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#### War powers authority is enumerated in prior statutes---doesn’t include CIC power because it’s not a congressionally authorized source of Presidential power

Curtis Bradley 10, Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School, Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty\_scholarship

The scope of the President’s independent war powers is **notoriously unclear**, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1 For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Vote negative---

#### Limits---commander-in-chief power blows the lid off the topic to include anything that might be a potential authority---makes adequate research impossible

#### Precision---Congress can only restrict authority which it has granted, which means any other reading of the topic is incoherent

### 1nc iran

#### Iran sanctions is top of the docket and Obama’s using capital to make Dems sustain a veto

**Lobe, 12/27**/13 - reporter for Inter Press Service(Jim, “Iran sanctions bill: Big test of Israel lobby power”

<http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046>)

WASHINGTON - This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.

The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.

The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.

To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.

The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.

The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”

The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.

Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.

Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.

Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.

To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.

Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, **the main battle will thus take place within the Democratic majority**.

The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).

The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.

That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

#### It’s a war powers fight that Obama wins – but failure commits us to Israeli strikes

**Merry, 1/1/14** - Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”

For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.

It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.

However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.

Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”

While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”

That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.

That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.

AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.

Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.

If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### **Plan’s a loss – causes defection**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

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

#### That collapses the deal

**Muhammad, 12/31**/13 – cites David Bositis, Vice President and Senior Research Analyst at the Joint Center for Political and Economic Studies (Askia, The Final Call, “Obama's burden” <http://www.finalcall.com/artman/publish/National_News_2/article_101094.shtml>

In foreign affairs, the President’s burden is made even more awkward by dug-in opposition by leaders of both parties here in this country. **Despite unprecedented breakthroughs** on his watch with Syria concerning its stockpile of chemical weapons, and with Iran concerning its nuclear enrichment plans, the Israel-lobby would prefer more saber-rattling and possible military action than any peaceful resolution. Other challenges are complicated by some of Mr. Obama’s own decisions.

“On the international level,” Dr. Horne explained, “it’s clear that the Obama administration wants to pivot toward Asia, which mean’s China.

“But, you may recall, when he first came into office that was to be accompanied by a reset with Russia, because it’s apparent that the United States confronting Russia and China together is more than a notion. And yet, the Obama administration finds itself doing both.

“Look at its misguided policy towards Ukraine, for example, where it’s confronting Russia head-on, and its confrontation with China off the coast of eastern China. So, I guess in the longer term, it’s probably evident that the most severe challenge for the Obama administration comes from (the) international situation because as we begin to mark the 100th anniversary of the onset of World War I in 2014, it’s evident that unfortunately the international situation today, in an eerie way, resembles some ways the international situation at the end of 1913.

“In the end of 1913 there was a rising Germany, just like there is a rising China. There was a declining Britain, just like there is a declining United States of America, and we all know the rather morbid consequences of World War I, so it is for that reason that I say that I would say that Mr. Obama’s most severe challenge is in the international arena,” said Dr. Horne.

“In terms of foreign policy, his wanting to negotiate with Iran about their stopping their nuclear program, almost immediately there were people in the Congress speaking out in public who were totally against everything he wanted to do,” said Dr. Bositis.

“There are people who don’t want to put any pressure on Israel about coming to terms with the Palestinians. There are people who are unhappy with what he’s done in terms of Syria,” he said. These stumbling blocks also stand in the way of the President’s ability to deliver on his pre-election promise to close the Guantanamo prison camp where hundreds are being detained, although most have been cleared for release by all U.S. intelligence agencies because they pose no threat to this country. Yet the prisoners languish, some even resorting to hunger strikes because of the hopelessness of their plight, with the U.S. turning to painful force-feeding the inmates to keep them from starving themselves to death.

“Change is always hard,” Ms. Jarrett said Mr. Obama told a group of youth leaders recently. “The Civil Rights Movement was hard. People sacrificed their freedom. They went to prison. They got beat up. Look through our history and then look around the world. It’s always hard. You can’t lose faith because it’s hard. It just means you have to try harder. That’s really what drives him every day,” said Ms. Jarrett.

And at the end of the day, Mr. Obama remains in control and holding all the “trump cards.”

“Remember something,” Dr. Bositis said. “These people can say or make all these claims about Obama, but the fact of the matter is that Obama is president, and he’s going to be president for three more years, and he’s going to have a lot more influence than all of these clowns,” who disparage his leadership.

“He’s not going to blink. He learned that lesson. With these guys, they’re like rapists. If you give them an inch, they will own you,” Dr. Bositis concluded.

#### Global war

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### 1nc cp

#### The United States federal government should renounce the president’s war power authority for self-defense targeted killings.

#### Competitive – restrictions keep the authority – distinct from prohibition

Vermont Law Digest, 92 (18 Vt. B.J. & L. Dig. 23 1992, Hein Online)

Defendant sought through zoning ordinances to remove some of plaintiffs' production greenhouses and to require permits for construction of greenhouses in the future. Plaintiffs argued the ordinance conflicted with 24 V.S.A. § 4495, and moved for summary judgment. Held, motion granted. Section 4495 prohibits zoning ordinances that "restrict accepted agricultural or silvicultural practices." Production greenhouses are accepted agricultural practices within the meaning of § 4495, and the term "restrict" does not mean complete prohibition; it means to confine within limits. Bothfeld v. Hyde Park Board of Adjustment, S0314-91 LaCa, 5/22/92, Meaker, J.

#### Drone strikes outside of armed conflict aren’t valid under self-defense – they’re preventative strikes in the same manner the aff’s Israel and Russia impact. The aff’s recognition of self-defense targeted killing authority turns the entire affirmative

**Martin, 11 -** Associate Professor of Law at Washburn University School of Law (Craig, “GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME” SSRN) **NSA = Non State Actors**

We turn next to the second question identified at the outset of this section, namely: in response to which armed attacks are the targeted killings being conducted? First, one has to establish whether the self-defense claimed is in respect of each individual strike, for the policy of strikes as a whole, or separately for the collective strikes against each of the various states. The proposition that each launch of hellfire missiles to implement a kill constitutes a separate act of self-defense is untenable.78 Notwithstanding the lack of evidence from the U.S. government, there is little basis for believing that each act of terrorism that was being contemplated by all the persons so far targeted would by themselves have risen to the level of constituting an armed attack against the United States, had they been launched.79 While the 9/11 attacks clearly reached the level of “armed attack,” most of the other publicly disclosed plots that have been uncovered subsequently would not. Moreover, the killings have apparently taken place before the planned attacks had reached anything close to being imminent. Each use of force would thus have to be characterized as a preventative strike in response to a speculative future threat.

This brings us back to an aspect of self-defense doctrine that, as mentioned earlier, has become controversial in the post 9/11 era, namely the anticipatory and preventative use of force. It has been argued that the killings can be justified on the basis of a “preemptive” or “preventative” conception of self-defense,80 a principle formalized in the so-called “Bush Doctrine.”81 This argument is used both in the context of the theory that each strike constitutes a separate act of self-defense, and arguments that all the targeted killings are part of a response to terrorist attacks generally, so it bears analysis. The claims to a right of “preventative” self-defense are, like the arguments that self-defense is not limited to the use of force against states, grounded in arguments that there are broader customary international law principles that co-exist with Article 51 of the U.N. Charter. These underlying arguments were addressed above.82 In addition, however, these assertions as they relate to preventative use of force are also not consistent with state practice.83 Preventative self-defense as a concept was roundly rejected by the international community when it was floated as a justification for the invasion of Iraq in 2003, and it is not part of established customary international law.84 The claims are inconsistent with the judgments of the ICJ.85 The principle of preventative self-defense goes well beyond an anticipatory use of force against an imminent armed attack, and cannot satisfy the principle of necessity that is one of the foundations of the doctrine of self-defense.86 And while these arguments in support of a preventive use of force have increased in the post 9/11 era, they do not represent the mainstream of scholarly opinion.87 This might lead some to argue that the jus ad bellum regime is an anachronism that must adapt to the new realities of transnational terrorism if it is not to become irrelevant. But as will be argued below, that would be to increase the risk of war simply to address the threat of terrorism.

### 1nc cp

#### The United States federal government should limit the war power authority of the president for self-defense targeted killings to outside an armed conflict unless the *jus in bello* proportionality test is met.

#### The United States federal government should subject its decision on the *jus in bello* proportionality test to third party review.

#### The CP competes – it’s less restrictive and both justification to occur outside of an armed conflict when the proportionality test is met.

#### It’s net-beneficial – COMPLETE separation of legal regimes allows non-state actor to exploit the self-defense doctrine – turns the second advantage. Expanding jus in bello to include the proportionality aspect of just ad bellum solves.

Benvenisti 9 (Eyal, Professor of Law, Tel Aviv University, “Rethinking the Divide Between Jus ad Bellum and Jus in Bello in Warfare Against Nonstate Actors,” Yale Journal of International Law, Vol. 34, <http://law.bepress.com/cgi/viewcontent.cgi?article=1114&context=taulwps>)

Curiously, however, the insulation of in bello legal assessment from ad bellum considerations has resisted this trend almost entirely.6 This dichotomy is still in vogue among most international lawyers and philosophers.7 Michael Walzer famously referred to these two sets of norms as “logically independent,”8 and even those who question the morality of this distinction understand its institutional significance. Yet there appear to be good reasons to question this distinction. In this brief Essay, I undertake to question the logic of the dichotomy by examining the growing influence of ad bellum considerations in assessing compliance with in bello obligations in the context of asymmetric warfare against nonstate actors.

