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#### Passage of immigration reform is likely, both sides agree it is a top priority and congress is willing to cooperate

Clifford, 12/30 (Mike, 12/30/2013, “Immigration Reform Supporters: “Positive Signs” Headed into 2014,” <http://www.publicnewsservice.org/2013-12-30/immigrant-issues/immigration-reform-supporters-positive-signs-headed-into-2014/a36538-1)>)

NEW YORK - Supporters of comprehensive immigration reform fell short of their goal in 2013, but several things happened in December to swing momentum in their direction, they say. The first positive sign, according to Jim Wallis, Sojourners president and founder, was the House and Senate working together to pass a budget bill. And, while Speaker Boehner has said immigration reform would have to wait until next year, Wallis said there are signs Republicans are ready to act. "I hear Republican leaders - Goodlatte from Judiciary - saying this will be a top priority in 2014," Wallis said. "John Boehner has hired a really talented aide to help with immigration - she knows the topic well, and she's for reform." At his final 2013 news conference, President Obama called on House members to pass the immigration reform measure approved by the Senate, but Speaker Boehner has said he won't bring that version up for a vote.

#### **Congressional drone proposals causes massive fights.**

Munoz 13

(Carlo Munoz, National Security writer, “Turf battle builds quietly in Congress over control of armed drone program”, The Hill, 4/9/13, http://thehill.com/homenews/administration/292501-turf-battle-builds-quietly-over-control-of-armed-drone-program)

A turf war is quietly building between congressional defense and intelligence committees over who will oversee the Obama administration’s controversial armed drone program. ¶ Lawmakers are scrambling to make their case for or against a White House proposal that would hand control of the drones to the Pentagon. ¶ Gordon Adams, a senior defense analyst at the Stimson Center, called the looming battle a “turf fight in the [disguise] of a policy debate.”¶ The Pentagon and CIA operate their own armed drone programs, which are both geared toward eliminating senior al Qaeda leaders and other high-level terror targets around the world. Under the Obama administration’s proposal, the CIA would continue to supply intelligence on possible targets, but actual control over the drone strikes would fall to the Pentagon. ¶ Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.) publicly questioned whether the Defense Department (DOD) would be able to shoulder the program alone. ¶ “We’ve watched the intelligence aspect of the drone program, how they function, the quality of the intelligence, watching the agency exercise patience and discretion,” Feinstein told reporters in March. “The military [armed drone] program has not done that nearly as well.” ¶ Sen. John McCain and other defense lawmakers say the drone program would be better off being run by the Pentagon. ¶ “It’s not the job of the Central Intelligence Agency. ... It’s the military’s job,” the Arizona Republican said in March. ¶ The fight is a typical battle over who on Capitol Hill will retain power over the program, according to several analysts, who described it as predictable. ¶ “There is always going to be a turf battle” when dealing with congressional oversight, said Lawrence Korb, a former DOD official and defense analyst at the liberal-leaning Center for American Progress. ¶ But that battle could become particularly heated, given the high-profile nature of the drone program, which since the Sept. 11, 2001, attacks has become a huge factor in shaping counterterrorism policy, given its success, Korb said. ¶ For congressional panels, the fight over who will control the drone program will have a say in the relevancy of the two committees. ¶ Korb, for example, noted that national security spending on unmanned aircraft and special operations forces will likely increase, even as the budget for defense spending overall is expected to trend downward. ¶ Ironically, Pentagon officials pushed back against using armed drones in the late 1990s, fearing they would replace fighter jets as the weapon of choice in future wars, Korb said. ¶ That decision essentially handed control of the armed drone program to the CIA, he said. Early versions of the unmanned aircraft flown during the 2001 invasion of Afghanistan belonged to the agency, not the Defense Department, according to Korb. ¶ Taking that influence away from Langley and intelligence lawmakers was bound to spark a fight, he said.

#### Obama’s capital key to ensuring passage

Orlando Sentinel, 11/1 (11/1/2013, “What we think: It'll take both parties to clear immigration logjam,” <http://articles.orlandosentinel.com/2013-11-01/news/os-ed-immigration-reform-congress-20131031_1_immigration-reform-comprehensive-reform-house-republicans>, JMP)

For those who thought the end of the government shutdown would provide a break from the partisan bickering in Washington, think again. The battle over comprehensive immigration reform could be every bit as contentious. Polls show the popular momentum is there for comprehensive reform, which would include a path to citizenship for many of the nation's 11 million undocumented immigrants. But it'll take plenty of political capital from President Obama and leaders in both parties on Capitol Hill to make it happen. Immigration-reform activists, who have been pushing for reform for years, are understandably impatient. This week police arrested 15 who blocked traffic at a demonstration in Orlando. There are plenty of selling points for comprehensive immigration reform. An opportunity for millions of immigrants to get on the right side of the law. Stronger border security. The chance for law enforcement to focus limited resources on real threats to public safety, instead of nannies and fruit pickers. A more reliable work force to meet the needs of key industries. Reforms to let top talent from around the world stay here after studying in U.S. universities. The Senate passed its version of comprehensive immigration in June. It includes all of the benefits above. Its path to citizenship requires undocumented immigrants to pay fines, learn English, pass a criminal background check and wait more than a decade. So far, House Republicans have balked, taking a piecemeal rather than comprehensive approach. Many members fear being challenged from the right for supporting "amnesty." Yet polls show the public supports comprehensive reform. In June, a Gallup poll found 87 percent of Americans — including 86 percent of Republicans — support a pathway to citizenship like the one outlined in the Senate bill. Florida Republican Sen. Marco Rubio took flak from tea-party supporters for spearheading the comprehensive bill. Now, apparently aiming to mend fences, he says immigration should be handled piecemeal. He's politically savvy enough to know that's a dead end. But comprehensive reform won't have a chance without President Obama making full use of his bully pulpit to promote it, emphasizing in particular all that undocumented immigrants would need to do to earn citizenship. House Democratic leaders will have to underscore the president's message.

#### Reform key to the economy – immigrants are key to several critical sectors

West, ‘09 – Director of Governance Studies at the Brookings Institution (7/22/09, Darrell M., “The Path to a New Immigration Reform,” http://www.brookings.edu/opinions/2009/0721\_immigration\_reform\_west.aspx)

Skeptics need to understand how important a new immigration policy is to American competitiveness and long-term economic development. High-skill businesses require a sufficient number of scientists and engineers. Many industries such as construction, landscaping, health care and hospitality services are reliant on immigrant labor. Farmers need seasonal workers for agricultural productivity. Critics who worry about resource drains must understand that immigrants spend money on goods and services, pay taxes and perform jobs and start businesses vital to our economy. Beyond the economy, immigration reform prospects improve considerably across a fresh political landscape that features a popular Democratic president armed with substantial Democratic majorities in the House and Senate, many who appear receptive to comprehensive reform. Obama has called repeatedly for big ideas and bold policy actions. The country needs new policies that emphasize the importance of immigrant workers \_ across the skills spectrum \_ to our country's long-term financial future. Our universities invest millions in training foreign students but then send them home without any U.S. job opportunities that would take advantage of their new skills. And investing in the children of middle- and lower-skilled immigrants is wise as we recognize their majority role in our workforce as the next generation rises.

#### Extinction

Harris and Burrows, ‘09 [Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>]

Increased Potential for Global Conflict Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

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#### The United States Congress should restrict targeted killings to the leadership of al-Qaeda and affiliated forces or individuals with a direct operational role in past or ongoing terrorist plots against the United States and its allies, end signature strikes, review the authority split for drone strikes between the CIA and JSOC, require the executive to provide information to the public, Congress, and UN special rapporteurs on targeted killing, prohibit targeted killings without an accountable human being authorizing the strike, maintain the MTCR Category I constraints on the export of armed drones, limit the retrofitting of drones already exported to U.S. allies that allow them to be weaponized, promote Track 1.5 or Track 2 discussions on armed drones, create an international association of drone manufacturers, explicitly state which legal principles apply—and do not apply—to drone strikes and the procedural safeguards, begin discussions with emerging drone powers for a code of conduct, and host discussions in partnership with Israel to engage emerging drone makers on how to strengthen norms against selling weapons capable systems. The United States federal government should end its use of the Warsame model of detention. The United States federal government should limit detention to operations guided by an individualized threat requirement and with procedural safeguards; and statutory codification of executive branch review policy for these practices.

#### The United States Federal Government should not use “zones of active hostilities” as a qualification for restrictions on targeted killing or detention.

#### The counterplan solves the case – avoids domestic and international backlash and effectively establishes norms controlling drone use and proliferation

Zenko 13, Fellow in the Center for Preventive Action at the Council on Foreign Relations

(Micah, January, Reforming U.S. Drone Strike Policies, Council Special Report No. 65)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below. The United States will inevitably improve and enhance the lethal capabilities of its drones. Although many of its plans are classified, the U.S. military has nonspecific objectives to replace the Predators and Reapers with the Next-Generation Remotely Piloted Aircraft (RPA) sometime in the early-to-mid 2020s. Though they are only in the early stages of development, the next generation of armed drones will almost certainly have more missiles of varying types, enhanced guidance and navigation systems, greater durability in the face of hostile air defense environments, and increased maximum loiter time—and even the capability to be refueled in the air by unmanned tankers.69 Currently, a senior official from the lead executive authority approves U.S. drone strikes in nonbattlefield settings. Several U.S. military and civilian officials claim that there are no plans to develop autonomous drones that can use lethal force. Nevertheless, armed drones will incrementally integrate varying degrees of operational autonomy to overcome their most limiting and costly factor—the human being.70 Beyond the United States, drones are proliferating even as they are becoming increasingly sophisticated, lethal, stealthy, resilient, and autonomous. At least a dozen other states and nonstate actors could possess armed drones within the next ten years and leverage the technology in unforeseen and harmful ways. It is the stated position of the Obama administration that its strategy toward drones will be emulated by other states and nonstate actors. In an interview, President Obama revealed, “I think creating a legal structure, processes, with oversight checks on how we use unmanned weapons is going to be a challenge for me and for my successors for some time to come—partly because technology may evolve fairly rapidly for other countries as well.”71 History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space. In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies. Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama administration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

Executive Branch

The president of the United States should

■■ limit targeted killings to individuals who U.S. officials claim are being

targeted—the leadership of al-Qaeda and affiliated forces or individuals

with a direct operational role in past or ongoing terrorist plots

against the United States and its allies—and bring drone strike practices

in line with stated policies;

■■ either end the practice of signature strikes or provide a public accounting

of how it meets the principles of distinction and proportionality

that the Obama administration claims;

■■ review its current policy whereby the executive authority for drone

strikes is split between the CIA and JSOC, as each has vastly different

legal authorities, degrees of permissible transparency, and oversight;

■■ provide information to the public, Congress, and UN special rapporteurs—

without disclosing classified information—on what procedures

exist to prevent harm to civilians, including collateral damage

mitigation, investigations into collateral damage, corrective actions

based on those investigations, and amends for civilian losses; and

■■ never conduct nonbattlefield targeted killings without an accountable

human being authorizing the strike (while retaining the potential

necessity of autonomous decisions to use lethal force in warfare in

response to ground-based antiaircraft fire or aerial combat).

