# 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

Reverse causal and targeted killing is key - absent the plan global war is inevitable

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.

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

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(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.

A strong, adaptive LOAC regime is key to regulate inevitable autonomous weapons – the impact is global war

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Since the first lethal drone strike in 2001, the US use of remotely operated robotic weapons has dramatically expanded. Along with the broader use of robots for surveillance, ordnance disposal, logistics, and other military tasks, robotic weapons have spread rapidly to many nations, captured public attention, and sparked protest and debate. Meanwhile, every dimension of the technology is being vigorously explored. From stealthy, unmanned jets like the X-47B and its Chinese and European counterparts, to intelligent missiles, sub-hunting robot ships, and machine gun-wielding micro-tanks, robotics is now the most dynamic and destabilizing component of the global arms race.

Drones and robots are enabled by embedded autonomous subsystems that keep engines in tune and antennas pointed at satellites, and some can navigate, walk, and maneuver in complex environments autonomously. But with few exceptions, the targeting and firing decisions of armed robotic systems remain tightly under the control of human operators. This may soon change.

Autonomous weapons are robotic systems that, once activated, can select and engage targets without further intervention by a human operator (Defense Department, 2012). Examples include drones or missiles that hunt for their targets, using their onboard sensors and computers. Based on a computer’s decision that an appropriate target has been located, that target will then be engaged. Sentry systems may have the capability to detect intruders, order them to halt, and fire if the order is not followed. Future robot soldiers may patrol occupied cities. Swarms of autonomous weapons may enable a preemptive attack on an adversary’s strategic forces. Autonomous weapons may fight each other.

Just as the emergence of low-cost, high-performance information technology has been the most important driver of technological advance over the past half-century—including the revolution in military affairs already seen in the 1980s and displayed to the world during the 1991 Gulf War—so the emergence of artificial intelligence and autonomous robotics will likely be the most important development in both civilian and military technology to unfold over the next few decades.

Proponents of autonomous weapons argue that technology will gradually take over combat decision making: “Detecting, analyzing and firing on targets will become increasingly automated, and the contexts of when such force is used will expand. As the machines become increasingly adept, the role of humans will gradually shift from full command, to partial command, to oversight and so on” (Anderson and Waxman, 2013). Automated systems are already used to plan campaigns and logistics, and to assemble intelligence and disseminate lethal commands; in some cases, humans march to orders generated by machines. If, in the future, machines are to act with superhuman speed and perhaps even superhuman intelligence, how can humans remain in control? As former Army Lt. Colonel T. K. Adams observed more than a decade ago (2001), “Humans may retain symbolic authority, but automated systems move too fast, and the factors involved are too complex for real human comprehension.”

Almost nobody favors a future in which humans have lost control over war machines. But proponents of autonomous weapons argue that effective arms control would be unattainable. Many of the same claims that propelled the Cold War are being recycled to argue that autonomous weapons are inevitable, that international law will remain weak, and that there is no point in seeking restraint since adversaries will not agree—or would cheat on agreements. This is the ideology of any arms race.

Is autonomous warfare inevitable?

Challenging the assumption of the inevitability of autonomous weapons and building on the work of earlier activists, the Campaign to Stop Killer Robots, a coalition of nongovernmental organizations, was launched in April 2013. This effort has made remarkable progress in its first year. In May, the United Nations Special Rapporteur on extrajudicial killings, Christof Heyns, recommended that nations immediately declare moratoriums on their own development of lethal autonomous robotics (Heyns, 2013). Heyns also called for a high-level study of the issue, a recommendation seconded in July by the UN Advisory Board on Disarmament Matters. At the UN General Assembly’s First Committee meeting in October, a flood of countries began to express interest or concern, including China, Russia, Japan, the United Kingdom, and the United States. France called for a mandate to discuss the issue under the Convention on Certain Conventional Weapons, a global treaty that restricts excessively injurious or indiscriminate weapons. Meeting in Geneva in November, the state parties to the Convention agreed to formal discussions on autonomous weapons, with a first round in May 2014. The issue has been placed firmly on the global public and diplomatic agenda.

Despite this impressive record of progress on an issue that was until recently virtually unknown—or scorned as a mixture of science fiction and paranoia—there seems little chance that a strong arms control regime banning autonomous weapons will soon emerge from Geneva. Unlike glass shrapnel, blinding lasers, or even landmines and cluster munitions, autonomous weapon systems are not niche armaments of negligible strategic importance and unarguable cost to humanity. Instead of the haunting eyes of children with missing limbs, autonomous weapons present an abstract, unrealized horror, one that some might hope will simply go away.

Unless there is a strong push from civil society and from governments that have decided against pursuing autonomous weapons, those that have decided in favor of them—including the United States (Gubrud, 2013)—will seek to manage the issue as a public relations problem. They will likely offer assurances that humans will remain in control, while continually updating what they mean by control as technology advances. Proponents already argue that humans are never really out of the loop because humans will have programmed a robot and set the parameters of its mission (Schmitt and Thurnher, 2013). But autonomy removes humans from decision making, and even the assumption that autonomous weapons will be programmed by humans is ultimately in doubt.

Diplomats and public spokesmen may speak in one voice; warriors, engineers, and their creations will speak in another. The development and acquisition of autonomous weapons will push ahead if there is no well-defined, immovable, no-go red line. The clearest and most natural place to draw that line is at the point when a machine pulls the trigger, making the decision on whether, when, and against whom or what to use violent force. Invoking a well-established tenet of international humanitarian law, opponents can argue that this is already contrary to principles of humanity, and thus inherently unlawful. Equally important, opponents must point out the threat to peace and security posed by the prospect of a global arms race toward robotic arsenals that are increasingly out of human control.

Humanitarian law vs. killer robots

The public discussion launched by the Campaign to Stop Killer Robots has mostly centered on questions of legality under international humanitarian law, also called the law of war. “Losing Humanity,” a report released by Human Rights Watch in November 2012—coincidentally just days before the Pentagon made public the world’s first open policy directive for developing, acquiring, and using autonomous weapons—laid out arguments that fully autonomous weapons could not satisfy basic requirements of the law, largely on the basis of assumed limitations of artificial intelligence (Human Rights Watch and International Human Rights Clinic at Harvard Law School, 2012).

The principle of distinction, as enshrined in Additional Protocol I of the Geneva Conventions—and viewed as customary international law, thus binding even on states that have not ratified the treaty—demands that parties to a conflict distinguish between civilians and combatants, and between civilian objects and military objectives. Attacks must be directed against combatants and military objectives only; weapons not capable of being so directed are considered to be indiscriminate and therefore prohibited. Furthermore, those who make attack decisions must not allow attacks that may be expected to cause excessive harm to civilians, in comparison with the military gains expected from the attack. This is known as the principle of proportionality.

“Losing Humanity” argues that technical limitations mean robots could not reliably distinguish civilians from combatants, particularly in irregular warfare, and could not fulfill the requirement to judge proportionality.1 Distinction is clearly a challenge for current technology; face-recognition technology can rapidly identify individuals from a limited list of potential targets, but more general classification of persons as combatants or noncombatants based on observation is well beyond the state of the art. How long this may remain so is less clear. The capabilities to be expected of artificial intelligence systems 10, 20, or 40 years from now are unknown and highly controversial within both expert and lay communities.

