## 1NC

### 1NC

#### Obama’s PC causing congressional backdown on sanctions now – but could easily flare up again

Pak Tribune January 31, 2014 “Obama repels new Iran sanctions push, for now” http://paktribune.com/news/Obama-repels-new-Iran-sanctions-push-for-now-266486.html

President Barack Obama appears to have prevailed, for now, in a campaign to stop Congress from passing new sanctions on Iran he fears could derail nuclear diplomacy.¶ Several Democratic senators who previously backed a bipartisan sanctions bill publicly stepped back after Obama threatened a veto during his State of the Union address on Tuesday.¶ Several sources familiar with behind-the-scenes maneuvering on the bill say a number of other Democratic senators signed up for more sanctions had privately recoiled from a damaging vote against their own president. The developments appear, in the short term, to have checked momentum behind the bill, which had appeared headed for a veto-proof majority in Congress.¶ "I am strongly supporting the bill but I think a vote is unnecessary right now as long as there's visible and meaningful progress" in the negotiations, Senator Richard Blumenthal told AFP, after first expressing reservations earlier this month.¶ Democratic Senator Chris Coons made a similar declaration at a post-State of the Union event hosted by Politico.¶ "Now is not the time for a vote on an Iran sanctions bill," he said. Another Democratic Senator, Joe Manchin, now hopes Senate Majority Leader Harry Reid will not bring it up.¶ "I did not sign it with the intention that it would ever be voted upon or used upon while we're negotiating," Manchin told MSNBC television.¶ "I signed it because I wanted to make sure the president had a hammer if he needed it and showed him how determined we were to do it and use it if we had to." The White House mounted an intense campaign against a bill it feared would undermine Tehran's negotiators with conservatives back home or prompt them to ditch diplomacy.¶ Obama aides infuriated pro-sanctions senators by warning the measure could box America into a march to war to halt Tehran's nuclear program if diplomacy died.¶ The campaign included a letter to Reid from Democratic committee chairs urging he put off a sanctions vote.¶ Another letter was orchestrated from a group of distinguished foreign policy experts.¶ Multi-faith groups also weighed in and coordinated calls from constituents backing Obama on nuclear diplomacy poured into offices of key Democrats. The campaign appears for now to have overpowered the pro-sanctions push by hawkish senators and the Israel lobby, whose doubts on the Iran nuclear deal mirror those of Israeli Prime Minister Benjamin Netanyahu. Senator Johnny Isakson, a Republican co-sponsor of the legislation, said: "It looks like we're kind of frozen in place."¶ Those behind the anti-sanctions campaign though privately concede they may have won a battle, not a war.¶ The push for new sanctions will flare again ahead of the American Israel Public Affairs Committee's (AIPAC) annual conference in March, which Netanyahu is expected to address. It could also recur if the talks on a final pact extend past the six-month window set by the interim deal.¶ But for now, groups that supported the push against sanctions celebrated.¶ "This is a major victory, a crucial victory for the American public who don't want to see a war," said Kate Gould of the Friends Committee on National Legislation.¶ "For right now, it looks like it's not going to be brought up," she said but warned "there'll be other efforts to try and sabotage the process."

#### The plan is a huge loss for Obama –Democrats cracking down on war powers makes Obama look weak

Paterno 6/23/2013 (Scott, Writer for Rock the Capital, “Selfish Obama” http://www.rockthecapital.com/06/23/selfish-obama/)

Now we have a Democratic president who wants to make war and does not want to abide by the War Powers Resolution. But rather than truly test the constitutionality of the measure, he is choosing to simply claim that THIS use of US military power is not applicable.¶ This is an extraordinarily selfish act, and one liberals especially should fear. POTUS is setting a precedent that subsequent presidents will be able to use – presidents that the left might not find so “enlightened.” Left as is, President Obama has set a standard where the president can essentially attack anywhere he wants without congressional approval for as long as he wants so long as he does not commit ground forces.¶ That is an extraordinarily selfish act. Why selfish? Because the president is avoiding congress because he fears a rebuke – from his own party, no less. The politically safe way to both claim to be decisive and to not face political defeat at the hands of Democrats – a defeat that would signal White House weakness – is to avoid congress all together. Precedent be damned, there is an election to win after all.

#### Collapse of negotiations causes proliferation in the Middle East –

Kearn 1/19/14 (David, Assistant Prof at St. John's University, The Folly of New Iran Sanctions, The Huffington Post)

More pessimistic observers disagree and take much less comfort in the history of proliferation. The historical record, including the evidence of risky crisis-initiation behavior between the two Superpowers paints a less sanguine picture. More importantly, looking at the modern Middle East, an Iranian bomb would potentially transform regional security dynamics. Given the region's geography and its particular vulnerability to nuclear attack, Israel (an undeclared nuclear power) would be on high-alert for any Iranian move. Other actors like Saudi Arabia may seek to acquire their own nuclear deterrent, leading to further proliferation within a region which is already flush with radical terrorist organizations operating across various troubled states. It seems implausible that Tehran's leaders could ever believe that the delivery of a nuclear weapon on Israeli soil by Hezbollah, rather than missile would somehow go unattributed or unpunished, but the introduction of an Iranian nuclear weapons program into a region that is already so tumultuous conjures particularly grim scenarios.

#### Escalates to full scale war and causes extinction

WIMBUSH ‘7 - Hudson Institute Senior Fellow, Center for Future Security Strategies Director (S. Enders, “The End of Deterrence: A nuclear Iran will change everything.” The Weekley Standard. 1/11/2007, http://www.weeklystandard.com/Utilities/printer\_preview.asp?idArticle=13154&R=162562FD5A)

Iran is fast building its position as the Middle East's political and military hegemon, a position that will be largely unchallengeable once it acquires nuclear weapons. A nuclear Iran will change all of the critical strategic dynamics of this volatile region in ways that threaten the interests of virtually everyone else. The outlines of some of these negative trends are already visible, as other actors adjust their strategies to accommodate what increasingly appears to be the emerging reality of an unpredictable, unstable nuclear power. Iran needn't test a device to shift these dangerous dynamics into high gear; that is already happening. By the time Iran tests, the landscape will have changed dramatically because everyone will have seen it coming. The opportunities nuclear weapons will afford Iran far exceed the prospect of using them to win a military conflict. Nuclear weapons will empower strategies of coercion, intimidation, and denial that go far beyond purely military considerations. Acquiring the bomb as an icon of state power will enhance the legitimacy of Iran's mullahs and make it harder for disgruntled Iranians to oust them. With nuclear weapons, Iran will have gained the ability to deter any direct American threats, as well as the leverage to keep the United States at a distance and to discourage it from helping Iran's regional opponents. Would the United States be in Iraq if Saddam had had a few nuclear weapons and the ability to deliver them on target to much of Europe and all of Israel? Would it even have gone to war in 1991 to liberate Kuwait from Iraqi aggression? Unlikely. Yet Iran is rapidly acquiring just such a capability. If it succeeds, a relatively small nuclear outcast will be able to deter a mature nuclear power. Iran will become a billboard advertising nuclear weapons as the logical asymmetric weapon of choice for nations that wish to confront the United States. It should surprise no one that quiet discussions have already begun in Saudi Arabia, Egypt, Turkey, and elsewhere in the Middle East about the desirability of developing national nuclear capabilities to blunt Iran's anticipated advantage and to offset the perceived decline in America's protective power. This is just the beginning. We should anticipate that proliferation across Eurasia will be broad and swift, creating nightmarish challenges. The diffusion of nuclear know-how is on the verge of becoming impossible to impede. Advanced computation and simulation techniques will eventually make testing unnecessary for some actors, thereby expanding the possibilities for unwelcome surprises and rapid shifts in the security environment. Leakage of nuclear knowledge and technologies from weak states will become commonplace, and new covert supply networks will emerge to fill the gap left by the neutralization of Pakistani proliferator A. Q. Khan. Non-proliferation treaties, never effective in blocking the ambitions of rogues like Iran and North Korea, will be meaningless. Intentional proliferation to state and non-state actors is virtually certain, as newly capable states seek to empower their friends and sympathizers. Iran, with its well known support of Hezbollah, is a particularly good candidate to proliferate nuclear capabilities beyond the control of any state as a way to extend the coercive reach of its own nuclear politics. Arsenals will be small, which sounds reassuring, but in fact it heightens the dangers and risk. New players with just a few weapons, including Iran, will be especially dangerous. Cold War deterrence was based on the belief that an initial strike by an attacker could not destroy all an opponent's nuclear weapons, leaving the adversary with the capacity to strike back in a devastating retaliatory blow. Because it is likely to appear easier to destroy them in a single blow, small arsenals will increase the incentive to strike first in a crisis. Small, emerging nuclear forces could also raise the risk of preventive war, as leaders are tempted to attack before enemy arsenals grow bigger and more secure. Some of the new nuclear actors are less interested in deterrence than in using nuclear weapons to annihilate their enemies. Iran's leadership has spoken of its willingness--in their words--to "martyr" the entire Iranian nation, and it has even expressed the desirability of doing so as a way to accelerate an inevitable, apocalyptic collision between Islam and the West that will result in Islam's final worldwide triumph. Wiping Israel off the map--one of Iran's frequently expressed strategic objectives--even if it results in an Israeli nuclear strike on Iran, may be viewed as an acceptable trade-off. Ideological actors of this kind may be very different from today's nuclear powers who employ nuclear weapons as a deterrent to annihilation. Indeed, some of the new actors may seek to annihilate others and be annihilated, gloriously, in return. What constitutes deterrence in this world? Proponents of new non-proliferation treaties and many European strategists speak of "managing" a nuclear Iran, as if Iran and the new nuclear actors that will emerge in Iran's wake can be easily deterred by getting them to sign documents and by talking nicely to them. This is a lethal naiveté. We have no idea how to deter ideological actors who may even welcome their own annihilation. We do not know what they hold dear enough to be deterred by the threat of its destruction. Our own nuclear arsenal is robust, but it may have no deterrent effect on a nuclear-armed ideological adversary. This is the world Iran is dragging us into. Can they be talked out of it? Maybe. But it is getting very late to slow or reverse the momentum propelling us into this nuclear no-man's land. We should be under no illusion that talk alone--"engagement"--is a solution. Nuclear Iran will prompt the emergence of a world in which nuclear deterrence may evaporate, the likelihood of nuclear use will grow, and where deterrence, once broken, cannot be restored.

### 1NC

#### The United States Federal Government should limit the President’s targeted killing authority as a first resort outside of geographic locations housing active American combat troops except as a response to attack by a non-state actor located within a state that has consented to the United States’ carrying out targeted killing missions within its borders.

#### 3 net benefits

1. Self- defense and jus-ad bellum

#### Obama is justifying drones with self-defense *jus ad bellum* in the squo and violating sovereignty claims- causing aggressive modeling

ACLU et al. ’13 (American Civil Liberties Union Amnesty, International Center for Human Rights & Global Justice, NYU School of Law\* Center for Civilians in Conflict Center for Constitutional Rights Global Justice Clinic, NYU School of Law\* Human Rights First Human Rights Institute, Columbia Law School, Human Rights Watch, Open Society Foundations, “Joint Letter to President Obama on US Drone Strikes and Targeted Killings”, April 11, 2013

Senior officials have claimed that the administration applies international humanitarian law to its targeted killing program.[14] However, unlike international human rights law, the circumstances under which international humanitarian law applies are narrow and exceptional. There must be an armed conflict: hostilities must be between the United Statesanda group that is sufficiently organized and must reach a level of intensity that is distinct from sporadic acts of violence.[15] Outside of an armed conflict, where international human rights law applies, the United States can only target an individual if he poses an imminent threat to life and lethal force is the last resort.[16] A key preliminary issue is thus whether or not the United States is using lethal force as part of hostilities in an armed conflict. Even when the United States uses force as part of hostilities in an armed conflict, there are important legal constraints on its targeting operations. The administration’s statements have raised fundamental concerns about whether it recognizes these constraints and complies with international law. We describe three of these concerns below, although they are not exhaustive. The first two involve concerns pertaining to how the U.S. chooses particular targets; the third involves concerns pertaining to the legality of U.S. use of force in other states. A. The administration’s criteria for determining that it can lawfully engage in lethal targeting of a particular individual or groups of individuals. The administration should ensure that its standards and criteria for determining that it can directly target a particular individual using lethal force are consistent with international law. It should also disclose those standards so that Congress, the public, and other nations can assess them. Because of the impact that U.S. policy will have on global standard setting on the use of drones in targeted killings, it is critically important that U.S. legal standards be fully disclosed. There are troubling indications that the U.S. regards an individual’s affiliation with a group as making him or her lawfully subject to direct attack.[17] This raises serious questions about whether the U.S. is operating in accordance with international law. Under international humanitarian law, applicable in the narrow and exceptional circumstance of armed conflict, the U.S. can directly target only members of the armed forces of an enemy, military objectives, or civilians directly participating in hostilities.[18] U.S. standards should reflect a presumption that unidentified individuals are civilians with protection from direct attack, unless and for such time as they take a direct part in hostilities.[19] Outside of an armed conflict, where international human rights law applies, any use of force must be both necessary and proportionate. Intentional lethal force may only be used where strictly necessary to prevent an imminent threat to life.[20] To assess “imminence” under human rights law and in the context of determining how force can be used outside an armed conflict, the U.S. should look only to human rights law sources. Some administration statements imply that the U.S. government may be attempting to borrow interpretations of “imminence” from the law regarding resort to the use of force (jus ad bellum), which involves a wholly separate inquiry into whether a state can lawfully use force in violation of another state’s sovereignty, to defend itself against an imminent threat (see Section V.C infra). B. The administration’s criteria for determining that a group is an “associated force” of Al Qaeda, and the implications of that determination. The administration has stated that it is in an armed conflict with Al Qaeda and “associated forces,” which it defines as organized armed groups that have “entered the fight alongside al Qaeda” and are “co-belligerent[s] with al Qaeda in hostilities against the United States or its coalition partners.”[21] The administration’s failure to define what specific organizational features or conduct would lead a group to be classified as an associated force raises concerns that this results in an aggressive and indefinitely expansive scope of targeting authority. The administration should disclose the groups it believes to currently constitute associated forces and the criteria for determining whether a group is an associated force. It should set forth the legal basis for considering the United States to be at war with “associated forces” of Al Qaeda that did not participate in the September 11, 2001 terrorist attacks. Moreover, it should clarify who it believes is lawfully targetable with lethal force within such “associated forces.” C. The administration’s concept of imminence, in justifying its resort to the use of force in self-defense. Some of the undersigned groups are concerned that the administration’s statements appear improperly to conflate the question of sovereignty with the question of whether use of force against a particular individual is lawful.[22] International law prohibits the use of force in the territory of other states, except in narrow circumstances, including self-defense and consent. The use of force may be a lawful act of self-defense in response to an armed attack or imminent threat of armed attack. Some scholars believe a state may use force in these circumstances even without a host state’s consent, for so long as the host state is unwilling or unable to take appropriate action. The resort to the use of force in self-defense (jus ad bellum) relates to issues of state sovereignty; any U.S. operations would still need to satisfy the applicable requirements of humanitarian law (jus in bello) and human rights law. Moreover, John Brennan has implied that the “imminent threat” threshold “should be broadened in light of the modern-day capabilities, techniques, and technological innovations of terrorist organizations.”[23] This and other statements by administration officials, and a leaked Department of Justice white paper regarding the legality of targeting a U.S. citizen,[24] imply that the broadening of the term “imminent threat” could expand the situations in which lethal force would be justified based on a perceived danger that may be realized at an undefined point in the future; or based on a group’s generalized intent to use force against the United States, even if the U.S. government is not aware of that group’s planning toward a specific attack against the United States.[25] These interpretations of imminence would be inconsistent with international law regarding resort to the use of force. \*\*\*\*\* As senior administration officials have recognized, U.S. targeted killing policies and practices will set a precedent for other nations, particularly as weaponized drone technology becomes more widely available. Lowering the threshold for the use of force outside armed conflicts could be in breach of international law, set a dangerous precedent, and weaken the U.S. government’s ability to argue for constraints on lethal targeting operations of other states.