U.S. Congress

The relevant Senate and House committees should

■■ demand regular White House briefings on drone strikes and how

such operations are coordinated with broader foreign policy objectives,

in order to hold the executive branch accountable for its actions;

■■ hold hearings with government officials and nongovernmental

experts on the short- and long-term effects of U.S. targeted killings;

■■ hold hearings to assess the geographic and temporal limits of the

AUMF and the legal justifications for targeted killings of U.S. citizens;

■■ maintain the MTCR Category I constraints on the export of armed

drones and limit the retrofitting of drones already exported to U.S.

allies that allow them to be weaponized; and

■■ withhold funding and/or subpoena the executive branch if cooperation

is not forthcoming.

International Cooperation

The United States should

■■ promote Track 1.5 or Track 2 discussions on armed drones, similar to

dialogues with other countries on the principles and limits of weapons

systems such as nuclear weapons or cyberwarfare;

■■ create an international association of drone manufacturers that

includes broad participation with emerging drone powers that

could be modeled on similar organizations like the Nuclear Suppliers

Group;

■■ explicitly state which legal principles apply—and do not apply—to

drone strikes and the procedural safeguards to ensure compliance to

build broader international consensus;

■■ begin discussions with emerging drone powers for a code of conduct

to develop common principles for how armed drones should be used

outside a state’s territory, which would address issues such as sovereignty,

proportionality, distinction, and appropriate legal framework;

and

■■ host discussions in partnership with Israel to engage emerging

drone makers on how to strengthen norms against selling weapons capable

systems.

### 1NC DA 2

#### The affirmative breaks down the separation principle by using regulations on conduct to make particular uses of force more desirable – targeted killing in zones of active hostilities becomes easier than outside of zones. This causes a shift away from humanitarian justifications for the use of force towards security based rationales

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(Ryan, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, http://ssrn.com/abstract=1666198)

According to a bedrock principle of international law, the rules regulating the recourse to war (jus contra bellum or jus ad bellum) and the rules regulating conduct during war (jus in bello) must be kept conceptually and legally distinct. The purported independence of the two domains – what I call the ‘separation principle’ – remains unstable despite its historic pedigree. Their separation is predicated on particular normative and empirical foundations. Those foundations involve the capacity and desire of actors to reduce the likelihood and destructiveness of war. However, the reliability of such commitments is doubtful in times of acute stress. Participants in armed conflict frequently believe the separation principle disserves their narrow self-interest, and they often discount downstream effects on future wars. These concerns have generally been anticipated by architects of the global legal order. In their calculus, such pressures simply represent a need for greater resolve in identifying and overcoming threats to the existing design. Rationales for retaining the regime’s design are well understood. Contemporary threats to the regime, in contrast, are far less obvious. In Part 2 of this essay, I briefly describe essential features of international law related to jus ad bellum and jus in bello. In Part 3, I explore recent developments that threaten to erode their separation. In particular, I identify doctrinal innovations that result in the regulation of the recourse to war through alterations of jus in bello. That is, international and national institutions have incentivized states to pursue particular paths to war by tailoring the rules that regulate conduct in armed conflict. Some warpaths are accordingly rewarded, and others are penalized. Some of the new threats to the separation principle are unintended by the actors who set the rules. Other threats may be intentional, but they are propelled by a different ambition than challenges of the past. For example, the classic challenge to the separation principle maintains that states acting for a just cause should not have to comply with baseline rules that might constrain their ability to win the war. A contemporary challenge, however, takes the opposite position. It maintains that states acting for a just cause should be held to an even higher standard than the baseline rules. Other threats to the separation are more conventional and are based on whether the use of force has been internationally sanctioned. I explore recent manifestations of these various threats in Part 3. The impact of decisions favoring particular uses of force by modifying jus in bello involves far-reaching and dangerous consequences. In Part 4, I explore potential effects, first, on state behavior involving the use of force and, second, on state behavior involving the conduct of warfare. Prior scholarship has focused extensively on the latter. I consider the impact on both, with greater emphasis on the former due to the existing literature’s coverage. In turning to jus ad bellum, I argue that the recent developments linking jus ad bellum and in bello channel state behavior and justifications for using force toward security-based and strategic rationales. I contend that these efforts – whether intended or not – risk suppressing ‘desirable wars’ and inspiring ‘undesirable wars.’ Turning to jus in bello, I contend that these recent developments undercut humanitarian protections by interfering with mechanisms for compliance. Throughout this essay, it is important to understand that the framework I use to analyze these relationships exceeds the formal rules governing jus ad bellum. That is, I examine the broader institutional environment that shapes the legitimacy of particular recourses to force. The following analysis includes not only uses of force that operate along the axis of lawful and unlawful behavior. Some cases involve operations that are fully authorized – e.g., by the Security Council – but the relevant factor is whether the operations have a particular objective (e.g., humanitarian protection) or have the status of a ‘war of choice’ for particular states (e.g., states contributing to UN peacekeeping operations). Other cases involve uses of force that are justified by self-defense, or collective self-defense, and the relevant consideration is whether states also work through the Security Council. And other cases involve unlawful military campaigns and the relevant factor is whether those actions nevertheless acquire legitimacy within the international community. An analysis of the separation principle should consider linkages between such variants of the recourse to force and jus in bello. As I illustrate below, tailoring jus in bello to favor or disfavor particular paths to war effectively raises the same types of concerns as conventional threats to the separation principle. Failure to consider this wider framework would overlook fundamental challenges to the existing global regime.

#### The affirmatives geographically differentiated law of war framework spillsover to shape the Law of Armed Conflict writ large

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(Laurie, LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE, University of Pennsylvania Law Review Online, Vol. 16­1:347)

In the context of a specific legal framework for one particular type of conflict, the same concerns about blurring the lines between legal regimes remain. LOAC does not require an individualized threat assessment in the targeting of combatants, who are presumed hostile by dint of their status. Over time, however, the requirement for an individualized threat assessment in certain geographical zones in a new law of war framework for conflicts with transnational terrorist groups may well begin to bleed into the application of LOAC in more traditional conflicts. In essence, therefore, a carefully designed paradigm for one complex and difficult conflict scenario ultimately impacts LOAC writ large, even absent any perceived need or direct motivation for such change. Interpreting LOAC to require an individualized threat assessment for all targeting decisions—even those against the regular armed forces of the enemy state in an international armed conflict—introduces significant tactical and operational risk for soldiers not mandated or envisioned by the law.35 The same conflation problem holds true for other non-LOAC obligations that might be imported into LOAC depending on the analysis of where and how a new law of war framework were to apply. It is important to recognize, notwithstanding the focus on the operational effectiveness of LOAC in this Response, that conflation and “borrowing” offer the same challenges for the implementation of human rights law, to the extent that norms from LOAC begin to bleed into the application of human rights norms. Lastly, superimposing an artificially created framework detracts attention from—or even papers over—current challenges within LOAC, such as the identification of enemy operatives, the nature and amount of proof required for determinations of reasonableness or unreasonableness in targeting decisions, and other perennially tricky issues. CONCLUSION The procedural and legal protections proposed in the sort of rules-based, geographically differentiated law of war framework that Daskal proposes could certainly maximize protections for certain groups of people in certain areas during certain specific conflicts. To that end, such enhanced protections would indeed be an important contribution. However, the operational imperatives of conflict—all conflicts, not only the complex current conflict with al Qaeda and associated terrorist groups—suggest that such a framework would likely have more significant detrimental consequences through diminished clarity and predictability in the application of LOAC at all stages and unfortunate modifications in the future development of LOAC. Learning to accept some uncertainty in assessing the geography of conflict therefore helps to protect equally important LOAC goals and may well be a better option than it appears at first blush.

#### The impact is uncontrolled escalation and warfare – our internal link is more likely than the affirmatives because the most recent studies prove rationale for force is the greatest predictor of warfare

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(Ryan, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, http://ssrn.com/abstract=1666198)

The developments regulating jus ad bellum through jus in bello also threaten to make ‘undesirable wars’ more likely. In previous writing, I argue that encouraging states to frame their resort to force through humanitarian objectives rather than other rationales would, in the aggregate, reduce the overall level of disputes that result in uncontrolled escalation and war. A reverse relationship also holds true. That is, encouraging states to forego humanitarian rationales in favor of other justifications for using force may culminate in more international disputes ending in uncontrolled escalation and war. This outcome is especially likely to result from the pressures created by Type I erosions of the separation principle. First, increasing the tax on humanitarian interventions (the Kosovo Commission/ICISS approach) and ‘wars of choice’ (the Al-Jedda approach) would encourage states to justify their resort to force on alternative grounds. For example, states would be incentivized to invoke other legitimated frameworks – such as security rationales involving the right to self-defense, collective self-defense, anticipatory selfdefense, and traditional threats to international peace and security. And, even if military action is pursued through the Security Council, states may be reluctant to adopt language (in resolutions and the like) espousing or emphasizing humanitarian objectives. Second, the elevation of self-regarding – security and strategic – frameworks over humanitarian ones is more likely to lead to uncontrolled escalation and war. A growing body of social science scholarship demonstrates that the type of issue in dispute can constitute an important variable in shaping the course of interstate hostilities. The first generation of empirical scholarship on the origins of war did not consider this dimension. Political scientists instead concentrated on features of the international system (for example, the distribution of power among states) and on the characteristics of states (for example, forms of domestic governance structures) as the key explanatory variables. Research agendas broadened considerably, however, in subsequent years. More recently, ‘[s]everal studies have identified substantial differences in conflict behavior over different types of issues’. The available evidence shows that states are significantly more inclined to fight over particular types of issues that are elevated in a dispute, despite likely overall material and strategic losses. Academic studies have also illuminated possible causal explanations for these empirical patterns. Specifically, domestic (popular and elite) constituencies more readily support bellicose behavior by their government when certain salient cultural or ideological issues are in contention. Particular issue areas may also determine the expert communities (humanitarian versus security mindsets) that gain influence in governmental circles – a development that can shape the hard-line or soft-line strategies adopted in the course of the dispute. In short, these links between domestic political processes and the framing of international disputes exert significant influence on whether conflicts will eventually culminate in war. Third, a large body of empirical research demonstrates that states will routinely engage in interstate disputes with rivals and that those disputes which are framed through security and strategic rationales are more likely to escalate to war. Indeed, the inclusion of a humanitarian rationale provides windows of opportunity to control and deescalate a conflict. Thus, eliminating or demoting a humanitarian rationale from a mix of justifications (even if it is not replaced by another rationale) can be independently destabilizing. Espousing or promoting security rationales, on the other hand, is more likely to culminate in public demands for increased bellicosity, unintended security spirals, and military violence.