While it may not satisfy the reified principle of distinction, proponents of autonomous weapons argue that some capability for discrimination is better than none at all. This assumes that an indiscriminate weapon would be used if a less indiscriminate one were not available; for example, it is often argued that drone strikes are better than carpet bombing. Yet at some point autonomous discrimination capabilities may be good enough to persuade many people that their use in weapons is a net benefit.

Judgment of proportionality seems at first an even greater challenge, and some argue that it is beyond technology in principle (Asaro, 2012). However, the military already uses an algorithmic “collateral damage estimation methodology” (Defense Department, 2009) to estimate incidental harm to civilians that may be expected from missile and drone strikes. A similar scheme could be developed to formalize the value of military gains expected from attacks, allowing two numbers to be compared. Human commanders applying such protocols could defend their decisions, if later questioned, by citing such calculations. But the cost of this would be to degrade human judgment almost to the level of machines.

On the other hand, IBM’s Watson computer (Ferruci et al., 2010) has demonstrated the ability to sift through millions of pages of natural language and weigh hundreds of hypotheses to answer ambiguous questions. While some of Watson’s responses suggest it is not yet a trustworthy model, it seems likely that similar systems, given semantic information about combat situations, including uncertainties, might be capable of making military decisions that most people would judge as reasonable, most of the time.

“Losing Humanity” also argues that robots, necessarily lacking emotion,2 would be unable to empathize and thus unable to accurately interpret human behavior or be affected by compassion. An important case of the latter is when soldiers refuse orders to put down rebellions. Robots would be ideal tools of repression and dictatorship.

If robot soldiers become available on the world market, it is likely that repressive regimes will acquire them, either by purchase or indigenous production. While it is theoretically possible for such systems to be safeguarded with tamper-proof programming against human rights abuses, in the event that the world fails to prohibit robot soldiers, unsafeguarded or poorly safeguarded versions will likely be available. A strong prohibition has the best chance of keeping killer robots out of the hands of dictators, both by restricting their availability and stigmatizing their use.

Accountability is another much-discussed issue. Clearly, a robot cannot be held responsible for its actions, but human commanders and operators—or even manufacturers, programmers, and engineers—might be held responsible for negligence or malfeasance. In practice, however, the robot is likely to be a convenient scapegoat in case of an unintended atrocity—a technical failure occurred, it was unintended and unforeseen, so nobody is to blame. Going further, David Akerson (2013) argues that since a robot cannot be punished, it cannot be a legal combatant.

These are some of the issues most likely to be discussed within the Convention on Certain Conventional Weapons. However, US Defense Department policy (2012) preemptively addresses many of these issues by directing that “[a]utonomous and semi-autonomous weapon systems shall be designed to allow commanders and operators to exercise appropriate levels of human judgment over the use of force.”

Under the US policy, commanders and operators are responsible for using autonomous weapons in accordance with the laws of war and relevant treaties, safety rules, and rules of engagement. For example, an autonomous weapon may be sent on a hunt-and-kill mission if tactics, techniques, and procedures ensure that the area in which it is directed to search contains no objects, other than the intended targets, that the weapon might decide to attack. In this case, the policy regards the targets as having been selected by humans and the weapon as merely semi-autonomous, even if the weapon is operating fully autonomously when it decides that a given radar return or warm object is its intended target. The policy pre-approves the immediate development, acquisition, and use of such weapons.

Although the policy does not define “appropriate levels,” it applies this rubric even in the case of fully autonomous lethal weapons targeting human beings without immediate human supervision. This makes it clear that appropriate levels, as understood within the policy, do not necessarily require direct human involvement in the decision to kill a human being (Gubrud, 2013). It seems likely that the United States will press other states to accept this paradigm as the basis for international regulation of autonomous weapons, leaving it to individual states to determine what levels of human judgment are appropriate.

Demanding human control and responsibility

As diplomatic discussions about killer robot regulation get under way, a good deal of time is apt to be lost in confusion about terms, definitions, and scope. “Losing Humanity” seeks to ban “fully autonomous weapons,” and Heyns’s report used the term “lethal autonomous robotics.” The US policy directive speaks of “autonomous and semi-autonomous weapon systems,” and the distinction between these is ambiguous (Gubrud, 2013). The Geneva mandate is to discuss “lethal autonomous weapon systems.”

Substantive questions include whether non-lethal weapons and those that target only matériel are within the scope of discussion. Legacy weapons such as simple mines may be regarded as autonomous, or distinguished as merely automatic, on grounds that their behavior is fully predictable by designers.3 Human-supervised autonomous and semi-autonomous weapon systems, as defined by the United States, raise issues that, like fractal shapes, appear more complex the more closely they are examined.

Instead of arguing about how to define what weapons should be banned, it may be better to agree on basic principles. One is that any use of violent force, lethal or non-lethal, must be by human decision and must at all times be under human control. Implementing this principle as strictly as possible implies that the command to engage an individual target (person or object) must be given by a human being, and only after the target is being reliably tracked by a targeting system and a human has determined that it is an appropriate and legal target.

A second principle is that a human commander must be responsible and accountable for the decision, and if the commander acts through another person who operates a weapon system, that person must be responsible and accountable for maintaining control of the system. “Responsible” refers here to a moral and legal obligation, and “accountable” refers to a formal system for accounting of actions. Both elements are essential to the approach.

Responsibility implies that commanders and operators may not blame inadequacies of technological systems for any failure to exercise judgment and control over the use of violent force. A commander must ensure compliance with the law and rules of engagement independently of any machine decision, either as to the identity of a target or the appropriateness of an attack, or else must not authorize the attack. Similarly, if a system does not give an operator sufficient control over the weapon to prevent unintended engagements, the operator must refuse to operate the system.

Accountability can be demonstrated by states that comply with this principle. They need only maintain records showing that each engagement was properly authorized and executed. If a violation is alleged, selected records can be unsealed in a closed inquiry conducted by an international body (Gubrud and Altmann, 2013).4

This framing, which focuses on human control and responsibility for the decision to use violent force, is both conceptually simple and morally compelling. What remains then is to set standards for adequate information to be presented to commanders, and to require positive action by operators of a weapon system. Those standards should also address any circumstances under which other parties—designers and manufacturers, for instance—might be held responsible for an unintended engagement.

There is at least one exceptional circumstance in which human control may be applied less strictly. Fully autonomous systems are already used to engage incoming missiles and artillery rounds; examples include the Israeli Iron Dome and the US Patriot and Aegis missile defense systems, as well as the Counter Rocket, Artillery, and Mortar system. The timeline for response in such systems is often so short that the requirement for positive human decision might impose an unacceptable risk of failure. Another principle—the protection of life from immediate threats—comes into play here. An allowance seems reasonable, if it is strictly limited. In particular, autonomous return fire should not be permitted, but only engagement of unmanned munitions directed against human-occupied territory or vehicles. Each such system should have an accountable human operator, and autonomous response should be delayed as long as possible to allow time for an override decision.

The strategic need for robot arms control

Principles of humanity may be the strongest foundation for an effective ban of autonomous weapons, but they are not necessarily the most compelling reason why a ban must be sought. The perceived military advantages of autonomy are so great that major powers are likely to strongly resist prohibition, but by the same token, autonomous weapons pose a severe threat to global peace and security.