#### This self-defense justification for drones is undermining US legitimacy and turns signal of the aff

**Kels ‘12** [Maj. Charles G. Kels is an attorney for the Department of Homeland Security and an individual mobilization augmentee with the U.S. Air Force Office of the Judge Advocate General, “Mixed messages on drone strikes,” July 16, <https://wiki.nps.edu/display/CRUSER/2012/07/16/Mixed+messages+on+drone+strikes>]

Finally, the administration emphasizes its "rigorous standards and process of review ... when considering and authorizing strikes" outside of "hot" war zones. The State Department's Koh has insinuated that this robust vetting process is integral to validating our legitimate self-defense claim in each and every targeted killing operation. This is a somewhat disconcerting line of argument, because it is seemingly at odds with the government's overall assertion that we are in an armed conflict with al-Qaida. Self-defense is a jus ad bellum principle; once we are at war, the appropriate legal standards for applying force are guided by jus in bello. Applying a self-defense analysis to each individual drone strike - as opposed to the time-honored LOAC principles of war fighters - sends mixed signals about whether we really believe we are in an armed conflict.¶ Given that the lawful imperative of U.S. self-defense in World War II was the unconditional surrender of the Axis powers, we would seem to be on firm ground today by strictly maintaining that our right of self-defense, as triggered by the terrorist attacks of 9/11, is geared toward the much narrower goal of degrading or eliminating al-Qaida's capability to launch another deadly attack against the U.S. homeland. Within that framework, we are guided by LOAC in the conduct of hostilities. Indeed, the U.S. government clearly believes that drone warfare is particularly suited to the task of waging an armed conflict with limited goals, because the new technology enables to us to synergize the campaign's means and ends as never before.¶ At least in the context of an American citizen such as al-Awlaki, the attorney general has stated that on top of traditional LOAC principles, the elaborate "kill list" procedure considers the imminence of the threat posed by the individual, as well as the feasibility of capture in lieu of deadly force. Such robust executive deliberation, Holder argues, satisfies the Fifth Amendment's accordance of due process of law; this provides the context in which he famously said that "the Constitution guarantees due process, not judicial process." The attorney general has taken considerable heat for this statement, in large part because an ultra-secretive executive war-making function is an odd tool with which to safeguard constitutional rights. From an armed conflict perspective, however, law professor Jack Goldsmith is surely correct in his estimation that the current U.S. system, as described in the administration's speeches, "goes far beyond any process given to any target in any war in American history."¶ Does It Hold Water?¶ Taken individually, each of these arguments is reasonable, accurate and perhaps even persuasive. Viewed as a whole, however, the U.S. position suffers from a degree of cognitive dissonance which results from our trying to please everyone at once instead of holding firm to basic, time-tested principles. In the end, this scattershot approach risks undermining our legal authority and - ironically - pleasing no one. The problem emanates from attempting to superimpose legal doctrines on top of one another rather than insisting on their own internal logic. The net effect is to make us appear hesitant about the wisdom and legality of our own actions, which merely emboldens those critics whom we can never hope to satisfy anyway - at least not without compromising our own security.¶ To see why it's so crucial for us to speak boldly and plainly, it's important to understand what entities such as the U.N. Human Rights Council and the Red Cross are really trying to do. At base, these noble organizations - reflective of the international human rights law community as a whole, with a decidedly continental European outlook - believe that "sporadic, low-intensity attacks" from nonstate actors "do not rise to the level of armed attack" that would enable us to invoke the right of self-defense as a basis for resorting to force. As the aforementioned U.N. report approvingly remarks, "the legality of a defensive response must be judged in light of each armed attack, rather than by considering occasional, although perhaps successive, armed attacks in the aggregate."¶ In other words, the human rights community rejects our jus ad bellum argument that we are at war with al-Qaida wherever they may be. Moreover, these institutions deny that we are in an armed conflict at all - at least outside of "hot" war zones - both because al-Qaida is not cohesive enough and because the intensity and duration of the havoc it wreaks is insufficiently destructive. Thus, the applicable standard for applying force in each instance is not LOAC; jus in bello is out the window because there is no war. Rather, the peacetime model of human rights law prevails. This clearly is not a position that the U.S. can abide: first, because it eradicates any realistic deterrent for states to rein in terrorist attacks emanating from their territory; and second, because it effectively neuters our considerable national security apparatus as a counterterrorism asset. Simply put, it is an attempt to hem us in by wedding us to a police paradigm rather than a military one.¶ What To Do¶ This context illustrates precisely why the government has to stop straddling the fence and sending mixed messages about what we are doing. We must emphatically state that any complex vetting process undertaken by the president before targeting an individual terrorist is simply a matter of discretionary policy and grand strategy, not legal obligation. The bizarre "bureaucratic ritual" of White House "Terror Tuesday" meetings attended by high-level political advisers - as reported in a recent, much-publicized New York Times article - bears an unsettling resemblance to President Lyndon Johnson's well-documented "Tuesday lunches" reviewing target lists for Vietnam. Although the conflicts and eras clearly differ, the U.S. must not repeat the mistakes of the Rolling Thunder campaign by allowing overly restrictive and centralized targeting rules to degrade the efficient and lawful application of our military might.

#### Expanded *jus ad bellum* collapses global firebreak on use-of-force- US signal

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 9-19-13, mss]

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

#### Second- unable or unwilling

#### Unable or Unwilling violates internal link and causes blowback among allies and enemies- it is not an international precedent the way the US is using it and

Heller ’12 (Kevin Jon Heller, Associate Professor & Reader at Melbourne Law School, where he teaches international criminal law and criminal law. He also serves as Project Director for International Criminal Law at the Asia Pacific Centre for Military Law, a joint project of Melbourne Law School and the Australian Defence Force. He holds a PhD in law from Leiden University, a JD with distinction from Stanford Law School, an MA with honours in literature from Duke University, and an MA and BA, both with honours, in sociology from the New School for Social Research. Kevin’s academic writing has appeared in a variety of journals, including the European Journal of International Law, the American Journal of International Law, the Journal of International Criminal Justice, the Harvard International Law Journal, the Michigan Law Review, the Leiden Journal of International Law, the Journal of Criminal Law & Criminology, Criminal Law Forum, and the Georgetown International Environmental Law Review. His book The Nuremberg Military Tribunals and the Origins of International Criminal Law was published by Oxford University Press in June 2011; Stanford University Press published his edited book (with Markus Dubber) The Handbook of Comparative Criminal Law in February 2011; and he is currently writing a book entitled A Geneology of International Criminal Law, which will be published by Oxford University Press in 2015. He is a permanent member of the international-law blog Opinio Juris. On the practical side, Kevin has been involved in the International Criminal Court’s negotiations over the crime of aggression, served as Human Rights Watch’s external legal advisor on the trial of Saddam Hussein, and served from December 2008 until February 2011 as one of Radovan Karadzic's formally-appointed legal associates. He also regularly conducts training in IHL on behalf of Professionals in Humanitarian Assistance and Protection, a Brussels-based NGO, in association with the Harvard Program on Conflict Research, Opinio Juris “Eric Posner Rejects the “Unwilling or Unable” Test!”, <http://opiniojuris.org/2012/10/08/eric-posner-rejects-the-unwilling-or-unable-test/>, October 8, 2012)

Julian beat me to Eric Posner’s new Slate article on the legality of drone strikes. I don’t agree with everything in it, but I think it’s notable that Posner — echoing his sometime co-author Jack Goldsmith — rejects the idea that international law permits self-defense against a non-state actor whenever a state is “unable or unwilling” to prevent the NSA from using its territory as a base for attacks. That rejection emerges clearly in the following passages: The U.N. Charter permits countries to use military force abroad only with the approval of the U.N. Security Council, in self-defense, or with the permission of the country in which military force is to be used. The U.N. Security Council never authorized the drone war in Pakistan. Self-defense, traditionally defined to mean the use of force against an “imminent” armed attack by a nation-state, does not apply either, because no one thinks that Pakistan plans to invade the United States. That leaves consent as the only possible legal theory. In other cases, including current drone operations in Pakistan, the United States has invoked a new idea of the “unable or unwilling” country, one that outside powers can invade because that country cannot prevent terrorists located on its territory from launching attacks across its borders. The “coerced consent” doctrine, the “unable and unwilling” doctrine, and the exception for humanitarian intervention all whittle away at whatever part of the law on United Nations use of force blocks U.S. goals. If the United States ever decides to invade Iran in order to prevent it from acquiring nuclear weapons, expect a new doctrine to take shape, perhaps one that emphasizes the unique dangers of nuclear weapons and Iran’s declared hostility toward a nearby country. I couldn’t agree more with Posner’s rejection of the “unwilling or unable” test. I’ve been watching with equal parts bemusement and concern as that standard spreads in the United States — with little or no effort on the part of those who defend it, of course, to identify the (non-US) opinio juris and state practice that ostensibly support it. The “unwilling or unable” test has even found its way into the Stanford/NYU report on drone strikes in Pakistan, which is otherwise so critical of US policy. Here is one of its statements about the jus ad bellum: Further, it must be shown that the host state is “unwilling or unable to take [the appropriate steps against the non-state group].” Pakistan has at times failed to act decisively against non-state groups, raising questions about its ability and willingness to take necessary steps. The quoted language, not surprisingly, is from Ashley Deeks’ article on the “unwilling or unable” test — an article that, as I have pointed out before, not only fails to establish that the test has achieved customary status, but actually admits (in a footnote) that it has not done so: “I have found no cases in which states clearly assert that they follow the test out of a sense of legal obligation (i.e., the opinio juris aspect of custom), nor have I located cases in which states have rejected the test.? Even if one concludes that the rule does not rise to the level of custom, however, the rule makes frequent appearances in state practice and therefore is the appropriate starting point from which to determine how the norm should develop”. That footnote, of course, is never mentioned in articles and reports that uncritically adopt the “unwilling or unable” test — thereby further facilitating its spread. I’d like to think that Posner’s rejection of the test may help stem the tide. Unfortunately, as Posner himself explains, nothing — especially not international law — gets in the way of legal theories that enhance the US’s ability to use force abroad.

#### Let’s be clear – the difference between the plan and the counterplan is that they statutorily codify executive branch review policy to strikes – we do not do those --- that means any permutation still allows the executive to determine what to do and the perm do counterplan severs out of that mechanism

#### That solves and is a *key* question

**Lewis ’12** [Michael W., Associate Professor of Law at Ohio Northern University Pettit College of Law, “Drones and the Boundaries of the Battlefield,” <http://www.tilj.org/content/journal/47/num2/Lewis293.pdf>]

\*\*\*IHL = International Humanitarian Law\*\*\*

The legal determination of what constitutes “the battlefield” has particular ¶ significance for the use of drones, particularly armed drones. This is because “the battlefield” is used to effectively define the scope of IHL’s application.31 In situations ¶ outside the scope of IHL, international human rights law (IHRL)32 applies. For the purposes of this Article, the salient difference between these two bodies of law lies in ¶ their disparate provisions regarding the use of lethal force. IHL allows for lethal ¶ force to be employed based upon the status of the target.33 A member of the enemy’s ¶ forces may be targeted with lethal force based purely on his status as a member of ¶ those forces.34 That individual does not have to pose a current threat to friendly ¶ forces or civilians at the time of targeting.35 In contrast, IHRL permits lethal force ¶ only after a showing of dangerousness.36 Under IHRL (the law enforcement model), ¶ lethal force may only be employed if the individual poses an imminent threat to law ¶ enforcement officers attempting arrest or to other individuals.37 Further, IHRL ¶ requires that an opportunity to surrender be offered before lethal force is ¶ employed.38¶ Because drones are incapable of offering surrender before utilizing lethal force, ¶ armed drones may not be legally employed in situations governed by IHRL.39 This ¶ absolute prohibition does not apply to other forces commonly used in ¶ counterinsurgency or counterterrorism operations, such as special forces units, ¶ because it is possible for them to operate within the parameters of IHRL. Although ¶ the use of special forces in law enforcement operations has the potential to be legally ¶ problematic,40 appropriately clear and restrictive rules of engagement that include the ¶ requirement of a surrender offer can allow special forces to operate under an IHRL ¶ regime.41 Similarly, almost any other part of the armed forces, from regular army ¶ units to military police to Coast Guard and naval forces, can adapt their operating ¶ procedures to comply with IHRL’s requirements. Armed drones cannot. As a result, the debate about what constitutes the legal boundaries of the ¶ battlefield has a particularly significant impact on the use and development of ¶ drones. Because their operational limitations prevent drones from being employed ¶ outside of the permissive environments found in counterterrorism or ¶ counterinsurgency operations, their usefulness as a weapons system is strongly tied to the scope of IHL’s application. If the strict geographic approach to defining IHL’s ¶ scope (described in more detail below) is accepted, then drone use would be ¶ considered illegal everywhere outside Afghanistan.

#### The CP is competitive and net-beneficial: restricting to SPATIAL terms RATHER THAN TERRITORIAL is key to minimize global conflict by respecting international armed conflict norms rather than fight it endlessly under USFG discretion --- the aff violates international law and triggers ALL of their impacts

BLANK 2010, Director, International Humanitarian Law Clinic, Emory Law School, Laurie R., 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

In an age of conflict where new terminologies abound, the “zone of combat” may seem to be simply another descriptive term that offers a clearer representation of real life than its antecedent. Today’s conflicts are not fought out in the open with artillery batteries and scores of infantrymen lined up in trenches. Rather, when soldiers fight in densely populated urban environments, drones track suspected terrorists across borders, and terrorists attempt to detonate bombs in subways, major tourist destinations, and other civilian locales, the battlefield does indeed seem to be a term from days gone by. In a purely descriptive sense, therefore, “zone of combat” may well have great value.

Like many other now-common terms, however, such as enemy combatant, the concept of the “zone of combat” also raises important and interesting legal questions. The Bush administration argued that “the battlefield in the global war on terror extends to every corner of the US itself”7—including locations where suspected al Qaeda sleeper agents were awaiting instructions but not yet carrying out attacks. Interestingly, although the courts in response have generally accepted the concept of an enemy combatant and detention related to that status, they have taken a limited view of the zone of combat in the present struggle.8

In cases regarding detainees at Guantanamo Bay or the Bagram Theater Internment Facility at Bagram Airfield and others arrested in the U.S., the courts have consistently referred to the U.S. as “outside a zone of combat,”9 “distant from a zone of combat,”10 or not within any “active [or formal] theater of war,”11 even while recognizing the novel geographic nature of the conflict. As one court noted, comparing the arrest of Yaser Hamdi— captured after a firefight in Afghanistan—to Jose Padilla—captured upon disembarking a plane at Chicago’s O’Hare airport—would be akin to comparing apples and oranges, showing that the court saw a distinct difference between the characterization of the U.S. and that of Afghanistan.12 Even more recently, in Al Maqaleh v. Gates, both the D.C. District Court and the Court of Appeals for the D.C. Circuit distinguished between Afghanistan, “a theater of active military combat,”13 and other areas outside Afghanistan (including the U.S.), which are described as “far removed from any battlefield.”14

Much has been and will continue to be written about the acceptable responses to terrorist attacks, the appropriate law to be applied to persons within the combat zone and/or suspected of involvement in such attacks, and related issues. One threshold set of questions involves the very nature of the struggle against terrorism, whether in the form of al Qaeda or other groups— it could be a law enforcement action, an armed conflict, a hybrid of the two, or perhaps even something else entirely.15 Scholars and practitioners will continue to debate these questions for quite some time, given the complexity of both the facts on the ground and the interaction of the relevant legal regimes.

This Article will focus on a related question, but one that has not yet been asked: where can we conduct an armed conflict against terrorist groups? Questions of whether the law of armed conflict applies to conflicts with al Qaeda or other terrorist groups are beyond the scope of this Article. Rather, accepting that the United States views itself as engaged “in an armed conflict with al-Qaeda, as well as the Taliban and associated forces,”16 this Article will focus on two hitherto unexamined issues—when and for how long is an area part of the zone of combat, and how far does this designation extend geographically. Although questions of applicable law have been central to legal and policy discussions for the past several years, these issues have remained below the surface and in the shadows. These questions of where and when with regard to the zone of combat are critical foundational questions that bear directly on the applicable law within (and without) the zone of combat.

Part I sets forth the traditional conception of the battlefield or zone of combat operations, in both the law of neutrality and the law of armed conflict. The law of neutrality defines the relationship between states engaged in armed conflict and those not participating.17 The Law of Armed Conflict (LOAC) governs the conduct of both states and individuals during armed conflict and seeks to minimize suffering in war by protecting persons not participating in hostilities and by restricting the means and methods of warfare. 18 These frameworks can demonstrate both how these legal regimes the zone of combat and where the traditional parameters fall short.

Part II then examines the nature of the zone of combat in contemporary conflict and counterterrorism operations to illustrate why the geographic and temporal scope of the battlefield is a critical issue in such conflicts. Because the traditional frameworks fall short in delineating the parameters of the zone of combat, we need to analyze how to better define the temporal and geographic scope of the conflict. For example, if an al Qaeda member is walking down the street in Vancouver, Oslo, or Santiago, is that area necessarily—or not—part of the zone of combat? In Part III, general principles of LOAC and concepts drawn from LOAC’s analysis of noninternational armed conflict suggest three primary factors to consider in delineating the zone of combat: the nature of the hostilities, the government response, and the territorial connections or attachments of the relevant terrorist group or actors.

Using these factors, this Article proposes parameters for conceptualizing the zone of combat, drawing on traditional conceptions of the battlefield and contemporary understandings of armed conflict and operational counterterrorism. By understanding where and when the relevant legal constructs are applicable, we will have a better understanding of the framework within which operational decisions must be made. The policy implications of different legal approaches play an important role, given the ramifications that varying parameters of the zone of combat can have for both national security and individual liberty interests.

II. TRADITIONAL BATTLEFIELD PARAMETERS

Naturally limited—and triggered—by the existence of an armed conflict, LOAC provides guidance for understanding the temporal and geographic scope of armed conflict. Indeed, “[t]he laws of war operate within temporal and geographic realms; considerable attention is given to when it can be said that an ‘armed conflict’ has arisen and ended, and also to where it is that protected persons are located . . . .”19 The temporal and geographic scope, in turn, provides parameters for where and when to apply LOAC’s rights and obligations to persons within that area. LOAC thus offers a paradigm for understanding the parameters of the zone of combat that other legal frameworks—such as human rights law or domestic criminal law—cannot necessarily offer because they do not have any comparable framework for determining applicability.

A. Belligerent Territory and Neutral Territory

Although in any international conflict there will be many states that remain neutral, the nature of an interconnected, globalized world is such that neutrals cannot simply turn a blind eye to a conflict between two or more other countries. Neutrality thus signals the dividing line between the application of the laws of neutrality and the laws of war.20 It thus provides an uncontestable framework for where and when hostilities can be conducted—the very questions that remain so difficult to answer in today’s counterterrorism operations and conflicts with non-state actors and terrorist groups.

Traditionally, states are either belligerents or neutrals during an armed conflict. As Oppenheim explained, “Such States as do not take part in a war between other States are neutrals.”21 The law of neutrality “defines the relationship under international law between states engaged in an armed conflict and those that are not participating in that armed conflict.”22 Based on the fundamental principle that neutral territory is inviolable,23 neutrality law seeks to (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.24 Neutrality law thus 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.25 In a conflict involving many states, such as World War II, for example, the battlefield—or the areas where states could conduct hostilities—certainly extended across the globe, but did not include neutral territory.

The Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land of 1907 (Hague V) sets forth neutrality law’s basic principles.26 Beyond upholding the inviolability of neutral territory, Hague V prohibits the movement of belligerent troops or materiel across neutral territory27 and the use of military installations or communications facilities on neutral territory.28 In addition, belligerent states may not attack targets in neutral territory, unless, as stated below, the neutral state fails to ensure its territory is not used for belligerent purposes.29

For its part, a neutral power must not provide, or enable the provision of, military supplies to any belligerent,30 nor allow its territory to be used for military operations.31 Indeed, it may use force—as necessary and within its capability—to prevent belligerent powers from using its territory for warmaking purposes.32 To the extent a neutral state is unable or unwilling to prevent the use of its territory for such purposes, “a belligerent state may become entitled to use force in self-defence against enemy forces operating from the territory of that neutral state,”33 based on the ordinary rules governing the resort to force

B. LOAC’s Geographic and Temporal Parameters

Beyond the belligerent-neutral paradigm, LOAC provides an alternative way to identify temporal and spatial boundaries or, at a minimum, to highlight useful criteria for doing so. Although the Geneva Conventions do not specifically delineate the geographic boundaries of conflict, both Common Article 2 and Common Article 3 take a geographic approach in some way. Common Article 2, which speaks of “all cases of declared war or . . . any other armed conflict which may arise between two or more of the High Contracting Parties,”34 brings the law of neutrality and the division between belligerents and neutrals directly into play. In the event of such a conflict, the theater of war—to use one descriptive term—would be anywhere the forces of two belligerents come into contact or are otherwise using force, such as to attack civilians, outside neutral territory. For noninternational armed conflicts, Common Article 3 refers to conflict “occurring in the territory of one of the High Contracting Parties,”35 suggesting that, at a minimum, the territory of the state in which the conflict is taking place forms part of the geographic area of conflict.