B. The Challenge of Asymmetric Conflicts

This exercise suits a publication that celebrates the jurisprudence of Professor W. Michael Reisman. His close attention to changes in the underlying political, economic, and social factors inspired the recasting of many of these binary dichotomies as continua. Reisman also devoted much attention, as early as the 1980s, to the challenges that asymmetric conflicts pose to the regulation of warfare9 due to the demise of the “dynamic of reciprocity and retaliation”10 when nonstate actors are “neither beneficiaries of nor hostages to the territorial system.”11

Perhaps as a response to the decline of that dyadic dynamic of reciprocity and retaliation, a new, broader dynamic has emerged, one that involves a host of other actors.12 These actors—governments, international organizations, humanitarian nongovernmental organizations, and civil society—have been translating their growing sensitivity to crises and human suffering to the promotion of new types of monitoring and retaliatory mechanisms ranging from divestment to criminal prosecutions of those whom they find to have violated the law.

These various new actors and observers, and the institutions they have developed, address a new type of battlefield that challenges the distinctions upon which the law of war is founded. The tactics of nonstate actors exploit, and hence undermine, two basic assumptions that have sustained the jus in bello since its inception: first, that it is possible to compartmentalize the battlefield and single out with sufficient clarity military from civilian targets and; second, that there are obvious military goals, such as gaining control over territory, that can reliably tell us whether the collateral civilian damage was or was not excessive relative to the effort made to achieve those goals. The combination of these two assumptions gave rise to the possibility that humanitarian conflict, one in which armies would strive to induce each other into submission without recourse to “total war,” was achievable. War was about inducing concessions from the defeated party by degrading its military capabilities and weakening and disabling its fighters, without necessarily killing them.13

Unfortunately, neither assumption typically holds in warfare against nonstate actors. First, there are very few purely military targets. This dramatically limits the ability of a regular army to identify arenas where it can legitimately project its power. In fact, as the 2003 invasion of Iraq showed, the relatively weaker army will try to reduce these arenas by reverting to guerrilla tactics. Moreover, it is no longer clear what can be considered military gain, especially since control over enemy resources and territory often proves to be a liability rather than an asset. Without tangible military goals, commanders are tempted to simply capture or kill as many of their opponents as possible, or to intimidate their opponents’ noncombatant constituency.

Nonstate actors therefore **pose a challenge that is fundamental to the vitality and content of the jus in bello**. Which military objectives could be considered legitimate in an asymmetric warfare against nonstate actors? How should one gauge the legitimacy of collateral civilian damage? In what follows I suggest that bridging the divide between jus in bello and jus ad bellum, and expanding the jus in bello proportionality test to include aspects of the ad bellum conditions, offers a possible response to these challenges. Jus in bello proportionality analysis can take into account not only the ad bellum question of who is to blame for the commencement of hostilities, but also incorporate the decision of one of the parties to pursue unrelated goals or to prolong the military confrontation instead of negotiating its end, thereby offering a more comprehensive assessment of the legality of the military action. Whereas according to the traditional jus in bello standard each enemy is entitled to pursue its adversary until its total defeat, it increasingly becomes relevant to inquire—at least in political discourse, if not in positive law—to what extent continuing the fight is necessary.14 For example, would it have been legitimate, during the 1991 campaign, for the coalition forces not only to drive the Iraqi forces out of Kuwait, but also to invade Iraq and replace the Iraqi regime? Under this framework, the party who had either no legitimate reason to resort to force, or no good reason to pursue it further, would be more limited in its ability to justify the infliction of harm on noncombatants when pursuing its military objectives. If these propositions become part of the law, they would effect a major change: the traditional in bello proportionality analysis never required the attacker to explain the necessity of attaining the military objective; the necessity of such action was taken for granted.\

#### Allowing third party review of the proportionality test guarantees compliance and effectively constrains the conflation of two legal regimes – turns the second advantage

Benvenisti 9 (Eyal, Professor of Law, Tel Aviv University, “Rethinking the Divide Between Jus ad Bellum and Jus in Bello in Warfare Against Nonstate Actors,” Yale Journal of International Law, Vol. 34, <http://law.bepress.com/cgi/viewcontent.cgi?article=1114&context=taulwps>)

Thus far I have articulated the proposition that ad bellum considerations do matter in in bello proportionality analysis, at least in political parlance. The “incident theory” suggests that further support for the proposition is likely to entrench it as the prevailing law. The task is now to reflect on this trend and to ask to what extent the proposition reflects sound policy considerations. Most contemporary scholars oppose the proposition based on two main arguments. First is the argument from dyadic reciprocity. To ensure compliance with jus in bello, both sides should enjoy its equal protection. The aggressor will have no incentive to comply with the law if the defender is relieved from the law’s constraints. And because each side tends to view itself as just, unless jus in bello is insulated from ad bellum considerations, the two camps will immediately descend to ruthless brutality.21 The argument from reciprocity is convincing, and is even morally compelling,22 when conditions for reciprocity obtain. But warfare between a regular army and nonstate actors is not subject to the dyadic reciprocity rationale. The asymmetric relationship in fact incentivizes both sides to eschew reciprocal considerations: the nonstate actor resorts to terrorism, whereas the stronger regular army is tempted to inflict excessive harm upon noncombatants, to conflate military objectives with killing combatants, and to treat captured combatants as outlaws.

However, as mentioned above, the growing involvement in such conflicts of third parties, with their diverse modalities for reviewing the belligerents’ actions, shifts the incentive structure from the traditional dyadic dynamic of reciprocity between the parties to a much broader dynamic.23 The dueling parties must take the attitude of those third parties into account as the combat is played out not only bilaterally but also concurrently in the global arena. Toleration or condemnation by key international actors, including public and private actors and observers, as well as by foreign and international courts, often proves to be an effective constraint at least on the state party to the conflict. The state party will not descend into barbarism regardless of what the enemy does if it has an incentive to maintain its good reputation globally or to avoid criminal sanctions. Since third-party observers assess **both ad bellum and in bello considerations**, the percolation of ad bellum considerations into the jus in bello proportionality analysis can prove a rather sophisticated and effective constraint on the stronger regular army. The introduction of ad bellum considerations into the analysis of jus in bello’s **vaguer concepts**—which often call for balancing of competing considerations, such as the determination of excessive harm to civilians or the targeting of individuals “for such time as they take a direct part in hostilities”24—would not provide either side with more freedom of action or impose greater risks to noncombatants. Quite to the contrary, a state party must convince the international community that its military operations are aimed at just causes to be able to justify the military goals it pursues. This fuller account of the jus in bello proportionality analysis examines not only the necessity of the collateral harm to noncombatants but also the legitimacy of the pursuit of the military goals. What the traditional law takes for granted—that in bello all military goals are equally and always legitimate—can now be questioned by the emerging new assessors and indirect enforcers of the law.

### Drones Adv

#### No risk of nuclear terrorism---too many obstacles

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

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

#### No retaliation—definitely no escalation

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### Obama will circumvent the plan --- empirics prove

Levine 12 - Law Clerk; J.D., May 2012, University of Michigan Law School (David Levine, 2013 SURVEY OF BOOKS RELATED TO THE LAW: BOOK NOTICE: A TIME FOR PRESIDENTIAL POWER? WAR TIME AND THE CONSTRAINED EXECUTIVE, 111 Mich. L. Rev. 1195)

Both the Declare War Clause n49 and the War Powers Resolution n50 give Congress some control over exactly when "wartime" exists. While the U.S. military was deployed to Libya during the spring and summer of 2011, the Obama Administration advanced the argument that, under the circumstances, it was bound by neither clause. n51 If Dudziak is worried about "war's presence as an ongoing feature of American democracy" (p. 136), Libya is a potent case study with implications for the use of force over the coming decades.

Article I, Section 8 of the U.S. Constitution grants to Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." n52 Although there is substantial debate on the precise scope of these powers, n53 this clause at least provides some measure of congressional control over significant commitments of U.S. forces to battle. However, it has long been accepted that presidents, acting pursuant to the commander-in-chief power, may "introduce[] armed forces into situations in which they encounter[], or risk[] encountering, hostilities, but which [are] not "wars' in either the common meaning or the [\*1207] constitutional sense." n54 Successive administrations have adopted some variant of that view and have invariably deployed U.S. forces abroad in a limited manner based on this inherent authority. n55

The Obama Administration has adopted this position - that a president has inherent constitutional authority to deploy forces outside of war - and even sought to clarify it. In the Office of Legal Counsel's ("OLC") memo to President Obama on the authority to use military force in Libya, n56 the Administration acknowledged that the Declare War Clause is a "possible constitutionally-based limit on ... presidential authority to employ military force." n57 The memo reasoned that the Constitution speaks only to Congress's ability to shape engagements that are "wars," and that presidents have deployed forces in limited contexts from the earliest days of the Union. n58 Acknowledging those facts, the memo concluded that the constitutional limit on congressional power must be the conceptual line between war and not war. In locating this boundary, the memo looked to the "anticipated nature, scope, and duration" of the conflict to which President Obama was introducing forces. n59 OLC found that the "war" standard "will be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period." n60