Although humans have (for now) superior capabilities for perception in complex environments and for interpretation of ambiguous information, machines have the edge in speed and precision. If allowed to return fire or initiate it, they would undoubtedly prevail over humans in many combat situations. Humans have a limited tolerance of the physical extremes of acceleration, temperature, and radiation, are vulnerable to biological and chemical weapons, and require rest, food, breathable air, and drinkable water. Machines are expendable; their loss does not cause emotional pain or political backlash. Humans are expensive, and their replacement by robots is expected to yield cost savings.

While today’s relatively sparse use of drones, in undefended airspace, to target irregular forces can be carried out by remote control, large-scale use of robotic weapons to attack modern military forces would require greater autonomy, due to the burdens and vulnerabilities of communications links, the need for stealth, and the sheer numbers of robots likely to be involved. The US Navy is particularly interested in autonomy for undersea systems, where communications are especially problematic. Civilians are sparse on the high seas and absent on submarines, casting doubt on the relevance of humanitarian law. As the Navy contemplates future conflict with a peer competitor, it projects drone-versus-drone warfare in the skies above and waters below, and the use of sea-based drones to attack targets inland as well.

In a cold war, small robots could be used for covert infiltration, surveillance, sabotage, or assassination. In an open attack, they could find ways of getting into underground bunkers or attacking bases and ships in swarms. Because robots can be sent on one-way missions, they are potential enablers of aggression or preemption. Because they can be more precise and less destructive than nuclear weapons, they may be more likely to be used. In fact, the US Air Force’s Long Range Strike Bomber is planned to be both nuclear-capable and potentially unmanned, which would almost certainly mean autonomous.

There can be no real game-changers in the nuclear stalemate. Yet the new wave of robotics and artificial intelligence-enabled systems threatens to drive a new strategic competition between the United States and other major powers—and lesser powers, too. Unlike the specialized technologies of high-performance military systems at the end of the Cold War, robotics, information technology, and even advanced sensors are today globally available, driven as much by civilian as military uses. An autonomous weapons arms race would be global in scope, as the drone race already is.

Since robots are regarded as expendable, they may be risked in provocative adventures. Recently, China has warned that if Japan makes good on threats to shoot down Chinese drones that approach disputed islands, it could be regarded as an act of war. Similarly, forward-basing of missile interceptors (Lewis and Postol, 2010) or other strategic weapons on unmanned platforms would risk misinterpretation as a signal of imminent attack, and could invite preemption.

Engineering the stability of a robot confrontation would be a wickedly hard problem even for a single team working together in trust and cooperation, let alone hostile teams of competing and imperfectly coordinated sub-teams. Complex, interacting systems-of-systems are prone to sudden unexpected behavior and breakdowns, such as the May 6, 2010 stock market crash caused by interacting exchanges with slightly different rules (Nanex, 2010). Even assuming that limiting escalation would be a design objective, avoiding defeat by preemption would be an imperative, and this implies a constant tuning to the edge of instability. The history of the Cold War contains many well-known examples in which military response was interrupted by the judgment of human beings. But when tactical decisions are made with inhuman speed, the potential for events to spiral out of control is obvious.

The way out

Given the military significance of autonomous weapons, substantial pressure from civil society will be needed before the major powers will seriously consider accepting hard limits, let alone prohibition. The goal is as radical as, and no less necessary than, the control and abolition of nuclear weapons.

The principle of humanity is an old concept in the law of war. It is often cited as forbidding the infliction of needless suffering, but at its deepest level it is a demand that even in conflict, people should not lose sight of their shared humanity. There is something inhumane about allowing technology to decide the fate of human lives, whether through individual targeting decisions or through a conflagration initiated by the unexpected interactions of machines. The recognition of this is already deeply rooted. A scientific poll (Carpenter, 2013) found that Americans opposed to autonomous weapons outnumbered supporters two to one, in contrast to an equally strong consensus in the United States supporting the use of drones. The rest of the world leans heavily against the drone strikes (Pew Research Center, 2012), making it seem likely that global public opinion will be strongly against autonomous weapons, both on humanitarian grounds and out of concern for the dangers of a new arms race.

In the diplomatic discussions now under way, opponents of autonomous weapons should emphasize a well-established principle of international humanitarian law. Seeking to resolve a diplomatic impasse at the Hague Conference in 1899, Russian diplomat Friedrich Martens proposed that for issues not yet formally resolved, conduct in war was still subject to “principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience.” Known as the Martens Clause, it reappeared in the second Hague Convention (1907), the Tehran Conference on Human Rights (1968), and the Geneva Convention additional protocols (1977). It has been invoked as the source of authority for retroactive liability in war crimes and for preemptive bans on inhumane weapons, implying that a strong public consensus has legal force in anticipation of an explicit law (Meron, 2000).

Autonomous weapons are a threat to global peace and therefore a matter of concern under the UN Charter. They are contrary to established custom, principles of humanity, and dictates of public conscience, and so should be considered as preemptively banned by the Martens Clause. These considerations establish the legal basis for formal international action to prohibit machine decision in the use of force. But for such action to occur, global civil society will need to present major-power governments with an irresistible demand: Stop killer robots.

## 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.

#### Clear delineation of legal authority is key 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.

#### Keeping action within the executive is the problem with the squo

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

## A2: Sloane

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

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

## --2ac impact xt

Autonomous systems make war obsolete - aggression becomes too costly

Arquilla 13

John Arquilla is professor of defense analysis at the U.S. Naval Postgraduate School, Foreign Policy, June 19, 2013, "Could Killer Robots Bring World Peace?", http://www.foreignpolicy.com/articles/2013/06/19/could\_killer\_robots\_bring\_world\_peace?page=full

Lethal robots have been making progress in the real world as well. One of the principal weapons of modern warfare, the Tomahawk missile, is a robot. To be sure, its target is chosen by humans, but the missile guides itself to its destination -- totally unlike human-controlled Predators, Reapers, and other so-called drones -- working around terrain features and dealing with all other factors on its own as well. Tomahawks have done much killing in our two wars with Iraq -- and in a few other spots as well. Israel's Harpy is another fully autonomous robot attack system; while it aims to take out radar emitters rather than people, if enemy soldiers are on site.... The British Taranis is a robot aircraft capable of engaging enemy fighter jets. On the Korean Peninsula, Techwin is a patrol robot, usually remote-controlled but capable of autonomously guarding the demilitarized zone between the North and South -- that narrow patch of green foliage surrounded by the most militarized turf on the planet.

Clearly, 21st century military affairs are already being driven by the quest to blend human soldiers with intelligent machines in the most artful fashion. For example, in urban battles, where casualties have always been high, it will be better to send a robot into the rubble first to scout out a building before the human troops advance. In future naval engagements, where the risk of killing civilians will be close to nil out at sea, robot attack craft might be the smartest weapon to use, particularly in an emerging era of supersonic anti-ship missiles that will imperil aircraft carriers and other large vessels. In the air, robots will pilot advanced jets built to perform at extreme G-forces that the human body could never tolerate. As Peter Singer has observed in his book Wired for War, robots are now implementing the swarming concept that my partner David Ronfeldt and I developed over a decade ago -- the notion of attacking from several directions at the same time -- at least in the United States military.

All this means that the moratorium Christof Heyns called for is likely to be dead on arrival if it ever gets to the U.N. Security Council -- some veto-wielding members have no intention of backing away from intelligent-machine warfare. Also, those who keep the high watch in many other countries are no doubt going to seek the diffusion, rather than the banning, of armed robots. However, the concerns that Heyns expressed are important ones. Yes, we should take care to protect noncombatants, but I think the case can be made that robots will do no worse, and perhaps will do better than humans, in the area of collateral damage. They don't tire, seek revenge, or strive to humiliate their enemies. They will make occasional mistakes -- just as humans always have and always will.