The Geneva Conventions do provide some guidance regarding the temporal scope of armed conflict, referring to the “cessation of active hostilities”36 and the “general close of military operations.”37 When the Conventions were drafted, the general close of military operations was considered to be “when the last shot has been fired.”38 The Commentary to the Fourth Geneva Convention offers further detail, explaining:

When the struggle takes place between two States the date of the close of hostilities is fairly easy to decide: it will depend either on an armistice, a capitulation or simply on debellatio. On the other hand, when there are several States on one or both of the sides, the question is harder to settle. It must be agreed that in most cases the general close of military operations will be the final end of all fighting between all those concerned.39

This approach is based, above all, on a practical understanding of the facts on the ground and not on the formalities of armistice, peace treaty or other legal instrument.40 One final issue relates to the frequency or sustained nature of the violence. Although the International Criminal Tribunal for the Former Yugoslavia (ICTY) speaks of “protracted armed violence”41 in defining noninternational armed conflict in Prosecutor v. Tadic, hostilities need not be continuous to qualify as armed conflict or for LOAC to apply constantly throughout the conflict.42 Beyond this limited guidance from the conventions and the commentaries, we can look to international jurisprudence for some additional understanding of the geographic and temporal parameters of armed conflict. In Tadic, the ICTY stated that LOAC mandates a broad geographic and temporal scope for armed conflict.43 Referring to various provisions in the Geneva Conventions demonstrating that their protections extend beyond the actual fighting, the Tadic Appeals Chamber declared that in both internal and international armed conflicts, the temporal and geographic limits range beyond the exact time and place of hostilities.44 The Tribunal held that:

[i]nternational humanitarian law applies from the initiation of . . . armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.45

As the Tribunal’s examination of relevant provisions in the Geneva Conventions demonstrates, the purpose of such a broad scope is to ensure the maximum protection for all persons engaged in or caught up in the conflict.

As an example, Common Article 3 refers to persons “taking no active part¶ in the hostilities,”46 including members of armed forces who have laid down¶ their arms and those who are hors de combat, suggesting that the protections¶ in that article must apply outside the limited locations of actual combat¶ operations.47 Provisions in the Third and Fourth Geneva Conventions¶ relating to the protection of prisoners of war and civilians, respectively,¶ demonstrate that the law applies anywhere within the territory of the parties¶ to the conflict, not simply where hostilities are taking place.48 Similarly,¶ Article 5 of the First Geneva Convention provides that “[f]or the protected¶ persons who have fallen into the hands of the enemy, the present Convention¶ shall apply until their final repatriation.”49 These protections mandate a¶ broad temporal scope as well to ensure that such persons are protected¶ whenever they are in the hands of the enemy party, not just during combat¶ operations. Thus, there need not be actual fighting taking place at all times¶ in every area for such areas to be part of the conflict.50 The next step then is¶ to examine whether this framework can help in determining the boundaries¶ of the zone of combat in today’s conflicts.

III. APPLYING GEOGRAPHIC AND TEMPORAL PARAMETERS TO¶ CONTEMPORARY CONFLICTS

This Article’s central question—where is the battlefield in the conflict with terrorists and how long does it remain the battlefield—is a fundamental and critical component of understanding the parameters of state action in combating terrorism. In traditional conflicts, military operations could take place beyond the territory of any neutral party.51 Today’s conflicts, however, pit states against non-state entities; actors and groups who 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 notwartime[, 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.52

Once we are outside the traditional belligerent-neutral framework that defined the traditional battlespace, determining the parameters of the contemporary battlefield or zone of combat becomes significantly more complicated. In addition, while human rights law—applicable in peacetime or wartime—treats the use of force in response to a threat as a measure of last resort,53 LOAC contemplates—indeed authorizes—the use of force as a first resort against legitimate targets.54 Thus, above all else, when leaders invoke the battlefield or the zone of combat, they seek to harness the authority to use force as a first resort against those identified as the enemy (terrorists, insurgents, etc.). For this reason alone, it is critical to understand both the parameters of the zone of combat and the ramifications of identifying particular areas as falling within that zone of combat.

A. Contemporary Combat Scenarios: Describing the Zone of Combat

At present, the overwhelming proportion of U.S. military forces are deployed to Afghanistan and Iraq and almost all actual combat operations are taking place in those two locales. There is little doubt that Afghanistan and Iraq form part of the zone of combat and a corresponding recognition that the entire territory of each country forms part of that zone of combat.55 The “global war on terror” is not limited to Afghanistan and Iraq, however. Identifying when other areas become a zone of combat—or form part of a broader zone of combat—as a result of terrorist attacks or subsequent military operations proves challenging and has significant legal and policy ramifications.

1. Terrorist Activities and Attacks

A look at major terrorist attacks in the past nine years shows a wide geographic scope and an obvious focus on major metropolitan areas where civilian casualties, and therefore impact, are maximized. Europe, Africa, Asia—the attacks span the globe and, for many, lend credence to the label “global war on terror.” Among countless others in a range of countries, the following are some of the major attacks in the past decade. On October 12, 2002, an Indonesian terrorist group bombed a Bali discotheque popular with Western tourists, killing over 200 people.56 The March 2004 Madrid train bombing killed 191 people and wounded nearly two thousand, the worst terror attack on European soil since the 1988 Lockerbie bombing.57 On July 7, 2005, three suicide bombers hit the London subway and a bomb exploded on a double-decker bus, killing fifty-two and wounding more than seven hundred.58 Mumbai has been the site of two horrific attacks in the past four years, starting with the July 2006 bombings of the Suburban Railway that killed 209 and wounded more than seven hundred.59 Two years later, armed gunmen opened fire at eight sites in a coordinated attack, including a train station, Western hotels, a hospital, a Chabad house, restaurants, and a police station.60

Al Qaeda and other terrorist groups—working alone or in concert, affiliated or independent—have also attempted attacks on U.S. soil or on aircraft traveling to the U.S. In December 2001, Richard Reid, now known as the shoe bomber, tried to detonate an explosive in his shoe on an American Airlines flight from the United Kingdom to Boston.61 A few years later, in August 2006, authorities in the United Kingdom arrested eight men plotting to use liquid explosives to blow up seven airliners en route from London’s Heathrow Airport to the United States.62 Finally, on Christmas Day 2009, Umar Farouk Abdulmutallab attempted to detonate explosives on a Northwest Airlines flight to Detroit.63 U.S. authorities have disrupted and foiled numerous other plots within the United States as well and some attempted attacks have simply failed. Most recently, Faisal Shahzad tried to detonate a car bomb in Times Square in New York City on May 1, 2010.64 Shahzad was subsequently arrested as he tried to leave the country two days later and pleaded guilty in June 2010.65 Other attempts include Jose Padilla’s dirty bomb, the planned attack on the New York City tunnels, and newly revealed plots for twin transit attacks in New York and London.66

In recent years, al Qaeda has begun to retreat from Afghanistan and has regrouped and reorganized in Pakistan’s Northwest Frontier Province and Swat Valley. It has also formed offshoots in Iraq, known as al Qaeda in Mesopotamia, largely ousted by U.S. and allied forces.67 Outside these areas, however, reports suggest that al Qaeda operates and finds sanctuary in a variety of other countries, in particular Yemen, Somalia and the Philippines.68 Al Qaeda has long recruited in or drawn adherents from Yemen and, in recent years, “a resurgent Yemen-based al Qaeda wing that has been trying to strengthen its foothold in the Arabian peninsula state” has made its home in Maarib Province.69 By 2009, al Qaeda leaders from Saudi Arabia had merged with existing al Qaeda forces in Yemen to form Al Qaeda in the Arabian Peninsula, in essence creating a regional franchise.70

Al Qaeda’s influence and foothold in Somalia have grown since Ethiopia’s invasion to overthrow the Islamic Courts Union and install the Transitional Federal Government.71 “Foreign fighters trained in Afghanistan are gaining influence inside Somalia's al-Shabab militia, fueling a radical Islamist insurgency with ties to Osama bin Laden, according to Somali intelligence officials, former al-Shabab fighters and analysts.”72 Finally, al Qaeda has long had a presence in the Philippines, although more as a facilitator for the local insurgent groups, Jemaah Islamiyah and the Abu Sayyaf Group, than as an operator.73

2. U.S. Use of Military Force Outside of Afghanistan and Iraq

For the past few years, the U.S. has engaged in target-specific drone air strikes against Taliban militants in Pakistan. A large proportion of these drone strikes target leaders and members of Tehrik-i-Taliban Pakistan, an umbrella group of what were once locally oriented tribal militias involved in separate conflicts with the state of Pakistan.74 For its part, Tehrik-i-Taliban Pakistan has attacked NATO convoys passing through Pakistan and killed U.S. military advisors in attacks inside Pakistan.75 It launched a “fedayeen style” attack on the U.S. consulate in Peshawar, Pakistan involving both car bombs and an assault team armed with rocket launchers and automatic weapons and likely participated in the suicide bomb attack on Forward Operating Base Chapman that killed seven CIA employees.76

The U.S. launched what is believed to be its first drone attack inside Pakistan in 2004, targeting and killing Nek Muhammad, the South Waziristan tribal leader.77 The U.S. then launched a total of nine drone strikes in Pakistan through the end of 2007.78 Beginning in 2008, the U.S. dramatically increased its use of drones in Pakistan, launching thirty-four attacks and killing over one hundred militants.79 In 2009, the U.S. launched fifty-three strikes—a rate of one drone strike per week—and more than double that number in 2010.80

Since 2001, the U.S. has also targeted al Qaeda leaders and other terrorists in other countries on multiple occasions. Given al Qaeda’s penchant for seeking sanctuary in Yemen, that country has been a frequent locale of such attacks, including the first use of an armed drone outside Afghanistan after September 11th.81 In that attack, a CIA drone launched a Hellfire missile and killed six suspected al Qaeda members traveling in a car in southern Yemen, including the man believed responsible for the bombing of the U.S.S. Cole.82 More recently, the U.S. has deployed drones to target Anwar al-Aulaqi, the al Qaeda terrorist suspected of planning the failed attack against Britain’s ambassador to Yemen in April and allegedly involved in the Fort Hood shooting incident and the Christmas Day bomber’s attempted attack.83

In Somalia, as early as 2007, the U.S. launched attacks against al Qaeda members suspected of involvement in the 1998 Embassy bombings.84 After multiple attempts to target Saleh Ali Saleh Nabhan, the al Qaeda militant suspected of masterminding the 2002 attack on the Paradise Hotel in Mombasa, Kenya, the United States launched a commando raid in broad daylight, killing Nabhan and at least eight others.85 Finally, in an attack related to the war in Iraq, U.S. Special Forces killed eight so-called foreign fighters in Syria in October 2008.86

B. Traditional LOAC Frameworks and Today’s Conflicts

Contemporary conflicts pitting states against terrorist groups, as in the situations described above, significantly challenge traditional frameworks for understanding the parameters of the zone of combat. Simply superimposing the approach applicable in traditional armed conflict onto conflicts with terrorist groups does not provide any means for distinguishing between different conceptions of the battlefield. Just a few weeks after the September 11th attacks, President George W. Bush laid the foundation for the notion of the whole world as a battlefield when he pronounced that “ ‘[o]ur war on terror will be much broader than the battlefields and beachheads of the past. The war will be fought wherever terrorists hide, or run, or plan.’ ”87 When coupled with statements by other high-ranking administration officials,88 the President’s view of a global battlefield, in which the whole world is a war zone, became clear. U.S. resort to military force in numerous countries around the world has borne out this theory over the past nine years since the September 11th attacks. Indeed, in 2004, then-Secretary of Defense Donald Rumsfeld signed a secret order giving the U.S. military authority to strike at al Qaeda targets anywhere in the world.89 In such a global war, the battlefield knows no geographic or temporal boundaries, and the U.S. would be entitled to kill its enemies wherever and whenever it finds them.90

The primary counter to this notion of a global battlefield is founded on traditional conceptions of armed conflict, according to which “[a]rmed conflicts inevitably have a limited and identifiable territorial or spatial dimension because human beings who participate in armed conflict require territory in which to carry out intense, protracted, armed exchanges.”91 As the discussion of the law of neutrality above demonstrates, spatial is a more accurate description than territorial, because territory is only one component of where combat operations take place. Proponents of this limited conception of the battlefield argue that terrorist attacks do not constitute protracted exchanges—one element necessary to finding the existence of a non-international armed conflict—and therefore action against terrorists, even targeted strikes with military force, do not create a combat zone or battlefield. Thus, while the U.S. may be engaged in an armed conflict with al Qaeda, these scholars believe that such conflict only takes place in limited, defined geographic areas—areas that would thus constitute the battlefield or zone of combat—such as Afghanistan, Iraq and the border areas of Pakistan.92 However, without any explanation beyond these conclusory statements regarding why the conflict, and thus the zone of combat, is limited to these geographic areas, this view offers no more justified conception of the zone of combat than the global battlefield theory.

U.S. practice, where decisions to use force are based on belligerent status or conduct rather than any adherence to geographic or spatial concepts, does indeed compel the conclusion that the U.S. views the whole world as a battlefield. And yet, at the same time, the U.S. also seems to view certain areas as outside the scope of appropriate belligerent activity, most likely based on a conception of what the host nation can or will do to address a particular threat. The co-existence of these two themes suggests that delineating the lines between battlefield and non-battlefield is based more on arbitrary decision-making than on a process stemming from traditional lawbased conceptions of the theater of hostilities.

The temporal scope of the conflict with al Qaeda is equally, if not more, perplexing. Terrorism is a phenomenon, not an enemy party; it is thus more likely to be managed over time than defeated outright.93 Terrorist groups morph, splinter, and reconfigure, making it difficult to determine if, let alone when, they have been defeated. Even though some U.S. federal courts have spoken of a time “when operations against al Qaeda fighters end, or the operational capacity of al Qaeda is effectively destroyed,”94 counterterrorism does not involve cease-fires, peaceful settlements, or armistices. The notions of “cessation of active hostilities” and “general close of military operations” thus prove difficult to apply and can lead to the conclusion that the conflict with terrorist groups will continue ad infinitum. As one Bush administration official explained, terrorist attacks such as “the Bali bombing, terrorist attacks in the Philippines, Kuwait, and elsewhere—only underscore the fact that this conflict remains ongoing and will continue for the foreseeable future.”95 Traditional notions of repatriation at the end of hostilities may offer helpful guidance in a geographically confined conflict with a non-state actor or terrorist group, such as the Tamil Tigers in Sri Lanka,96 but the diffuse geographic nature of most conflicts with terrorist groups generally makes traditional temporal concepts unlikely to apply effectively to such conflicts.

#### That codification key to solve military tech spillover, great power war and extinction

**Weston 91** – Chair of the International and Comparative Law Program @ The University of Iowa [Weston, Burns H., “Logic and Utility of a Lawful United States Foreign Policy,” Transnational Law & Contemporary Problems, Vol. 1, Issue 1 (Spring 1991), pp. 1-14