#### A breakdown of the separation principle ensures global WMD use – it gives justification for any actor who thinks they have good reason to use extreme force

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(Robert, The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War, www.yale.edu/yjil/files\_PDFs/vol34/Sloane)

The former sentence, it seems, declares nuclear weapons “generally” illegal under the jus in bello (except, perhaps, in unlikely scenarios such as those suggested by Judge Schwebel).281 The latter proposes that nuclear weapons might still be lawful given high enough stakes. As Judges Higgins and Schwebel alike stressed, this de facto non liquet holding is breathtaking: no state had even argued that a use of nuclear weapons that violates the jus in bello may become lawful if it satisfies the jus ad bellum. If this reading is accurate, the ICJ’s holding clearly violates the dualistic axiom, for the jus in bello does not, in this view, apply uniformly to all parties. Rather, the state acting in an “extreme circumstance of self-defence . . . in which [its] very survival . . . would be at stake” apparently may use weapons that would be legally prohibited were they deployed by its adversary.284 Another plausible reading, however, is that the ICJ rejected the dualistic axiom in an even deeper sense. Note that it related Article 51 to what it described as “the fundamental right of every State to survival, and thus its right to resort to self-defence . . . when its survival is at stake.” 285 This suggests that the Court may not have intended to imply that force that violates the jus in bello might still be legal if it satisfies the jus ad bellum. Rather, as suggested earlier, the Court may have had in mind scenarios that political theorists refer to as supreme emergencies. If so, the ICJ arguably meant that where “the very survival of a State would be at stake,”286 nuclear weapons would not violate in bello proportionality at all because of the peculiar logic of supreme emergency theory, which elevates states to or well beyond the moral status of persons. The jus in bello, that is, ceases to be as relevant, or relevant at all, if “the fundamental right of [a] State to survival”287 is at stake. Needless to say, a right of states to survive does not appear in the U.N. Charter or other positive law. Consistent with the logic of supreme emergency, it rather seems to be an assertion about an allegedly inherent right of states, which derives from their presumed associative value. On this view, states, like individuals in Hobbes’s state of nature, have a natural right to self defense and survival that cannot be relinquished. If this reading is correct, Nuclear Weapons involves a frequent, but always questionable and often dangerously anachronistic, argument: that states may coherently be analogized to people and that they necessarily enjoy an equal or greater moral status in international law. On either view, the ICJ’s opinion has disquieting implications beyond the unique horror of nuclear weapons. There is no principled reason to limit its logic to particular weapons or methods of warfare. Chemical or biological weapons, too, would be justified to ensure a state’s survival, as would torture, summary execution, terrorism, denial of quarter, and other in bello violations—provided only that the cost of military defeat in ad bellum terms reaches a sufficient level, that is, the destruction of a state or (perhaps) a cognate nonstate polity. A core purpose of the dualistic axiom is to avoid this kind of misguided logic. Taken to its extreme, it leads inexorably to the destruction of independent constraints on the use of force by polities. Such entities may, in this view, arrogate to themselves an associative value that exceeds the aggregate interests of their constituents. Even apart from general philosophical objections, one obvious problem with this contention in the context of international law is that it cannot be limited in principle to the survival of “desirable” polities—say, to liberal democratic states. States like North Korea may equally invoke this sort of logic to justify IHL violations and disregard the dualistic axiom—as may nonstate collectives, such as al Qaeda, that espouse some collective, sacred value higher than the individual.

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#### **aff’s use of the law is a militaristic tactic that creates legal legitimacy to propel more frequent, more deadly violent interventions that ensure infrastructural violence that maims civilians – they actively displace moral questions in favor of a pathologically detached question of legality**

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(Thomas, *International Studies Quarterly* 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!. Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure. Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!. Conclusion The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### this mindset is important – our consciousness of war guarantees endless violence that ensures planetary destruction and structural violence

* Another impact: freeing ourselves from war = more resources for peace

Lawrence 9 (Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27)

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### **the aff’s certain calculations about war are an impossibly arrogant form of mechanical, sterile analysis that eases the path towards war. their language is coopted to provide rhetorical ammunition for militarists. our alternative is not pure pacifism, but rather a pacifist analysis that injects moral and epistemic doubt into our decisionmaking about war – this is the only way to formulate better policies that address structural causes of war and avoids inevitable cycles of violence**

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(Michael, International Relations 27(4), December, The Tragedy of Justified War)

Just war theory is not concerned with millions of starving people who could be saved from death and disease with a fraction of the astronomical amount of money that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing the operat- ing mechanisms of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is con- cerned with. As intellectually impressive as analytical just war accounts are, they do not convey any critical sense of Western moralism. It is as though just war theory were written for a different world than the one we occupy: a world of morally responsible, structurally unconstrained, roughly equal agents, who have non-complex and non-exploitative relationships, relationships that lend themselves to easy epistemic access and binary moral analysis. Theorists write with a degree of confidence that fails to appreciate the moral and epistemic fragility of justified war, the long-term genesis of violent conflict, structural causes of violence and the moralistic attitudes that politicians and the media are capable of adopting. To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified reflects a way of doing moral philosophy that is frighteningly mechanical and sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it suffocates a nuanced moral world in a rigid binary structure designed to deliver unambiguous, action-guiding recommendations. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’: See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we pursued a valid moral goal of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss. This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgments are offered and the ability to regard the moral case as closed once the judgments have been made. One implication of my argument for just theorists is clear enough: they should critically reflect on the one-dimensionality of their dominant agenda of making binary moral judgments about war. If they did, they would become more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) but to the timeless wisdom that forms the essence of the pacifist argument. It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60 If this is correct, just war theorists have good reason to stop calling themselves by their name. They would no longer be just war theorists, but unjust war theorists, confronting politicians with a jus contra bellum, rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that: notions of legitimate violence which appear so vivid and complete to the thinking individual are only moments and snapshots of a wider history concerning the different ways in which humans have ordered their arguments and practices of legitimate violence. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61 Binary thinking in just war theory is indeed arrogant, as is the failure to acknowledge the legitimacy of – and need for – ambiguity, agony and doubt in moral thinking about war. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war that comes without ambiguity and moral remainders. Any language of justified warfare must therefore be carefully drafted and constantly questioned. It should demonstrate an inherent, acute awareness of the fragility of moral thinking about war, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. The uncertainty is not only moral, it is also epistemic. Contemporary just war theorists proceed as if certainty were the rule, and uncertainty the exception. The world to which just war theory applies is one of radical and unavoidable uncertainty though, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be. Philosophers of war should also become more sensitive to the problem of political moralism. The just war language is dangerous, particularly when spoken by eager, self- righteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They could also investigate the historical genesis and structural conditionality of large-scale aggressive behaviour in the global arena, deconstruct- ing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim? A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents ought to prevent such tragedies from occurring. This demanding principle, however, may require a more fundamental reflection on how we ‘conduct our lives and arrange our institutions’ (Marcus) in this world. It is not enough to adopt a ‘wait and see’ policy, simply waiting for potential aggressions to occur and making sure that we do not go to war unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘through more careful decision-making’ (Lebow), then this is what ought to be done by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

### Solvency

#### Use of “zone of activity hostilities” guarantees circumvention --- Impossible to define the precise geographic scope and what constitutes active hostilities – their author

Daskal, 13 --- Adjunct Professor at Georgetown Law (April 2013, Jennifer C., University of Pennsylvania Law Review, “ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE,” 161 U. Pa. L. Rev. 1165)

2. Identifying the Zone

Consistent with treaty and case law, overt and sustained fighting are key factors in identifying a zone of active hostilities. Specifically, the fighting must be of sufficient duration and intensity to create the exigent circumstances that justify application of extraordinary war authorities, to put civilians on notice, and to justify permissive evidentiary presumptions regarding the identification of the enemy. n133 The presence of troops on the [\*1207] ground is a significant factor, although neither necessary nor sufficient to constitute a zone of active hostilities. Action by the Security Council or regional security bodies such as NATO, as well as the belligerent parties' express recognition of the existence of a hot conflict zone, are also relevant.

Linking the zone of active hostilities primarily to the duration and intensity of the fighting and to states' own proclamations suffers, however, from an inherent circularity. A state can itself create a zone of active hostilities by ratcheting up violence or issuing a declaration of intent, thereby making previously unlawful actions lawful. n134

It is impossible to fully address this concern. The problem can, however, be significantly reduced by insisting on strict compliance with the law-of-war principles of distinction and proportionality and by vigorously punishing states for acts of aggression. n135 There will, of course, be disagreement as to whether a state's escalation of a certain conflict constitutes aggression, particularly given underlying disagreements about who qualifies as a lawful target. The zone approach is helpful in this regard as well: it narrows the range of disagreement by demanding heightened substantive standards as to who qualifies as a legitimate target outside the zones of active hostilities. Under the zone approach, the escalation of force must be aimed at a narrower set of possible military targets until the increased use of force is sufficiently intense and pervasive enough to create a new zone of active hostilities.

3. Geographic Scope of the Zone

A secondary question relates to the geographic scope of the zone of active hostilities. In answering the related question of the scope of the overarching armed conflict, the Tadic court defined the conflict as extending throughout the state in which hostilities were conducted (in the case of international armed conflict) n136 and the area over which a party had territorial control (in the case of a noninternational armed conflict that did not extend [\*1208] throughout an entire state). n137 Neither approach, however, maps well onto the practical realities of a transnational conflict between a state and a non-state actor. In many cases, the non-state actor and related hostilities will be concentrated in a small pocket of the state. It would be contrary to the justifications of exigency and proper notice to define the zone of active hostilities as extending to the entire state. A territorial control test also does not make sense when dealing with a non-state actor, such as al Qaeda, which does not exercise formal control over any territory and is driven more by ideology than territorial ambition.

#### Even if there’s no statutory wiggle room, Obama will change definitions to create it

Hafetz, 11/5 --- law professor at Seton Hall

(11/5/2013, Jonathan, “Outrage Fatigue: The Danger of Getting Used to Gitmo,” http://www.worldpoliticsreview.com/articles/13311/outrage-fatigue-the-danger-of-getting-used-to-gitmo))

The Obama administration has shown no shortage of creative lawyering in justifying U.S. military involvement in Libya and Syria as well as in expanding America’s use of targeted drone strikes. In those instances, the administration has interpreted presidential authority robustly, while narrowly construing congressional attempts to cabin that authority, as in the War Powers Resolution. Yet, when it comes to releasing Guantanamo detainees, the administration remains sheepish. It has failed to apply the same interpretive approach to congressional transfer restrictions despite what the president has described as the clear national security interests in closing the prison. Only external events, such as the hunger strike, now seem to prompt any action. And even there, the urgency tends to dissipate once the public pressure and media attention fades.