As to Heyns's worry that war will become too attractive if it can be waged by robots, I can only reaffirm Gen. William Tecumseh Sherman's assessment: "War is hell." He was right during the Civil War, and the carnage of the nearly 150 years since -- perhaps the very bloodiest century-and-a-half in human history -- has done nothing at all to disprove his point. So the coming of lethal robots, as with other technological advances, will likely make war ever deadlier. The only glimmer of hope is that on balance, and contrary to Heyns's concern, the cool, lethal effectiveness of robots properly used might, just might, give potential aggressors pause, keeping them from going to war in the first place. For if invading human armies, navies, and air forces can be decimated by defending robots, the cost of aggression will be seen as too high. Indeed, the country, or group of countries, that can gain and sustain an edge in military robots might have the ultimate peacekeeping capability.

Think of Gort and his fellow alien robots from the original Day the Earth Stood Still movie. As Klaatu, his humanoid partner, makes clear to the people of Earth, his alliance of planets had placed their security in the hands of robots programmed to annihilate any among them who would break the peace. A good use of lethal robots for a greater humane purpose.

## 2AC WPA/CIC

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.

AND—we have to meet because we specify “war power authority”

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**.

## 2AC self-restraint

Object fiat is a voter – avoids the core question of pres powers by fiating away obama’s behavior in the squo – justifies the end war cp which means the neg wins every debate – it’s not in the lit which is key

Hansen 12 (Victor, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>, PDF, ZBurdette)

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

Causes a congressional firestorm and laws in the opposite direction of the XO

Hallowell 13

Billy Hallowell, staff writer, Citing William Howell, a political science professor at the University of Chicago and the author of “Power Without Persuasion: The Politics of Direct Presidential Action", and citing John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara, The Blaze, February 11, 2013, "HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS", http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”

And the political opposition howls.

Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”

The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.

“For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

The power isn’t limitless, as was demonstrated when Obama issued one of his first executive orders, calling for closing the military prison at the Guantanamo Bay naval base in Cuba and trying suspected terrorists housed there in federal courts instead of by special military tribunals. Congress stepped in to prohibit moving any Guantanamo prisoners to the U.S., effectively blocking Obama’s plan to shutter the jail.

## 2AC comissions

Defense reviews don’t lead to implementation

Peter Buxbaum, International Relations and Security Network, 2010, The Pentagon’s Defense Review Trap, www.isn.ethz.ch/isn/Digital-Library/Articles/Detail/?lng=en&id=110915

The Washington defense and contracting communities are anxiously awaiting next month's release of the Quadrennial Defense Review (QDR). Deputy Defense Secretary William Lynn, in a speech in New York last month, promised the report would be driven by current Afghanistan and Iraq war needs, placing an emphasis on ground troops and counterinsurgency operations and less on the modernization of weapons systems.

If that proves to be the case, it would amount to a Pentagon about-face since the last QDR, released in 2006, which had a rather short shelf life. **The last edition was replete with proposals for spending on a laundry** list of military modernization **programs**, much **of which were to be scrapped or scaled back after** the Department of Defense decided **a year** later to increase ground troop strength and emphasize counterinsurgency operations.

The fiasco associated with the last QDR may be explainable, at least in part, on the change of leadership at the Pentagon. Donald Rumsfeld was pushed out as secretary of defense and his replacement, Robert Gates, who continues to serve in the Obama administration after having been appointed by George W Bush, emphasized planning for the wars the US was actually fighting instead the wars Rumsfeld would have liked the US to be fighting.

Somewhere between strategy and reality

But observers fret that a gap between strategy and reality has become embedded in the QDR process, and that the 2010 edition will be no different.

The QDR was instituted in the late 1990s with the admirable purpose of institutionalizing strategic thinking among Department of Defense echelons.

"QDRs help Secretaries of Defense to set out their strategic vision for the department, and better align the military posture with the strategy," Jim Thomas, vice president for strategic studies at the Center for Strategic and Budgetary Assessments, a non-partisan Washington think tank, told ISN Security Watch. But "the results of QDRs have been mixed."

Why? "Past QDRs have generally done a better job of articulating strategic approaches than aligning the military posture - investments, force structure, basing - with the strategy," Thomas explained. "There are powerful institutional forces in the military, Congress and industry supporting status quo investment programs and force structures, but there are rarely strong countervailing forces for new program starts or developing new types of forces."

Indeed, there is a school of thought that believes that **the QDR as a strategic planning tool is** doomed to failure.

A report recently released by the Center for Strategic and International Studies (CSIS), a bipartisan Washington think tank, concluded that the goals of the QDR - to serve as a means to develop new policies, capabilities and initiatives - "have so far been unrealized." The report is less than optimistic that the 2010 QDR will turn things around.

"The issues the QDR must address have been greatly complicated by the Department of Defense’s past failures to develop effective plans, programs, and budgets; carry out effective systems analysis; develop credible cost estimates; and create timely and meaningful future year defense plans," the report said.

"Past **reviews have been decoupled from meaningful budget figures**, realistic force plans, **honest procurement decisions**, and metrics to measure the success of their recommendations. As a result of this strategy-reality gap between concepts and resources, **they have** had **limited practical value.**"

Delay is a solvency deficit - Now’s the make it or break it for norm-development

Kenneth Anderson 13, professor of international law at Washington College of Law, American University, and visiting fellow at the Hoover Institution, and Matthew Waxman, a professor of law at Columbia Law School and an adjunct senior fellow at the Council on Foreign Relations, 4/9/13, Law and Ethics for Autonomous weapon Systems: Why a Ban Won’t Work and How the Laws of War Can, http://www.hoover.org/publications/monographs/144241

Where in this long history of new weapons and attempts to regulate them ethically and legally will autonomous weapons fit? What are the features of autonomous robotic weapons that raise ethical and legal concerns? How should they be addressed, as a matter of law and process—by treaty, for example—or by some other means? And what difference does the incremental shift from increasing automation to autonomy mean, if anything, to the legal and ethical concerns?

One answer to these questions is to wait and see: it is too early to know where the technology will go, so the debate over ethical and legal principles for robotic autonomous weapons should be deferred until a system is at hand. Otherwise it is just an exercise in science fiction. One does not have to embrace a ban on autonomous systems and their development to say that **the wait-and-see view is shortsighted and faulty**, however. Not all of the important innovations in autonomous weapons are far off on the horizon; some are possible now or will be in the near-term. Some of these innovations also raise serious questions of law and ethics even at their current research and development stage.

This is the time—before technologies and weapons development have become “hardened” in a particular path and before their design architecture is entrenched and difficult to change—to take account of the law and ethics that ought to inform and govern autonomous weapons systems, as technology and innovation let slip the robots of war. This is also the time—before ethical and legal understandings of autonomous weapon systems become hardened in the eyes of key constituents of the international system—to propose and defend a framework for evaluating them that advances simultaneously strategic and moral interests.