The Obama Administration's position was not out of sync with previous presidential practice - the Declare War Clause did not require congressional approval prior to executive deployment of troops. In analyzing the "nature, scope, and duration" questions, the memo looked first to the type of missions that U.S. forces would be engaged in. The air missions envisioned for the Libya operation did not pose the threat of withdrawal difficulty or escalation risk that might indicate "a greater need for approval [from Congress] at the outset." n61 The nature of the mission, then, was not similar to full "war." Similarly, the scope of the intended operation was primarily limited, at the time the memo was written, to enforcing a no-fly zone. n62 Consequently, [\*1208] the operation's expected duration was not long. Thus, concluded OLC, "the use of force by the United States in Libya [did not rise] to the level of a "war' in the constitutional sense." n63 While this conclusion may have been uncontroversial, it highlights Dudziak's concerns over the manipulation of the idea of "wartime," concerns that were heightened by the Obama Administration's War Powers Resolution analysis. Congress passed the War Powers Resolution in 1973 in an attempt to rein in executive power in the wake of the Vietnam War. n64 The resolution provides that the president shall "in every possible instance ... consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." n65 Additionally, when the president sends U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated," the resolution requires him to submit a report to Congress describing the circumstances of the deployment and the expected involvement of U.S. troops in the "hostilities." n66 Within sixty days of receiving that report, Congress must either declare war or in some other way extend the deployment; in the absence of some ratifying action, the resolution requires that the president withdraw U.S. forces. n67 Though eschewing the plainly confrontational route of directly challenging Congress's power under the War Powers Resolution, the Obama Administration implicitly challenged Congress's ability to affect future operations. In declining to withdraw forces, despite Congress's lack of approving legislation, President Obama claimed that the conflict in Libya could not be deemed "hostilities" as that term is used in the resolution. This argument was made both in a letter to Congress during the summer of 2011 n68 and in congressional testimony given by Harold Koh, the State Department Legal Advisor under the Obama Administration. n69 [\*1209] Koh's testimony provides the most complete recitation of the Obama Administration's analysis and focuses on four factors that distinguish the fighting in Libya (or at least the United States' participation) from "hostilities": the scope of the mission, the exposure of U.S. forces, the risk of escalation, and the nature of the tactics to be used. First, "the mission is limited." n70 That is, the objectives of the overall campaign led by the North American Treaty Organization ("NATO") were confined to a "civilian protection operation ... implementing a U.N. Security Council resolution." n71 Second, the "exposure" of the U.S. forces involved was narrow - the conflict did not "involve active exchanges of fire with hostile forces" in ways that would endanger U.S. service members' safety. n72 Third, the fact that the "risk of escalation [was] limited" weighed in favor of not categorizing the conflict as "hostilities." n73 Finally, the "military means" the United States used in Libya were limited in nature. n74 The majority of missions were focused on "providing intelligence capabilities and refueling assets." n75 Those American flights that were air-to-ground missions were a mix of suppression-of-enemy-air-defenses operations to enforce a no-fly zone and strikes by armed Predator drones. n76 As a point of comparison, Koh noted that "the total number of U.S. munitions dropped has been a tiny fraction of the number dropped in Kosovo." n77 With the exception of this final factor, these considerations are quite similar to the factors that define whether a conflict is a "war" for constitutional purposes. n78

The result of this reasoning is a substantially relaxed restraint on presidential authority to use force abroad going forward. As armed drones begin [\*1210] to make up a larger portion of the United States' arsenal, n79 and as other protective technologies, such as standoff munitions n80 and electronic warfare techniques, gain traction, it is far more likely that the "exposure" of U.S. forces will decrease substantially. The force used in Yemen and the Horn of Africa is illustrative of this new paradigm where U.S. service members are not "involved [in] active exchanges of fire with hostile forces," n81 but rather machines use force by acting as human proxies. To the same point, if the "military means" used in Libya are markers of something short of "hostilities," the United States is only likely to see the use of those means increase in the coming decades. Pressing the logic of Koh's testimony, leeway for unilateral executive action will increase as the makeup of our arsenal continues to modernize. n82

Dudziak worries about the invocation of "wartime" as an argument for the perpetual exercise of extraordinary powers. The Libya scenario, of course, is somewhat different - the president has argued that the absence of "war" leaves him a residuum of power such that he may use force abroad without congressional input. The two positions are of a piece, though. Dudziak argues that legacy conceptions of "wartime" and "peacetime" have left us vulnerable to the former's use, in and of itself, as a reason for increased executive power. Such literal thinking - that "war" is something specific or that the word "hostilities" has certain limits - also opens the door to the Obama Administration's defense of its position on Libya. And looking at the substance of that position leaves much to be desired.

Both Koh's testimony and the OLC memo pay lip service to the idea that the policy considerations underlying their position are consistent with the policy considerations of the Framers with respect to the Declare War Clause and Congress with respect to the War Powers Resolution. But the primary, if not the only, consideration mentioned is the loss of U.S. forces. That concern is front and center when analyzing the "exposure" of service [\*1211] members, n83 and it is also on display with respect to discussions about the nature and scope of an operation. n84 This is not the only policy consideration that one might intuit from those two provisions, however. Using lethal force abroad is a very serious matter, and the U.S. polity might rationally want input from the more representative branch in deciding when, where, and how that force is used in its name. In that same vein, permitting one individual to embroil the nation in foreign conflicts - limited or otherwise - without the input of another coequal branch of government is potentially dangerous. n85

As Dudziak's framework highlights the limits of the Obama Administration's argument for expansive power, so does the Administration's novel dissection of "hostilities" illustrate the limits of Dudziak's analysis. Dudziak presents a narrative arc bending toward the expansion of wartime and, as a result, increased presidential power. That is not the case with Libya: the president finds power in "not war" rather than in "wartime." If the American public is guilty, as Dudziak asserts, of using the outmoded and misleadingly concrete terminology of "wartime" to describe an increasingly complex phenomenon, Dudziak herself is guilty of operating within a paradigm where wartime necessarily equals more executive power (than does "not war"), a paradigm that has been supplanted by a more nuanced reality. Although [\*1212] Dudziak identifies the dangers of manipulating the boundaries of wartime, her catalog of manipulations remains incomplete because of the inherent limits of her framework.

This realization does not detract from Dudziak's warnings about the perils of endless wartime, however. Indeed, the powers that President Obama has claimed seem, perhaps, more palatable after a decade in which war has been invoked as an argument for many executive powers that would, in other eras, seem extraordinary. Though he has not explicitly invoked war during the Libya crisis, President Obama has certainly shown a willingness to manipulate its definition in the service of expanded executive power in ways that seem sure to increase "war's presence as an ongoing feature of American democracy" (p. 136).

Conclusion Dudziak presents a compelling argument and supports it well. War Time is potent as a rhetorical device and as a way to frame decisionmaking. This is especially so for the executive branch of the U.S. government, for which wartime has generally meant increased, and ever more expansive, power. As the United States continues to transit an era in which the lines between "war" and "peace" become increasingly blurred and violent adversaries are a constant, the temptation to claim wartime powers - to render the extraordinary ordinary - is significant.

This Notice has argued that, contrary to Dudziak's concerns, the temptation is not absolute. Indeed, in some instances - notably, detention operations in Iraq and Afghanistan - we are still able to differentiate between "war" and "peace" in ways that have hard legal meaning for the actors involved. And, importantly, the executive still feels compelled to abide by these distinctions and act in accordance with the law rather than claim wartime exceptionalism.

That the temptation is not absolute, however, does not mean that it is not real or that Dudziak's concerns have not manifested themselves. This detachment of expansive power from temporally bound periods has opened the door for, and in some ways incentivized, limiting wartime rather than expanding it. While President Obama has recognized the legal constraints that "war" imposes, he has also followed in the footsteps of executives who have attempted to manipulate the definition of "war" itself (and now the definition of "hostilities") in order to evade those constraints as much as possible. To the extent he has succeeded in that evasion, he has confirmed what seems to be Dudziak's greatest fear: that "military engagement no longer seems to require the support of the American people, but instead their inattention" (p. 132).

#### Drones fail

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

Yet the evidence that drones inhibit the operational latitude of terrorist groups and push them towards collapse is more ambiguous than these accounts suggest. 57 In Pakistan, the ranks of Al-Qaeda have been weakened significantly by drone strikes, but its members have hardly given up the fight. Hundreds of Al-Qaeda members have fled to battlefields in Yemen, Somalia, Iraq, Syria and elsewhere. 58 These operatives bring with them the skills, experience and weapons needed to turn these wars into fiercer, and perhaps longer-lasting, conflicts. 59 In other words, pressure from drone strikes may have scattered Al-Qaeda militants, but it does not neutralize them. Many Al-Qaeda members have joined forces with local insur - gent groups in Syria, Mali and elsewhere, thus deepening the conflicts in these states. 60 In other cases, drones have fuelled militant movements and reordered the alliances and positions of local combatants. Following the escalation of drone strikes in Yemen, the desire for revenge drove hundreds, if not thousands, of Yemeni tribesmen to join Al-Qaeda in the Arabian Peninsula (AQAP), as well as smaller, indigenous militant networks. 61 Even in Pakistan, where the drone strikes have weakened Al-Qaeda and some of its affiliated movements, they have not cleared the battlefield. In Pakistan, other Islamist groups have moved into the vacuum left by the absence of Al-Qaeda, and some of these groups, particularly the cluster of groups arrayed under the name Tehrik-i-Taliban Pakistan (TTP), now pose a greater threat to the Pakistani government than Al-Qaeda ever did. 62 Drone strikes have distinct political effects on the ecology of militant networks in these countries, leaving some armed groups in a better position while crippling others. It is this dynamic that has accounted for the US decision gradually to expand the list of groups targeted by drone strikes, often at the behest of Pakistan. Far from concentrating exclusively on Al-Qaeda, the US has begun to use drone strikes against Pakistan’s enemies, including the TTP, the Mullah Nazir group, the Haqqani network and other smaller Islamist groups. 63 The result is that the US has weakened its principal enemy, Al-Qaeda, but only at the cost of earning a new set of enemies, some of whom may find a way to strike back. 64 The cost of this expansion of targets came into view when the TTP inspired and trained Faisal Shahzad to launch his attack on Times Square. 65 Similarly, the TTP claimed to be involved, possibly with Al-Qaeda, in attacking a CIA outpost at Camp Chapman in the Khost region of Afghanistan on 30 December 2009.66