### Allies

#### Allied frustrations won’t undermine intelligence cooperation efforts

Lynch, 11/4 (Colum, 11/4/2013, “Global Push to Rein in U.S. Moves from Spying to Gitmo,” http://thecable.foreignpolicy.com/posts/2013/11/04/un\_usa\_nsa\_gitmo))

The Brazilians have been embarrassed by the disclosure of an NSA listening station in Brasilia, right under the government's nose, said Bruce Jones, the director of New York University Center on International Cooperation. "In domestic terms, they have to create some distance" from the United States, he said.

Germany, Jones noted, is seriously offended by the revelations that the NSA listened in on German Chancellor Angela Merkel's cell phone conversations. But what they really want is to develop a closer relationship with American intelligence agencies. "What the United States is experiencing internationally is a combination of genuine anger, tactical posturing, and an effort by governments to get some cover by pursuing symbolic initiatives," Jones said. But like most of governments, Germany will still cooperate on the intelligence front with the United States. "It's in their interest to do so. It's not like they are going to stop cooperating."

#### Intel cooperation is high – Snowden leaks prove

NYT 2013 (July 9, “For Western Allies, a Long History of Swapping Intelligence” <http://www.nytimes.com/2013/07/10/world/europe/for-western-allies-a-long-history-of-swapping-intelligence.html?pagewanted=all&_r=1&&pagewanted=print>)

When Edward J. Snowden disclosed the extent of the United States data mining operations in Germany, monitoring as many as 60 million of the country’s telephone and Internet connections in one day and bugging its embassy, politicians here, like others in Europe, were by turns appalled and indignant. But like the French before them, this week they found themselves backpedaling. In an interview released this week Mr. Snowden said that Germany’s intelligence services are “in bed” with the National Security Agency, “the same as with most other Western countries.” The assertion has added to fresh scrutiny in the European news media of Berlin and other European governments that may have benefited from the enormous American snooping program known as Prism, or conducted wide-ranging surveillance operations of their own. The outrage of European leaders notwithstanding, intelligence experts and historians say the most recent disclosures reflect the complicated nature of the relationship between the intelligence services of the United States and its allies, which have long quietly swapped information on each others’ citizens. “The other services don’t ask us where our information is from and we don’t ask them,” Mr. Snowden said in the interview, conducted by the documentary filmmaker Laura Poitras and Jacob Appelbaum, a computer security researcher, and published this week in the German magazine Der Spiegel. “This way they can protect their political leaders from backlash, if it should become public how massively the private spheres of people around the globe are being violated.” Britain, which has the closest intelligence relationship with the United States of any European country, has been implicated in several of the data operations described by Mr. Snowden, including claims that Britain’s agencies had access to the Prism computer network, which monitors data from a range of American Internet companies. Such sharing would have allowed British intelligence agencies to sidestep British legal restrictions on electronic snooping. Prime Minister David Cameron has insisted that its intelligence services operate within the law. Another allegation, reported by The Guardian newspaper, is that the Government Communications Headquarters, the British surveillance center, tapped fiber-optic cables carrying international telephone and Internet traffic, then shared the information with the N.S.A. This program, known as Tempora, involved attaching intercept probes to trans-Atlantic cables when they land on British shores from North America, the report said. President François Hollande of France was among the first European leaders to express outrage at the revelations of American spying, and especially at accusations that the Americans had spied on French diplomatic posts in Washington and New York. There is no evidence to date that French intelligence services were granted access to information from the N.S.A., Le Monde reported last week, however, that France’s external intelligence agency maintains a broad telecommunications data collection system of its own, amassing metadata on most, if not all, telephone calls, e-mails and Internet activity coming in and out of France. Mr. Hollande and other officials have been notably less vocal regarding the claims advanced by Le Monde, which authorities in France have neither confirmed nor denied. Given their bad experiences with domestic spying, first under the Nazis and then the former the East German secret police, Germans are touchy when it comes to issues of personal privacy and protection of their personal data. Guarantees ensuring the privacy of mail and all forms of long-distance communications are enshrined in Article 10 of their Constitution. When the extent of the American spying in Germany came to light the chancellor’s spokesman, Steffen Seibert, decried such behavior as “unacceptable,” insisting that, “We are no longer in the cold war.” But experts say ties between the intelligence services remain rooted in agreements stemming from that era, when West Germany depended on the United States to protect it from the former Soviet Union and its allies in the East. “Of course the German government is very deeply entwined with the American intelligence services,” said Josef Foschepoth, a German historian from Freiburg University. Mr. Foschepoth spent several years combing through Germany’s federal archives, including formerly classified documents from the 1950s and 1960s, in an effort to uncover the roots of the trans-Atlantic cooperation. In 1965, Germany’s foreign intelligence service, known by the initials BND, was created. Three years later, the West Germans signed a cooperation agreement effectively binding the Germans to an intensive exchange of information that continues up to the present day, despite changes to the agreements. The attacks on Sept. 11, 2001, in the United States saw a fresh commitment by the Germans to cooperate with the Americans in the global war against terror. Using technology developed by the Americans and used by the N.S.A., the BND monitors networks from the Middle East, filtering the information before sending it to Washington, said Erich Schmidt-Eenboom, an expert on secret services who runs the Research Institute for Peace Politics in Bavaria. In exchange, Washington shares intelligence with Germany that authorities here say has been essential to preventing terror attacks similar to those in Madrid or London. It is a matter of pride among German authorities that they have been able to swoop in and detain suspects, preventing several plots from being carried out. By focusing the current public debate in Germany on the issue of personal data, experts say Chancellor Angela Merkel is able to steer clear of the stickier questions about Germany’s own surveillance programs and a long history of intelligence sharing with the United States, which still makes many Germans deeply uncomfortable, more than two decades after the end of the cold war. “Every postwar German government, at some point, has been confronted with this problem,” Mr. Foschepoth said of the surveillance scandal. “The way that the chancellor is handling it shows that she knows very well, she is very well informed and she wants the issue to fade away.”

#### NATO is permanently dead

Alexander Melikishvili- research associate with the James Martin Center for Nonproliferation Studies- 1/26/09, YaleGlobal, NATO’s Double Standards Make for a Hollow Alliance, http://yaleglobal.yale.edu/content/nato%E2%80%99s-double-standards-make-hollow-alliance

As events of the past year demonstrate, NATO faces an existential crisis, reflected in the three aspects underpinning its operations – an inconsistent enlargement policy, diminished internal cohesion and inadequate military planning. Unless NATO can overcome these weaknesses, excitement in Europe about a new era of cooperation with an Obama-led United States may turn out to be premature and groundless. Lost among diplomatic platitudes is the real question of what actually constitutes the set of criteria by which Brussels deems one country to be eligible for NATO membership while another is not. A comparison of Albania and Georgia highlights NATO’s dysfunctional enlargement process of late, raising serious questions about NATO prioritization in membership considerations. At the last NATO summit in April 2008, alliance members unanimously decided to extend membership to Albania. The “Solomonic” wisdom behind admitting Albania, widely recognized as the epicenter of organized crime and corruption in Europe, defies common sense and logic, pointing towards NATO’s double standards with regard to arbitrarily adjusting membership criteria on a case-by-case basis. 1 The unstable character of the Albanian state was highlighted on the eve of the summit: In mid-March a massive explosion at the munitions decommissioning facility just 15 kilometers west of the Albanian capital, Tirana, killed dozens, wounded hundreds and displaced thousands of people. This tragic incident led to the resignation of Albanian Defense Minister Fatmir Mediu, also implicated in an illegal arms-trafficking case. According to details of an ongoing federal investigation, in 2007 Florida-based defense contractor AEY Inc. illegally supplied malfunctioning Chinese-made weapons and munitions from Albanian stockpiles, to the Afghan Army, under terms of a multimillion-dollar Pentagon military-to-military assistance contract. 2 The hypocrisy was on display during a two-day visit by a NATO delegation to Georgia in September. Addressing Tbilisi State University students, NATO Secretary General Jaap de Hoop Scheffer emphasized that Georgia’s progress towards receiving the coveted Membership Action Plan (MAP) – a roadmap intended to facilitate an applicant country’s eventual incorporation into NATO – was contingent on implementation of further democratic reforms by the Georgian government. In response, speaking at the UN General Assembly in New York, Georgian President Mikheil Saakashvili unveiled new reforms aimed at ensuring independence of judiciary, increasing media freedoms and supporting political opposition. Indeed, if judged by the most commonly accepted standards of democratic governance, rule of law and economic development, Albania lags behind Georgia. The Transparency International’s Corruption Perceptions Index 2008 ranks Albania at the 85th position, whereas Georgia ranks 67th. It’s truly mind-boggling that Secretary Scheffer demands greater democratic reforms from Tbilisi while apparently giving a free pass to Tirana’s dismal performance. There’s only one explanation for this discrepancy, and it’s rooted in the combination of guilt of NATO bureaucrats over Albania’s wait in the membership-action antechamber – since 1999 – and US insistence, an unusual byproduct of American involvement in the Balkans in the aftermath of Yugoslavia’s bloody dissolution. Inconsistencies reflected in the selective membership dispensation undermine the founding principles and credibility of the NATO alliance as a whole. Moreover, the relentless pace of enlargement over the past decade and a half has had an adverse impact on NATO’s cohesion. This is particularly evident in the emergence of factions within NATO that led former US Secretary of Defense Donald Rumsfeld to draw distinctions between the “Old” and “New” Europe. His successor, Robert Gates, was more diplomatic in his remarks, but frustrated by an inability to elicit adequate troop commitments from European allies for the Afghanistan stabilization campaign, he too warned of the “two-tiered alliance” in which some members are more willing to fight than others. Several cycles of enlargement clearly had a debilitating effect on NATO’s collective decision making mechanism because the sheer number of voting members grew to the current 26 (or 28, with Albania and Croatia expected to formally join the alliance by April), which invariably complicated policy formulation. Furthermore, deep resentment felt by a number of Western European governments towards the Bush administration in the aftermath of the Iraqi invasion further exacerbated tensions with former Warsaw Pact countries vying for Washington’s attention. Nowhere have the growing cleavages within the alliance been as evident as in Afghanistan, where NATO maintains 50,000-strong contingent under the aegis of the UN-sanctioned International Security Assistance Force. Since August 2003, when NATO took command of the ISAF, this out-of-area operation has repeatedly tested the limits of allied military cooperation in addressing the security challenges in Afghanistan. The US increasingly faces difficulty in forging NATO consensus on the most pressing issues concerning security in Afghanistan. What else can explain that it took close to five years for the allies to reach an accord authorizing military attacks on the country’s burgeoning underground opium-heroin industry? For years, regional experts issued dire warnings that profits from poppy cultivation, which according to UN estimates now account for at least half of Afghanistan’s gross domestic product, support the Taliban comeback. At the October meeting of NATO defense ministers in Budapest, the allies finally hammered out an agreement to authorize military force against Afghan drug lords. However, the NATO members that customarily favor restrictive caveats regarding deployment of their forces, including Germany and Italy, insisted on including a provision that effectively cuts the agreement at its knees. The provision states that attacks on the Afghan narcotics industry will occur only with explicit approval of the respective national governments. In effect, the agreement allows some NATO members to basically opt out of the operations that put their troops in harm’s way. What’s striking is the apparent lack of realization on the part of some European allies that NATO’s failure in Afghanistan will deal a deadly blow to the alliance and may even spell its demise.