A recent and widely circulated report from the British Ministry of Defense on the future of unmanned systems made this point forcefully. It noted that as “technology matures and new capabilities appear, policy-makers will need to be aware of the potential legal issues and take advice **at a very early stage** of any new system’s procurement cycle.”20 This is so whether the system is intended in the first place to be highly automated but not fully autonomous; is intended from the beginning to be autonomous in either target selection or engagement with a selected target, or both; or turns out upon review to have unanticipated or unintended autonomous functions (perhaps in how it interoperates with other systems).21

## 2AC TPA

Obama not spending capital on TPA

Phil Levy, Foreign Policy, 1/29/14, Is Obama even trying on trade, shadow.foreignpolicy.com/posts/2014/01/29/is\_obama\_even\_trying\_on\_trade

The president faces an enormous challenge on trade. He has built much of his Asian foreign policy around the Trans-Pacific Partnership (TPP) and much of his European foreign policy around the Transatlantic Trade and Investment Partnership (TTIP). In each case, he did so on the promise to our international partners -- explicit or implicit -- that he would sooner or later bring Congress around.

It is now later. The TPP was nominally to conclude last year. Other countries' trade ministers have stated their desire to see it wrap up as soon as possible. They are waiting on White House efforts to win a negotiating mandate from Congress (known as TPA). While such a measure has met some Republican opposition, the most serious challenge has come from Democrats, particularly in the House. The Senate looked safer, at least before the president sent the bill's key Democratic backer, Finance Committee Chairman Max Baucus (D-MT), off to Beijing.

In the House, members of the president's party have voiced skepticism about what trade deals do. They believe those deals cost jobs, damage the environment, and harm workers. A key part of the president's task in his State of the Union address was to speak to these members of his party and their constituents watching at home. He had to persuade them that, while he had once espoused such positions and empathized, the critics were mistaken. Instead, here was the sum total of the president's pitch:

"...when 98 percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create even more jobs. We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment and open new markets to new goods stamped 'Made in the USA.'"

Even had the president made this statement at the beginning of last summer, when discussions were just starting up on the TPA, it would have been cursory. Few people are persuaded by the bare assertion that their strong beliefs are false and the opposite is true. Usually, to change minds, some supporting detail is required, some evidence, or a carefully structured argument. Weak mercantilist claims are easily rejected by skeptics (e.g. if trade is good because exports bring jobs, what does it mean when we run a trade deficit and imports exceed exports?).

Not only did the president fail to make much of a sales pitch, but his vague call to ‘work together' comes at a time when a bipartisan bill has been crafted and the battle lines are drawn. By not mentioning the bill, nor taking a stance on the controversial facets under debate -- currency provisions, intellectual property protection clauses, trade adjustment assistance -- the White House remains on the sidelines, hoping that TPA will simply fall into its lap without much expenditure of effort or political capital.

Success on the trade front was going to require experienced leadership in the Congress and a concerted public and private persuasion campaign from the President. Instead, the last month has brought the removal of an irreplaceable Capitol Hill proponent and noncommittal nods from the White House. This does not bode well.

Reid blocks and Obama not actually pushing

James Polti, Financial Times, 1/30/14, Top Democrat puts Obama trade deals in doubt, www.ft.com/intl/cms/s/0/bf61f75a-88a1-11e3-bb5f-00144feab7de.html#axzz2sT74OPia

President Barack Obama’s push to strike trade deals with the European Union and 11 Pacific Rim nations was put in jeopardy after the top Democrat in Congress quashed the idea of giving the White House congressional approval to negotiate the pacts. Harry Reid, the Senate majority leader, said he opposed legislation known as Trade Promotion Authority, which sets a swift timeline for trade bills and prevents amendments that would slow them down or modify their contents. “I’m against fast track,” Mr Reid told reporters, less than a day after Mr Obama had called for TPA in his State of the Union speech. “Everyone would be well advised just to not push this right now, ”he added. Mr Reid has often been sceptical of trade deals, and is wary of their potential to divide his party in a year of midterm congressional elections during which his control of the Senate is at risk. “Leader Reid has always been clear on his position on this particular issue,” a White House official said, dismissing the significance of Mr Reid’s comments. Others, however, saw his intervention as a defiant rebuff to the president that threatens to chill hopes of making progress this year on the biggest global negotiations to liberalise international trade. “Harry Reid’s decision to block these deals cripples America’s historic role as the global leader in advancing free trade, and it is a personal embarrassment to the president,” said Tony Fratto, a former US Treasury and White House official under George W Bush, and a partner at Hamilton Place Strategies, a consultancy. Mr Obama’s words on trade in Tuesday night’s address to Congress were cautious, reflecting doubts that he has built enough political support for his expansive second-term agenda of trade liberalisation. Mr Obama said the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership would help generate employment among small businesses seeking to export around the world. “We need to work together on tools like bipartisan Trade Promotion Authority to protect our workers, protect our environment, and open new markets to new goods stamped ‘Made in the USA’,” he said. But Republicans said this was far from the more heavy-handed public and private White House campaign that was needed to win over sceptical Democrats. Orrin Hatch of Utah, the top Republican on the Senate finance committee and an architect of a bipartisan TPA bill introduced this month, said he was “extremely disappointed” by the administration’s efforts and message. “The president barely mentioned his trade agenda. He certainly didn’t call on members of his own party to set aside their differences and support renewing TPA,” Mr Hatch said. “This administration needs to do better,” he told an audience at the US Chamber of Commerce on Wednesday. Securing a TPA bill has been an uphill struggle for the administration since last year, and its prospects looked bleaker after Mr Reid’s comments. A spokesman for the Senate finance committee said Max Baucus, the Democratic committee chairman who brokered the TPA compromise with Mr Hatch this month, would “continue to push forward on efforts to secure TPA”. But it is highly unlikely the existing compromise can be voted on in the Senate finance committee any time soon. Moreover, Mr Baucus will start as US ambassador to Beijing as early as next month, removing him from the picture. He will be replaced at the helm of the committee by Ron Wyden of Oregon, who has also signalled that the TPA legislation is not acceptable as written. His wish to renegotiate some of the bill’s terms clouds its fate. “My bottom line is that America needs a better TPA framework so our people can benefit from better trade agreements. These agreements must expand the winner’s circle, so that it includes more Americans with good-paying jobs,“ Mr Wyden said in a statement late on Wednesday. “Global commerce has changed dramatically since the last time TPA was authorised and Senators are telling me they want the chance to examine those changes and have an opportunity to weigh in on a variety of issues,” he added. America’s trading partners are tracking the fate of TPA with increasing anxiety. European officials were reserving judgment on Wednesday about Mr Obama’s speech and how it might affect transatlantic trade talks. But they said it was clear that, mindful of political difficulties, the White House had decided not to use the speech to press its case for TPA forcefully. “There is no sense of urgency,” one European official told the FT. But “we’d love him to push hard on trade/TPA. That will keep the momentum, also on this side of the pond.”

PC fails, and the plan isn’t necessary for GOP obstruction

The Economist, 1/30/14, Clowns to the left, jokers to the right, www.economist.com/blogs/democracyinamerica/2014/01/barack-obama

I find this argument unpersuasive. Ed Luce made the key point a year and a half ago: LBJ had liberal Republicans and conservative Democrats to work with, whose decision about whether to vote with or against the president on different bills could be influenced by a variety of political considerations. Those legislative cross-loyalties don't exist anymore. Neither do earmarks, the budget goodies targeted to individual districts that were once a widespread currency of congressional dealmaking (something we lamented here). The parties today are ideologically sorted, and there is almost nothing Mr Obama can do to convince or compel Republicans to vote with him. Republicans are able to halt the president's agenda in its tracks, and they have every reason to do so. There simply isn't any reason to believe that more aggressive legislative arm-twisting would have generated more success for Mr Obama; it seems entirely possible that if he had aggressively tried to dictate the terms of health-care reform legislation rather than allowing various senators to rewrite (and weaken) the bill, he might have lost even that signature achievement. Last year, Mr Obama decided to throw his entire weight behind gun-control legislation, taking on just the sort of ambitious and improbable crusade Mr Ignatius had advised him to attempt. The result was that he lost, squandered political capital, and mired his party in the mud.