### Legal Regimes

#### No impact to robotics

McGinnis, senior professor – Northwestern Law, ‘10

(John O., 104 Nw. U. L. Rev. Colloquy 366)

It is not as if in the absence of AI wars or weapons will cease to exist. The way to think about the effects of AI on war is to think of the consequences of substituting technologically advanced robots for humans on the battlefield. In at least three ways, that substitution is likely to be beneficial to humans. First, robots make conventional forces more effective and less vulnerable to certain weapons of mass destruction, like chemical and biological weapons. Rebalancing the world to make such weapons **less effective**, even if marginally so, must be counted as a benefit. Second, one of the reasons that conventional armies deploy lethal force is to protect the human soldiers against death or serious injury. If only robots are at stake in a battle, a nation is more likely to use non-lethal force, such as stun guns and the like. The United States is in fact considering outfitting some of its robotic forces with non-lethal weapon-ry. Third, AI-driven weaponry gives an advantage to the developed world and particularly to the United States, be-cause of its advanced capability in technological innovation. Robotic weapons have been among the most successful in the fight against Al-Qaeda and other groups waging asymmetrical warfare against the United States. The Predator, a robotic airplane, has been successfully targeting terrorists throughout Afghanistan and Pakistan, and more technologi-cally advanced versions are being rapidly developed. Moreover, it does so in a targeted manner without the need to launch large-scale wars to hold territory--a process that would almost certainly result in more collateral damage. n61 If one believes that the United States is on the whole the best enforcer of rules of conduct that make for a peaceful and prosperous world, this development must also be counted as a benefit.

#### All these scenarios are insanely long timeframe—make them read evidence on timeframe and feasibility of the tech itself—we shouldn’t need impact d cards to science fiction

#### No nanotech impact

**Park 03** Robert L.**,** Professor of Physics and former chairman of the Department of Physics at the University of Maryland, (“End of the World?” Issues in Science and Technology, Volume: 20. Issue: 1. Publication Date: Fall 2003. Page Number: 84, www.questia.com)

What follows is a set of brilliant essays forming more or less independent chapters that could be read in any order. He does not ignore the continued threat of nuclear holocaust or collision between Earth and an asteroid, but we have lived with these threats for a long time. His primary focus is on 21st century hazards, such as bioengineered pathogens, out-of-control nanomachines, or superintelligent computers. These new threats are difficult to treat because they don't yet exist and may never do so. He acknowledges that the odds of self-replicating nanorobots or "assemblers" getting loose and turning the world into a "grey-goo" of more assemblers are remote. After all, we're not close to building a nanorobot, and perhaps it can't be done. But this, Rees points out, is "Pascal's wager." The evaluation of risk requires that we multiply the odds of it happening (very small) by the number of casualties if it does (maybe the entire population). Personally, I think the grey-goo threat is zero. We are already confronted with incredibly tiny machines that devour the stuff around them and turn it into replicas of themselves. There are countless millions of these machines in every human gut. We call them bacteria and they took over Earth billions of years before humans showed up. We treat them with respect or they kill us.

So why isn't Earth turned into grey-goo by bacteria? The simple answer is that they run out of food. You can't make a bacterium out of just anything, and they don't have wings or legs to go somewhere else for dinner. Unless they can hitch a ride on a wind-blown leaf or a passing animal, they stop multiplying when the local food supply runs out. Assemblers will do the same thing. You should find something else to worry about.

#### Conflation is a norm and is inevitable – multiple alt causes disprove the impact

Benvenisti 9 (Eyal, Professor of Law, Tel Aviv University, “Rethinking the Divide Between Jus ad Bellum and Jus in Bello in Warfare Against Nonstate Actors,” Yale Journal of International Law, Vol. 34, <http://law.bepress.com/cgi/viewcontent.cgi?article=1114&context=taulwps>)

A. Observing State Practice

The reasons for maintaining the “total separation” between jus ad bellum and jus in bello, which are generally valid, are both moral and pragmatic. Yet they become strained in the context of warfare against nonstate actors. As a result, it is possible to observe a shift in the attitude of different actors, who inject ad bellum considerations into their assessment of the legality of certain military measures. In this Part, I first articulate the observation concerning the changing practice and then discuss its normative basis.

**Even the adherents** of the separation between ad bellum and in bello admit that “conflicts continue to be viewed in terms of ‘good’ and ‘evil’ . . . [and that] the reality is that such differences, real or perceived, matter.”15 For example, during the Gulf War of 1991 both the coalition forces and the international community took into consideration the illegality of the Iraqi invasion of Kuwait when assessing the proportionality of the military tactics adopted by the coalition forces. As Gardam noted, “[i]n the assessment of proportionality, civilians, and to a lesser extent combatants, of the aggressor state were accorded less weight in the balancing process than combatants of the ‘just side.’”16 Reactions during the military conflict in Lebanon in the summer of 2006 conflated ad bellum with in bello obligations.17 Similarly, in reaction to the Israeli attack in the Gaza Strip in December 2008 and January 2009, key observers linked ad bellum and in bello considerations. When asked whether Israel’s attacks were disproportionate, the U.S. ambassador to the United Nations responded: “Israel has the right to defend itself against these rocket attacks and we understand also that Israel needs to do all that it can to make sure that the impact of its exercise of right of self defense against rockets is as minimal and no affect [sic] on the civilian population.”18

#### No enforcement mechanism

**Blank, 12 -** Director, International Humanitarian Law Clinic, Emory Law School (Laurie, “TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” 1656 WILLIAM MITCHELL LAW REVIEW [Vol.38:5, <http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf>)

Finally, effective implementation of and compliance with the law, whether the LOAC, the law of self-defense, or human rights law, depends on regular and respected mechanisms for enforcement. In the arena of international law, both formal (courts and tribunals) and informal (public opinion, response from other states) enforcement have value and effect. Any judicial body determining the lawfulness of state action or the criminal responsibility of individuals must first determine the applicable law in order to reach an appropriate result. n141 When the legal regimes become blurred through repeated conflation, application of the law and thus enforcement will be hampered. The resulting consequence, of course, is that a lack of effective enforcement then undermines effective implementation of the law and protection of persons in the future. These problems often are highlighted in the more informal enforcement arena of media reporting, public opinion, advocacy reports, and other responses, where disputes over applicable law and appropriate analyses abound. When international or nongovernmental organization reports produce primarily disputes over which law is applied - rather than how the law is applied to the facts on the ground - the debate becomes centered on the law and legal disputes rather than on the victims, the perpetrators, and how to prevent legal violations in the future. The blurring of lines between armed conflict and self-defense takes these challenges to another level as well, however, creating a situation in which independent analysts may have difficulty identifying the key pieces of information necessary to an effective examination of the legality of the state's policies and actions.

#### Inevitable – zones definition is conflated

**Blank, 12 -** Director, International Humanitarian Law Clinic, Emory Law School (Laurie, “TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” 1656 WILLIAM MITCHELL LAW REVIEW [Vol.38:5, <http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf>)

One core purpose of the LOAC is the protection of innocent civilians by minimizing harm to civilians and civilian objects during wartime. Another is to enable effective military operations within the boundaries of the law. A central purpose of human rights law is the protection of individuals from violation of their rights and overreaching, even - and especially - during times of national emergency. Blurring the lines between armed conflict and self-defense and the targeting authority relevant to each legal regime directly affects all three of these critical goals. First, the hard-to-define parameters of an ongoing armed conflict with terrorist groups raise serious concerns about too many areas being subsumed within an area of armed conflict and the use of lethal force as a first resort. As more and more areas are viewed as part of the "zone of combat," more innocent civilians will face the consequences of hostilities, whether unintended death, injury, or property damage. This result runs counter to both the LOAC and human rights law. The potential spillover between status-based [\*1698] targeting and direct participation in the armed conflict framework and imminence and necessity (but without belligerent nexus) in the self-defense framework provoke similar consternation with regard to the protective and discriminating purposes of both bodies of law.

#### Plan does nothing – it ends the use of self-defense justifications in armed conflict. The greatest risk is the opposite – the use of jus in bello justifications in self-defense targeting.

**Blank, 12 -** Director, International Humanitarian Law Clinic, Emory Law School (Laurie, “TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” 1656 WILLIAM MITCHELL LAW REVIEW [Vol.38:5, <http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf>)

When no differentiation is made between the armed conflict and self-defense justifications and the two paradigms are potentially conflated, serious concerns regarding the legal parameters for targeting may arise. The greatest risk is that the status-based targeting regime relevant to armed conflict could bleed over into self-defense targeting. Suddenly, imminence and individualized [\*1695] threat determinations begin to give way to more amorphous and seemingly simplistic designations of membership and affiliation or association. In fact, even beyond that danger, one might argue that it is easier to group more groups or individuals within the category of "enemy" because of the greater ease in reaching them with the superior capability and decreased riskiness of drones. n129 The use of so-called "signature strikes" n130 outside of Afghanistan and Pakistan - the "hot battlefields" - surely raises the prospect of status-based targeting in areas where the existence of an armed conflict is uncertain. The category of persons who can be targeted outside of armed conflict thus becomes significantly broader than that contemplated by international law and that normally demonstrated through state practice in situations in which self-defense is not conflated with armed conflict.