#### Relations resilient- studies prove

The German Marshall Fund of the US- March 15, 2011 , Transatlantic Trends: Leaders 2011 Partners, http://www.gmfus.org/publications/publication\_view?publication.id=1620

The general state of transatlantic relations appears to be very good, as seen from the perspective of both leaders and their public. While specific issues were met with varying levels of agreement or disagreement, transatlantic leaders and their respective publics showed positive attitudes toward each other and could generally agree that the state of the transatlantic relationship was good. Below are some of the key findings on this topic: Strong Support for EU and U.S. leadership Majorities in all groups surveyed found it desirable that the EU and the United States exert strong leadership in world affairs. EU leaders and the public, in Europe and the United States, support a strong U.S. and European leadership in world affairs (see charts 1 and 2). While U.S. leaders (96%) and the U.S. public (84%) overwhelmingly supported U.S. leadership in world affairs and EU leaders (85%) reflected the same level of support for U.S. leadership, the EU public (54%) remained less convinced that strong U.S. leadership is desirable. The public, in both Europe and the United States, was slightly less supportive of strong U.S. and EU leadership than the leaders. While 93% of the American leaders and 92% of the European leaders favored a strong EU leader- ship, fewer Americans (82%) and EU citizens (76%) thought the same. Over time, EU public support for strong U.S. leadership has bounced back to levels of the early 2000s, but these levels are still much lower than support among both ministers of the European Parliament (MEPs) and top-level officials. When asked about the likelihood of future leadership, a majority of both leaders and the general public in the United States and EU were convinced that the EU and the United States will exert strong leadership five years from now. However, all groups were slightly more prone to say that the United States will exert strong leadership than they were to say the same about the EU (see charts 1 and 2). Just as the EU public was less likely to think that the United States will exert strong leadership, they were also less likely to think that the EU would do the same. While EU leaders (84%), U.S. leaders (87%), and the U.S. public (84%) predicted the EU would exert strong leadership in the future, slightly less of the European public (75%) was convinced. Chart 1 shows that while the EU public is divided about the desirability of U.S. leadership in world affairs, Europeans were realistic enough to see that it is likely the United States will exert strong leadership in the future. Specifically, 55% of the European public favored strong U.S. leadership, and 80% thought the United States will likely exert strong leadership five years from now. EU-U.S. Relations Strong Leaders in the United States and Europe were more likely than the public to say relations between EU and United States are good. While 76% of the American leaders and 73% of the European leaders said so, only 54% of the American public and 58% of the EU public thought so. Both leaders and the public had strongly positive attitudes toward the other side of the Atlantic. The leaders were always more favorable than the public to both the United States and the EU. Ninety-three percent of the EU leaders had positive feelings toward the United States and 91% of the American leaders felt the same toward the EU. Among the general public, 76% of the Europeans had a positive attitude toward the United States and 68% of the American public felt likewise toward the EU. Among the European public, sentiments toward the United States were more positive than the desire for a strong U.S. leadership, but this desire did not obfuscate their assessment about the future short term role of U.S. leadership (see chart 6). Although the majority in both the United States and Europe thought that relations between United States and the EU have either improved or stayed the same, over one-third of the American public (35%) thought that relations have gotten worse, as opposed to 14% of the American leaders. Common Values Both leaders and the public, in Europe and the United States, thought that the United States and EU have enough common values to cooperate, with the leaders being more likely to say so than the public. A plurality of leaders in Europe (49%) and the United States (62%) claimed the partnership between EU and United States should become closer. However, 35% of the EU leaders answered that they should be more independent, as did 38% of the EU public and 30% of the U.S. public, while only 5% of the U.S. leaders felt the same way. Assessing Obama’s Policies On average, leaders and the public were more likely to approve U.S. President Barack Obama’s overall handling of international issues than they were to approve of his handling of specific issue areas. However, the American public was somewhat more divided than the leaders (see chart 9). European leaders were least satisfied with the way President Obama handled fighting climate change over the past 12 months. Only 44% of European leaders, a minority, agreed that Obama was handling climate change well. Among the European public (61%), U.S. public (55%), and U.S. leaders (61%), a majority showed their approval. Transatlantic Priority: The Economy and Climate Change Both leaders and the general public stressed the management of the recent economic crisis as the first priority for leaders on both sides of the Atlantic (see table 1). The public, both in Europe and the United States, set fighting terrorism as a priority more frequently than their leaders, with only 5% of the EU leaders mentioning this as the top priority. On climate change, Europeans and Americans had different priorities. More than four times as many Europeans mentioned climate change as an issue compared to Americans. While 20% of the European public and 19% of its leaders thought that climate change should be high on the policy agenda, only 5% among the U.S. general public and 8% of the U.S. leaders felt the same (see chart 10).

#### Technology checks a superbug

Easterbrook (Gregg, The New Republic Editor) 2003 [Wired, "We're All Gonna Die!" 11/7, http://www.wired.com/wired/archive/11.07/doomsday.html]

3. Germ warfare! Like chemical agents, biological weapons have never lived up to their billing in popular culture. Consider the 1995 medical thriller Outbreak, in which a highly contagious virus takes out entire towns. The reality is quite different. Weaponized smallpox escaped from a Soviet laboratory in Aralsk, Kazakhstan, in 1971; three people died, no epidemic followed. In 1979, weapons-grade anthrax got out of a Soviet facility in Sverdlovsk (now called Ekaterinburg); 68 died, no epidemic. The loss of life was tragic, but no greater than could have been caused by a single conventional bomb. In 1989, workers at a US government facility near Washington were accidentally exposed to Ebola virus. They walked around the community and hung out with family and friends for several days before the mistake was discovered. No one died. The fact is, evolution has spent millions of years conditioning mammals to resist germs. Consider the Black Plague. It was the worst known pathogen in history, loose in a Middle Ages society of poor public health, awful sanitation, and no antibiotics. Yet it didn't kill off humanity. Most people who were caught in the epidemic survived. Any superbug introduced into today's Western world would encounter top-notch public health, excellent sanitation, and an array of medicines specifically engineered to kill bioagents. Perhaps one day some aspiring Dr. Evil will invent a bug that bypasses the immune system. Because it is possible some novel superdisease could be invented, or that existing pathogens like smallpox could be genetically altered to make them more virulent (two-thirds of those who contract natural smallpox survive), biological agents are a legitimate concern. They may turn increasingly troublesome as time passes and knowledge of biotechnology becomes harder to control, allowing individuals or small groups to cook up nasty germs as readily as they can buy guns today. But no superplague has ever come close to wiping out humanity before, and it seems unlikely to happen in the future.

### Overreach

#### No naval challengers and deterrence fails anyway

Goure 10—Vice President, Lexington Institute, PhD (Daniel, 2 July 2010, Can The Case Be Made For Naval Power?,<http://www.lexingtoninstitute.org/can-the-case-be-made-for-naval-power-?a=1&c=1171>, RBatra)  
This is no longer the case. The U.S. faces no great maritime challengers. While China appears to be toying with the idea of building a serious Navy this is many years off. Right now it appears to be designing a military to keep others, including the United States, away, out of the Western Pacific and Asian littorals. But even if it were seeking to build a large Navy, many analysts argue that other than Taiwan it is difficult to see a reason why Washington and Beijing would ever come to blows. Our former adversary, Russia, would have a challenge fighting the U.S. Coast Guard, much less the U.S. Navy. After that, there are no other navies of consequence. Yes, there are some scenarios under which Iran might attempt to close the Persian Gulf to oil exports, but how much naval power would really be required to reopen the waterway? Actually, the U.S. Navy would probably need more mine countermeasures capabilities than it currently possesses. More broadly, it appears that the nature of the security challenges confronting the U.S. has changed dramatically over the past several decades. There are only a few places where even large-scale conventional conflict can be considered possible. None of these would be primarily maritime in character although U.S. naval forces could make a significant contribution by employing its offensive and defensive capabilities over land. For example, the administration’s current plan is to rely on sea-based Aegis missile defenses to protect regional allies and U.S. forces until a land-based variant of that system can be developed and deployed. The sea ways, sometimes called the global commons, are predominantly free of dangers. The exception to this is the chronic but relatively low level of piracy in some parts of the world. So, the classic reasons for which nations build navies, to protect its own shores and its commerce or to place the shores and commerce of other states in jeopardy, seem relatively unimportant in today’s world.

#### Long timeframe – no one wants to invest in the near term

Zenko 2013 (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and crossborder adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingencies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

#### No arms race – too many barriers

Joshi and Stein ’13 [Shashank Joshi, Research Fellow at the Royal United Services Institute and a PhD candidate at the Department of Government, Harvard University, & Aaron Stein, Associate Fellow at the Royal United Services Institute, a researcher at the Istanbul-based Centre for Economics and Foreign Policy Studies and a PhD candidate at King’s College London, 2013, Survival: Global Politics and Strategy, Volume 55, Issue 5, “Emerging Drone Nations,” Taylor and Francis, accessed 10/12/13]

As with all shifts in military technology, a nation’s ability to use drones as effective military instruments depends on the context of their broader technological status, local political conditions and, above all, the strategic and operational context into which the new technology is being introduced. As Michael Horowitz explains in his book, The Diffusion of Military Power: Causes and Consequences for International Politics, past military innovations such as the all-big-gun steel battleship, aircraft carriers, nuclear weapons and the use of suicide terror by non-state actors have spread through the international system in uneven ways, depending on nations’ abilities to fund and adapt to these changes.7

We argue that there are at least five key challenges that states will have to grapple with as they adapt to building and operating drones: cost, human and material infrastructure, the problem of air superiority, the develop- ment of a doctrinal and legal framework, and the impact on proliferation. The United States has not escaped any of these challenges but it does have notable advantages – some of which have come from operational experi- ence, and others of which inhere in its military preponderance.