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

Feaver 1/17/14

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

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

Plan doesn’t cost capital

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 59-60

Presidents and politicos alike have long recognized Congress's ability to reduce the political costs that the White House risks incurring by pursuing a major military initiative. While declarations of war are all but extinct in the contemporary period, Congress has repeatedly moved to authorize presidential military deployments and consequently to tie its own institutional prestige to the conduct and ultimate success of a military campaign. Such authorizing legislation, even if it fails to pass both chambers, creates a sense of shared legislative-executive responsibility for a military action's success and provides the president with considerable political support for his chosen policy course.34 Indeed, the desire for this political cover—and not for the constitutional sanction a congressional authorization affords—has historically motivated presidents to seek Congress's blessing for military endeavors. For example, both the elder and younger Bush requested legislative approval for their wars against Iraq, while assiduously maintaining that they possessed sufficient independent authority as commander in chief to order the invasions unilaterally.35 This fundamental tension is readily apparent in the elder Bush's signing statement to HJ Res 77, which authorized military action against Saddam Hussein in January of 1991. While the president expressed his gratitude for the statement of congressional support, he insisted that the resolution was not needed to authorize military action in Iraq. "As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution."36

Obamacare outweighs AND solves the link – it determines PC and the survival of every agenda item

Sean Sullivan 12-23, Washington Post, Joe Manchin’s Obamacare fears — and why they matter, <http://www.washingtonpost.com/blogs/the-fix/wp/2013/12/23/joe-manchins-obamacare-fears-and-why-they-matter/>

That of course, is a sort of worst-case-scenario view. But preparing for the worst possible scenario is what red and swing state Democrats like Manchin will be doing throughout the course of the next year. If problems with the health-care law continue, you will start to hear Democrats from states in which Obama is unpopular distance themselves even more from him.

If the law’s image improves, you will hear less of that. And that will mean more political capital for Obama to address issues like the economy — or maybe even immigration.

Then, Republicans eager to shepherd immigration reform may grow increasingly open to working with the president on a modest bill that meets his requirements. And there may be more common fiscal ground to be found for congressional Republicans and the White House — some of which was paved in the bipartisan budget plan that passed this year.

But for now at least, the health-care law looks to remain the dominant issue. And how it proceeds headed into the new year will determine a lot, even on issues that have nothing to do with health care.

No trade agenda—not spending capital effectively

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

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

No brink and no now key argument

Ikenson 9(Daniel, associate director for the Center for Trade Policy Studies at the Cato Institute, “A Protectionism Fling: Why Tariff Hikes and Other Trade Barriers Will Be Short-Lived,” 3/12, http://www.freetrade.org/pubs/FTBs/FTB-037.html

A Little Perspective, Please Although some governments will dabble in some degree of protectionism, the combination of a sturdy rules-based system of trade and the economic self interest in being open to participation in the global economy will limit the risk of a protectionist pandemic. According to recent estimates from the International Food Policy Research Institute, if all WTO members were to raise all of their applied tariffs to the maximum bound rates, the average global rate of duty would double and the value of global trade would decline by 7.7 percent over five years.8 That would be a substantial decline relative to the 5.5 percent annual rate of trade growth experienced this decade.9 But, to put that 7.7 percent decline in historical perspective, the value of global trade declined by 66 percent between 1929 and 1934, a period mostly in the wake of Smoot Hawley's passage in 1930.10 So the potential downside today from what Bergsten calls "legal protectionism" is actually not that "massive,"

even if all WTO members raised all of their tariffs to the highest permissible rates. If most developing countries raised their tariffs to their bound rates, there would be an adverse impact on the countries that raise barriers and on their most important trade partners. But most developing countries that have room to backslide (i.e., not China) are not major importers, and thus the impact on global trade flows would not be that significant. OECD countries and China account for the top twothirds of global import value.11 Backsliding from India, Indonesia, and Argentina (who collectively account for 2.4 percent of global imports) is not going to be the spark that ignites a global trade war. Nevertheless, governments are keenly aware of the events that transpired in the 1930s, and have made various pledges to avoid protectionist measures in combating the current economic situation. In the United States, after President Obama publicly registered his concern that the "Buy American" provision in the American Recovery and Reinvestment Act might be perceived as protectionist or could incite a trade war, Congress agreed to revise the legislation to stipulate that the Buy American provision "be applied in a manner consistent with United States obligations under international agreements." In early February, China's vice commerce minister, Jiang Zengwei, announced that China would not include "Buy China" provisions in its own $586 billion stimulus bill.12 But even more promising than pledges to avoid trade provocations are actions taken to reduce existing trade barriers. In an effort to "reduce business operating costs, attract and retain foreign investment, raise business productivity, and provide consumers a greater variety and better quality of goods and services at competitive prices," the Mexican government initiated a plan in January to unilaterally reduce tariffs on about 70 percent of the items on its tariff schedule. Those 8,000 items, comprising 20 different industrial sectors, accounted for about half of all Mexican import value in 2007. When the final phase of the plan is implemented on January 1, 2013, the average industrial tariff rate in Mexico will have fallen from 10.4 percent to 4.3 percent.13 And Mexico is not alone. In February, the Brazilian government suspended tariffs entirely on some capital goods imports and reduced to 2 percent duties on a wide variety of machinery and other capital equipment, and on communications and information technology products.14 That decision came on the heels of late-January decision in Brazil to scrap plans for an import licensing program that would have affected 60 percent of the county's imports.15 Meanwhile, on February 27, a new free trade agreement was signed between Australia, New Zealand, and the 10 member countries of the Association of Southeast Asian Nations to reduce and ultimately eliminate tariffs on 96 percent of all goods by 2020. While the media and members of the trade policy community fixate on how various protectionist measures around the world might foreshadow a plunge into the abyss, there is plenty of evidence that governments remain interested in removing barriers to trade. Despite the occasional temptation to indulge discredited policies, there is a growing body of institutional knowledge that when people are free to engage in commerce with one another as they choose, regardless of the nationality or location of the other parties, they can leverage that freedom to accomplish economic outcomes far more impressive than when governments attempt to limit choices through policy constraints.

# 1AR

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.

## 1AR---QDR Solvency Deficit

Won’t change DoD’s preference for squo policy

Erin K. Fitzgerald, and Anthony H. Cordesman, CSIS Arleigh A. Burke Chair in Strategy, 8/27/2009, THE 2010 QUADRENNIAL DEFENSE REVIEW: A+, F, OR DEAD ON ARRIVAL?, http://csis.org/files/publication/090809\_qdrahc\_revised.pdf

Still, this survey shows that the Department of Defense’s QDRs to date have been largely a list of beginnings, concepts and intentions. It is also a fundamental reality of every aspect of national security policy that good intentions are ultimately irrelevant unless they are followed by successful actions. Once again, it must be stressed that a nation’s national security strategy – and indeed its security – is not defined by what it declares, but rather by what it does. Similarly, the fact that there are no good intentions, only successful actions is an iron law of public policy that Department has so far violated with grim and consistent determination.