#### There’s no such thing as ‘self-defense targeted killings’ – jus ad bellum only allows the use of self-defense against states that facilitate non-state actors’ attacks. The plan codifies an expansive notion of jus ad bellum that increases the risk of armed conflict

**Martin, 11 -** Associate Professor of Law at Washburn University School of Law (Craig, “GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME” SSRN) **NSA = Non State Actors**

In sum, the proposition that states can use force against NSAs as such, and thereby against states with little responsibility for the NSAs actions, is not consistent with the current jus ad bellum system, and moreover there are good reasons why this is so. It will be objected that this tends to create something of an asymmetry, as well as to give rise to something of a paradox—for while under the current law a terrorist attack may constitute an armed attack in jus ad bellum terms, a response to the attack is not permissible if there was not sufficient state complicity in the NSAs operation. Thus, so the objection would go, the jus ad bellum regime recognizes that NSAs can mount armed attacks, but then it insulates them from the responding use of force in self-defense.75 There is thereby a recognition of a wrong, but the denial of a remedy. Of course, in response to this it must be pointed out that the current law exists precisely because the remedy sought would be inflicted on states that are not themselves guilty of the kind of wrong that legitimates the use of force against them. But even to this the detractors would argue that from a philosophical and moral perspective it might be entirely defensible to inflict a remedy on a not entirely blameless state. As between Utopia, the innocent victim of terrorist attacks, and Oceania, which while not sufficiently responsible for the attacks to justify a response in selfdefense is not blameless, surely we should permit harm to the latter.76 However, in response to this entire line of argument it has to be emphasized that the modern jus ad bellum regime is not primarily grounded in such moral balancing, or even in a sense of justice, but rather is founded on the profound need to prevent war among states. Permitting the use of force against states that have not assisted terrorists acting from within their territory would create a different and far more serious asymmetry, which would distort and undermine the integrity of the jus ad bellum regime, and increase the risk of armed conflict among nations.

Such risk is not mere idle speculation. In Columbian raids against NSAs in Ecuador in 2006, and Turkish attacks on Kurds in Iraq in 2007–08, there was a serious risk of escalation. Consider the ramifications if India had characterized the Mumbai attack of 2008 as an “armed attack” justifying the use of force in selfdefense against Lashkar-e-Taiba, quite independent of whether there was sufficient evidence to establish that its operations could be attributed to Pakistan. The use of force against the group within the territory of Pakistan would have nonetheless been viewed as an act of war by Pakistan, and there would have been a real risk of a full-blown armed confl ict between nuclear powers.77

#### PMC’s jack the LOAC

Daniel P. Ridlon, A.F. Captain, JD Harvard, 2008, “CONTRACTORS OR ILLEGAL COMBATANTS? THE STATUS OF ARMED CONTRACTORS IN IRAQ,” 62 A.F. L. Rev. 199, ln

In addition to legal liability, the United States' employment of PMF personnel in future conflicts has potential negative policy ramifications. Employing PMF personnel who are potentially viewed as illegal combatants may undermine the public image that the United States conducts its military operations in accordance with the laws of war. This would not only serve as a public relations problem for the United States, but it could also be used as justification for other nations or non-state actors to violate the laws of war, especially if those states or groups are engaged in a conflict against the United States. In the end, the employment of illegal combatants could reduce prisoner of war [\*253] protections afforded to United States military personnel if they are captured.

#### No causal link between U.S. drone doctrine and other’ countries choices---means can’t set a precedent

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way: ¶ Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat. ¶ “Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.” ¶ By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?) ¶ It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be. ¶ Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so. ¶ But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.¶ Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### Goldstone report destroys the LOAC

Michael A. Newton 10, Law Prof @ Vanderbilt, “LAWFARE AND THE ISRAELI-PALESTINE PREDICAMENT: Illustrating Illegitimate Lawfare,” 43 Case W. Res. J. Int'l L. 255, ln

After detailing the content of the leaflet and radio broadcast warnings, the Report concluded that the warnings did not comply with the obligations of Protocol I because Israeli forces were presumed to have had the capability to issue more effective warnings, civilians in Gaza were uncertain about whether and where to go for safety, and some places of shelter were [\*277] struck after the warnings were issued. n91 Thus, despite giving more extensive warnings to the civilian population than in any other conflict in the long history of war, the efforts of the Israeli attackers were equated with attacks intentionally directed against the civilian population. This approach eviscerates the appropriate margin of appreciation that commanders who respect the law and endeavor to enforce its constraints should be entitled to rely upon--and which the law itself provides. There is simply no legal precedent for taking the position that the civilians actually respond to such warnings, particularly in circumstances such as Gaza where the civilian population is intimidated and often abused by an enemy that seeks to protect itself by deliberately intermingling with the innocent civilian population. The newly minted Goldstone standard for warning the civilian population would displace operational initiative from the commander in the attack to the defender who it must be remembered commits a war crime by intentionally commingling military objectives with protected civilians. This aspect of the report would itself serve to amend the entire fabric of the textual rules that currently regulate offensive uses of force in the midst of armed conflict.¶ This, then, is the essence of illegitimate lawfare. Words matter--particularly when they are charged with legal significance and purport to convey legal rights and obligations. When purported legal "developments" actually undermine the ends of the law, they are illegitimate and inappropriate. Legal movements that foreseeably serve to discredit the law of armed conflict even further in the eyes of a cynical world actually undermine its utility. Lawfare that creates uncertainty over the application of previously clear rules must be opposed vigorously because it does perhaps irrevocable harm to the fabric of the laws and customs of war. Illegitimate lawfare will marginalize the precepts of humanitarian law if left unchecked, and may serve to create strong disincentives to its application and enforcement. Knowledge of the law and an accompanying professional awareness that the law is binding remains central to the professional ethos of military forces around our planet irrespective of the reality that incomplete compliance with the jus in bello remains the regrettable norm. Hence, it logically follows that any efforts to distort and politicize fundamental principles of international law cannot be meekly accepted as inevitable developments.

#### UN peace operations undermine the LOAC

Matthew E. Dunham 13, JD Dickinson, “SACRIFICING THE LAW OF ARMED CONFLICT IN THE NAME OF PEACE: A PROBLEM OF POLITICS,” 69 A.F. L. Rev. 155, ln

Peace operations are the United Nation's (UN's) core business and its most visible activity. n3 Between 1948 and 2012, the UN Department of Peacekeeping Operations (DPKO) conducted sixty-seven peace operations with the general purpose of ending violence. n4 The worldwide presence of peace operation forces is even larger when one adds operations carried out by states under unified command. n5 [\*157] When conducting peace operations, the DPKO maintains that successful operations are based in the rule of law. n6 This principle clearly follows from one of the major purposes of the UN to "maintain international peace and security . . . in conformity with the principles of justice and international law." n7 Nevertheless, to sustain political support for some peace operations, the UN and its member states intentionally ignore the applicability of the law of armed conflict (LOAC) n8 by refusing to classify hostilities as an armed conflict and by wrongly denying that peace operation forces have become belligerents in armed conflict. If the international community wishes to conduct high-intensity peace operations without causing the LOAC to be cast aside in future conflicts, it must promote the rule of law by ceasing to pretend that such operations are passive and impartial. This paper provides three examples where the UN and its member states improperly circumvented the LOAC. The first two examples concern intervention of peace operation forces in East Timor by Australia and then the UN between 1999 and 2000. Both Australia and the UN determined the LOAC did not apply to hostilities even though the facts on the ground required its application. n9 The third example examines the UN's intervention in the Ivory Coast in 2011, where the UN conducted air assaults against one party to a non-international armed conflict (NIAC). After the offensive, the UN Secretary-General implausibly denied the UN had become a party to the conflict, thereby denying the application of the LOAC as a matter of law to those UN actions. n10 The UN and its member states sacrifice the LOAC in peace operations because of conflicting concepts of sovereignty and an unsustainable adherence to traditional peacekeeping doctrine. Under traditional peacekeeping doctrine, a peace operation force must gain consent from the parties, remain impartial to the conflict, and only use force in self-defense. n11 Traditional peacekeeping is based on a Westphalian concept of sovereignty, which absolutely prohibits interference in the [\*158] internal affairs of another state. n12 More recently, however, peace operations have become more robust and aggressive. n13 Particularly since the mid-1990s, the UN Security Council has typically authorized peace operations under Chapter VII of the UN Charter to not only use force for individual and unit self-defense, but also to further the mission's mandate and protect civilians. n14 These more aggressive peace operations are based on a post-Westphalian view that a sovereign's inability or unwillingness to protect its citizens could result in involuntary forfeiture of sovereignty. n15 Further obscuring the application of the LOAC in peace operations is the fact that the international community lacks accepted definitions for peace operations and its different forms, such as "peacekeeping" and "peace enforcement." n16 While the DPKO distinguishes five types of peace operations (conflict prevention, peacekeeping, peace enforcement, peacemaking, and peace building), it only generically describes the activities. n17 The lack of clear definitions makes it difficult [\*159] to consistently apply the terms. While Part II of this paper generally distinguishes between peacekeeping and peace enforcement, the majority of the paper uses the generic term "peace operation" when feasible to emphasize the importance of consistency in the application of terms. n18 The international community is forcing a square peg into a round hole by trying to apply traditional Westphalian principles of consent, impartiality, and the use of force in self-defense to robust peace operations justified under a post-Westphalian concept of sovereignty. To fit the peg into the Westphalian idea of a valid peace operation, the UN and its member states avoid objective classification of hostilities and proper characterization of participants in hostilities. Unfortunately, such political maneuvering sacrifices the LOAC--represented by the pieces shaved off the square peg as it breaks down to fit the round hole. Instead of avoiding the LOAC, peace operation forces should promote and respect the LOAC by objectively identifying their role and the nature hostilities. Otherwise, states may use examples of peace operations to justify unlawful actions in armed conflict. The next section of this paper, Part II, focuses on the evolution of peace operations as background for considering why the UN and states conducting peace operations sacrifice the LOAC in the name of peace. It discusses the origin of peace operations under a Westphalian concept of sovereignty and shows how such operations have expanded with a shifting view of sovereignty. This section also examines the evolution of the application of the LOAC to peace operations--from an initial perspective that the LOAC never applies to peacekeepers, to a view that the LOAC will apply if peacekeepers become a party to a conflict. Despite theoretical progression on the application of the LOAC to peace operations, Part III analyzes hostilities in East Timor between 1999 and 2000, and the Ivory Coast in early 2011, to illustrate intentional avoidance of the LOAC in peace operations. Within these contexts, Part IV shows how peace operation forces in East Timor and the Ivory Coast applied traditional Westphalian peacekeeping principles to post-Westphalian peace operations for political purposes. Further, this section shows [\*160] why such political calculations undermine the LOAC. Finally, Part V argues the error in sacrificing the LOAC to justify humanitarian intervention. This section contends that intentional avoidance of the LOAC in peace operations creates a model for states to ignore the LOAC in other conflicts. It also shows that the apparent success in one peace operation undertaken by political maneuver may, in fact, be detrimental to the next humanitarian crisis. Accordingly, the UN and its member states must properly categorize hostilities and the participant's status if they wish to use military force in peace operations. II. THE EVOLUTION OF PEACE OPERATIONS AND THE APPLICABILITY OF THE LAW OF ARMED CONFLICT Peace operations are a core activity of the UN, which is charged with maintaining international peace and security in accordance with the rule of law. When conducting such operations, however, traditional notions of sovereignty undermine the ability of the UN and its member states to effectively adhere to the LOAC. To explore this problem, this section examines the origin of peace operations in light of the Westphalian concept of sovereignty in which they were developed, n19 and it shows how the purpose of peace operations has expanded with a shifting concept of sovereignty. The section then discusses the types of circumstances that trigger the LOAC. Finally, it addresses the evolving application of the LOAC to peace operations and identifies the political dilemma of applying the LOAC to certain types of peace operations.