George Will and others like him are right, of course, that the rhetoric of international law can be used, like a double-edged sword, against the United States as well as by it. They are wrong, however, to bemoan this fact-unless, of course, they bemoan the nature of law itself, a process of legitimized politics that, in Benjamin Cardozo's unforgettable words, seeks the "reconciliation of the irreconcilable," the "merger of antitheses," the "synthesis of opposites," in "one unending paradox."12 Though the "real world" often is not a very nice place and though for this reason it sometimes may seem that the responsible pursuit of national interests requires realpolitik policies and practices, a foreign policy that corresponds with what most people have in mind when they think of "The Rule of Law" (i.e., notions of equality, mutuality, reciprocity, cooperation, and third-party procedure) is more likely to find itself on the winning side of most political and strategic battles than one that does not. Legality, like honesty, is generally the best policy. It enhances power used under its aegis. In the pages following, I suggest six concrete reasons why the United States-indeed, all nations- should take international law seriously, even¶ when others do not. Viewed in isolation, they may not persuade the hardened realpolitiker. Viewed together, however, they should. 1. Respect for International Law Assists Human Survival To begin with, it is not healthy for people (and for other living things) to resist principles of international law in a world that is bristling with more than 50,000 nuclear weapons and other greatly expanded technologies of war and mass destruction. If the history of the last half century has taught us anything, it is that our present militarily competitive international order cannot be expected to prevent large-scale war for very long (e.g.,Kuwait). There is, therefore, little hope for genuine security, national or global, without a strengthening of the legal foundations, bilateral and multilateral, for the nonmilitary-preferably democratic-resolution of international disputes. These would include, but not be limited to, the improvement of U.N. peacekeeping and peacemaking opportunities and capabilities, and the improvement of both national and international opportunities and capabilities for legal challenges to coercive foreign policies. 13 Even if other countries do not always follow suit, surely our country and our children's future will be better served if we strive hard to build as peaceful and just a world society as we can, and while we still have the chance. 14 The Soviet Union, home to more than 25,000 nuclear weapons and many newly-awakened nationalisms, faces a world history that demonstrates little support for the proposition that collapsing empires fade quietly. And in our increasingly "high-tech" world, with military research and development fast at work on atomic guns, particle-beam cannons, and other space age deviltries that divert attention from the perils of nuclear proliferation, many regimes in Western Asia and elsewhere have been acquiring nuclear and other weapons of mass destruction-and the means to deliver them, with frightening ease and speed, to almost anywhere on earth. In sum, it is respect (or lack of respect) for international law that, in the end, will determine the fate of the Earth. As the late Bill Bishop counseled pithily over two decades ago, "under present conditions all [States]¶ need international law in order to continue to exist together on this planet."15 Rededication to the world rule of law and cooperation in this Age of Nuclear Anxiety is not a matter of choice. It is, quite simply, a matter of survival. 2. Respect for International Law Enhances International Stability Living as we do in the twilight years of the global Middle Ages, characterized by more than 160 separate fiefdoms, each with a monopoly control over the military instrument and each only barely accountable in any formal sense either to each other or to the larger arena in which each operates, it is easy to be seduced by the popular claim that ours is an anarchical world. Such an outlook does not, however, comport with reality. Every hour of every day, ships ply the sea, planes pierce the clouds, and artificial satellites probe outer space. Every hour of every day, communications are transmitted, goods and services traded, and people andthings transported from one country to another. Every hour of every day, transactions are negotiated, resources exploited, and institutions established across national and equivalent frontiers. And in all these respects, the many processes of authoritative and controlling decision that help to regulate such endeavors-what we call international law-are observed rather well on the whole. On the other hand, when States bend, twist, or otherwise show disrespect for this ordering force to suit their special interests, international law, because it is an essentially voluntarist process of decision that is seriously lacking in centralized command and enforcement structures, quickly loses its otherwise stabilizing influence. The kidnapping of sixty-two Americans at the U.S. Embassy in Teheran in 1979, for example, demonstrates well the fundamental instability that can flow from a failure or refusal to abide by international law. Without, in this instance, a commitment to the basic rules of diplomatic protection, diplomacy ceased to exist and respectable discourse became impossible. Without a commitment to the world rule of law there could be no assurance of inter-governmental stability. Of course, States-especially the major powers-are perfectly capable of unilaterally resisting the doctrines, principles, and rules of international law without necessarily feeling directly the destabilizing impact that their noncompliance ultimately has on the wider structure of international law and order itself. The probability of being formally punished for violating international law is usually so slim that foreign policy strategists commonly give little or no weight to the cost of decision-making marked by dubious legality. However, the increasingly interdependent and interpenetrating character of today's world is of such magnitude and complexity that no nation, least of all the United States, can sensibly afford to insist upon its own independence of action without simultaneously threatening its own ultimate good and the ultimate good of others, and potentially in very fundamental ways. Though not understood by most Americans, it is in fact the United States "which stands to lose the most in a state of world anarchy." 16 Because the United States and its citizens have such wide-ranging and far-flung international interests, we urgently need a stable, predictable environment of international legal rules and procedures that can help to secure those interests on a cooperative basis worldwide. It is not in the first instance our freedom of action that should be our concern when we refuse to commit to the world rule of law, but rather, the stability of our world public order itself. 3. Respect for International Law Advances Our Geopolitical Interests Allowing principles of international law and multilateral cooperation to inform our foreign policy also serves our geopolitical interests, especially our long-term geopolitical interests. For example, in contrast to our recent hegemonic warmongering in Grenada, Nicaragua, and Panama, a record of faithful adherence to the principle of nonintervention and to the right to self-determination would have helped, politically at least, to neutralize the Israelis in southern Lebanon and the Occupied Territories, the Soviets in the Baltics, and the Iraqis in Kuwait. As the late L.F.E. Goldie observed a number of years ago: "Obedience to law... is not only a categorical value but also a prudential one." 1'7 My colleague and former Prime Minister of New Zealand Sir Geoffrey W. R. Palmer, referring to the need for strict compliance with arms control and disarmament treaties, once put it this way: "[I]s it possible on the one hand to look to international law to provide essential security guarantees, while on the other hand, in other areas, the right is quietly being reserved to undermine, ignore and indeed walk away from the rule of law in international affairs?"18 In recent years, however, during the Reagan presidency especially, the United States has come before the world community more to bury international law than to praise it. Selectively displaying its military strength to the general disregard of international law, it has chosen, at least when the risks have been low, to advance several broadly defined but narrowly determined national interests: (1) demonstrating American will to act with decisiveness and reinforcing deterrence against the Soviet Union in the Third World; (2) displaying the ability of U.S. armed forces to defend American and allied interests; (3) inducing countries that challenge the U.S. to cease and desist; and (4) enhancing in the broadest terms an international perception of the U.S. as the great world power. 19 But to favor such special interests over the common interest of a world rule of law is to shoot ourselves in the geopolitical foot-perhaps not always, but more often than is commonly realized. It gets us into quagmires from which it is hard to extricate ourselves and it subverts our ability to ensure in other settings that other governments, especially our adversaries, will fulfill their obligations under international law that are in our interest for them to fulfill. The point is depressingly simple to illustrate. If we can unilaterally reinterpret and abrogate an arms control treaty with the Soviet Union,20 why cannot the Soviets do the same with us? If we can excuse the kidnapping and killing of innocent civilians by the Nicaraguan Contras because they were "freedom fighters,"21 what right do we have to condemn the Palestinians or Shiites for doing the same thing in Lebanon? If we can ignore a World Court decision relative to the human rights violations we encouraged in Nicaragua,2 how can we complain when Iran ignores a World Court decision relative to the taking of U.S. hostages in Teheran?2 If we can claim the right to seize fugitives from abroad,2 what logic compels our right to object when the Iranian Majlis (parliament) approves legislation authorizing Iranian officials to arrest Americans anywhere in the world for violations of Iranian law?25 If we can intercept a civilian aircraft over the Mediterranean on the grounds that it appears to threaten our national security interests, 26 what is to stop the Soviet Union from doing the same thing over the Pacific for the same reason?27 If we can condone a U.S. military raid upon an ambassadorial residence in Panama despite our obligations under the 1961 Vienna Convention on Diplomatic Relations, how can we complain when Iranian students seize a U.S. embassy protected by the 1961 Vienna Convention on Diplomatic Relations? 28 And so forth. Such partisan uses of international law are illustrative of what, during the 1980s, has been referred to as the "Reagan Corollary" of international law-which is to claim a right "to pressure the international legal system into changing in a manner beneficial to United States interests."9 However, such uses do not, in the end, correspond to our long-term national interest of ensuring that other governments in other settings fulfill their obligations under international law. Were every nation to adopt this Reagan Corollary, a perverted interpretation of international doctrines, principles, and rules would become the standard practice and the international legal system would quickly disintegrate into a system of retributive justice extremely unsafe for the geopolitical interests of even the most powerful States. Thus, if the United States wants to insist upon compliance with international law to protect American interests, it will be to its advantage to obey international law, even when its application proves inconvenient. If we want meaningful international law to be available when we find it useful, we must respect it even when we do not. 4. Respect for International Law Promotes Policy Efficacy A failure to adhere to international law-in particular the prohibitions against the threat and use of nondefensive force and the admonitions to¶ promote and safeguard human rights-tends also to be counterproductive, hence not very efficacious. While militarism and support of repressive regimes to the disregard of international law may sometimes yield tactical victories that are viscerally pleasing in the short-run, they rarely achieve strategically satisfying gains, to say nothing of justice, over the long-run. Consider, for example, the Reagan administration's decision, pursuant to what came to be known as the "Schultz Doctrine," to fight terrorism with American-sponsored counterterrorism, 30 the ultimate denouement of which was the sordid Iran-Contra affair. In keeping with this decision, the United States provided Israel with diplomatic, financial, and material support of Israel's illegal invasion of southern Lebanon in 1982,31 in violation of common Article 1 of the four Geneva Conventions on the laws of war of 194932 and involving the killing of more than 20,000 people (at a time when, ironically, Palestinian terrorist attacks against American persons and property had been in decline). Not surprisingly, the victims of the invasion and their sympathizers held Washington responsible, in conjunction with Israel, for the atrocities committed by the Israeli army and the Lebanese Phalange militia against Palestinian civilians in the Sabra and Shatilla refugee camps in southern Lebanon.33 American interests immediately began to experience a pronounced increase in terrorist attacks-via airplane hijackings, kidnappings, assassinations, bombings, and other paramilitary activitiesfrom Palestinian, Shiite, and other groups throughout the Middle East. Consider also the refusal of the United States to accept the jurisdiction of the International Court of Justice in the case brought by Nicaragua in April 1985 in protest of Washington's illegal assistance to, and support of, the Contra guerrillas against Nicaragua's democratically elected Sandinista government.34 Instead of making its substantive case before the Court, the United States contended that what it considered to be an issue of Western Hemispheric security was not properly for the World Court to decide and that, in any event, there was no reason for the United States to submit to the Court's jurisdiction when, over the years, the Soviet Union had consistently refused to do so. 35 As one sensitive observer put it, "[this] argument was politically attractive domestically, but it eroded the stature of the World Court that American values had once tried to build up."36 More such examples could easily be recounted. It might be asked, for example, whether our aiding and abetting the assassination of Chile's Allende or our legally dubious support of the Shah of Iran really did serve our long-term national interest. And the same might be asked, as well, of the Iran-Contra affair and of our legally questionable assistance to Saddam Hussein during and after the Iran-Iraq war. But the efficacy argument is perhaps best demonstrated by noting the large-scale political support that was extended to Washington, internationally as well as nationally, during at least the early months of the 1990-91 Persian Gulf crisis when the United States pressed hard for economic sanctions against Iraq that were, it can be said, not only timely and measured but in keeping with the collective security system authorized in San Francisco in 1945.37 Adherence to the principles and procedures of international law, President Bush discovered, was essential to gaining the world's support to force Iraq's hand. Lawful foreign policies are consensusbuilding policies-politically pragmatic or efficient policies-and they are useful even to a superpower. To put it all another way, we abandoned lynching parties on the western frontier not only because they turned into orgies of wasteful bloodlust but also because they simply did not stop horse thieves. International law violations, like violations of law in general, have a dubious pragmatic record at best. 5. Respect for International Law Safeguards Domestic Society Disregard of international law and institutions tends to be self destructive as well as destructive of international order. The consequences of our unilateral and disproportionate uses of force in Vietnam should be proof enough. Over a decade and a half later, as such movies as Platoon, Born on the Fourth of July, and Casualties of War alone bear witness, we are still licking the socioeconomic, political, and ethical wounds. Though not always immediately apparent or discernible, international law violations and "go-it- alone" policies that fail to show a decent respect for the rights and opinions of others invariably corrode our core essence, diminishing our national integrity and threatening even our individual liberties. As Professor Bilder has asked, can we legitimately expect to separate the standards that govern the way our government operates internationally from those that govern it internally? 8 If we tell our elected officials that it's okay to act illegally, corruptly, or brutally abroad, can we be completely sure that they will really listen when we tell them that they should not act that way at home? If we say to the Secretary of State, the CIA, or the National Security Council that it's okay to bend the law a little because we do not like another country's ideology, can we rightfully expect that the Attorney General or the FBI will not bend the law a little when it comes to those of our citizens who do not share the government's ideology in domestic affairs? In other words, when we show contempt for international law and cooperation, we badly damage our sense of national self-respect and purpose and, in so doing, invite civil unrest. In addition to the widespread civil disobedience that characterized the era of the legally problematic Vietnam War, we may note the popular protests that, more recently, accompanied Washington's extraordinary build-up of offensive nuclear weapons, its policy of "constructive engagement" with apartheid South Africa, and its military adventurism in Central America.3 9 One of the wondrous things about our country-deep-rooted in our ideology even if not always borne out in practice-is our commitment to decent behavior and the rule of law. From our very beginnings, we have officially embraced the notion of a Higher Law based upon "principles of right and justice that prevail because of their own obvious merit:"40 liberty, equality, participation, and due process. And since at least the turn of the century, cognate international principles have been added: the self-determination of peoples, the sovereign equality of States, respect for international law and organization, and the peaceful settlement of international disputes. So, when our government resorts to¶ foreign policy plots and maneuvers of a Machiavellian sort that sacrifice or otherwise diminish these principles, the spillover into the domestic arena is predictable. The government soon loses the support of the people. Our Founding Fathers established that ours is a society of laws, not of men. To most of us, therefore, "standing tall" in the global community does not mean being the toughest kid on the block, pushing other countries around and breaking our promises as we once accused the Soviet Union of doing, but acting humanely and honorably. Intuitively we know that it is necessary for us to uphold the rule of law abroad in order to uphold it at home. Intuitively we know that "[t]he two are inextricably connected." 41 Intuitively we know that a double standard erodes our claim to moral leadership in the international community.42 6. Respect for International Law Ennobles Our National Rectitude As evidenced by the U.N. General Assembly's declaration of the 1990s as the "Decade of International Law,"43 there is a growing realization that an effective system of international law is fundamental to the achievement¶ of a world public order of human dignity. It is essential to peace and security, and it is indispensable for just solutions to the many complex and urgent problems that otherwise currently make up the human agenda. International law provides, potentially, the most durable framework for undertaking cooperative action toward the abolition of war, the promotion of human rights, the ending of mass poverty, and the creation of a sustainable global environment. Its progressive evolution, in keeping with Article 28 of the Universal Declaration of Human Rights ("Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized"),4 is the key to all that is right and good. To insist upon respect for international law and cooperation is, thus, the morally correct thing to do, and for this reason alone it is in our longterm best interest. Rather than throw our weight around as if at some shootout at the OK Corral, the United States should reaffirm its commitment to a law-oriented foreign policy and, from this posture, through carefully planned and diligently executed diplomatic strategy, regain a once assumed (even if not always demonstrated) moral stature among the family of nations-the "American difference," as President Reagan used to call it. Along the way, discovering that it would thus gain the upper hand in the global competition for hearts and minds, including the enthusiastic support of otherwise doubting allies, the United States would also discover that commitment to international law and cooperation is fundamentally a matter of self-interest. Our reputation as a law-abiding nation, one that genuinely honors the world rule of law in practice, is a vital asset, strongly affecting our ability to win friends and influence people. It is a reputation that cannot-must not-be squandered. Most importantly, however, the United States has an especial obligation in this regard. Quite simply, the size of our economy, the sophistication of our technology, the ubiquity of our investments, and the power of our arsenals make us so globally consequential that the acts and omissions of our government transmit a powerful and usually lasting message. Like it or not, our words and our deeds count heavily in the normative, institutional, and procedural development of world affairs. 45 And this establishes for us, a professedly democratic and peace-loving country, an historically unique moral responsibility. Pg. 4-13

Third is Preemption

#### The plan codifies loose rules on doctrines of military force for pre-emptive and preventative strikes ---- Only the CP resolves the self-defense doctrine to international standards

Obayemi, 6 -- East Bay Law School professor

[Olumide, admitted to the Bars of Federal Republic of Nigeria and the State of California, Golden Gate University School of Law, "Article: Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law," 12 Ann. Surv. Int'l & Comp. L. 19, l/n, accessed 9-19-13, mss]

The United States must abide by the rigorous standards set out above that are meant to govern the use of preemptive strikes, because today's international system is characterized by a relative infrequency of interstate war. It has been noted that developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict. n100 This is important as O'Hanlon, Rice, and Steinberg have rightly noted: ...countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy. Potential examples abound, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. n101 The world must be a safe place to live in. We cannot be ruled by bandits and rogue states. There must be law and order not only in the books but in enforcement as well. No nation is better suited to enforce international law than the United States. The Bush Doctrine will stand the test [\*42] of time and survive. Again, we submit that nothing more would protect the world and its citizens from nuclear weapons, terrorists and rogue states than an able and willing nation like the United States, acting as a policeman of the world within all legal boundaries. This is the essence of the preamble to the United Nations Charter.

#### We’ve just got cards that are way too specific to their mechanism ---- the plan codifies a *blurred line* between pre-emptive and preventative strikes ---- causes unlimited worldwide aggression

DWORKIN 2013, senior policy fellow at the European Council on Foreign Relations, Anthony, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

Two further points are worth noting. First, the administration has acknowledged that in the case of American citizens, even when they are involved in the armed conflict, the US Constitution imposes additional requirements of due process that bring the threshold for targeted killing close to that involved in a self-defence analysis. These requirements were listed in a Department of Justice white paper that became public earlier this year.26 Second, the administration has at times suggested that even in the case of non-Americans its policy is to concentrate its efforts against individuals who pose a significant and imminent threat to the US. For example, John Brennan said in his Harvard speech in September 2011 that the administration’s counterterrorism efforts outside Afghanistan and Iraq were “focused on those individuals who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qaeda and its associated forces”.27

However, the details that have emerged about US targeting practices in the past few years raise questions about how closely this approach has been followed in practice. An analysis published by McClatchy Newspapers in April, based on classified intelligence reports, claimed that 265 out of 482 individuals killed in Pakistan in a 12-month period up to September 2011 were not senior al-Qaeda operatives but instead were assessed as Afghan, Pakistani, and unknown extremists.28 It has been widely reported that in both Pakistan and Yemen the US has at times carried out “signature strikes” or “Terrorist Attack Disruption Strikes” in which groups are targeted based not on knowledge of their identity but on a pattern of behaviour that complies with a set of indicators for militant activity. It is widely thought that these attacks have accounted for many of the civilian casualties caused by drone strikes. In both Pakistan and Yemen, there may have been times when some drone strikes – including signature strikes – could perhaps best be understood as counterinsurgency actions in support of government forces in an internal armed conflict or civil war, and in this way lawful under the laws of armed conflict. Some attacks in Pakistan may also have been directly aimed at preventing attacks across the border on US forces in Afghanistan. However, by presenting its drone programme overall as part of a global armed conflict. the Obama administration continues to set an expansive precedent that is damaging to the international rule of law.

Obama’s new policy on drones

It is against this background that Obama’s recent counterterrorism speech and the policy directive he announced at the same time should be understood. On the subject of remotely piloted aircraft and targeted killing, there were two key aspects to his intervention. First, he suggested that the military element in US counterterrorism may be scaled back further in the coming months, and that he envisages a time in the not-too-distant future when the fight against the al-Qaeda network will no longer qualify as an armed conflict. He said that “the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat” and that while al-Qaeda franchises and other terrorists continued to plot against the US, “the scale of this threat closely resembles the types of attacks we faced before 9/11”.29 Obama promised that he would not sign legislation that expanded the mandate of the AUMF, and proclaimed that the United States’ “systematic effort to dismantle terrorist organizations must continue […] but this war, like all wars, must end”. The tone of Obama’s speech contrasted strongly with that of US military officials who testified before the Senate Committee on Armed Services the week before; Michael Sheehan, the Assistant Secretary of Defence for Special Operations and Low-Intensity Conflict, said then that the end of the armed conflict was “a long way off” and appeared to say that it might continue for 10 to 20 years.30

Second, the day before his speech, Obama set out regulations for drone strikes that appeared to restrict them beyond previous commitments (the guidance remains classified but a summary has been released). The guidance set out standards and procedures for drone strikes “that are either already in place or will be transitioned into place over time”.31 Outside areas of active hostilities, lethal force will only be used “when capture is not feasible and no other reasonable alternatives exist to address the threat effectively”. It will only be used against a target “that poses a continuing, imminent threat to US persons”. And there must be “near certainty that non-combatants will not be injured or killed”.