#### No drone prolif – countries won’t integrate into existing military apparatuses,

**Gilli and Gilli 13** [Andrea Gilli & Mauro Gilli, “Attack of the Drones: Should we fear the proliferation of unmanned aerial vehicles?”, Paper prepared for the 2013 APSA Annual Conference, Chicago (IL), Aug 31- Sept 3 2013, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2299962>]

From our analysis, we reach the opposite conclusion. Drones production and¶ employment is significantly more complicated and costly than many claim. More¶ precisely, at the platform level, for three out of the four types of drones we¶ investigate, UAVs require specific technical and industrial competences that are long,¶ difficult and expensive to develop and to maintain. Second, drones require some¶ advanced components and modules that in three out of four cases are expensive or¶ difficult either to produce or to access: from sensors to engines and munitions.¶ Finally, with the exception of very small drones, UAVs’ military value depends on¶ their integration into a broader architecture, what in military jargon is called the¶ battle-networks: the entire set of satellite, air and ground installations permitting realtime¶ and constant intelligence sharing. However, building and maintaining such¶ battle-networks is both expensive and challenging.10 In sum, the available evidence¶ suggests that the types of drones casting the most salient military threats are unlikely¶ to spread as quickly and easily as many claim.11

#### Empirically denied – no ME conflict has escalated

Drum ‘7

(Kevin-, Political Blogger @ the Washington Monthly, Sept. 9, Washington Monthly, “The Chaos Hawks”, http://www.

washingtonmonthly.com/archives/individual/2007\_09/012029.php )

Having admitted, however, that the odds of a military success in Iraq are almost impossibly long, Chaos Hawks nonetheless insist that the U.S. military needs to stay in Iraq for the foreseeable future. Why? Because if we leave the entire Middle East will become a bloodbath. Sunni and Shiite will engage in mutual genocide, oil fields will go up in flames, fundamentalist parties will take over, and al-Qaeda will have a safe haven bigger than the entire continent of Europe.

Needless to say, this is nonsense. Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the second half the 20th century. Result: no regional conflagration. The Soviets fought in Afghanistan and then withdrew. No regional conflagration. The U.S. fought the Gulf War and then left. No regional conflagration. Algeria fought an internal civil war for a decade. No regional conflagration. So where does this bogeyman come from? Hard to say. Probably a deep-seated unwillingness to confront the fact that the United States can't really influence a course of events we originally set in motion. But Iraq is already fighting a civil war, and that civil war will continue whether we stay or go. If we go it will likely become more intense, but also shorter lived. The eventual result, however, will almost certainly be the same: a de facto independent Kurdistan in the north and a Shiite theocracy in the south. The rest of the Middle East will, as usual, watch events unfold without doing much of anything about them, and will accept the inevitable results. The U.S., for its part, will remain in the north to protect Kurdistan, in the east in Afghanistan, in the west in the Mediterranean, and in the south in its bases in the Gulf. We'll hardly be absent from the region.

#### Nuclear deterrence is stable between India and Pakistan

Ganguly, poli sci prof- Indiana, 08 (Sumit, Nuclear Stability in South Asia, Intl Security Vol 33, No 2, Fall)

The Robustness of Nuclear Deterrence As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan's acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners [End Page 65] can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article's analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan's willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India's internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability. Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground fire.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in [End Page 66] Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India's first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People's Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993: [End Page 67] The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its "Operation Gibraltar" and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87 Subrahmanyam's argument takes on additional significance in light of the overt acquisition of nuclear weapons by both India and Pakistan. Third, Sagan's assertion about the dominance of the Pakistani military in determining Pakistan's security policies is unquestionably accurate. With the possible exception of the Kargil conflict, however, it is far from clear that the Pakistani military has been the primary force in planning for and precipitating aggressive war against India. The first Kashmir war, without a doubt, had the explicit approval of Pakistan's civilian authorities.88 Similarly, there is ample evidence that the highly ambitious foreign minister, Zulfikar Ali Bhutto, goaded President Ayub Khan to undertake the 1965 war.89 Finally, once again Bhutto, as much as the Pakistani military dictator Yahya Khan, was complicit in provoking a war with India in 1971, following the outbreak of a civil war in East Pakistan.90

#### Wouldn’t cause extinction

Copley News Service, 02 (Bruce Lieberman, “Fallout from nuclear war in South Asia seen as unlikely to reach U.S.”, http://www.globalsecurity.org/org/news/2002/020610-indopak1.htm)

The horror of a nuclear war between India and Pakistan could decimate South Asia's largest cities, killing up to 12 million people and bringing misery to countless others. But a war, if limited to those two nations and the nuclear arsenals they are thought to possess, poses little danger of radioactive fallout reaching North America, physicists and atmospheric scientists say. There are fundamental reasons. First, India and Pakistan are believed armed with less potent weapons, probably no larger than the equivalent of 15,000 tons of TNT, about the same size as the bombs the United States dropped on Hiroshima and Nagasaki in 1945. In contrast, the typical nuclear weapon in the U.S. stockpile today is 10 to 20 times more powerful than the weapons held by India and Pakistan, according to GlobalSecurity.org. Second, the two countries are thought to have no more than 200 warheads between them - not enough, scientists believe, to endanger populations far beyond South Asia. More than 31,000 nuclear weapons, by contrast, are maintained by eight known nuclear powers, and 95 percent are in the United States and Russia, according to the Bulletin of Atomic Scientists, which monitors nuclear proliferation. Third, the approaching summer in the Northern Hemisphere will mean an absence of fast-moving winter storms that could carry nuclear fallout quickly across the globe. Further, South Asia's monsoon season, which begins this month and extends into October, could wash nuclear fallout back to Earth, confining the worst environmental damage to that part of the world. "Of course, there will be some radiation reaching globally, but the amounts will be small compared to the levels that would produce health effects," said Charles Shapiro, a physicist at San Francisco State University, who co-authored a 1985 study on the environmental effects of nuclear war. Irradiated particles blasted into the atmosphere from a nuclear war between India and Pakistan, carried aloft by the jet stream, would eventually reach every part of the globe and rain back down to Earth as fallout, scientists say. Atmospheric studies conducted by scientists at the Scripps Institution of Oceanography in La Jolla, Calif., have found that particulate from pollution in South Asia can reach the West Coast of the United States in as few as six days. However, those studies focused on the migration of haze in South Asia that covers thousands of square kilometers - a much greater area than that affected by a nuclear explosion, said V. Ramanathan, an atmospheric scientist at Scripps. "It's very risky to extrapolate" data from the pollution study, he said. Ramanathan's study found that particulates larger than 10 microns in diameter fell to Earth before reaching North America, so it's unclear how much radioactive fallout might reach the West Coast, or how dispersed it would be, he said. "I think East Asia has more to worry about, as well as Europe," Ramanathan said. Larry Riddle, a climatologist at Scripps, said the levels of radiation reaching the United States probably would not be any higher than background radiation. Humans are exposed every day to radiation from space, from deep in the Earth, and from man-made sources such as medical X-rays and other consumer products. "Essentially, it would have no effect," Riddle said.

# 2NC

## CP

### Allies

#### no measurable difference between the plan and CP for allies – they don’t care about zones

Anderson 09, Law Prof at American

(Kenneth, Targeted Killing in U.S. Counterterrorism Strategy and Law, www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf)

Similarly, very few people in the United States, regardless of political persuasion, would regard the Predator strike in Yemen on November 3, 2002—which killed six people, including a senior member of al Qaeda, Qaed Salim Sinan al-Harethi, in a vehicle on the open road—as anything other than a good thing, regardless of how one characterizes it legally. Yet the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions described it as a “clear case of extrajudicial killing.” The legal analysis followed that held by Amnesty International and many others—to wit, that it does not matter whether the targeted killing takes place in armed conflict or not, nor how the United States justifies it legally, because international human rights law continues to apply no matter what and to require that the governments involved seek to arrest, rather than to kill. A subsequent U.N. special rapporteur on extrajudicial, summary or arbitrary executions summarized his office’s view in 2004: “Empowering Governments to identify and kill ‘known terrorists’ places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative had been exhausted.”59 Once again, it is hard to see how targeted killing as a policy could survive in any form with such a legal characterization. Various European allies have been extremely hostile toward the practice. Swedish Foreign Minister Anna Lindh was among the most outspoken critics of the U.S. targeting of al-Harethi in November 2002. She described the operation as “a summary execution that violated human rights…Even terrorists must be treated according to international law. Otherwise any country can start executing those whom they consider terrorists.”60 The criticism is even stronger when the actor is Israel—which undertakes targeted killing in keeping with the peculiarly long-term, “mixed” war-security and intelligence-law enforcement nature of its struggle—and, incidentally, with far more procedural protections than the United States uses, including judicial review. Then the gloves come off completely in expressions of international hostility to the practice.61 To be clear, under the standards these groups are articulating, these practices are regarded as crimes by a sizable and influential part of the international community. This is so whether or not these acts are currently reachable by any particular tribunal. As the coercive interrogation debate shows, with Spain and other countries considering prosecutions in their own courts, the trend is toward an expansion of jurisdiction of such tribunals. And America’s claim that these are killings of combatants in an armed conflict governed by either self-defense or IHL does not cut much ice against the views of those who either reject the armed conflict claim outright or else claim that even in armed conflict, human rights standards will apply. American officials seem to believe that by appealing to the detailed and specific requirements of IHL on the formal and technical definition of combatancy as an apparent condition of finding a lawful target, they have done an especially good and rigorous parsing of the legal requirements. As far as the international law community is concerned, however, the combatancy standard is not some especially rigorous approach that shows how concerned a party is for international law. To the contrary, it is by definition a relaxation of the ordinary standard of international human rights law, including prohibitions on murder and extrajudicial killing—and it can only be justified by the existence of an armed conflict that meets the definitions of IHL treaties. At times it appears that the United States government has little idea how much its concession of formal requirements of combatancy concedes. Yet when the United States argues that it’s okay to target someone because he is a combatant, it effectively concedes that the conflict must meet the definition of an IHL conflict for such an attack to be legitimate. By contrast, what the United States needs, and its historic position has asserted, is a claim that self-defense has an existence as a doctrine apart from IHL armed conflict that can justify the use of force against an individual. The United States has long assumed, then-Legal Adviser to the State Department Abraham Sofaer stated in 1989, that the “inherent right of self defense potentially applies against any illegal use of force, and that it extends to any group or State that can properly be regarded as responsible for such activities.”62 To put the matter simply, the international law community does not accept targeted killings even against al Qaeda, even in a struggle directly devolving from September 11, even when that struggle is backed by U.N. Security Council resolutions authorizing force, even in the presence of a near-declaration of war by Congress in the form of the AUMF, and even given the widespread agreement that the U.S. was both within its inherent rights and authorized to undertake military action against the perpetrators of the attacks. If targeted killing in which the international community agreed so completely to a military response against terrorism constitutes extrajudicial execution, how would it be seen in situations down the road, after and beyond al Qaeda, and without the obvious condition of an IHL armed conflict and all these legitimating authorities? In the view of much of the international law community, a targeted killing can only be something other than an extrajudicial execution—that is, a murder—if • It takes place in an armed conflict; • The armed conflict is an act of self-defense within the meaning of the UN Charter, and • It is also an armed conflict within the meaning of IHL; and finally, • Even if it is an armed conflict under IHL, the circumstances must not permit application of international human rights law, which would require an attempt to arrest rather than targeting to kill. As a practical matter, these conditions would forbid all real-world targeted killings.