#### Conflation between jus ad bellum and jus in bello is globally inevitable

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

This case reflects, in microcosm, a pressing issue in the contemporary law of war. After 9/11, countless scholars and statesmen have called for changes in the jus ad bellum, the law governing resort to force, or the jus in bello, the law governing the conduct of hostilities.10 These invitations to reform, whatever their merit, raise an equally vital but distinct legal issue that has been largely neglected in recent legal scholarship: the relationship between the traditional branches of the law of war.11 Since the U.N. Charter introduced a positive jus ad bellum into international law, the reigning dogma has been that reflected in the SCSL Appeals Chamber’s opinion: the jus ad bellum and the jus in bello are, and must remain, analytically distinct. In bello rules and principles apply equally to all combatants, whatever each belligerent’s avowed ad bellum rationale for resorting to force: self-defense, the restoration of democratic government, territorial conquest, or the destruction of a national, ethnic, racial, or religious group, as such.12 It is immaterial, on this view, whether the ad bellum intent of the militia leaders indicted by the SCSL had been to restore a democratic government or to topple that government and install a brutal regime in its stead: they must adhere to and be judged by the same in bello rules and principles.

Postwar international law regards this analytic independence as axiomatic,13 as do most just war theorists. They insist that “[i]t is perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules.”14 In theory, then, any use of force may be simultaneously lawful and unlawful: unlawful, because its author had no right to resort to force under the jus ad bellum; lawful, if and to the extent that its author observes “the rules,” that is, the jus in bello. 15 I will refer to this particular rule, which insists on the analytic independence of ad bellum and in bello, as the dualistic axiom. Despite its widespread acceptance,16 the axiom, as we will see, is logically questionable, 17 undertheorized, and at times disregarded or misapplied in practice—with troubling consequences for the policies that underwrite these components of the contemporary law of war. Consider briefly a few examples, which, among others, will be explored in greater detail below:

• In 1999, the North Atlantic Treaty Organization (NATO) carried out a four-month air campaign against Serbia. At the outset, NATO’s leaders made an in bello decision: its pilots would fly at a minimum height of 15,000 feet to reduce their risk from anti-aircraft fire essentially to zero, even though that would increase the risk to Serbian civilians because it often prevented visual confirmation of legitimate military targets. Many would argue that the in bello principle of proportionality obliges combatants to take some risk in an effort to reduce the risk to enemy civilians.18 If so, the perceived legitimacy of NATO’s avowed ad bellum goal, i.e., to halt the incipient ethnic cleansing of ethnic Albanian Kosovars, influenced the international ex post appraisal of NATO’s in bello conduct in the conflict.19

• After 9/11, the Bush administration launched and prosecuted what it described as a “Global War on Terror.” In this war, if it is a war,20 political elites and their lawyers invoked ad bellum factors—for example, the novel nature of the conflict or the enemy and the imperative to avoid at any cost another catastrophic terrorist attack— to justify or excuse in bello violations.21 Both treaties and custom, for example, categorically prohibit the in bello tactic of torture. It is difficult to dispute that the United States deliberately tortured some detainees in its custody. Alberto R. Gonzales also wrote in what has become an infamous memorandum that “the war against terrorism is a new kind of war,” which “renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.” 22 One might recharacterize this assertion in the framework of this Article as a suggestion that ad bellum considerations

may justifiably relax, or even vitiate, what some see as anachronistic in bello constraints.23

• In 1996, the International Court of Justice (ICJ) considered the legality of the threat or use of nuclear weapons.24 This required it to analyze both the jus ad bellum and the jus in bello. The Court concluded that the jus in bello generally prohibits nuclear weapons— with a curious qualification. It could not say “whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”25 Again, to recharacterize this statement in the framework of this Article: if the ad bellum consequences for one party to a conflict become bad enough, a weapon otherwise categorically prohibited by the jus in bello might become legal for that party, although presumably it would remain illegal for the other—unless that other party, too, “a State,” faced an “extreme circumstance of self-defence.”

The logic in each of these examples is contrary to the dualistic axiom, which insists that in bello constraints apply equally to all parties to a conflict. They do not vary based on ad bellum appraisals of the justice, legitimacy, or even urgency of one side’s asserted casus belli (cause or justification for resort to force). 26 Yet these examples reflect a trend in contemporary international law to relax or disregard the dualistic axiom, that is, to allow ad bellum considerations to influence and, at times, even to vitiate the jus in bello—an outcome that degrades the efficacy of both components of the law of war. Recent state practice and some jurisprudence also suggest a related, and equally misguided, tendency to collapse the distinct ad bellum and in bello proportionality constraints imposed by the law of war. As explained in greater detail below, today, in contrast to the pre-U.N. Charter era, all force must be doubly proportionate: that is, proportionate relative to both the jus ad bellum and the jus in bello. 27 Yet, at times, the ICJ has confused, neglected, or misapplied the two principles, as have belligerents—again to the detriment of the key values and policies that underwrite the contemporary law of war.

## 2nc

### t = circumvention

#### The Court separates war powers that can be restricted by Congress and inherent Presidential authority---proves circumvention or no solvency

David J. Barron 8, S. William Green Professor of Public Law at Harvard Law School , & Martin S. Lederman, THE COMMANDER IN CHIEF AT THE LOWEST EBB — FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING, HLR 121;3

4. Judicial Enforcement of Implied Statutory Restrictions. — The way the Supreme Court approaches war powers generally, when com- bined with the increased mass of potentially relevant legislative restric- tions on the conduct of this military conflict, further increases the like- lihood that the “lowest ebb” issue will be joined in the future. Principles of deference to executive authority tend to dominate aca- demic discussion of statutory interpretation and war powers. As we have indicated, however, Hamdan, Youngstown, and other modern war powers cases demonstrate that the Court cannot be counted on to give the President the benefit of the doubt. And in many war powers cases, the Court has been perfectly willing to construe ambiguous statutory language against certain background rules that it presumes Congress intended to honor,84 including a presumption that the Executive must comply with the laws of war.85

This general and longstanding judicial willingness to find implied limitations in ambiguous texts concerning the use of military force and national security powers is sometimes controversial. But whether jus- tified or not, such an interpretive approach is of particular import now, given the sheer mass of preexisting statutes potentially applicable to the conflict with al Qaeda and the likelihood that this body of law will grow. Executive branch lawyers may be hard-pressed to advise their client agencies that creative construction can overcome the apparent statutory restrictions, at least if there is a reasonable prospect of judi- cial review (as there often will be in the war on terrorism due to its pe- culiar domestic connections). Instead, the prospect of judicial review will impel these lawyers to advise that the courts could well construe the potentially restrictive language to impose hard constraints on the Executive’s preferred course of conduct — and that only the assertion of a superseding constitutional power of the President could, possibly, overcome such limits. Thus, the relatively weak deference the Court has long shown the President in many war powers cases, when combined with the relatively high likelihood in the war on terrorism of the applicability of restrictive but ambiguous statutory language and a jus- ticiable case to hear, make constitutional assertions of preclusive executive powers a more likely occurrence than war powers scholarship typically assumes.

### russia war

Based on internal strategy for Chechnya, no modeling relative to aff solvency, one statement from Putin, not reflective of entire armed forces establishment, not Putin’s own declaration, just that some escalations have said it. Doesn’t say it WOULD cause Central Asia war, just that it could. Obvi don’t solve Chechnya

#### No Russia war

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

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

#### De-escalation solves—generals agree

**Ivashnov, 7** – Colonel General Leonid Ivashov, President of the Academy of Geopolitical Problems (Leonid,. July 2007 “Will America Fight Russia”. Defense and Security, No 78. LN

Ivashov: Numerous scenarios and options are possible. Everything may begin as a local conflict that will rapidly deteriorate into a total confrontation. An ultimatum will be sent to Russia: say, change the domestic policy because human rights are allegedly encroached on, or give Western businesses access to oil and gas fields. Russia will refuse and its objects (radars, air defense components, command posts, infrastructure) will be wiped out by guided missiles with conventional warheads and by aviation. Once this phase is over, an even stiffer ultimatum will be presented - demanding something up to the deployment of NATO "peacekeepers" on the territory of Russia.