In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how “areas of active hostilities” should be understood. Nevertheless, taken at face value, they seem to represent a meaningful change, at least on a conceptual level. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat, this is now formalised as official policy. In this way, the standards are significantly more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach. In effect, the new policy endorses a self-defence standard as the de facto basis for US drone strikes, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.32 The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.33

However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.34 The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing under the new guidelines.35

It is also notable that the new standards announced by Obama represent a policy decision by the US rather than a revised interpretation of its legal obligations. In his speech, Obama drew a distinction between legality and morality, pointing out that “to say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. The suggestion was that the US was scaling back its use of drones out of practical or normative considerations, not because of any new conviction that the its previous legal claims went too far. The background assertion that the US is engaged in an armed conflict with al-Qaeda and associated forces, and might therefore lawfully kill any member of the opposing forces wherever they were found, remains in place to serve as a precedent for other states that wish to claim it.

### Drolif

#### No Indo-Pak War

Wright ‘13 (Thomas Wright is a fellow at the Brookings Institution in the Managing Global Order project. Previously, he was executive director of studies at the Chicago Council on Global Affairs, a lecturer at the Harris School of Public Policy at the University of Chicago, and senior researcher for the Princeton Project on National Security, "Don’t Expect Worsening of India, Pakistan Ties," <http://blogs.wsj.com/indiarealtime/2013/01/16/dont-expect-worsening-of-india-pakistan-ties/>, January 16, 2013)

There’s no end for now to the hostile rhetoric between India and Pakistan. But that doesn’t necessarily presage anything more drastic. Pakistan claims another of its soldiers died Tuesday night in firing across the Line of Control in Kashmir, the divided Himalayan region claimed by both nations. Indian army chief, Gen. Bikram Singh, on Wednesday, said Pakistan had opened fire and India retaliated. “If any of their people have died, it would have been in retaliation to their firing,” Gen. Singh said. ”When they fire, we also fire.” It was the latest in tit-for-tat recriminations over deaths in Kashmir that began last week. Pakistan claimed one of its soldiers died on Jan. 6. Two days later, India said Pakistani forces killed two of its soldiers and mutilated the bodies. Tuesday night, Indian Prime Minister Manmohan Singh said the mutilations meant it could not be “business as usual” between the countries. That has worried some that peace talks, which have been in train for two years, could be about to break down. Mr. Singh’s comments built on a drumbeat of anger from India. Gen. Singh, Monday called the mutilations “unpardonable” and said India withheld the right to retaliate to Pakistan aggression when and where it chooses. Pakistan Foreign Minister Hina Rabbani Khar, who is in the U.S., Tuesday termed the Indian army chief’s comments as “very hostile.” There are some other worrying signs. India said Tuesday it was delaying the start of a visa-on-arrival program meant to make it easier for some Indians and Pakistanis to visit each other’s countries. The visa program, like talks on opening up bilateral trade, is supposed to pave the way toward broader peace talks that would encompass thornier issues, like how to solve the Kashmir problem. Also Tuesday, nine Pakistani hockey players who had come to participate in a tournament in India were sent home due to fears of protests and violence against them. Still, there’s little benefit for either side to escalate what is now still sporadic firing over the Line of Control, the de facto border in Kashmir. Pakistan is embroiled in its own political meltdown sparked by the Supreme Court’s decision Tuesday to order the arrest of Prime Minister Raja Pervez Ashraf on allegations of corruption. Tens of thousands of protesters Tuesday took to the streets in Islamabad, and remain there today, demanding immediate elections and a greater role for the army and Supreme Court in politics. Pakistan’s military continues to play an important political role, dominating defense and foreign policy. But it has so far shown little sign of mounting a full-blown coup despite persistent rumors of military intervention. Pakistan’s government must hold national elections by May, meaning the next few months are likely to be choppy ones in Pakistan politics. In such an environment, the military is unlikely to want to dial up tensions with India. On the Indian side, despite Mr. Singh’s unusually strident tone Tuesday, there also will be pause before taking matters to the next level. Mr. Singh has put immense personal political capital into trying to improve ties with Pakistan since he came to power in 2004. Last year, he hosted Pakistan President Asif Ali Zardari in New Delhi and promised a return visit. Such a trip is clearly off the table for now. But India still has put too much into peace talks to throw away the progress made so far on visas, trade and other issues. Even Gen. Singh, India’s army chief, Monday said he did not believe the latest flare-up would lead to a broader escalation in violence and an official end to a 2003 ceasefire agreement in Kashmir. The clashes so far, he noted, have been limited to specific areas of the Line of Control.

#### Prolif is inevitable- no one models US restraint

**Etzioni ‘13** [Amitai, professor of international relations at George Washington University, “The Great Drone Debate,” March-April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>]

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

#### Drone prolif doesn’t escalate or cause terrorism

**Singh ’12** [Joseph Singh is a researcher at the Center for a New American Security, an independent and non-partisan organization that focuses on researching and analyzing national security and defense policies, also a research assistant at the Institute for Near East and Gulf Military Analysis (INEGMA) North America, is a War and Peace Fellow at the Dickey Center, a global research organization, “Betting Against a Drone Arms Race,” 8-13-12, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/>]

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey.¶ Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory.¶ States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement.¶ This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.¶ What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy.¶ In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region.¶ Non-state actors, on the other hand, have even more **reasons to steer clear** of drones:¶ – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue.¶ – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose.¶ – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face.¶ – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts.¶ In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.

Instead, we must return to **what we know about state behavior** in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.

Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.

What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.

Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.

Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.

Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### **No Azerbaijan-Armenia war --- International actors check conflict and recent hostilities are just domestic posturing.**

Sumerinli & Harutyunyan Today (September 23rd 2013)

Jasur Mammadov, Vahe, Gunfire as Extension of Politics on Azerbaijan-Armenia Border, Transition Online: Regional Intelligence, http://www.tol.org/client/article/23953-armenia-azerbaijan-nagorno-karabakh.html

While cross-border gunfire involving Azerbaijani and Armenian forces is all too common, a recent sharp increase in incidents has left analysts wondering what is going on. The consensus is that the skirmishes are not a precursor to wider hostilities. Instead, commentators on each side believe they are a reflection of domestic political problems in the other country. As an illustration of the rise in shooting incidents, Armenian defense officials said one soldier died and six were injured in August, whereas there had been no casualties in July. An Armenian tank outside Stepanakert, the capital of Nagorno Karabakh, serves as a war memorial. Photo by Marshall Bagramyan/Wikipedia. The incidents happened on Armenia’s eastern border with Azerbaijan, on its southeastern frontier with Nakhichevan – an Azerbaijani exclave territory – and on the “line of control” around Nagorno Karabakh. Armenian Defense Ministry spokesman Artsrun Hovhannisyan said the nature of the “enemy action” was unusual. “This isn’t reconnaissance, nor is it designed to improve their position, or to prepare for sweeping military operations,” he said. “The Azerbaijanis’ aim is to inflict as much harm as possible on our military personnel.” In Azerbaijan, officials said it was the Armenians who started or at least provoked the shooting. The Defense Ministry said its monitoring indicated that most of the gunfire was taking place around Karabakh and on the border with Nakhichevan. Defense Ministry spokesman Eldar Sabiroglu said the Armenians were trying to divert public attention from their government’s own failings. “We know that Armenia’s domestic affairs are in bad shape. People express their unhappiness with the authorities every day. In order to mitigate this, they [authorities] try to project attention onto Azerbaijan,” he said. “This is always going to be a problem. Armenia’s aggressive policy has not changed, so there will continue to be trouble on the front line.” Sabiroglu also spoke about an incident in early August, on the border between Armenia and Nakhichevan. According to the Armenian account, one soldier was killed and a second injured by Azerbaijani sniper fire. But Sabiroglu described this as “an attempt by Armenia to divert attention from problems inside its own army.” “They’re trying to cover up the fact that there was a shootout between Armenian soldiers, We have reliable information that several soldiers died and several more were injured in a shootout in an Armenian military unit deployed on the border with Nakhichevan,” he said. A mirror-image view of the situation was articulated in Yerevan. Alexander Arzumanyan, a former foreign minister of Armenia, said the clashes were being instigated by Azerbaijan, where the authorities are keen to ensure the re-election of President Ilham Aliev next month. “The Azerbaijanis have resorted to deliberately escalating tensions on the border ahead of general and presidential elections on more than one occasion,” he said. “It’s the familiar policy of the Aliev clan – dictatorships always need an external enemy.” Arzumanyan pointed to the widening military imbalance between oil-rich Azerbaijan and less affluent Armenia. Baku continues to purchase high-tech weaponry, and Aliev and other officials often warn that if talks on the future of Karabakh ultimately fail, the army is capable of retaking it by force. Armenian officials are clearly unsettled by this build-up but hope their longstanding alliance with Moscow will safeguard them. Despite the threats coming out of Baku, Arzumanyan said, “the years go by, and the Karabakh problem remains unresolved.” The Karabakh conflict ended in 1994 with a truce that has lasted ever since, despite the sporadic outbreaks of gunfire. Talks intended to produce a lasting settlement are mediated by the OSCE’s Minsk Group, chaired by Russia, the United States, and France, but have failed to make significant progress. The Karabakh Armenian administration says it will never give up its claim to independence, while Baku insists that the ultimate solution must involve regaining control over its sovereign territory. “There has been no substantive movement in the positions taken by the parties to the conflict,” Arzumanyan said. “Then again, Karabakh isn’t of such paramount importance to [external] states that it would prompt serious pressure [for a solution] from outside.” Even with high levels of mutual mistrust and little apparent prospect of progress in the OSCE-mediated talks, commentators in Yerevan and Baku are not predicting that things will get out of hand. “I do not think that the option of returning to war will be decided in Baku alone, so I see it as unlikely that Azerbaijan would go down that road,” David Shahnazaryan, former head of Armenia’s National Security Service, told IWPR. “What I mean is that a number of states are active in this region, and they are driven by they own interests and by the fact that they have a political, military, and economic presence – there’s Russia, the United States, Turkey, the European Union, and Iran. I wouldn’t say any of these countries wants to unleash a war in the South Caucasus.” Zumrud Mammadova, a researcher at the Simulated Forecasts think tank in Baku, agreed that none of the big players wanted conflict. “Analysis of what’s going on indicates that neither Armenia nor Azerbaijan is preparing for war,” she added. “Each side wants to show its strength and insure itself against current and possible international responses to its domestic problems. Armenia and Azerbaijan are doing this to get round the international community’s demands for democracy.”

### Allies

No risk of terrorism

Mearsheimer 1/2 (John J. Mearsheimer, Does he need equals?, “America Unhinged”, <http://nationalinterest.org/article/america-unhinged-9639>, January-February 2014)

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled. What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency. Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody

#### No Russian War

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

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over.

And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

#### No Russian Miscalc

Williscroft ‘10 (Six patrols on the *John Marshall* as a Sonar Technician, and four on the *Von Steuben* as an officer – a total of twenty-two submerged months. Navigator and Ops Officer on *Ortolan* & *Pigeon* – Submarine Rescue & Saturation Diving ships. Watch and Diving Officer on *Oceanographer* and *Surveyor*. “Accidental Nuclear War” http://www.argee.net/Thrawn%20Rickle/Thrawn%20Rickle%2032.htm, 2010)

Is there a realistic chance that we could have a nuclear war by accident? Could a ballistic submarine commander launch his missiles without specific presidential authorization? Could a few men conspire and successfully bypass built-in safety systems to launch nuclear weapons? The key word here is “realistic.” In the strictest sense, yes, these things are possible. But are they realistically possible? This question can best be answered by examining two interrelated questions. Is there a way to launch a nuclear weapon by accident? Can a specific accidental series of events take place—no matter how remote—that will result in the inevitable launch or detonation of a nuclear weapon? Can one individual working by himself or several individuals working in collusion bring about the deliberate launch or detonation of a nuclear weapon? We are protected from accidental launching of nuclear weapons by mechanical safeguards, and by carefully structured and controlled mandatory procedures that are always employed when working around nuclear weapons. Launching a nuclear weapon takes the specific simultaneous action of several designated individuals. System designers ensured that conditions necessary for a launch could not happen accidentally. For example, to launch a missile from a ballistic missile submarine, two individuals must insert keys into separate slots on separate decks within a few seconds of each other. Barring this, the system cannot physically launch a missile. There are additional safeguards built into the system that control computer hardware and software, and personnel controls that we will discuss later, but—in the final analysis—without the keys inserted as described, there can be no launch—it’s not physically possible. Because the time window for key insertion is less than that required for one individual to accomplish, it is physically impossible for a missile to be launched accidentally by one individual. Any launch must be deliberate. One can postulate a scenario wherein a technician bypasses these safeguards in order to effect a launch by himself. Technically, this is possible, but such a launch would be deliberate, not accidental. We will examine measures designed to prevent this in a later column. Maintenance procedures on nuclear weapons are very tightly controlled. In effect always is the “two-man rule.” This rule prohibits any individual from accessing nuclear weapons or their launch vehicles alone. Aside from obvious qualification requirements, two individuals must be present. No matter how familiar the two technicians may be with a specific system, each step in a maintenance procedure is first read by one technician, repeated by the second, acknowledged by the first (or corrected, if necessary), performed by the second, examined by the first, checked off by the first, and acknowledged by the second. This makes maintenance slow, but absolutely assures that no errors happen. Exactly the same procedure is followed every time an access cover is removed, a screw is turned, a weapon is moved, or a controlling publication is updated. Nothing, absolutely nothing is done without following the written guides exactly, always under two-man control. This even applies to guards. Where nuclear weapons are concerned, a minimum of two guards—always fully in sight of each other—stand duty. There is no realistic scenario wherein a nuclear missile can be accidentally launched...ever...under any circumstances...period!

#### NSA scandal makes counter-terror distrust inevitable

**AP ’13** [Associated Press, “US counterterrorism officials defend Internet and phone surveillance to skeptical lawmakers,” June 12, <http://www.foxnews.com/us/2013/06/12/us-counterterrorism-officials-defend-internet-and-phone-surveillance-to/>]

Lawmakers voiced their confusion and concern, and some called for the end of sweeping surveillance programs by U.S. spy agencies after receiving an unusual briefing on the government's yearslong collection of phone records and Internet usage.¶ "People aren't satisfied," Rep. Tim Murphy, R-Pa., said as he left the briefing Tuesday. "More detail needs to come out."¶ The phalanx of FBI, legal and intelligence officials who briefed the entire House was the latest attempt to soothe outrage over National Security Agency programs that collect billions of Americans' phone and Internet records. Since they were revealed last week, the programs have spurred distrust in the Obama administration from around the world.¶ Congressional leaders and intelligence committee members have been routinely briefed about the spy programs, officials said, and Congress has at least twice renewed laws approving them. But the disclosure of their sheer scope stunned some lawmakers, shocked foreign allies from nations with strict privacy protections and emboldened civil liberties advocates who long have accused the government of being too invasive in the name of national security.

#### The public loves drones—more likely to roll back the plan

– 57 percent – support the current level of drone strikes targeting “Al Qaeda targets and other terrorists in foreign countries.” Another 23 percent said the use of drones for such purposes should increase. Only 11 percent said the use of drones should decrease. The poll, conducted from May 28-31, followed a major speech in which Mr. Obama suggested the use of drone strikes would decline. In the May 26 address, he also hinted at his own ambivalence about the controversial tactic, weighing the program’s efficacy against the moral questions and long-term impact. Obama acknowledged that the pluses of drone strikes – no need to put boots on the ground and the accuracy and secrecy they offer – can “lead a president and his team to view drone strikes as a cure-all for terrorism.” He balanced that against words of caution: “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance.” The drone strikes, which under Obama have mostly been carried out in secrecy by the CIA, are credited with killing as many as 3,000 terrorists and Islamist militants – at least four of whom were American citizens. Obama is planning to shift most drone operations to the military as part of an effort to make the program more transparent. Americans are by and large comfortable with drone strikes being ordered by the president, the CIA, or by the military, according to the Monitor poll. Less popular is the idea of creating a separate “drone court” **–** a panel that would presumably increase the accountability of the program. Almost two-thirds of Americans (62 percent) say they approve of drone-strike authorization coming from the president, the Pentagon, or the CIA. About a quarter (26 percent) favor setting up a drone court to sign off on strikes.

## 2NC

### 2NC

BLANK 2010 – aff author, Director, International Humanitarian Law Clinic, Emory Law School, Laurie R., 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

As a result, the entire concept of neutrality is problematic in this context—but yet it seems hard to imagine that the absence of declaratively neutral states means that no territory is inviolable in counterterrorism and military operations against terrorists. One certainly might argue that any country using military force against terrorists constitutes a belligerent in this type of conflict. Similarly, one could argue that any state acting in concert with or directly supporting terrorist groups on its territory could become a belligerent state as well. But what about states where terrorists operate or find safe haven without state support or even in direct opposition to state policy? Or state sponsors of terrorist groups operating in another state’s territory? If the territory of any state where a terrorist group operates or a terrorist is found were to become belligerent territory even against its will, then state sovereignty is simply eliminated. It is thus difficult to translate neutrality law’s framework into the murky world of today’s conflicts, nonstate actors, and dispersed terrorist groups.

IV. INTO THE FUTURE: FINDING A MIDDLE GROUND

The ramifications of including areas within the zone of combat, such as the accompanying authority to use lethal force as a first resort, raise a variety of policy considerations. The two primary considerations weigh directly against each other and perhaps, as a result, lend credence to the need for a middle ground in defining the zone of combat. First, some argue that creating geographic limits to the battlefield has the problematic effect of granting terrorists a safe haven. For example, a member of al Qaeda can be a legitimate target as a result of continuous participation in hostilities, thus losing any immunity from attack he might have had by dint of being a civilian.105 If the zone of combat is limited geographically to certain areas, then this member of al Qaeda can avoid being targeted—and thus regain civilian immunity, in essence—simply by crossing an international border even while remaining active in a terrorist organization engaged in a conflict with the U.S.106 Geographic limits designed to curtail the use of governmental military force thus effectively grant terrorists a safe haven and extend the conflict by enabling them to regroup and continue their attacks.

