, http://truth-out.org/index.php?option=com\_k2&view=item&id=7249:youth-in-revolt-the-plague-of-statesponsored-violence)

Meanwhile, exaggerated violence is accelerated in the larger society and now rules screen culture. The public pedagogy of entertainment includes extreme images of violence, human suffering and torture splashed across giant movie screens, some in 3D, offering viewers every imaginable portrayal of violent acts, each more shocking and brutal than the last. The growing taste for violence can be seen in the increasing modeling of public schools after prisons, the criminalization of behaviors such as homelessness that once were the object of social protections. A symptomatic example of the way in which violence has saturated everyday life can be seen in the growing acceptance of criminalizing the behavior of young people in public schools. Behaviors that were normally handled by teachers, guidance counselors and school administrators are now dealt with by the police and the criminal justice system. The consequences have been disastrous for young people. Not only do schools resemble the culture of prisons, but young children are being arrested and subjected to court appearances for behaviors that can only be termed as trivial. How else to explain the case of the five-year-old girl in Florida who was put in handcuffs and taken to the local jail because she had a temper tantrum; or the case of Alexa Gonzales in New York who was arrested for doodling on her desk. Even worse, a 13-year-old boy in a Maryland school was arrested for refusing to say the pledge of allegiance. There is more at work than stupidity and a flight from responsibility on the part of educators, parents and politicians who maintain these laws; there is also the growing sentiment that young people constitute a threat to adults and that the only way to deal with them is to subject them to mind-crushing punishment. Students being miseducated, criminalized and arrested through a form of penal pedagogy in prison-type schools provide a grim reminder of the degree to which the ethos of containment and punishment now creeps into spheres of everyday life that were largely immune in the past from this type of state violence. The governing through crime ethic also reminds us that we live in an era that breaks young people, corrupts the notion of justice and saturates the minute details of everyday life with the threat, if not reality, of violence. This mediaeval type of punishment inflicts pain on the psyche and the body of young people as part of a public spectacle. Even more disturbing is how the legacy of slavery informs this practice given that "Arrests and police interactions ... disproportionately affect low-income schools with large African-American and Latino populations,"(26) paving the way for them to move almost effortlessly through the school-to-prison pipeline. Surely, the next step will be a reality TV franchise in which millions tune in to watch young kids being handcuffed, arrested, tried in the courts and sent to juvenile detention centers. This is not merely barbarism parading as reform - it is also a blatant indicator of the degree to which sadism and the infatuation with violence have become normalized in a society that seems to take delight in dehumanizing itself.

Hyperviolence is a reality – we have a moral obligation to acknowledge it in all its horror and then act to prevent it

**Porter 6**, Prof & head of the School of International Studies at the University of South Australia, (Elisabeth, Hypatia 21.4, project muse)

I have explained what constitutes suffering and that attentiveness affirms dignity. I clarify further the nature of attentiveness. If morality is about our concerned responsiveness, attention is the prerequisite to intense regard. Iris Murdoch borrowed the concept of "attention" from Simone Weil "to express the idea of a just and loving gaze" (1985, 34) on the reality of particular persons. Part of the moral task is, as Murdoch reiterated, to see the world in its reality—to see people struggling in pain and despair. Weil, too, gave "attention" a prominent place, grounded in concrete matters of exploitation, economic injustice, and oppression.23 Her emphases were pragmatic in struggling against the debilitating nature of life—how "it humiliates, crushes, politicizes, demoralizes, and generally destroys the human spirit" (quoted in R. Bell 1998, 16)—and idealistic in striving to put ideals into practice. Too readily, we think about suffering in the height of media accounts of famine, suicide bombings, terrorist attacks, refugee camps, and war's destructive impact, and retreat quickly into our small world of self-pity. As Margaret Little explains, Murdoch's point was that "the seeing itself is a task—the task of being attentive to one's surroundings" (1995, 121). We need to "see" reality in order to imagine what it might be like for others, even when this includes horrific images from war violence.24 Yet despite the presence of embedded journalists, media reporting of such events as the invasion of Iraq has remained entirely typical in that "the experience of the people on the receiving end of this violence remains closed to us" (Manderson 2003, 4). Without political imagination, we will not have compassionate nations. "Without being tragic spectators, we will not have the insight required if we are to make life somewhat less tragic for those who . . . are hungry, and oppressed, and in pain" (Nussbaum 1996, 88). In order for political leaders to demonstrate [End Page 113] compassion, they should display the ability to imagine the lives led by members of the diverse groups that they themselves lead. Otherwise, dispassionate detachment predominates and acts like the 2003 invasion of Iraq lead to talk of freedom without seeing fear, assume liberation without replacing the losses, and abuse power without addressing people's pain. "The difference, for instance, between someone who discerns the painfulness of torture and someone who sees the *evil* of it is that the latter person has come to see the painfulness as a reason not to torture" (Little 1995, 126). Attentive ethics in international relations is about priorities and choices.