Refusal to bow to the demands will be met with a mass aviation and missile strike at Army and Navy assets, infrastructure, and objects of defense industry. NATO armies will invade Belarus and western Russia. Two turns of events may follow that. Moscow may accept the ultimatum through the use of some device that will help it save face. The acceptance will be followed by talks over the estrangement of the Kaliningrad enclave, parts of the Caucasus and Caspian region, international control over the Russian gas and oil complex, and NATO control over Russian nuclear forces. The second scenario involves a warning from the Kremlin to the United States that continuation of the aggression will trigger retaliation with the use of all weapons in nuclear arsenals. It will stop the war and put negotiations into motion.

#### No Chechnya war

**RussiaToday 2009** (No more terrorists in Chechnya? http://www.russiatoday.com/Top\_News/2009-03-31/No\_more\_terrorists\_in\_Chechnya.html/print)

The national anti-terrorism committee is considering ending the anti-terrorist operation in the Chechen republic, launched a decade ago. The Russian Republic of Chechnya is well on the road to putting the dark days of conflict behind it, but the counter-terrorism operation still underway there is preventing a full recovery for the economy and scaring off investors. Yet the wind of change is in the air. Restoration works are in full swing in the Chechen capital, and it is hard to believe two years ago the city was in ruins. The republic’s president Ramzan Kadyrov has managed to bring peace to the republic, but social problems still exist. More than 50% of the republic’s population is unemployed. President Kadyrov says he wants to create job opportunities. Before that happens, the counter-terrorist operation, which is still officially ongoing in Chechnya, should end. Although there have been no recent terrorist attacks, the authorities admit that the operation itself keeps away possible investors, never mind Chechens living abroad. “People, including investors, get scared when they read on the Internet a counter-terrorist operation is underway in Chechnya. Rich people always look for quiet places without problems, where their business will be well-protected. If the counter-terrorist operation regime is lifted, it would be easier for us to rebuild the economy, to create jobs”, says the president. (You can find full version of the interview with the President of the Chechen Republic Ramzan Kadyrov here) Read more The counter-terrorist operation was launched some ten years ago, after a group of militants from Chechnya intruded in the neighbouring republic of Dagestan. They proclaimed an Islamic state on the territory of the two republics, which resulted in riots in Dagestan and a second campaign against militants in Chechnya. Grozny on June 2007 (AFP Photo / Ruslan Alkhanov) Military expert Viktor Litovkin says the situation in Chechnya has become more or less stable: “Law enforcement agencies are stronger now. The leadership of the Chechen Republic is eager to establish ties with the outside world, but it is difficult under the counter-terrorist operation regime”, explains the expert. An airport in the capital Grozny used to serve international flights ten years ago, but now it’s for domestic traffic only. Due to the ongoing counter-terrorism alert, there is no customs service in the republic. “It is inconvenient, because currently you have to go someplace else, pay extra, get approvals from various government agencies”, says Grozny resident Ramzan Digayev. Food and goods in Chechen shops are more expensive than elsewhere in Russia, because many supplies must come from other regions. The anti-terrorist measures in force pose difficulties here too, as everything crossing the Chechen border has to be checked and documented. Although the Kremlin is considering lifting the measures, the security situation will continue to be monitored as militants may remain in mountainous regions. The Chechen president claims his republic is one of the quietest regions of Russia. The experts agree–his policies brought relative peace to this area, but that has led to the violence being exported to the neighboring republics. While defeated here, the Islamist militants found shelter in Ingushetia and Dagestan, which became the new arenas of counter-terrorist operations.

### impact

#### Israel outweighs—only way to simultaneously trigger economic collapse, international backlash, and nuclear standoff—even if they have defense to components, crisis synergy overwhelms normal conflict resolution and leads to World War 3 as per Reuveny. Also says US response independently leads to miscalc due to high alert.

#### Shorter timeframe because talks are on the brink now and our link is based on Israel’s response to diplomatic progress.

#### Turns case – sets a precedent to delegate authority – draws us into war

**Richman, 12/29/13** (Sheldon, Counterpunch, “AIPAC's Stranglehold Congress Must Not Cede Its War Power to Israel”, <http://www.counterpunch.org/2013/12/27/congress-must-not-cede-its-war-power-to-israel/>)

The American people should know that pending right now in Congress is a bipartisan bill that would virtually commit the United States to go to war against Iran if Israel attacks the Islamic Republic. “The bill outsources any decision about resort to military action to the government of Israel,” Columbia University Iran expert Gary Sick wrote to Sen. Chuck Schumer (D-NY) in protest, one of the bill’s principal sponsors.

The mind boggles at the thought that Congress would let a foreign government decide when America goes to war, so here is the language (PDF):

If the government of Israel is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military and economic support to the Government of Israel in its defense of its territory, people and existence.

This section is legally nonbinding, but given the clout of the bill’s chief supporter outside of Congress — the American-Israel Public Affairs Committee (AIPAC [PDF]), leader of the pro-Israel lobby — that is a mere formality.

Since AIPAC wants this bill passed, it follows that so does the government of Israeli Prime Minister Benjamin Netanyahu, who opposes American negotiations with Iran and has repeatedly threatened to attack the Islamic Republic. Against all evidence, Netanyahu insists the purpose of Iran’s nuclear program is to build a weapon with which to attack Israel. Iran says its facilities, which are routinely inspected, are for peaceful civilian purposes: the generation of electricity and the production of medical isotopes.

The bill, whose other principal sponsors are Sen. Robert Menendez (D-NJ) and Sen. Mark Kirk (R-IL), has a total of 26 Senate cosponsors. If it passes when the Senate reconvenes in January, it could provoke a historic conflict between Congress and President Obama, whose administration is engaged in negotiations with Iran at this time. Aside from declaring that the U.S. government should assist Israel if it attacks Iran, the bill would also impose new economic sanctions on the Iranian people. Obama has asked the Senate not to impose additional sanctions while his administration and five other governments are negotiating with Iran on a permanent settlement of the nuclear issue.

A six-month interim agreement is now in force, one provision of which prohibits new sanctions on Iran. “The [Menendez-Schumer-Kirk] bill allows Obama to waive the new sanctions during the current talks by certifying every 30 days that Iran is complying with the Geneva deal and negotiating in good faith on a final agreement,” Ali Gharib writes at Foreign Policy magazine. That would effectively give Congress the power to undermine negotiations. As Iran’s foreign minister, Javad Zarif, told Time magazine, if Congress imposes new sanctions, even if they are delayed for six months, “The entire deal is dead. We do not like to negotiate under duress.”

Clearly, the bill is designed to destroy the talks with Iran, which is bending over backward to demonstrate that its nuclear program has no military aims.

#### Deal failure itself causes global war

**PressTV, 11/13/13** (“Global nuclear conflict between US, Russia, China likely if Iran talks fail,” <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>)

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.

“If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday.

“The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said.

“So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned.

The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war.

#### Impacts - Sanctions destroy Iran negotiations kills US cred and alliances – leads to US-Iran war and prolif

Nader, The Hill, ‘13

(Alirez “ Pause on additional Iran sanctions crucial to negotiations” 11-5-13 <http://thehill.com/opinion/op-ed/189371-pause-on-additional-iran-sanctions-crucial-to-negotiations> accessed: 11-15-13 mlb)

Iran has demonstrated a different tone and approach to nuclear negotiations since the June 14 election of Hassan Rouhani as president. Nothing concrete has emerged yet, but the U.S. negotiating team, headed by Undersecretary of State Wendy Sherman, has described the last round of negotiations as positive and different from previous sessions with the Iranian team under former President Mahmoud Ahmadinejad. ADVERTISEMENT Rouhani’s election and, more importantly, Iran’s dire economic condition are the reasons for Tehran’s new approach. Some have taken this to mean that more sanctions are needed. However, just because Tehran is seeking to ease the pressure brought on by the sanctions that exist today does not mean that it will yield to new sanctions tomorrow. Rouhani has a limited mandate to solve the nuclear crisis and lift sanctions. However, more radical elements of the Iranian political system, marginalized for now, are waiting for him to fail. They believe that the American government is either duplicitous or will be unable to deliver a deal. New sanctions would confirm their view and further their goals of ending negotiations and sidelining Rouhani. New sanctions passed before a true test of Iran’s intentions could result in a bleak future: a risky and costly war with Iran with no guarantee of success, or the acceptance of an increasingly embittered, isolated, repressive and nuclear capable Islamic Republic. The Iranian people have borne the brunt of sanctions, but it would be hard to argue that the Iranian regime has not felt the pressure as well. And it is this crucial portfolio that could determine his fate. He has the support of Supreme Leader Ayatollah Ali Khamenei and the Revolutionary Guard, without which he would not be able to negotiate or even run his government. But Khamenei and the Guard are under no illusion that negotiations are sure to succeed; nor are they willing to continue negotiations under humiliating conditions. Sanctions are a danger to their rule, but weakness in the face of pressure might be no less a threat. They must give Rouhani a chance because the Iranian people and key political constituents support negotiations. The viability of Rouhani’s platform of moderation and engagement with the West hangs in balance. Khamenei and hard-line Guard are willing to “test” America as much as the Obama administration is willing to “test” Tehran. New sanctions under consideration by Congress could lead to a weakening of the overall U.S. position. First, Rouhani could lose his mandate to continue negotiations. Second, Iran could begin to undermine the international coalition that has created the harshest peacetime sanctions in history. Rouhani, weakened at home but still respected abroad, could persuade major Iranian oil buyers such as China, India, Japan and even European that Iran attempted to negotiate in good faith but was rebuffed by the United States. Third, Iran could successfully cause a split between the group. China and Russia might believe that Congress wants regime change in Iran instead of a diplomatic solution. Germany, which has close business ties with Iran, could become unhappy about its economic sacrifices. And even the U.K. and France could begin to doubt U.S. intentions. Congress deserves credit for pressuring the Iranian regime, but it should pause the march toward new sanctions to give the negotiations a chance. Current sanctions against Iran are effective, and new sanctions can always be imposed if Iran does not budge. A smart approach toward Iran does not only entail creating pressure but using it correctly, and for the right goals.