Alternatively, others argue that the lack of geographic limitations on the zone of combat has grave consequences, both locally and globally. In particular, “[t]he implications of allowing the use of armed force to capture or kill enemies outside a country’s own territory, and outside a theater of traditional armed conflict, may include spiraling violence, the erosion of territorial sovereignty, and a weakening of international cooperation.”107 Use of military force to target a person inside the territory of another state without its consent inherently violates that state’s sovereignty. A conception of the battlefield enabling regular incursions into another state’s territory will, over time, have the effect of weakening the importance of state sovereignty as a defining part of the international legal order. It also increases the likelihood of violence on a more regular and more widespread basis, as more and more locations fall within the arena of military operations.

With these tensions as a backdrop, one can look to LOAC to derive a framework or set of parameters. Such factors can be drawn from LOAC itself—from the general principles at the heart of LOAC and from the way we understand whether there is an armed conflict in existence that triggers LOAC.

A. Seeking Guidance from LOAC’S General Principles

LOAC is a living body of law rather than a set of static concepts, repeatedly adapting to uncertainties and changing circumstances. As Jean Pictet wrote in 1985:

The international Conventions contain a multitude of rules which specify the obligations of states in very precise terms, but this is not the whole story. Behind these rules are a number of principles which inspire the entire substance of the documents. . . . They serve in a sense as the bone structure in a living body, providing guidelines in unforeseen cases and constituting a complete summary of the whole, easy to understand and indispensable for the purposes of dissemination.108

When unforeseen situations have demanded new answers, LOAC’s basic principles have guided interpretations and helped find solutions to preserve and protect the law’s core values.

The Geneva Conventions, and the laws of war for centuries before that, are based on four key principles: distinction, proportionality, military necessity, and humanity.109 The principle of distinction requires all parties in a conflict to distinguish between those who are fighting and those who are not and only target the former when launching attacks.110 The principle of proportionality seeks to balance military goals with protection of civilians, prohibiting attacks when the expected civilian casualties will be excessive compared to the anticipated military advantage.111 Military necessity recognizes that the goal of war is the complete submission of the enemy as quickly as possible and allows any force necessary to achieve that goal as long as not forbidden by the law.112 Finally, humanity aims to minimize suffering in armed conflict; the infliction of suffering not necessary for legitimate military purposes is therefore forbidden.

For the purposes of this analysis, military necessity and humanity are the two key principles that can help provide guidance in delineating the zone of combat. Military necessity naturally suggests a broad view of the zone of combat in order to offer the most comprehensive opportunity to defeat the enemy effectively. In essence,

[t]he appeal [of invoking armed conflict] is obvious: the IHL applicable in armed conflict arguably has more permissive rules for killing than does human rights law or a State’s domestic law, and generally provides immunity to State armed forces. Because the law of armed conflict has fewer due process safeguards, States also see a benefit to avoiding compliance with the more onerous requirements for capture, arrest, detention or extradition of an alleged terrorist in another State. . . . [Finally,] labeling a situation as an armed conflict might also serve to expand executive power both as a matter of domestic law and in terms of public support.113

At first glance, the principle of humanity seems to support a broad view of the zone of combat as well. The Commentary to the Fourth Geneva Convention emphasizes that the drafters sought to ensure the widest possible field of application for LOAC’s protective goals. First, the Commentary explains that the phrase “ ‘in the hands of’ is used in an extremely general sense.”114 In particular, Part II of the Fourth Geneva Convention, entitled “General Protection of Populations Against Certain Consequences of War,” has a broad application, covering “the whole of the populations of the countries in conflict . . . .”115 In the past, this goal of maximizing protection has been a driving force facilitating interpretations of complicated questions regarding protected persons or other issues. For example, the ICTY’s approach in Tadic and other cases, basing protected person status on allegiance rather than nationality, fulfills LOAC’s general need for broad applicability across territory, time, and categories of persons.116

This goal may not work as effectively, however, when correlated to conflicts with terrorist groups. Simply put, taking a broad view of the time and space dimensions in the war against terrorist groups could—with little imagination—lead one to conclude that a large portion of the world falls within the zone of combat, by dint of terrorist groups having a presence in many countries and terrorist attacks taking place in many countries. While this approach would, theoretically, mean that large numbers of persons might benefit from the rights and protections of LOAC, it also means that large swaths of the globe would fall within the use of force as first resort authority that LOAC grants to belligerents. Thus, the principle of humanity more rationally supports a narrow view of the zone of combat’s parameters, one that seeks to protect the most people by keeping conflict, and the battlefield, away from their countries altogether. Because the risk of mistake increases dramatically as we move farther away from the conventional battlefield, humanity and its accompanying limitations on the use of force are ever more critical. This result—broad based on military necessity and narrow based on humanity—mirrors in some ways LOAC’s essential and inherent balancing of military necessity and humanity. Nonetheless, even though resort to the general principles of LOAC and the object and purpose of the law can often be a useful tool for resolving complicated or unforeseen issues, here it leaves us with lingering uncertainties regarding how best to fulfill those goals.

B. Factors From LOAC’s Armed Conflict Trigger

As explained above, this Article does not address the much-debated question whether the conflict with al Qaeda constitutes an armed conflict as understood within the framework of the Geneva Conventions and LOAC. However, a number of the factors relevant to analyzing whether any conflict situation meets the threshold of LOAC application can be useful here in developing a paradigm for framing the battlefield in the “war on terror.”

Determining whether violence between states, between a state and a nonstate actor, or between two or more non-state actors rises to the level of an armed conflict is a foundational analytical step for LOAC, which only applies during armed conflict. The most common and oft-cited contemporary definition of armed conflict is from the Tadic case: an armed conflict exists whenever “there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”117 According to the Commentary, recognizing the existence of international armed conflict in accordance with Common Article 2 is straightforward. “Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war.”118 The length of the hostilities or the number of casualties does not impact the characterization as armed conflict.119 For this reason, analysis and interpretation of Common Article 2 will not be particularly useful here. Rather, this section draws factors and other relevant insights from LOAC’s approach to noninternational conflict and Common Article 3.

The parameters of Common Article 3 conflicts can be harder to identify concretely than those of Common Article 2 conflicts; according to the Commentary, no specific test for determining the applicability of Common Article 3 exists. Rather, the goal is to interpret Common Article 3 broadly120 based on a number of indicative—but not dispositive—factors regarding the nature and behavior of both state and non-state parties. For example, the state’s response is a critical component, in particular whether it employs its regular armed forces in combating the non-state actor.121 Another key factor is the intensity of the hostilities and whether it rises above the level of riots and internal disturbances.122 Finally, the Commentary considers the nonstate actor’s authority, organization, and territorial connections.123

The United States, like selected other countries, views itself as operating within an armed conflict paradigm in combating terrorism.124 Much of the continuing debate centers on the nature of this conflict rather than on whether it exists at all. Some argue that this conflict falls outside this framework altogether,125 leaving us with a conflict unregulated by the laws of war, a problematic conclusion, but an armed conflict nonetheless. Alternatively, in Hamdan v. Rumsfeld, the U.S. Supreme Court held that the conflict with al Qaeda is a non-international armed conflict governed by Common Article 3 of the Geneva Conventions.126 Finally, some scholars point to a new category of conflict, so-called “transnational armed conflict,”127 which involves the “transnational characteristics of international armed conflict, but the military operational characteristics of noninternational armed conflicts (because of the state versus nonstate nature of the operations).”128 However contentious this debate, it rests on the fundamental presumption that the U.S. is engaged in some type of armed conflict. Thus, several factors identified above from traditional LOAC analyses regarding non-international armed conflict can prove helpful to the instant analysis: the nature of the hostilities, the government response, and the territorial connections of the non-state actor or terrorist group.

1. What are Hostilities?

Traditionally, LOAC looks to the intensity of the hostilities to determine whether violence in a particular area or situation has passed the threshold necessary to constitute a non-international armed conflict. For the purposes of this article, it will be helpful to examine the types of violence, attacks and acts that are normally considered to fall within the category of hostilities in the framework of LOAC. Analogizing terrorist acts and activities to hostilities can be a useful starting point in identifying the parameters of the zone of combat. As a general rule, classical definitions of armed conflict and hostilities exclude “civil unrest or terrorist activities.”129 But our analysis should not stop there, because just as traditional conceptions of armed conflict may not be effective in analyzing the conflict with al Qaeda, so classical understandings of hostilities may not hold all the answers.

First, Article 49 of Additional Protocol I defines an attack as an “[act] of violence against the adversary, whether in offence or in defence.”130 Attack thus “means ‘combat action’ ”131 and refers to “physical force.”132 The Commentary further defines hostile acts as “acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces” and explains that the term “ ‘hostilities’ covers not only the time that [a] civilian actually makes use of a weapon, but also, for example, . . . situations in which he undertakes hostile acts without using a weapon.”133 Most terrorist acts fall within one or more of these definitions with little trouble.

A next step in this analysis is to incorporate information about the types of acts that constitute hostilities for the purposes of analyzing the intensity of hostilities. ICTY cases have involved a wide range of types of hostilities and the Tribunal has concomitantly pointed to a number of considerations in making determinations about intensity. Among those considerations, particularly relevant ones for this analysis include the number of civilian casualties, the extent of material destruction and the types of weapons used.134 By those measures, many terrorist attacks could fall within a general notion of hostilities. Many attacks over the past decade have caused hundreds—even thousands in the case of 9/11—of civilian deaths, have wrought substantial material destruction, and have used sophisticated explosives or coordinated attacks with automatic weapons, such as in Mumbai. One definition of “attack” used at the ICTY is “incidents in which firearms, hand-grenades, and other explosive devices were used against civilians” and enemy forces.135 In addition, the target of particular attacks can be determinative—attacks on a military target will often be more likely to constitute hostilities that fall within the category of armed conflict.136 One might therefore distinguish the attack on the U.S.S. Cole—a military target— from an attack on a civilian vessel or other civilian target in assessing how each might constitute hostilities within a zone of combat.

Admittedly, the ordinary use of the term “hostilities” within LOAC and international criminal jurisprudence does not necessarily translate well to a world in which terrorists attack in diverse geographic locations and seek safe haven in multiple remote locations around the world. But just as there is an emerging “recognition . . . that [LOAC] principles must . . . ‘migrate’ to the realm of transnational armed conflicts,”137 so perhaps the notion of hostilities may begin to encompass certain terrorist acts, at least for limited analytical purposes. In the interim, the characterization and description of hostilities can be useful in understanding how different types of terrorist attacks can impact identification of the zone of combat.

2. Government Response

The nature of the government response is the most adaptable of these three factors to a conflict with terrorist groups. In assessing whether a noninternational armed conflict exists, how the government responds to provocation or violence is one way courts have traditionally understood a distinction between riots or internal disturbances and armed conflict. The use of law enforcement personnel is usually a sign that the government views the situation as one falling within the former arena and not within the overall framework of armed conflict. In contrast, armed conflict often requires the government “to have recourse to the regular military forces” to combat the threats or challenges it faces.138 The most-oft cited example of this factor is the decision of the Inter-American Commission on Human Rights in the La Tablada case. In analyzing whether LOAC applied to an attack on an Argentine military barracks and the thirty-hour firefight that ensued, the Commission found that the distinctly military nature of the government’s response was persuasive, if not determinative.139

In the context of the current conflict, many see the U.S. government’s decision to use military force “to combat terrorism . . . as one important indication of the existence of an armed conflict.”140 Given that the U.S. and other governments have a range of tools at their disposal to combat terrorists—military force, law enforcement options, etc.—the nature of the government response can also be a relevant factor in identifying the parameters of the zone of combat. One complex analysis of how the government’s response impacts the nature—and thus location—of the conflict addresses how the government chooses to categorize and characterize the enemy for purposes of targeting and other uses of force. Rules Of Engagement authorizing targeting based on status, and thus specifically based on the concept of military objective, suggest the existence of an armed conflict; rules of engagement based on conduct would suggest otherwise.141 Applying this type of analysis to the location of a conflict rather than the existence of a conflict, for example, shows how the government’s response can be a useful factor in identifying the parameters of the zone of combat.

3. Territory

Although Common Article 3 includes no requirement that a non-state party control or occupy a specific territorial area, territory can play a role in the analysis of whether a particular situation qualifies as an armed conflict. Among the criteria the Commentary mentions are: the non-state actor is “acting within a determinate territory,” or “the insurgent civil authority exercises de facto authority over persons within a determinate portion of the national territory.”142 As with other factors in the Commentary, these criteria are merely considerations that may play a role in assessing the nature of a conflict under Common Article 3. In contrast, Additional Protocol II only applies to conflicts in which “dissident armed forces or other organized groups . . . , under responsible command, exercise such control over a part of [the] territory as to enable them to carry out sustained and concerted military operations.”143 Whether territorial control is required or merely considered, the link between the non-state forces and some territory is a relevant factor in analyzing the nature of the conflict.

But the notion of territory and territorial control or administration does not translate effectively to most conflicts with terrorist groups. Terrorist groups generally do not seek to control territory, but rather use particular areas as safe havens, training grounds, or launching pads for attacks. One remote area is often as good as another in many ways. Nonetheless, territorial concepts and links can be a relevant factor in creating a paradigm for understanding the zone of combat, albeit in a more creative way. Those who propound a “global battlefield theory” use territory as a factor by looking at where terrorists are presently located; that is, according to this theory, anywhere one finds a designated terrorist would constitute part of the battlefield. Without going so far, territory can also be useful in a more intermediate approach to defining the zone of combat. Terrorist groups may not occupy or administer territory, but they have a more concrete footprint in certain areas, such as where they find safe haven, where they establish training camps, and if relevant, where they launch repeated attacks. These locations naturally have a stronger connection to the ongoing conflict than other areas where no attacks have taken place or where an identifiable terrorist is located but not engaged in any activity. Another way of looking at this factor is to consider that as an al Qaeda member’s connection, geographic or otherwise, to the areas of traditional combat operations grows more attenuated, the presumption of deadly force authority weakens**.** As such, perhaps, this interpretation of territory can be a helpful factor in defining the geographic parameters of the zone of combat. Similarly, we can add temporal considerations as well, differentiating between time periods when a terrorist group is using certain territorial areas as described above, and when it, perhaps, vacates a safe haven or training camp area.

#### Aff leaves room for abuse – the CP solves that

BLANK 2010 – aff author, Director, International Humanitarian Law Clinic, Emory Law School, Laurie R., 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

Second, in declaring that it is “at war with terrorists,” a state may envision the whole world as a battlefield. But the state’s actual conduct in response to the threat posed offers a more accurate lens through which to view the battlefield. Areas where the state uses military force, particularly multiple facets of military power, on a regular or recurring basis, should fall within the zone of combat. In contrast, those areas where the state chooses diplomatic or law enforcement measures, or relies on such efforts by another state, do not demonstrate the characteristics of the battlefield. This same analysis holds true for the temporal parameters as well. Applying this type of analysis in a simplistic manner does indeed leave room for abuse by states that might overuse military power merely to try to squeeze otherwise nonbattlefield areas within the zone of combat. While this is certainly a consideration, government response is only one factor to take into account in assessing the parameters of the zone of combat and both the nature of the international community and the great expense, both human and material, of applying military might where not necessary will likely weigh against any such abuse.

#### Their case would fail- no clear definition of combatant means no definition of “zone of hostility”

Goodman and Knuckley ’13 (Ryan Goodman is the Anne and Joel Ehrenkranz Professor of Law at New York University School of Law, where he also serves as Co-Chair of the Center for Human Rights and Global Justice. Sarah Knuckey is Director of the Project on Extrajudicial Executions at New York University School of Law, and a Special Advisor to the UN Special Rapporteur on extrajudicial executions, “What Obama's New Killing Rules Don't Tell You”, <http://www.esquire.com/blogs/politics/obama-counterterrorism-speech-questions-052413>, May 24, 2013)

In a landmark speech on counterterrorism yesterday, President Obama outlined rules for the conduct of lethal operations abroad. The speech itself may mark a turning point as the president tries to steer the country away from "perpetual war," and toward a counterterrorism policy that better balances security and rights. The administration also published written rules for the use of lethal force, an important response to years of criticism of the administration’s secretive killing program. Many hoped this moment would herald a new era of transparency. To be sure, these steps bring clarity to some issues. But, the framework he presented also raises some troubling questions and leaves important older questions completely unanswered. Where do the rules apply? The new rules apply only to operations conducted outside "areas of active hostilities." A lot turns on the definition of that geographic boundary. For all we know, the administration may define parts of Pakistan, Yemen, and elsewhere as a zone of hostilities. The administration, however, doesn’t tell you how it decides when and where places of active hostilities exist. And wherever such zones exist, the new rules are irrelevant. In short, it is possible that the "new" rules may leave completely untouched some of the most significant parts of the existing drone program. Signature strikes: in or out? Some suggest that the new rules put an end to controversial signature strikes, carried out based on patterns of behavior assumed to indicate militancy. The new rules do finally rebut reports (sourced originally to anonymous government officials) that "all military-aged males in the vicinity of a target are deemed to be combatants." Yet there is no clarity at all about what actual "signatures" were used, or might still be in use. Nothing in the new rules requires that the government kill only named targets, and nothing in the rules prohibits behavior-based targeting. On the contrary, senior administration officials, hours before the President’s speech, suggested that signature strikes will continue but perhaps decrease "over time." Whether to capture or kill?: One of the rules, already known from the leaked Department of Justice white paper is that the government may kill only when "capture is not feasible." This phrase begs the question: at what price is capture considered infeasible? The answer, according to the government, is clearly not limited to situations in which it is physically impossible to apprehend an individual. The rule apparently includes situations in which it is not possible to capture the individual without significant risks to U.S. forces or to nearby civilians. The President's speech was at its most persuasive in explaining those types of concerns. His remarks however failed to address a nagging concern, and may have needlessly aggravated it. The concern, raised in recent books by Daniel Klaidman and Mark Mazzetti, is that Obama turned to drone strikes as the tactic of choice once the apprehension and detention of international terrorists became a political "briar patch" for the administration. In his speech, the President suggested that wrapped up in the definition of feasibility are concerns about the political fallout from ground forces capturing an individual. The President appeared to suggest that he may consider capture "foreclosed" — that is, off the table — when that option would result in a public "backlash" among local populations or spark international tensions. We trust the President is not actually saying that when apprehending an individual is politically costly, that person might instead be killed. But his speech missed an opportunity to dismiss such frequently voiced concerns once and for all. Killed but not "specifically" targeted: In its belated acknowledgement that the US has killed four American citizens since 2009, the administration gave us another novel turn of phrase: "not specifically targeted." This is carefully crafted, but highly opaque wording. The government says that one American, Anwar al-Aulaqi, was "specifically targeted and killed." The other three, it says, were "not specifically targeted" but no explanation whatsoever is given for their deaths. Were these Americans purposely or knowingly killed in signature strikes? Were they intentional or accidental collateral damage in a strike on some other target? Or killed by mistake? We just don't know, and this raises significant questions not just about the targeting of Americans, but of the thousands of others killed. Senior operational leaders, or any terrorist? In an important piece, McClatchy reporter Jonathan Landay accurately notes that the new rules do not limit force to senior operational leaders, although this limit appeared in numerous prior government statements and the much discussed White Paper. The new rules are at odds with some popular assumptions that only high-level leaders are targeted. The written rules indicate instead that any member of a terrorist group carrying out attacks is targetable. This revelation appears consistent with past findings that only 2 percent of killings have been of “high-level” militants, and that the vast majority of strikes have killed low-level fighters. The administration thus appears to be taking a more explicitly expansive approach to its kill list. Threats to U.S. persons and the end of bargaining chip strikes? What or whom does a terrorist have to threaten to make them targetable by the U.S. government? The new rules say that the government will kill only to "prevent or stop attacks against U.S. persons." This would seem to rule out U.S. attacks carried out at the request of Pakistan or Yemen and involvement in other countries’ purely domestic insurgencies, attacks sometimes called "side-payment strikes" or "goodwill strikes." However, a "reservation" at the end of the written rules states that the President can still take action to protect U.S. allies – does this leave open future strikes carried out for other countries? And given reports indicating that such strikes have taken place in the past, should we now assume that the administration has decided to completely forgo all such tactics? When can civilians be killed? The rules set out a strict test: strikes will take place only when there is a "near certainty" that civilians will not be injured or killed. This is far stricter than the traditional test in armed conflict, which permits civilian deaths proportionate to a military advantage. Officials suggested that this test may have existed "for the last several years." However, the demanding test is difficult to reconcile with specific allegations of civilian harm, such as the 2009 Al-Majala strike in which 21 children were reportedly killed, or numerous individual reports of civilian harm in Pakistan. To fulfill its transparency and accountability commitments, the administration must now answer the specific allegations. Still no clarity about key terms: "associated forces" and "imminence." The administration has received much criticism for its "elongated" imminence concept. Its position that it can kill "associated forces" of al-Qa'ida has also been a key point of controversy because the government has never adequately defined who these forces are. Although many anticipated increased transparency on these points, little was offered, and we still don't meaningfully know how these categories are being applied or defined.