The Pentagon has been conducting Quadrennial Defense Reviews since early in the Clinton administration. Each one has been cited as the essential precursor of big decisions to come. Each one has come and gone and done nothing to change whatever trajectory the Pentagon's leadership has pre-decided; it functions as little more than a review by the department bureaucracy of itself. It is an attempt to replace basic management tasks with a four-year review. After four attempts (if the 1993 BUR is included), the process is stagnant and barely useful.

Doesn’t cause follow on

Erin K. Fitzgerald, and Anthony H. Cordesman, CSIS Arleigh A. Burke Chair in Strategy, 8/27/2009, THE 2010 QUADRENNIAL DEFENSE REVIEW: A+, F, OR DEAD ON ARRIVAL?, http://csis.org/files/publication/090809\_qdrahc\_revised.pdf

Like its two predecessors, the 2005 QDR was decoupled from a real world force plan, **failed to take hard decisions** about manpower or procurement, and made no budgetary linkages. This was in many ways unsurprising, given that Secretary Rumsfeld had claimed that ―the QDR is not a programmatic or budget document‖ but rather a reflection of ―the thinking of the senior civilian and military leaders of the Department of Defense.‖13 Describing itself as ―a snapshot in time of the department’s strategy for defense of the Nation and the capabilities needed to effectively execute that defense,‖ the review focused on the vague chart shown in Figure 7. This described security challenges to the nation more in terms of colored blobs than real world planning needs. 14 It talked about a broad spectrum of ―capabilities‖ that included traditional, conventional conflicts; irregular warfare, such as terrorism and insurgencies; catastrophic challenges from unconventional weapons used by terrorists or rogue states; and disruptive threats, in which new technologies could counter American advantages. However, it made no effort to define a realignment of forces, acquisitions or budgets to accompany this shift in focus. To the surprise of those who thought the two-conflict standard was obsolete,15 the 2005 QDR still reverted the yardstick of fighting two major theatre wars (now called ―conventional campaigns‖), with some adjustments.16 US forces were now to be structured for a surge capability to win two nearly simultaneous conventional campaigns and be prepared in one of those campaigns to remove a hostile regime and destroy its military capacity. The 2005 QDR, however, made no real effort to describe what this meant or set any broad goals that defined a future set of real world operational capabilities. Previous QDRs had put forward fairly detailed force structure plans—fighter wings, strategic forces, bombers, land divisions and brigades, warships, and submarines – but in 2005 it provided only a few details about the organizational size of the Air Force, Army, Navy, and Marine Corps. The 2005 QDR provided some information about personnel strength, but the review made no sweeping changes in the size of the armed forces. The anticipated personnel increases for the ground forces did not materialize. Instead, it continued to call for cuts. The 2005 QDR dodged every hard decision relating to force modernization and procurement. The high-technology programs that once were seen as the key to the ―revolution in military affairs‖ had already reached a clear crisis point in time, cost, and performance and it was clear that they were out of control and so costly that they could never be implemented in the planned form. However, even the most problematic programs like the F-22 survived, albeit with some reductions. The 2005 QDR also largely failed to address any tangible changes in force posture and structure, leaving the Ameri- can military in the outdated conventional war posture it had been in since the end of the Cold War. The decision to keep the process ―resource neutral‖ prevented any chance of closing the gap between strategy, forces, and procurement. This decision bordered on the ludicrous, considering that the Department of Defense had been asking for increasingly larger supplemental to fund the wars in Iraq and Afghanistan for the previous five years. Even then, analysts like Andrew Krepinevich warned that, ―Independent estimates conclude that over the long term, the defense program may be short some $50 billion a year.‖17 Yet, Rumsfeld and his team persisted in conducting the QDR as if would be possible to maintain defense spending at contemporary levels. A Failed and Self-Destructive Process to Date **The** Quadrennial **Defense Review process**, from 1993 until the present, **has failed to do what it was intended – provide a link among strategy, force-planning and** defense budgeting. Indeed, **with every QDR, the situation has gotten worse**. Whether the 2010 document departs from this tradition remains to be seen. III. THE COMING QDR AND THE FY2010 BUDGET REQUEST The ineffectiveness of DOD’s efforts in linking strategy to resources and reality, and in force planning, has been compounded by a crisis in programming and budgeting. There are a wide range of critical areas in the defense budget and FDYP where impossible goals in performance and scheduling, and cost escalation, pose a serious problem. **Regardless of** the **efforts to formulate strategy** at the conceptual level, **the operational reality is a Department of Defense where far too few hard choices have been made**, where **key programs** are not fully defined or **cannot be implemented**, and where trade-offs will have to be made between major increases in the budget and current force plans.

The CP is literally pointless

Rebecca Grant, Air Force Magazine, April 2011, On QDRs, www.airforcemag.com/MagazineArchive/Pages/2011/April 2011/0411qdr.aspx

The QDR’s purpose is noble. According to the National Defense Authorization Act for Fiscal Year 2000, the goal of the QDR is to delineate a military strategy consistent with the most recent national security strategy, define the defense programs to successfully execute the full range of missions assigned to the military by that strategy, and identify the budget plan necessary to successfully execute those missions at a low-to-moderate level of risk.

Yet the QDR is not a beloved beast. "Every QDR disappoints," said Center for Strategic and Budgetary Assessments expert Jim Thomas in February 2010. "Appetites are way too great for what the QDR delivers," said Mark A. Gunzinger, who worked on three QDRs and is now also at CSBA.

Longtime Center for Strategic and International Studies analyst Anthony H. Cordesman heaped the most scorn on the QDR. "**If God** really **hates you, you may end up working on a** Quadrennial **Defense Review**—the most pointless and destructive planning effort imaginable," Cordesman said in a 2009 paper. "You will waste two years on a document decoupled from a real-world force plan, from an honest set of decisions about manpower or procurement, with no clear budget or FYDP, and with no metrics to measure or determine its success."

## 1AR overview

Data disproves hegemony impacts

Fettweis, 11

Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence.

The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated.

Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered.

However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation.

It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

No econ impact

Barnett, senior managing director of Enterra Solutions LLC, contributing editor/online columnist for Esquire, 8/25/’9

(Thomas P.M, “The New Rules: Security Remains Stable Amid Financial Crisis,” Aprodex, Asset Protection Index, <http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx>)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape.

None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession.

Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions.

Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends.

And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces.