### 2NC Solvency

#### Sufficiency

#### Cp vs squo, not CP vs plan

#### The counterplan prevents blowback, increases domestic and international support, sustains allied cooperation, and develops norms

Zenko 13, Fellow in the Center for Preventive Action at the Council on Foreign Relations

(Micah, January, Reforming U.S. Drone Strike Policies, Council Special Report No. 65)

Although reforming U.S. drone strike policies will be difficult and will require sustained high-level attention to balance transparency with the need to protect sensitive intelligence sources and methods, it would serve U.S. national interests by ■■allowing policymakers and diplomats to paint a more accurate portrayal of drones to counter the myths and misperceptions that currently remain unaddressed due to secrecy concerns; ■■ placing the use of drones as a counterterrorism tactic on a more legitimate and defensible footing with domestic and international audiences; ■■ increasing the likelihood that the United States will sustain the international tolerance and cooperation required to carry out future drone strikes, such as intelligence support and host-state basing rights; ■■ exerting a normative influence on the policies and actions of other states; and ■■ providing current and future U.S. administrations with the requisite political leverage to shape and promote responsible use of drones by other states and nonstate actors. As Obama administration officials have warned about the proliferation of drones, “If we want other nations to use these technologies responsibly, we must use them responsibly.”

#### A more carefully targeted drone policy prevents international backlash

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. Cooperation with affected nations will ensure that their sovereignty is not violated and the use of human intelligence programs will reduce civilian casualties, thus resulting in a sanitary, more effective drone operation. 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. 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.

## Case

### Circumvention

#### Obama will broadly define zones of active hostilities to justify status quo use of force – our Goodman evidence indicates that applying that label increases escalation risk

Brooks 13, International Law Prof at Georgetown

(Rosa, The Real Reason the Limits of Drone Use Are Murky: We Can't Decide What 'Terrorists' or 'Conflict' Mean, www.theatlantic.com/international/archive/2013/08/the-real-reason-the-limits-of-drone-use-are-murky-we-cant-decide-what-terrorists-or-conflict-mean/278739/)

Humpty Dumpty knew that arguments about the meaning of words have as much to do with power as with dictionaries, and so it is with drone strikes. Would limiting their use to "active, armed conflicts and for known terrorists" make drone strikes "Acceptable"? Well... it depends what you mean by "active, armed conflicts," what you mean by "known," what you mean by "terrorists," and what you mean by "acceptable." Here's the basic problem. Under international law and U.S. law, there are different rules for armed conflicts than for ordinary, peacetime situations. To put it starkly, in peacetime, you can't just go around killing people. Try it! (No, don't try it, not really). Just consider the likely outcome if you wander outside and bash a passerby over the head with a brick. You know what will happen, right? You'll be arrested and charged with murder. You could try saying to the arresting officer, "But officer, the guy I killed was my enemy," but odds are this will just add a mental health evaluation to your woes. During an armed conflict, though, the rules are different. If you're a combatant, and you see someone approaching who you believe might be an enemy, you get to shoot first and ask questions later. In wartime, soldiers have what's called "combatant immunity:" they don't get prosecuted as murderers for killing other people, provided that their lethal acts are consistent with general law of war principles (these include the principles of distinction, necessity, and proportionality). I'm radically oversimplifying, but you get the basic idea: many things that are unlawful in the absence of an active armed conflict are lawful during an armed conflict, and this applies to drone strikes just as it applies to the use of lethal force via grenade, gun, or slingshot. So, can you lob a grenade -- or fire a Hellfire missile from a Predator drone -- into a building full of sleeping people? Generally yes, if there's an armed conflict, you're a combatant, and you reasonably believe the building is occupied by enemy soldiers. Generally no, if there's no armed conflict. The police, for instance, can't just decide to blow up a house in which suspected felons lie sleeping. So a great deal hinges on whether or not we classify something as an armed conflict -- and this is where Humpty Dumpty comes in. The war in Afghanistan is clearly an armed conflict -- no one disagrees with that premise. But is the U.S. in an "armed conflict" with militants in Pakistan, or suspected Al-Qaeda associates in Yemen, or members of the Al Shabaab organization in Somalia? The Obama administration, like the Bush administration before it, thinks the answer is yes. Their position is that an armed conflict can exist between a state and one or more non-state entities, even if those non-state entities are not publicly identified, their membership criteria cannot be clearly defined, and their activities are geographically dispersed. Many others disagree. In Europe, for instance, as a recent European Council on Foreign Relations report by Anthony Dworkin notes, most legal scholars and courts "[reject] the notion of a de-territorialized global armed conflict between the U.S. and Al-Qaeda," and believe that a "confrontation between a state and a non-state group only rises to the level of an armed conflict if the non-state group meets a threshold for organization... there are intense hostilities between the two parties... [and] fighting [is] concentrated within a specific zone (or zones) of hostilities." Return to the original question: " Should we limit our use of drones to active, armed conflicts and for known terrorists? And would they be acceptable in that case?" Virtually everyone would agree that drone strikes are permissible during active armed conflicts, as long as they otherwise comply with the laws of war (by not targeting civilians, etc.) That's the easy answer. The problem is that we can't seem to agree on what constitutes an "armed conflict" -- and if we can't agree on that, we can't agree on what rules apply, or whether drone strikes are lawful wartime activities or unlawful murders.

#### Zones of active hostilities serves no limiting function – Both Pakistan and Yemen will be fair game

Anderson 09, Law Prof at American

(Kenneth, Targeted Killing in U.S. Counterterrorism Strategy and Law, www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf)

The trouble for the United States arises because, as the war on terror migrates away from the most overt of armed conflict situations, the question of whether a given targeted killing takes place in a legally cognizable armed conflict becomes open to debate. This might seem surprising, given the importance of targeted killing as part of armed conflict in U.S. military doctrine and its importance in both the Afghanistan and Iraq wars, as well as the extension of the Afghanistan operation into Pakistan. Predator strikes have been important in all of those operations, and anyway they are not the only kinds of “covert,” unacknowledged operations involving both military and CIA personnel taking place in Pakistan and elsewhere.39 But at least if armed conflict means as a matter of law anything more than the mere fact that a party has undertaken to use lethal force, it is not always clear that these killings are actually targeted killings within, rather than outside of, armed conflict. This anomaly reflects different legal meanings and standards, pursuant to different legal instruments and regimes, for the term “armed conflict.” The problem is not merely that terms have one meaning in the ordinary parlance and another in legally precise contexts. One scholar points out that the recent massive, three volume, four thousand-plus page International Committee of the Red Cross study on the customary law of international humanitarian law “included nothing on the definition of the term, because it remains much disputed…[and] terminological disputes are rife; several commentators express doubt, for instance, that attacks even by well organized terrorist groups like al Qaeda can constitute ‘armed attacks’ within the meaning” of the UN Charter and, by implication, the international law of self-defense. International lawyers argue over the meaning of “armed conflict,” starting with the most basic question: Is it a term referring specially to the law of “resort to force,” or to the conduct of warfare, IHL, or both? Eminent legal scholar and former West Point law professor Gary Solis states flatly, for example, that for a targeted killing to be lawful, “an international or noninternational conflict must be in progress. Without an ongoing armed conflict the targeted killing of a civilian, terrorist or not, would be assassination—a homicide and a domestic crime.”41 But that only raises the question of what constitutes an “armed conflict” in the first place. Does the prohibition to which Solis alludes refer to armed conflict in the sense of a resort to force in self-defense? Or instead to armed conflict within the meaning of IHL, governing not the decision to resort to force, but how the use of force is conducted in hostilities? If the former, then the long-existing structure of civilian CIA authority to act in accordance with domestic law makes sense. If the latter (or both), then the lawful function of the CIA to use force becomes unclear at best, because it is a civilian agency with authority to act, as discussed below, outside of contexts involving IHL armed conflict. The stakes on this question are high, because the international legal standards that must be satisfied are radically, conceptually different. They answer sharply different questions. International law governing the resort to force is fundamentally about separating legitimate self-defense from illegitimate aggression. IHL, by contrast, does not address the legitimacy of the resort to force, but instead addresses the conduct of any party in an armed conflict. It is concerned, at bottom, with the conduct of the parties in hostilities, with separating combatants from noncombatants. It does not apply to every resort to force—only those that meet particular treaty requirements or rise to a certain level of violence constituting IHL “armed conflict.” Yet if it’s really simple murder legally, as Solis suggests, to engage in a targeted killing outside of such armed conflict—even if in lawful self-defense—then the United States has a big problem. In the common, lay understanding of the term “armed conflict,” at least, it is obvious that the United States is engaged in one in Pakistan; its aircraft and missiles are engaged against targets there, and it sends in special forces and other personnel to engage in fighting as well. Again, in the common understanding of the term, it was only a little less obvious that a Predator strike against an al Qaeda figure fleeing in a vehicle across the desert in Yemen was part of America’s “armed conflict,” its war, against al Qaeda. For that matter, in that same common understanding—if not, perhaps surprisingly, in the views of all legal commentators—September 11 itself constituted an armed attack, an undertaking in an armed conflict initiated by al Qaeda. Even if al Qaeda is a non-state actor using criminal ends, September 11 was an act at once part of an armed conflict and also a crime.

#### Zones of active hostilities will be defined as any place we want to use drones

Goodman 13, Law Prof at NYU

(Ryan, What Obama's New Killing Rules Don't Tell You, www.esquire.com/blogs/politics/obama-counterterrorism-speech-questions-052413?click=news)

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.

# 1NR

### DA O/V

#### There was some confusion—there are two principles—Jus Ad Bellum and Jus In Bello—Jus ad bellum is a question of when the recourse to war is allowed but gives no mention of specific acts—ie a jus ad bellum question would be whether the recourse of war is limited to areas of active hostilities or for anticipatory self defense or other legal principles—these principles determine whether a recourse to war is allowed—jus in bello is a question of whether certain practices are allowed—ie whether nukes can be used or whether drones can be used—the aff uses a jus ad bellum principle ZONES OF ARMED CONFLICT to determine whether a certain aspect of war can be used—examples of actions that are now legally viable that aren’t now

* Nukes are justified because of humanitarian law, as opposed to principles now dealing with of now of whether nukes are justified

### AT: Zone Limitations Aren’t Jus Ad Bellum

#### Using “active hostilities” as a means to separate classifications of the use of force is an application of jus ad bellum criteria

Welsh 13, IR Prof at Oxford

(Jennifer, Moral & Legal Challenges of Drone Warfare, peacepolicy.nd.edu/2013/03/28/moral-legal-challenges-of-drone-warfare/)

Under jus ad bellum criteria, Jennifer Welsh (Oxford University) argued, military force can be used only under very specific and necessary circumstances: if there is a grave threat of genocidal attack or military aggression, if that threat is actual rather than merely potential, if there is clear evidence that the intended target is liable for the observed threat, and if no possibility exists to capture those responsible. Similar strict criteria exist for the principle of self-defense, which is valid only in response to an existing attack from an armed group and only against combatants who are engaged in active hostilities. It cannot be applied to an attack that took place 12 years ago or to one that may occur at some indeterminate date in the future. By discounting the possibility of negotiation and using force outside an acknowledged war zone, drone strikes re-conceptualize and weaken the principle of last resort.