#### CP is the ONLY way to solve all of their case

Ellison ’13 (Keith Ellison, “Time for Congress to build a better drone policy”, <http://articles.washingtonpost.com/2013-01-13/opinions/36311903_1_drone-strikes-drone-program-drone-policy>, January 13, 2013)

An unmanned U.S. aerial vehicle — or drone — reportedly killed eight people in rural Pakistan last week, bringing the estimated death toll from drone strikes in Pakistan this year to 35. As the frequency of drone strikes spikes again, some questions must be asked: How many of those targeted were terrorists? Were any children harmed? And what is the standard of evidence to carry out these attacks? The United States has to provide answers, and Congress has a critical role to play. The heart of the problem is that our technological capability has far surpassed our policy. As things stand, the executive branch exercises unilateral authority over drone strikes against terrorists abroad. In some cases, President Obama approves each strike himself through “kill lists.” While the president should be commended for creating explicit rules for the use of drones, unilateral kill lists are unseemly and fraught with hazards. When asked about the drone program in October during an interview on the “The Daily Show,” the president said, “One of the things we’ve got to do is put a legal architecture in place, and we need congressional help in order to do that, to make sure that not only am I reined in, but any president’s reined in terms of some of the decisions that we’re making.” It’s time to put words into action. Weaponized drones have produced results. They have eliminated 22 of al-Qaeda’s top 30 leaders and just last week took out a Taliban leader. Critically, they lessen the need to send our troops into harm’s way, reducing the number of U.S. casualties. Yet the costs of drone strikes have been ignored or inadequately acknowledged. The number of innocent civilian casualties may be greater than people realize. A recent study by human rights experts at Stanford Law School and the New York University School of Law found that the number of innocent civilians killed by U.S. drone strikes is much higher than what the U.S. government has reported: approximately 700 since 2004, including almost 200 children. This is unacceptable. Another cost is how drone strikes are shaping views of the United States around the world. You might develop a negative attitude toward the United States if your only perception of it is a foreign aircraft buzzing over your house that occasionally fires missiles into your neighborhood. In Pakistan, where 95 percent of U.S. drone strikes have occurred, people familiar with them overwhelmingly express disapproval (97 percent, according to Pew polling from June) and believe they kill too many innocent people (94 percent). Drone strikes may well contribute to the extremism and terrorism the United States seeks to deter. U.S. drone use has also lowered the threshold for the use of lethal force in foreign countries. Would we fire so many missiles into Pakistan, Yemen and Somalia if doing so required sending U.S. troops into harm’s way? Our drone policy must be guided by more than capability. It must be guided by respect for noncombatants, necessity and urgency. It is Congress’s responsibility to exercise oversight and craft policies that govern the use of lethal force. But lawmakers have yet to hold a single hearing examining U.S. drone policy. Any rules must provide adequate transparency, respect the rule of law, conform with international standards and prudently advance U.S. national security over the long term. In codifying a legal framework to guide executive action on drone strikes, Congress should consider these steps: First, we must do more to avoid innocent civilian casualties. The Geneva Conventions, which have governed the rules of war since World War II, distinguish between combatants and noncombatants in the conduct of hostilities and state that civilian casualties are not acceptable except in cases of demonstrated military necessity. This is the standard we must follow. Second, Congress must require an independent judicial review of any executive-branch “kill list.” The U.S. legal system is based on the principle that one branch of government should not have absolute authority. Congress should object to that concentration of power, especially when it may be used against U.S. citizens. A process of judicial review would diffuse executive power and provide a mechanism for greater oversight. Third, the United States must collaborate with the international community to develop a widely accepted set of legal standards. No country — not even our allies — accepts the U.S. legal justification for targeted killings. Our justification must rest on the concept of self-defense, which would allow the United States to protect itself against any imminent threat. Any broader criteria would create the opportunity for abuse and set a dangerous standard for other countries to follow, which could harm long-term U.S. security interests. The United States will not always enjoy a monopoly on sophisticated drone technology. The Iranian-made drone that Hezbollah recently flew over Israel should compel us to think about the far-reaching implications of current policy. A just, internationally accepted protocol on the use of drones in warfare is needed. By creating and abiding by our own set of reasonable standards, the United States will demonstrate to the world that we believe in the rule of law.

#### Ending drones key to host country cooperation

Streeter ’13 (Devin C. Streeter, Helms School Of Government, Liberty University “Boko Haram, Drone Policy, And Port Security: Issues For Congress”, [http://www.academia.edu/3523639/U.S.\_Drone\_Policy\_Tactical\_Success\_and\_Strategic\_Failure](http://www.academia.edu/3523639/U.S._Drone_Policy_Tactical_Success_and_Strategic_Failure)shaw), April 19, 2013)

A new set of drone operating procedures would help to repair international relations and decrease civilian casualties. Furthermore, nations like Yemen, Somalia, and others, will not feel threatened and will readily accept U.S. assistance in counterterrorism efforts.¶ 78¶ Cooperation with affected nations will ensure that their sovereignty is not violated¶ 79¶ and the use of human intelligence programs will reduce civilian casualties, thus resulting in a sanitary, more effective drone operation.¶ 80¶ While the U.S. drone program has many noteworthy tactical successes, it simultaneously has suffered various strategic failures. Collateral damage has directly strained our relations with Pakistan, and indirectly stressed our relations with Europe, Asia, and South America. However, by increasing joint cooperation and decreasing civilian casualties, the harms inflicted on international relations can be reconciled. If this new system is implemented, not only will United States policy makers see the radical decrease of innocent deaths, but they will also see a decrease in terrorism and the terrorist recruiting pool.¶ 81¶ Confronting this issue and establishing a new set of standard operating procedures should be on the forefront of every elected official’s agenda, for the purpose of improving foreign policy and repairing international relations.

#### The RISK that the executive utilizes this for their benefit is GREATER in the world of the perm so it’s ALWAYS more desirable to have the CP alone --- They send mixed signals about law of armed conflict: that undermines all parts of their aff

**Kels ‘12** [Maj. Charles G. Kels is an attorney for the Department of Homeland Security and an individual mobilization augmentee with the U.S. Air Force Office of the Judge Advocate General, “Mixed messages on drone strikes,” July 16, <https://wiki.nps.edu/display/CRUSER/2012/07/16/Mixed+messages+on+drone+strikes>]

Finally, the administration emphasizes its "rigorous standards and process of review ... when considering and authorizing strikes" outside of "hot" war zones. The State Department's Koh has insinuated that this robust vetting process is integral to validating our legitimate self-defense claim in each and every targeted killing operation. This is a somewhat disconcerting line of argument, because it is seemingly at odds with the government's overall assertion that we are in an armed conflict with al-Qaida. Self-defense is a jus ad bellum principle; once we are at war, the appropriate legal standards for applying force are guided by jus in bello. Applying a self-defense analysis to each individual drone strike - as opposed to the time-honored LOAC principles of war fighters - sends mixed signals about whether we really believe we are in an armed conflict.¶ Given that the lawful imperative of U.S. self-defense in World War II was the unconditional surrender of the Axis powers, we would seem to be on firm ground today by strictly maintaining that our right of self-defense, as triggered by the terrorist attacks of 9/11, is geared toward the much narrower goal of degrading or eliminating al-Qaida's capability to launch another deadly attack against the U.S. homeland. Within that framework, we are guided by LOAC in the conduct of hostilities. Indeed, the U.S. government clearly believes that drone warfare is particularly suited to the task of waging an armed conflict with limited goals, because the new technology enables to us to synergize the campaign's means and ends as never before.¶ At least in the context of an American citizen such as al-Awlaki, the attorney general has stated that on top of traditional LOAC principles, the elaborate "kill list" procedure considers the imminence of the threat posed by the individual, as well as the feasibility of capture in lieu of deadly force. Such robust executive deliberation, Holder argues, satisfies the Fifth Amendment's accordance of due process of law; this provides the context in which he famously said that "the Constitution guarantees due process, not judicial process." The attorney general has taken considerable heat for this statement, in large part because an ultra-secretive executive war-making function is an odd tool with which to safeguard constitutional rights. From an armed conflict perspective, however, law professor Jack Goldsmith is surely correct in his estimation that the current U.S. system, as described in the administration's speeches, "goes far beyond any process given to any target in any war in American history."¶ Does It Hold Water?¶ Taken individually, each of these arguments is reasonable, accurate and perhaps even persuasive. Viewed as a whole, however, the U.S. position suffers from a degree of cognitive dissonance which results from our trying to please everyone at once instead of holding firm to basic, time-tested principles. In the end, this scattershot approach risks undermining our legal authority and - ironically - pleasing no one. The problem emanates from attempting to superimpose legal doctrines on top of one another rather than insisting on their own internal logic. The net effect is to make us appear hesitant about the wisdom and legality of our own actions, which merely emboldens those critics whom we can never hope to satisfy anyway - at least not without compromising our own security.¶ To see why it's so crucial for us to speak boldly and plainly, it's important to understand what entities such as the U.N. Human Rights Council and the Red Cross are really trying to do. At base, these noble organizations - reflective of the international human rights law community as a whole, with a decidedly continental European outlook - believe that "sporadic, low-intensity attacks" from nonstate actors "do not rise to the level of armed attack" that would enable us to invoke the right of self-defense as a basis for resorting to force. As the aforementioned U.N. report approvingly remarks, "the legality of a defensive response must be judged in light of each armed attack, rather than by considering occasional, although perhaps successive, armed attacks in the aggregate."¶ In other words, the human rights community rejects our jus ad bellum argument that we are at war with al-Qaida wherever they may be. Moreover, these institutions deny that we are in an armed conflict at all - at least outside of "hot" war zones - both because al-Qaida is not cohesive enough and because the intensity and duration of the havoc it wreaks is insufficiently destructive. Thus, the applicable standard for applying force in each instance is not LOAC; jus in bello is out the window because there is no war. Rather, the peacetime model of human rights law prevails. This clearly is not a position that the U.S. can abide: first, because it eradicates any realistic deterrent for states to rein in terrorist attacks emanating from their territory; and second, because it effectively neuters our considerable national security apparatus as a counterterrorism asset. Simply put, it is an attempt to hem us in by wedding us to a police paradigm rather than a military one.¶ What To Do¶ This context illustrates precisely why the government has to stop straddling the fence and sending mixed messages about what we are doing. We must emphatically state that any complex vetting process undertaken by the president before targeting an individual terrorist is simply a matter of discretionary policy and grand strategy, not legal obligation. The bizarre "bureaucratic ritual" of White House "Terror Tuesday" meetings attended by high-level political advisers - as reported in a recent, much-publicized New York Times article - bears an unsettling resemblance to President Lyndon Johnson's well-documented "Tuesday lunches" reviewing target lists for Vietnam. Although the conflicts and eras clearly differ, the U.S. must not repeat the mistakes of the Rolling Thunder campaign by allowing overly restrictive and centralized targeting rules to degrade the efficient and lawful application of our military might.

#### They sever out of identification of the parameters that DEFINES THE ZONE --- THIS IS KEY --- voter for fairness/education and this has an impact in and of itself --- you have to PUNISH them for poor research --- don’t reward lazy debating and vague plantext writing --- STAR THIS CARD

BLANK 2010 – aff author, Director, International Humanitarian Law Clinic, Emory Law School, Laurie R., 9/16/10, “DEFINING THE BATTLEFIELD IN CONTEMPORARY CONFLICT AND COUNTERTERRORISM: UNDERSTANDING THE PARAMETERS OF THE ZONE OF COMBAT,” Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 2010, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677965>

V. DEFINING THE ZONE OF COMBAT

Notwithstanding the complicated nature of the conflict between the U.S. and al Qaeda and affiliated terrorist groups, and the resulting confusion in trying to define the space where that conflict is taking place, identifying the parameters of the zone of combat is a critical task. At the same time that many debate whether a state can even be engaged in an armed conflict with a terrorist group, a critically important question with ramifications for generations to come, the U.S. has declared that it indeed is in such an armed conflict and is operating accordingly. Analyzing *how* we can understand the parameters of the zone of combat and assessing relevant factors for doing so must become part of the debate and discussion surrounding the appropriate response to and manner of combating terrorism.

This Article demonstrates that traditional conceptions of belligerency and neutrality are not designed to address the complex spatial and temporal nature of terrorist attacks and states responses. Nor can human rights law or domestic criminal law, which are both legal regimes of general applicability, offer a useful means for defining where a state can conduct military operations against terrorist groups. LOAC, in contrast, provides a framework not only for when it applies, but where and for how long. By using this framework and analogizing relevant factors and considerations to the conflict with al Qaeda, we can identify factors that can help define the zone of combat.

First, some terrorist attacks and activities fall closer to the traditional conception of hostilities as understood within LOAC. Areas where these types of attacks occur naturally have a stronger link to a battlefield. In addition, when such attacks or activities occur regularly or over a defined time period, we can more clearly define the temporal parameters of the zone of combat as well.

## 1NR

The plan codifies loose rules on doctrines of military force for pre-emptive and preventative strikes

#### Their link defense is bullshit --- the mechanism is insufficient and unnecessary --- you can’t pay lip service to countries on what sovereignty means

**Travalio and Altenburg ’03** (Greg, Lawrence D. Stanley Professor of Law, Michael E. Moritz College of Law, The Ohio State University; and John, Colonel, Judge Advocate General's Corps, US Army Reserve, Spring, 4 Chi. J. Int'l L. 97)

The limitations on the right to use armed force stated earlier in this Article should be made explicit by the administration, lest the doctrine backfire when applied broadly by other states to justify aggression in the name of self-defense. Unless we clearly articulate both the justifications for our actions and, more importantly, the limitations on our conduct, as well as persuade the international community to accept these justifications and limitations, our restraint will mean little to the Russian government contemplating military action against Georgia, or to the Indian government considering its options in dealing with Pakistan. To date, the public pronouncements of the United States, which seem to impose few limits upon the use of military force in combating terrorism, will not deter the use of force. To the contrary, the breadth of these public statements will only encourage governments to resort to force. More importantly, however, this evolution seems to have spawned an entirely new doctrine--that of "preemption." First announced in a Presidential speech at West Point in June 2002, this doctrine asserts that the US maintains the right to strike first to eliminate weapons that might be used against us or supplied to terrorists. This is the basis, in large part, for the Administration's justification for military action against Iraq, and it is in our newest National Security Strategy. [53](http://www.lexis.com/research/retrieve?_m=6644d0e602cd0712da0435e0a5d1a3b0&docnum=29&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAt&_md5=8e71d1b393cf982617a4d822297e0184&focBudTerms=prevent%21%20w/35%20preempt%21%20w/35%20international%20law&focBudSel=all#n53) It was recently reported that a classified appendix to the recently released National Strategy to Combat Weapons of Mass Destruction authorizes preemptive strikes on states and terrorist groups that are close to acquiring weapons of mass destruction or the long-range missiles capable of delivering them. [**54**](http://www.lexis.com/research/retrieve?_m=6644d0e602cd0712da0435e0a5d1a3b0&docnum=29&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAt&_md5=8e71d1b393cf982617a4d822297e0184&focBudTerms=prevent%21%20w/35%20preempt%21%20w/35%20international%20law&focBudSel=all#n54) We contend that permitting the evolving rules of state responsibility to  [\*118]  metamorphose into a doctrine of preemption is both unnecessary and illadvised. The doctrine of preemption is not recognized by the international community and has been opposed in the past by the United States. In 1981, for example, the United Nations Security Council unanimously passed a resolution condemning Israel's preemptive attack on the Iraqi nuclear facility at Osiraq. [**55**](http://www.lexis.com/research/retrieve?_m=6644d0e602cd0712da0435e0a5d1a3b0&docnum=29&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAt&_md5=8e71d1b393cf982617a4d822297e0184&focBudTerms=prevent%21%20w/35%20preempt%21%20w/35%20international%20law&focBudSel=all#n55) Furthermore, the vast majority of commentators reject any claim of a right to preemptive self-defense. The doctrine of preemption is not necessary to counter the terrorist threat and, more importantly, its potential costs outweigh its benefits. The requirements for state responsibility and for anticipatory self-defense, as articulated in this Article, provide a sufficient basis for the United States to act to prevent terrorist attacks and the use of weapons of mass destruction without entering the uncharted and previously prohibited waters of preemption. An open-ended doctrine of preemption is a Pandora's box we should be very reluctant to open.