LOAC does not legitimize violence—alternative is militarized violence

Charles Kels, attorney for the Department of Homeland Security and a major in the Air Force Reserve, 12/6/12, THe Perilous Position of the Laws of War, harvardnsj.org/2012/12/the-perilous-position-of-the-laws-of-war/

The real nub of the current critique of U.S. policy, therefore, is that the Bush administration’s war on terror and the Obama administration’s war on al Qaeda and affiliates constitute a distinction without a difference. The latter may be less rhetorically inflammatory, but it is equally amorphous in application, enabling the United States to pursue non-state actors under an armed conflict paradigm. This criticism may have merit, but it is really about the use of force altogether, not the parameters that define how force is applied. It is, in other words, an ad bellum argument cloaked in the language of in bello.

Transnational terrorist networks LOAC is apolitical. **Adherence to it does not legitimize** an unlawful resort to **force**, **just as its violation**—unless systematic—**does not automatically render one’s cause unjust**. The answer for those who object to U.S. targeted killing and indefinite detention is not to apply a peace paradigm that would invalidate LOAC and undercut the belligerent immunity of soldiers, but to direct their arguments to the political leadership regarding the decision to use force in the first place. Attacking LOAC for its perceived leniency and demanding the “pristine purity” of HRL in military operations is actually quite dangerous and counterproductive from a humanitarian perspective, because there remains the distinct possibility that **the alternative to LOAC is not HRL but “lawlessness**.” While there are certainly examples of armies that have acquitted themselves quite well in law enforcement roles—and while most nations do not subscribe to the strict U.S. delineation between military and police forces—**the vast bulk of history indicates that in the context of armed hostilities, LOAC is by far the best case scenario, not the worst**.

pose unique security problems, among them the need to apply preexisting legal rubrics to an enemy who is dedicated to undermining and abusing them. Vital to meeting this challenge—of “building a durable framework for the struggle against al Qaeda that [draws] upon our deeply held values and traditions”—is to refrain from treating the deeply-ingrained tenets of honorable warfare as a mere mechanism for projecting force. The laws of war are much more than “lawyerly license” to kill and detain, subject to varying levels of application depending upon political outlook. They remain a bulwark against indiscriminate carnage, steeped in history and tried in battle.

# 1AR

## circumvention

President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) **believes** himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

## nuke terror

Nuclear terrorism is feasible---high risk of theft and attacks escalate

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

## solvency

Attempt to clarify legal regimes through soft law leads to unclear and muddy international norms

Gregory Shaffer, Professor of Law, University of Minnesota Law School, and Mark Pollack, Professor of Political Science and Jean Monnet Chair, Temple University., Sept 2011, ARTICLE: HARD VERSUS SOFT LAW IN INTERNATIONAL SECURITY, 52 B.C. L. Rev 1147

This interaction of competing international hard and soft law has, in turn, affected the purported advantages of the hard and soft legal regimes in question. The soft-law Codex Alimentarius Commission, for example, normally meets at a technical level to deliberate about non- binding food safety standards, but it has been politicized as each side has grasped the implications of Codex rules on the application of WTO hard law in WTO litigation.174 By contrast, there has been pressure on the quintessential hard-law regime of the WTO dispute-settlement sys- tem to accommodate the norms set forth in neighboring international regimes. In WTO litigation over the EU’s regulation of GMOs, the EU pressed the WTO panel to take into account the neighboring interna- tional regimes. The end result, we noted, was not a gradual clarification and elaboration of international law, as per the existing literature, but a deliberate and persistent muddying of the international legal waters.175

## 1AR---Uniqueness

That poisons the well

Greg Sargent, political writer, 1/14 [“Senate Dems put themselves in tough spot over Iran,” http://www.washingtonpost.com/blogs/plum-line/wp/2014/01/14/senate-dems-put-themselves-in-tough-spot-over-iran/]

On another front, the Wall Street Journal reports that House GOP leaders may bring the Menendez bill to the floor. moving it forward in another chamber. The Huffington Post makes a good point about this, noting that the increasing involvement of House Republicans could make it more likely that Senate Dems come out against it, because **it could inject a heavy dose of partisanship into what had been a bipartisan affair.”¶** Indeed, a plausible case can be made that Republicans want to see the sanctions bill move forward in part because it will exacerbate the already-deepening rift among Democrats over Iran and make it more likely that Obama will have to veto something that passed both houses with large bipartisan majorities. Whatever the motive of Senate Dems who are supporting this bill, they are helping Republicans drive this wedge.