#### Wyden blocks fast track

Cicki Needham, 2/6/14, Sen. Wyden says not so fast on trade, thehill.com/blogs/on-the-money/trade/197610-sen-wyden-says-not-so-fast-on-trade

The next chairman of the Senate Finance Committee is making it plain to President Obama that he will not rush forward with “fast-track” legislation that would spur on the White House’s trade agenda. Sen. Ron Wyden (D-Ore.) has no plans to take up the fast-track bill written by outgoing Chairman Max Baucus (D-Mont.), who was nominated by Obama to be U.S. ambassador to China. Instead, he says he will hear out other senators on trade, a policy area he says has changed tremendously since the last time a fast-track bill was approved, in 2002. “Senators want to examine the changes in global commerce and how it affects both the process and substantive agreements, so I’m going to spend some time listening to senators,” Wyden told The Hill. Other Democrats on the Finance panel say Wyden is signaling that fast-track — which Obama called for in his State of the Union address last week — is on ice for now. Sen. Sherrod Brown (D-Ohio), a member of the panel who has been critical of free-trade policies, said his view is that Wyden will ditch the bill Baucus wrote with Sen. Orrin Hatch (Utah), the top Republican on Finance, and House Ways and Means Committee Chairman Dave Camp (R-Mich.). Brown expects Wyden to start from scratch. “We’re not going to pass a 2002 fast-track and that’s pretty much what the Hatch-Camp-Baucus bill was,” he told The Hill. “It was dressing up the pig to make it look a little better ... but nothing more than that. “It has to be fundamentally different,” Brown said of a future bill. Sen. Ben Cardin (D-Md.), another Finance member, cited concerns in the Democratic Caucus and said he expects Wyden will “take a new look” at the authority. Cardin wants U.S. Trade Representative Michael Froman to testify before the committee and address Democratic concerns. Obama’s hopes for fast-track already looked to be in trouble, given Senate Majority Leader Harry Reid’s (D-Nev.) dismissal of quick action last week. But the comments from Wyden, Brown and Cardin are a second blow for an issue that has been championed by business groups and could serve as a rare opportunity for compromise between Obama and congressional Republicans. Hatch warned that the White House’s ambitious trade agenda would likely collapse without fast-track — also known as trade promotion authority (TPA) — which makes it easier to negotiate trade deals by preventing them from being amended and installing time limits on congressional consideration.

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#### Fast track won’t happen

Alexander Bolton, 1/29/14, Reid shunts TPA onto slow track, thehill.com/homenews/senate/196853-reid-rejects-obamas-plea-for-trade-power

Senate Majority Leader Harry Reid (D-Nev.) on Wednesday suggested he will not bring legislation to the floor that would grant President Obama greater trade powers. Reid said he is “against” trade promotion authority (TPA) legislation — often called “fast track” — that, if passed, would make it easier for Obama to negotiate trade deals by preventing Congress from amending them. “I’m against fast track,” said Reid, who told reporters he would not guarantee floor time for legislation by Senate Finance Committee Chairman Max Baucus (D-Mont.), who is set to leave the Senate upon his confirmation as ambassador to China. “We’ll see,” Reid said of the bill. “Everyone would be well advised just to not push this right now.” Reid had recently called the legislation “controversial,” and cast several votes against trade deals during former President George W. Bush’s administration. “Everyone knows how I feel about this. Sen. Baucus knows. Sen. [Ron] Wyden [(D-Ore.)] knows,” he said in reference to the incoming chairman of the powerful Finance panel. Reid’s comments show how difficult it will be for Obama to win fast track authority from Congress — and that his biggest problem will be with fellow Democrats. The Baucus measure is co-sponsored by Senate Finance Committee ranking member Orrin Hatch (R-Utah) and is backed in the House by Ways and Means Committee Chairman Dave Camp (R-Mich.). But the House measure has not won over House Democrats, and Republicans have warned the White House it needs to build Democratic support for the measure. Reid’s criticism of the legislation was made less than 24 hours after Obama used his State of the Union address to ask the Congress to pass it. “We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment and open new markets to new goods stamped ‘Made in the USA,’ ” Obama said in his speech. “China and Europe aren’t standing on the sidelines. Neither should we,” the president said. The legislation is important to an administration negotiating trade deals with the European Union, and a group of Asian and Latin American countries under the Trans-Pacific Partnership. Obama in 2010 also set a goal of doubling U.S. exports by 2015. Trade promotion authority would put timetables on congressional consideration of trade deals, and would prevent Congress from amending them in exchange for the administration meeting specific goals laid out in the authority. Bush used the authority to negotiate a series of individual trade deals. Trading partners are thought to be more likely to sign such pacts if they know the deals will be considered by Congress and will not be changed. The White House on Wednesday downplayed Reid’s comments. “Leader Reid has always been clear on his position on this particular issue,” a White House official told The Hill. “As the president said last night, he will continue to work to enact bipartisan trade promotion authority to protect our workers and environment and open markets to new goods stamped ‘Made in the USA,’ and we will not cede this important opportunity for American workers and businesses to our competitors.” Democrats said the light-handed approach Obama took on the issue in his State of the Union address shows he realizes it isn’t likely to happen. Trade took up only two lines of the president’s speech, which was more than an hour long. Rep. Rosa DeLauro (D-Conn.) said the president’s lack of attention to the issue “demonstrates the broad opposition” to fast track and trade deals that she said undermine his economic goals of growing jobs and increasing wages. Business groups and Republicans, however, were disappointed with the comments. “Awful timing,” Bill Reinsch, president of the National Foreign Trade Council, said of Reid’s comments. “What it means is the fast track bill is not on a fast track.” In a blog post Tuesday, John Murphy, vice president of international affairs for the U.S. Chamber of Commerce, wrote that Obama needs to call lawmakers as well as lobby them in person. “He needs to work the phone and spend time on Capitol Hill every week until it’s done. It’s that important,” Murphy wrote. U.S. Trade Representative Michael Froman has nearly taken up residence on Capitol Hill this month to talk to Democrats about fast track and the TPP, which negotiators are pushing to finish within the next several months. But Lori Wallach, director of Public Citizen’s Global Trade Watch, said Reid’s rejection of the bill reflects congressional “distaste” for trade strategies of old and a desire to create a new mechanism that ensures intimate congressional involvement. Reinsch said opposition to trade deals “is impressively well-organized and is doing an awful lot of work out in the communities where we have not been. That’s a handicap of ours.”

#### NSA sapped his capital—he’s not getting it back

Adam Bistagne, Los Angeles Loyolan, 2/3/14, State of the Union address falls short, www.laloyolan.com/opinion/state-of-the-union-address-falls-short/article\_37260576-8c4c-11e3-afb2-001a4bcf6878.html

In 2013, a slew of problems damaged the Obama Administration: the National Security Agency (NSA) leaks by Edward Snowden, health care rollout errors and a U-6 unemployment rate that’s still over 13 percent. Obama’s 2013 was so dreadful that Julie Pace of the Associated Press asked Obama whether 2013 had been the worst year of his presidency at a White House press conference.

Obama’s State of the Union address was the first opportunity to change the tone for the coming year, to dig his feet into the ground and sway the national conversation. I think Obama’s address failed to meet these goals and instead highlighted the flaws of his time of office.

The speech was Obama’s chance to say something significant about Edward Snowden, yet he missed his opportunity. Obama had a chance to reconcile abuses of privacy with a proposal to grant Snowden amnesty. Such a 180-turn on an issue fraught with serious domestic and international problems would have helped Obama reestablish his credibility.

For American citizens, it would have provided us with some hope that our informational privacy would be protected. For the U.S.’s international allies, it would have made substantial progress in repairing torn relationships. For example, the Brazilian president turned down a White House dinner last year because of the revelations about the NSA spying, a grievous snub to the administration. In addition, the European Union-United States trade deal negotiations have also been seriously derailed by the NSA fiasco.

Only a bold, decisive move by Obama would have given him even a slight chance to repair the damage caused by the leaks. The task forces and panel recommendations have done nothing to heal the political wounds. While a drastic change is not easy in politics, I think a significant policy reform was necessary in this situation. Granting Snowden amnesty would allow progress on an E.U.-U.S. trade deal comparable to the North American Free Trade Act (NAFTA), something that would improve the American economy while providing Obama with political capital necessary to get Congress back working, if only somewhat.