#### Their first resorts/zones mechanism links --- it starts blurring the line EVEN MORE than the status quo

Blank 12. [Laurie R. Blank, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, Emory University School of Law Legal Studies Research Paper Series

Research Paper No. 12-217, <http://ssrn.com/abstract=1981379>]

One core purpose of the LOAC is the protection of innocent ¶ civilians by minimizing harm to civilians and civilian objects during ¶ wartime. Another is to enable effective military operations within ¶ the boundaries of the law. A central purpose of human rights law is ¶ the protection of individuals from violation of their rights and ¶ overreaching, even—and especially—during times of national ¶ emergency. Blurring the lines between armed conflict and self-defense and the targeting authority relevant to each legal regime ¶ directly affects all three of these critical goals. First, the hard-to-define parameters of an ongoing armed conflict with terrorist ¶ groups raise serious concerns about too many areas being ¶ subsumed within an area of armed conflict and the use of lethal ¶ force as a first resort. As more and more areas are viewed as part of ¶ the “zone of combat,” more innocent civilians will face the ¶ consequences of hostilities, whether unintended death, injury, or ¶ property damage. This result runs counter to both the LOAC and ¶ human rights law. The potential spillover between status-based¶ targeting and direct participation in the armed conflict framework ¶ and imminence and necessity (but without belligerent nexus) in ¶ the self-defense framework provoke similar consternation with ¶ regard to the protective and discriminating purposes of both ¶ bodies of law. ¶

#### There’s an impact to blurring that distinction --- the plan adds a terrible enforcement mechanism by adding another agent to determine imminent threat

Blank 12. [Laurie R. Blank, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, Emory University School of Law Legal Studies Research Paper Series

Research Paper No. 12-217, <http://ssrn.com/abstract=1981379>]

Finally, effective implementation of and compliance with the ¶ law, whether the LOAC, the law of self-defense, or human rights ¶ law, depends on regular and respected mechanisms for ¶ enforcement. In the arena of international law, both formal ¶ (courts and tribunals) and informal (public opinion, response ¶ from other states) enforcement have value and effect. Any judicial ¶ body determining the lawfulness of state action or the criminal ¶ responsibility of individuals must first determine the applicable law ¶ in order to reach an appropriate result.141¶ When the legal regimes ¶ become blurred through repeated conflation, application of the ¶ law and thus enforcement will be hampered. The resulting ¶ consequence, of course, is that a lack of effective enforcement then ¶ undermines effective implementation of the law and protection of ¶ persons in the future. These problems often are highlighted in the ¶ more informal enforcement arena of media reporting, public ¶ opinion, advocacy reports, and other responses, where disputes ¶ over applicable law and appropriate analyses abound. When ¶ international or nongovernmental organization reports produce ¶ primarily disputes over which law is applied—rather than how the ¶ law is applied to the facts on the ground—the debate becomes ¶ centered on the law and legal disputes rather than on the victims, ¶ the perpetrators, and how to prevent legal violations in the future. ¶ The blurring of lines between armed conflict and self-defense takes ¶ these challenges to another level as well, however, creating a ¶ situation in which independent analysts may have difficulty ¶ identifying the key pieces of information necessary to an effective ¶ examination of the legality of the state’s policies and actions.

#### US will strategically interpret zones of conflict --- this is key because they have “asserted” too

**Radin ’13** [Sasha, Visiting Research Scholar at the Naval War College, Newport Rhode Island; PhD candidate, Asia Pacific Centre for Military Law, University of Melbourne Law School, “Global Armed Conflict?¶ The Threshold of Extraterritorial Non-International Armed Conflicts,” online]

NIAC = Non-International Armed Conflicts

Once the existence of an armed conflict has been established, a sepa-rate issue arises as to the geographic boundaries of that conflict. This im-pacts the controversial question of when an individual may be targeted or detained if located in another country away from the main battlefield. Here too, because the law was originally intended to apply within State bounda-ries, very little guidance exists. It is argued that as the law currently stands, once an armed conflict exists LOAC applies to the parties to the conflict wherever they may be located, but that other restraints within LOAC and jus ad bellum limit its application. In particular, the question of whether an armed conflict exists in the first place is not self-evident. The debate on who can be targeted and when applies both to internal NIACs and extra-territorial NIACs. It may be that additional stipulations will be considered necessary as the law develops given the lack of State boundaries and the distance from an active battlefield. However, currently the law does not require this. Finally, the restrictions found in jus ad bellum curtail action that may be taken.¶ Therefore, to erase territorial boundaries from the equation entirely when establishing the existence of an armed conflict raises challenges to the structure of the law and some of its underlying purposes. Certain ob-stacles may prompt clarification in the law; others may remain as limita-tions on the law’s application. As a consequence, it is not clear where the bar for the application of Common Article 3, and thus LOAC, lies, particu-larly when applied to conflicts that spread across multiple countries. Some States want to ensure that they have sufficient flexibility to deal with these circumstances. Other States (as well as organizations and commentators) are concerned that the law may be interpreted too permissively and ulti-mately be abused

#### Anderson vote negs- justifies covert action which *wrecks* law

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

What Should Congress Do?

Does this analysis offer any practical policy prescriptions for Congress and the administration? The problem is not so much a need for new legislation to create new structures or new policies. The legislative category in which many instances of targeted killing might take place in the future already exists. The task for Congress and the administration, rather, is instead to preserve a category that is likely to be put under pressure in the future and, indeed, is already seen by many as a legal non-starter under international law. Before addressing what Congress should do in this regard, we might ask from a strictly strategic political standpoint whether, given that the Obama Administration is committed to this policy anyway, whether it is politically prudent to draw public attention to the issue at all. Israeli officials might be threatened with legal action in Spain; but so far no important actor has shown an appetite for taking on the Obama Administration. Perhaps it is better to let sleeping political dogs lie. These questions require difficult political calculations. However, the sources cited above suggest that even if no one is quite prepared at this moment to take on the Obama Administration on targeted killing, the intellectual and legal pieces of the challenge are already set up and on the table. Having asserted certain positions concerning human rights law and its application and the United States having unthinkingly abandoned its self-defense rationale for its policy, the play can be made at any time—at some later time in the Obama Administration or in the next Republican administration, prying apart the “American” position to create a de facto alliance among Democrats and Europeans and thereby undermining the ability of the United States to craft a unified American security strategy.101 The United States would be best served if the Obama Administration did that exceedingly rare thing in international law and diplomacy: Getting the United States out in front of the issue by making plain the American position, rather than merely reacting in surprise when its sovereign prerogatives are challenged by the international soft-law community. The deeper issue here is not merely a strategic and political one about targeted killing and drones but goes to the very grave policy question of whether it is time to move beyond the careful ambiguity of the CIA’s authorizing statute in referring to covert uses of force under the doctrines of vital national interest and self-defense. Is it time to abandon strategic ambiguity with regards to the Fifth Function and assert the right to use force in self-defense and yet in “peacetime”—that is, outside of the specific context of an armed conflict within the meaning of international humanitarian law? Quite possibly, the strategic ambiguity, in a world in which secrecy is more and more difficult, and in the general fragmentation of voice and ownership of international law, has lost its raison d’etre. This is a larger question than the one undertaken here, but on a range of issues including covert action, interrogation techniques, detention policy, and others, a general approach of overt legislation that removes ambiguity is to be preferred. The single most important role for Congress to play in addressing targeted killings, therefore, is the open, unapologetic, plain insistence that the American understanding of international law on this issue of self-defense is legitimate. The assertion, that is, that the United States sees its conduct as permissible for itself and for others. And it is the putting of congressional strength behind the official statements of the executive branch as the opinio juris of the United States, its authoritative view of what international law is on this subject. If this statement seems peculiar, that is because the task—as fundamental as it is—remains unfortunately poorly understood. Yet if it is really a matter of political consensus between Left and Right that targeted killing is a tool of choice for the United States in confronting its non-state enemies, then this is an essential task for Congress to play in support of the Obama Administration as it seeks to speak with a single voice for the United States to the rest of the world. The Congress needs to backstop the administration in asserting to the rest of the world— including to its own judiciary—how the United States understands international law regarding targeted killing. And it needs to make an unapologetic assertion that its views, while not dispositive or binding on others, carry international authority to an extent that relatively few others do—even in our emerging multi-polar world. International law traditionally, after all, accepts that states with particular interests, power, and impact in the world, carry more weight in particular matters than other states. The American view of maritime law matters more than does landlocked Bolivia’s. American views on international security law, as the core global provider of security, matter more than do those of Argentina, Germany or, for that matter, NGOs or academic commentators. But it has to speak—and speak loudly—if it wishes to be heard. It is an enormously important instance of the need for the United States to re-take “ownership” of international law— not as its arbiter, nor as the superpower alone, but as a very powerful, very important, and very legitimate sovereign state. Intellectually, continuing to squeeze all forms and instances of targeted killing by standoff platform under the law of IHL armed conflict is probably not the most analytically compelling way to proceed. It is certainly not a practical long-term approach. Not everyone who is an intuitively legitimate target from the standpoint of self-defense or vital national security, after all, will be already part of an armed conflict or combatant in the strict IHL sense. Requiring that we use such IHL concepts for a quite different category is likely to have the deleterious effect of deforming the laws of war, over the long term—starting, for example, with the idea of a “global war,” which is itself a certain deformation of the IHL concept of hostilities and armed conflict.

#### Their Brooks card is neg --- aff causes international backlash and allows Obama to make the term mean whatever he wants- causes circumvention

Brooks, 13 [Rosa, Professor of Law, Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, The Constitutional and Counterterrorism Implications of Targeted Killing, <http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf>]

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28 But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks. As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks. Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law. A. The Rule of Law At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness. Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party. In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination. B. Targeted Killing and the Law of Armed Conflict Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30 It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained. Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31 This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior. Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts. None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law. To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war. Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft. That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35 Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant. The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. As a result, Administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable, because they're based wholly on undisclosed evidence. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings. This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions? I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US targeted killings. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder? C. Targeted Killing and the International Law of Self-Defense When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles. Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality. But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts. According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence. But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict). That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.” The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate. From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter? As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases. So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens. Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41 No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials. As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? 5. Setting Troubling International Precedents Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### We control terminal impact uniqueness- war taboo strong and effective now. Norms matter- prevents miscalc and escalation

Beehner, 12 – Council on Foreign Relations senior writer; Truman National Security Project fellow

[Lionel, "Is There An Emerging ‘Taboo’ Against Retaliation?" The Smoke Filled Room, 7-13-12, thesmokefilledroomblog.com/2012/07/13/is-there-an-emerging-taboo-against-retaliation/, accessed 9-22-13, mss]

The biggest international news in the quiet months before 9/11 was the collision of a U.S. Navy spy aircraft and a PLA fighter jet in China, during which 24 American crew members were detained. Even though the incident was lampooned on SNL, there was real concern that the incident would blow up, damaging already-tense relations between the two countries. But it quickly faded and both sides reached an agreement. Quiet diplomacy prevailed. Flash-forward a decade later and we have a similar border incident of a spy plane being shot down between Turkey and Syria. Cue the familiar drumbeats for war on both sides. To save face, each side has ratcheted up its hostile rhetoric (even though Syria’s president did offer something of an admission of guilt). But, as in the spring of 2001, I wouldn’t get too worried. One of the least noted global norms to emerge in recent decades has been the persistence of state restraint in international relations. Retaliation has almost become an unstated taboo. Of course, interstate war is obviously not a relic of previous centuries, but nor is it as commonplace anymore, despite persistent flare-ups that have the potential to escalate to full-blown war. Consider the distinct cases of India and South Korea. Both have sustained serious attacks with mass casualties in recent years: South Korea saw 46 of its sailors killed after the Cheonan, a naval vessel, was sunk by North Korea; India saw 200 citizens killed by the Mumbai attacks, orchestrated by Islamist groups with links to Pakistani intelligence. Yet neither retaliated with military force. Why? The short answer might be: Because a response may have triggered a nuclear war (both Pakistan and North Korea are nuclear-armed states). So nukes in this case may have acted as a deterrent and prevented an escalation of hostilities. But I would argue that it was not the presence of nuclear weapons that led to restraint but rather normative considerations. South Korea and India are also both rising democratic powers with fast-growing economies, enemies along their peripheries, and the military and financial backing of the United States. Their leaders, subject to the whims of an electorate, may have faced domestic pressures to respond with force or suffer reputational costs. And yet no escalation occurred and war was averted. Again, I argue that this is because there is an emerging and under-reported norm of restraint in international politics. Even Russia’s invasion of Georgia in August 2008, which may at first appear to disprove this theory, actually upholds it: The Russians barely entered into Georgia proper and could easily have marched onto the capital. But they didn’t. The war was over in 5 days and Russian troops retreated to disputed provinces. Similarly, Turkey will not declare war on Syria, no matter how angry it is that Damascus shot down one of its spy planes. Quiet diplomacy will prevail. In 1999, Nina Tannenwald made waves by proclaiming the emergence of what she called a “nuclear taboo” – that is, the non-use of dangerous nukes had emerged as an important global norm. Are we witnessing the emergence of a similar norm for interstate war? Even as violence rages on in the form of civil war and internal political violence all across the global map, interstate conflict is increasingly rare. My point is not to echo Steven Pinker, whose latest book, The Better Angles of Our Nature, painstakingly details a “civilizing process” and “humanitarian revolution” that has brought war casualties and murder rates down over the centuries. I’m not fully convinced by his argument, but certainly agree with the observation that at the state level, a norm of non-retaliation has emerged. The question is why. Partly, war no longer makes as much sense as in the past because capturing territory is no longer as advantageous as it once was. We no longer live in a world where marauding throngs of Dothraki-like bandits – or what Mancur Olson politely called “non-stationary bandits” – seek to expand their writ over large unconquered areas. This goes on, of course, at the intrastate level, but the rationale for interstate war for conquest is no longer as strong. Interstate wars of recent memory — the Eritrea-Ethiopia conflicts of 1999 and 2005, the Russia-Georgia War of 2008 — upon closer inspection, actually look more like intrastate wars. The latter was fought over two secessionist provinces; the former between two former rebel leaders-turned-presidents who had a falling out. But if we have reached a norm of non-retaliation to threats or attacks, does that mean that deterrence is no longer valid? After all, if states know there will be no response, why not step up the level of attacks? I would argue that the mere threat of retaliation is enough, as evidenced by Turkish leaders’ harsh words toward Syria (there is now a de facto no-fly zone near their shared border). Still, doesn’t restraint send a signal of weakness and lack of resolve? After all, didn’t Seoul’s non-response to the Cheonan sinking only invite Pyongyang to escalate hostilities? Robert Jervis dismisses the notion that a tough response signals resolve as being overly simplified. The observers’ interpretation of the actor and the risks involved also matter. When Schelling writes about the importance of “saving face,” he describes it as the “interdependence of a country’s commitments; it is a country’s reputation for action, the expectations other countries have about its behavior.” Others note that the presence of nuclear weapons forces states, when attacked, to respond with restraint to avoid the risk of nuclear escalation. Hence, we get “limited wars” rather than full-blown conflicts, or what some deterrent theorists describe as the “stability-instability paradox.” This is not a new concept, of course: Thucydides quoted King Archimadus of Sparta: “And perhaps then they see that our actual strength is keeping pace with the language that we use, they will be more inclined to give way, since their land will still be untouched and, in making up their minds, they will be thinking of advantages which they still possess and which have not yet been destroyed.” There will be future wars between states, of course. But the days when an isolated incident, such as a spy plane being shot down or a cross-border incursion, can unleash a chain of events that lead to interstate wars I believe are largely over **because of the emergence of restraint as a powerful norm**ative force in international politics, not unlike Tannenwald’s “nuclear taboo.” Turkey and Syria will only exchange a war of words, not actual hostilities. To do otherwise would be a violation of this existing norm.

#### Russian leaders perceive the blurring between preemption and prevention and will use it to advance neo-imperialist policy

**The Record**, September 29, 20**02**, p. Lexis

"This is a devaluation of deterrence and containment, as if those were 20th century ideas that are now outmoded," Graham T. Allison, a professor of government at Harvard, said Friday. "If something in the zone between preemption and prevention came to be the general international understanding, you could see a significant increase in the number of attacks," Allison said. These distinctions may seem academic to the majority of Americans, who tell pollsters they support an attack on Iraq, but they are crucial to the thinking of European, Russian and Chinese leaders. Many Europeans fear the Bush doctrine could encourage Russia to claim a similar right to preemptive military action to defeat the Chechen separatists it calls terrorists, and to defend southern Russian regions from cross-border incursions being staged from within Georgia

#### Preemption will be modeled by India and Pakistan – resulting in the escalation of conflict

Ivo H. **Daalder,** senior fellow in foreign policy studies - Brookings Institution, 11/16/ 20**02**, Policy Implications of the Bush Doctrine on Preemption, Council on Foreign Relations, p. http://www.cfr.org/publication/5251/policy\_implications\_of\_the\_bush\_doctrine\_on\_preemption.html?breadcrumb=%2Feducators%2Fmodules

The doctrine of preemption is also strategically imprudent. If taken seriously by others, it will exacerbate the security dilemma among hostile states, by raising the incentive of all states to initiate military action before others do. The result is to undermine whatever stability might exist in a military standoff. Take the very real case of India and Pakistan, both nuclear powers with long-standing territorial and other grievances. Suppose tensions rise, as they did last summer, when a million Indian and Pakistani troops massed on the border. Islamabad, fearing that Delhi might try to preempt its quite vulnerable nuclear strike capability, will have a powerful incentive to go first. India, knowing this to be the case, will have an equally powerful incentive to get its weapons off before Pakistan does. Given this dynamic, the use of force in tense situations like these will increasingly be viewed as a first resort, thus undermining whatever moderating influence diplomatic intervention might otherwise have had.