#### Zone based restrictions are jus ad bellum limits

Daskal 13, Law Prof at Georgetown

(Jennifer, THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE “HOT” CONFLICT ZONE, www.pennlawreview.com/print/Daskal-U-Pa-L-Rev-1165.pdf)

Respect for the state system and its embodiment of Westphalian notions of state sovereignty provides a set of territorially based (jus ad bellum) limits on the scope of the conflict, limiting the use of unconsented-to force in another state’s territory to those instances in which the state is unable or unwilling to effectively suppress the threat. This restricts the United States’ use of unconsented-to force against al Qaeda and its associates to failed states (such as Somalia), ungoverned regions within states (such as the northwest province of Pakistan), or state supporters of terrorism (such as Afghanistan under the Taliban leadership). By comparison, the use of unconsented-to force in London or Munich is generally prohibited, given that the United Kingdom and Germany are able and willing to respond to the threat posed by terrorists on their soil, albeit through law enforcement mechanisms.

### 2NC Uniqueness

#### 1) The separation principle is currently being upheld – rules are applied uniformly

Corn 12, Law Prof at South Texas

(Geoffrey, “Blurring the Line Between the Jus ad Bellum and the Jus in Bello,” in Non-International Armed Conflict in the Twenty-First Century)

At the core of the self-defense targeting theory is the assumption that the jus ad bellum provides sufficient authority to both justify and regulate the application of combat power. This assumption ignores an axiom of jus belli development: the compartmentalization of the jus ad bellum and the jus in bello.72 As Colonel G.I.A.D. Draper noted in 1971, “equal application of the Law governing the conduct of armed conflicts to those illegally resorting to armed forces and those lawfully resorting thereto is accepted as axiomatic in modern International Law.” This compartmentalization is the historic response to the practice of defining jus in bello obligations by reference to the jus ad bellum legality of conflict. As the jus in bello evolved to focus on the humanitarian protection of victims of war, to include the armed forces themselves, the practice of denying LOAC applicability based on assertions of conflict illegality became indefensible. Instead, the de facto nature of hostilities would dictate jus in bello applicability, and the jus ad bellum legal basis for hostilities would be irrelevant to this determination. This compartmentalization lies at the core of the Geneva Convention law triggering equation. Adoption of the term “armed conflict” as the primary triggering consideration for jus in bello applicability was a deliberate response to the more formalistic jus in bello applicability that predated the 1949 revision of the Geneva Conventions.79 Prior to these revisions, in bello applicability often turned on the existence of a state of war in the international legal sense, which in turn led to assertions of inapplicability as the result of assertions of unlawful aggression.80 Determined to prevent the denial of humanitarian regulation to situations necessitating such regulation—any de facto armed conflict—the 1949 Conventions sought to neutralize the impact of ad bellum legality in law applicability analysis.81 This effort rapidly became the norm of international law. Armed conflict analysis simply did not include conflict legality considerations. National military manuals, international jurisprudence and expert commentary all reflect this development. This division is today a fundamental LOAC tenet—and is beyond dispute. In fact, for many years the United States has gone even farther, extending application of LOAC principles beyond situations of armed conflict altogether so as to regulate any military operation. This is just another manifestation of the fact that States, or perhaps more importantly the armed forces that do their bidding, view the cause or purported justification for such operations as irrelevant when deciding what rules apply to regulate operational and tactical execution.

#### 2) The aff is more significant than previous violations – our Blank evidence in the 1NC indicates that the affirmatives geographically defined restrictions are a dramatic departure from status quo law of war approaches that will become a game changer moving forward

#### 3) Their argument at best proves a brink - the war taboo is strong and effective now so the separation principle has not been sufficiently eroded

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/)

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.

### 2NC Link Block

#### The affirmative erodes the separation principle – a couple ways to conceptualize the link:

#### A) Independence - The affirmative breaks it by tying restrictions on conduct to the legal status under which force is used. Force can be used one way outside of the zone of active hostilities and a different way in the zone of active hostilities

Goodman 10, Law Prof at NYU

(Ryan, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, http://ssrn.com/abstract=1666198)

I begin with a standard understanding of jus ad bellum. This regime refers to international law that defines the legal conditions for states to resort to force. According to the standard account, the regime categorically prohibits the use of force with only two exceptions. The first exception is for (1) the use of force in self-defense against an armed attack. The second is for (2) the use of force pursuant to Security Council authorization. It is useful to consider other actions that are implicitly exempted from the general prohibition. A more comprehensive list includes: (3) the use of force in collective selfdefense – which some might classify as a subspecies of self-defense; (4) the use of force within a state’s own territory – but what exactly constitutes a state’s own territory is often in dispute, such that many conflicts will involve an unlawful use of force between states; (5) the use of force by invitation of a foreign state within its own territory, for example, in dealing with a civil war; (6) the use of force pursuant to state consent by treaty – for example, the African Union Charter6 and ECOWAS Protocol7 whereby states consent at time 1 to intervention at time 2 if particular conditions arise within their country (e.g., a genocide). Note that the sixth ground may be a subset of the fifth, and thus folded into it. Some might also contend that an additional exception is emerging for unilateral humanitarian intervention. The requisite consensus for such an exception to exist as a matter of international law, however, has not been reached. Jus in bello refers to international law governing the conduct of belligerents during armed conflict. Examples include the authority to detain and the prohibition on military attacks that excessively risk the lives of civilians. In the following pages, I adopt an understanding of jus in bello which includes both the laws of war and international human rights law. The former involves rules that apply in armed conflict, and the latter involves rules that apply in all times whether armed conflict or peacetime.8 Notably, much of the discussion that follows is applicable even if one believes that human rights law should not apply in armed conflict: those parts of the discussion involve general issues for regulating wartime conduct regardless of the particular source of the rules. Additionally, other parts of the discussion concern third-party institutions which presume that international human rights applies in armed conflict, but modulate the rules according to jus ad bellum considerations. In those instances, one can hold the view that, regardless of whether human rights law should apply in armed conflict, it is wrong to modify its application on the basis of such factors. Finally, some of the following analysis may rest in part on the proposition that jus in bello does and should include human rights law. I recognize some readers might not follow me all the way down that final path. Throughout this article, I refer to the ‘separation principle,’ which is the conventional understanding in international law that the two regimes – jus ad bellum and jus in bello – are conceptually and legally independent of each another. This principle is notably related to the equality of application principle. The latter holds that the justice or legal status of the cause of one side in a conflict should not affect the duties of belligerents in the conflict. That said, as discussed in the Introduction, the framework I use to analyze these relationships exceeds the formal rules governing jus ad bellum. I examine the broader institutional environment that determines the legitimacy of recourses to force. My discussion of the separation principle refers to this broader domain of institutionalized legal norms and state behavior. The separation principle holds that the justification for going to war (or using force more generally) should not affect the rules that apply during armed conflict. And, conduct during armed conflict should not affect the legal status of the decision to wage war.

#### B) Incentives – The affirmative should be viewed as a tax which tries to funnel the use of force into zones of armed conflict by making it less restricted there

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(Ryan, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, http://ssrn.com/abstract=1666198)

This essay explores a series of developments that threaten to erode the grand design of separating jus ad bellum and jus in bello. As explained at the outset, to gain a complete understanding of such threats it is necessary to study not only the rules concerning the legality of the use of force. It is also necessary to study relationships with the global order concerning the justness and legitimacy of resorting to force. This essay thus examines a range of cases in which judicial bodies and other institutions have modified the rules in bello through schemes that tax or penalize particular uses of force and subsidize or reward other ones. The forms of forcible measures thus affected include humanitarian intervention, actions pursuant to a responsibility to protect, ‘wars of choice’ as opposed to wars of necessity, actions authorized by the UN Security Council, and peacekeeping operations. As I have argued throughout, tailoring jus in bello to encourage or discourage these various paths to war effectively raises the same types of concerns as conventional threats to the separation principle. That said, this essay does not purport to provide a complete understanding of the implications of these erosions of the separation principle. I have not attempted to examine, for example, the overall implications of holding humanitarian interveners to a higher standard. The main focus of this essay, instead, is to cover areas that have received insufficient attention by practitioners and scholars. That is, I have attempted to identify inter-related threats to the separation principle and to examine their consequence for the prevalence of war as well as for mechanisms of compliance with jus in bello. Many of these effects have been largely overlooked by the institutions that have challenged the separation principle. This essay ultimately calls for those institutions and supporters of these schemes to reckon with the dangerous, even if unintended, consequences of such approaches.

### Spillover

#### 1NC Ev to extend:

#### -1st Goodman card in the 1NC says that violations of the separation principle can create fundamental challenges to the existing global regime.

#### -Blank card in the 1NC is specific to the aff – says it will modify future development of the law of war

#### The plan sets a precedent that will become the dominant law of war framework

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(Laurie, LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE, University of Pennsylvania Law Review Online, Vol. 16­1:347)

As Daskal aptly describes, the primary contours of the debate over the scope of the battlefield are shaped by the territorially prescribed view on one side and the broadly conceived “global battlefield” on the other.17 From a policy standpoint, the latter poses the risk of spiraling violence and a degradation of sovereignty; the former offers terrorists and other armed groups an unnecessary bonus of safe haven simply by crossing an international border. In an earlier piece, I have argued for a middle ground, based on an understanding of the relevant legal parameters that can offer guidance in analyzing the geographic space of conflict. In this sense, I firmly agree with the motivation behind Daskal’s effort to transcend the “impasse” seemingly created by a dichotomous, all-or-nothing view of the geography of conflict. However, attempting to navigate these thorny questions through new binding legal frameworks that copy and borrow from two or more distinct legal regimes poses a separate set of concerns, with the risk of more comprehensive long-term consequences. This Part highlights two of these concerns, specifically within the context of one overarching question: would a new law of war framework apply only to conflicts with terrorist groups or to all LOAC-triggering situations? To the extent that this new framework would become the dominant framework for all conflict situations, the operational and law-development concerns discussed in this Part loom large. However, if the new framework were to apply only in the event of conflicts like that between the U.S. and al Qaeda—a conflict between a state and a transnational terrorist group— two equally significant questions arise. First, how—and by whom—would the determination be made as to whether a particular conflict situation fits within the regular LOAC framework or the new rules-based framework? The risk of additional layers of complexity, legal challenge, and uncertainty as a result of having to make this additional determination first would be great and poses a significant concern. Second, would there thus be two different standards for training and for enforcement, depending on the framework under which a particular unit was operating? Here the consequences for clarity and predictability are quite simply enormous.