#### Turns heg and cred

**Daremblum, Hudson Institute senior fellow, 11**

(Jaime, 10/25/11, “Iran Dangerous Now, Imagine it Nuclear,” Real Clear World, accessed 10/3/13, <http://www.hudson.org/index.cfm?fuseaction=publication_details&id=8439>, kns)

What would it mean if such a regime went nuclear? Let's assume, for the sake of argument, that a nuclear-armed Iran would never use its atomic weapons or give them to terrorists. Even under that optimistic scenario, Tehran's acquisition of nukes would make the world an infinitely more dangerous place. For one thing, it would surely spark a wave of proliferation throughout the Greater Middle East, with the likes of Turkey, Egypt, and Saudi Arabia - all Sunni-majority Muslim countries - going nuclear to counter the threat posed by Shiite Persian Iran. For another, it would gravely weaken the credibility of U.S. security guarantees. After all, Washington has repeatedly said that the Islamic Republic will not be permitted to get nukes. If Tehran demonstrated that these warnings were utterly hollow, rival governments and rogue regimes would conclude that America is a paper tiger. Once Tehran obtained nuclear weapons, it would have the ultimate trump card, the ultimate protection against outside attack. Feeling secure behind their nuclear shield, the Iranians would almost certainly increase their support for global terrorism and anti-American dictatorships. They would no longer have to fear a U.S. or Israeli military strike. Much like nuclear-armed North Korea today, Iran would be able to flout international law with virtual impunity. If America sought to curb Iranian misbehavior through economic sanctions, Tehran might well respond by flexing its muscles in the Strait of Hormuz. As political scientist Caitlin Talmadge explained in a 2008 analysis, "Iranian closure of the Strait of Hormuz tops the list of global energy security nightmares. Roughly 90 percent of all Persian Gulf oil leaves the region on tankers that must pass through this narrow waterway opposite the Iranian coast, and land pipelines do not provide sufficient alternative export routes. Extended closure of the strait would remove roughly a quarter of the world's oil from the market, causing a supply shock of the type not seen since the glory days of OPEC." Think about that: The world's leading state sponsor of terrorism has the ability to paralyze destabilize the global economy, and, if not stopped, it may soon have nuclear weapons. As a nuclear-armed Iran steadily expanded its international terror network, the Western Hemisphere would likely witness a significant jump in terrorist activity. Tehran has established a strategic alliance with Venezuelan leader Hugo Chávez, and it has also developed warm relations with Chávez acolytes in Bolivia, Ecuador, and Nicaragua while pursuing new arrangements with Argentina as an additional beachhead in Latin America Three years ago, the U.S. Treasury Department accused the Venezuelan government of "employing and providing safe harbor to Hezbollah facilitators and fundraisers." More recently, in July 2011, Peru's former military chief of staff, Gen. Francisco Contreras, told the Jerusalem Post that "Iranian organizations" are aiding and cooperating with other terrorist groups in South America. According to Israeli intelligence, the Islamic Republic has been getting uranium from both Venezuela and Bolivia. Remember: Tehran has engaged in this provocative behavior without nuclear weapons. Imagine how much more aggressive the Iranian dictatorship might be after crossing the nuclear Rubicon. It is an ideologically driven theocracy intent on spreading a radical Islamist revolution across the globe. As the Saudi plot demonstrates, no amount of conciliatory Western diplomacy can change the fundamental nature of a regime that is defined by anti-Western hatred and religious fanaticism.

### hardliners

Takes out d because it says hardliners COULD prevail – this proves they can’t read impact d but it raises the question of whether there’s new sanctions

This isn’t a sanctions GOOD card, just speculative uniqueness—no new 1ar

#### Recent tightening of existing sanctions angered Iran but didn’t collapse the deal –new sanctions is the real risk

**Sorcher, 12/16/13** - Sara Sorcher is National Journal's national security correspondent. You can find her in the halls of the Pentagon, State Department and Congress covering defense, military and foreign policy issues (“The Iran Deal Hasn't Collapsed” <http://www.defenseone.com/politics/2013/12/iran-deal-hasnt-collapsed/75530/?oref=d-channelriver>)

Accusing the U.S. of violating "the spirit" of last month's interim deal, Iran stopped negotiations with world powers in Vienna over how to curb its nuclear program—just one day after Washington announced new sanctions against companies and individuals found supporting Tehran's nuclear ambitions.

Diplomats are downplaying Tehran's decision to end the talks. According to Reuters, diplomats stressed the "inconclusive outcome" of the Vienna discussions about how to implement the deal, meant to curtail the most dangerous aspects of Iran's nuclear program in exchange for about $7 billion in sanctions relief, and said this did not mean the deal was in "serious trouble." Discussions, they say, are expected to resume soon.

However, the news, which comes as the Obama administration has launched a charm offensive to persuade skeptical members of Congress to give diplomacy a chance and avoid levying new sanctions on Iran, does raise the possibility of two separate outcomes:

1) The Nov. 23 deal is fragile, and Iran is not a guaranteed player. The Obama administration worries new sanctions from Congress would unravel the sensitive nuclear negotiations, but to prevent members from taking action, it must prove it can and will keep the economic pressure on Tehran. Thursday's sanctions announcement, just hours before senior State and Treasury Department officials testified on Capitol Hill—was a strong step in that direction.

That Tehran is hesitant to concretely commit to more talks after the sanctions is a sign Iranian officials may not be bluffing when they warn new sanctions would derail a deal. The nuclear deal was considered a major diplomatic breakthrough and a solid chance to end the decadelong nuclear dispute. So, after Friday's spat, those members of Congress inclined to give talks a chance may have more ammunition to convince their colleagues not to call Iran's bluff.

2) However, that the Iranian delegation returned to Tehran after the U.S. simply demonstrated it would enforce its existing sanctions is not necessarily an encouraging sign that the country—which is obviously familiar with the international vise around its economy—is serious.

There's no chance Washington will lift all its sanctions at once, just as there's virtually no chance Iran will dismantle all of its nuclear program immediately. Everyone knows some form of pressure must remain for negotiations to continue. If Iran breaks off—or extensively pauses—nuclear talks now because it is angry about sanctions that are already in force, impatient congressional hawks are virtually certain to move forward with new measures to cripple Iran's economy and test its resolve. And in that case, very likely, the deal would be kaput.

#### Negotiations are genuine – concrete concessions are on the table

Joyner, 9/20/13 - Professor of Law at the University of Alabama School of Law (Dan, “Rouhani’s WaPo Op-ed, Trip to the UN, Major New Concession, and an Opportunity Not to be Missed” http://armscontrollaw.com/)

Many will have already read Iranian President Hassan Rouhani’s op-ed published yesterday in the Washington Post. Part of an interesting trend lately, begun with Russian President Putin’s op-ed in the NYT last week, of foreign leaders trying to speak directly to the American people through leading American media outlets. Rouhani’s op-ed is just the most recent installment in a number of statements by the new Iranian president, including through a Twitter account, in which he has tried to strike a much more conciliatory and positive tone with the West and with Israel than his predecessor Mahmoud Ahmadinejad. He has said repeatedly that he is willing to negotiate on a real and meaningful basis with the West in order to resolve the dispute over Iran’s nuclear program.

It has been reported that President Obama and President Rouhani have already exchanged letters, in a very rare instance of direct communication between US and Iranian leaders. Further, in what appears to be a significant sign of goodwill, the US Treasury department has twice this year eased some provisions of its sanctions on Iran.

In the midst of these positive signs of a changed tone and willingness on the part of both sides to cooperate productively in negotiations regarding Iran’s nuclear program, President Rouhani will be traveling to the United Nations in New York next week, for his first address to the UN General Assembly.

In perhaps the most significant sign yet of Iran’s commitment to serious negotiations with the West over its nuclear program, the German magazine Der Spiegel reported a few days ago that President Rouhani is prepared to offer as a concession something that President Ahmadinejad would never have considered offering – the decommissioning of of the Fordow enrichment facility. The decommissioning of Fordow has been one of the P5+1′s longstanding demands in the negotiations. I wrote about it in one of my very first ACL posts last summer, including the explicit rejection of this idea by Iran’s IAEA representative at the time. The Der Spiegel report says that Rouhani may even make this offer publicly during his UN visit next week.

It it’s true that Rouhani is willing to put the decommissioning of Fordow on the table, then people can stop their dismissal of Rouhani’s recent statements as a charm offensive without any real substance. The decommissioning of Fordow would be a major concession by Iran to Western demands, and would, as part of a negotiated package deal, deserve a reciprocal major concession on the part of the P5+1, in the form of real and meaningful sanctions relief for Iran.

I think that the current circumstances of Rouhani’s election and mandate from the Iranian people, and his expressed willingness to negotiate productively and to put major concessions on the table, represent a historic opportunity that President Obama would be a fool to miss. I think he has a real chance here to do something that would re-earn him his Nobel Peace Prize – negotiate an accord with Iran over its nuclear program that will significantly reduce international tension surrounding this longstanding dispute, that has harmed the reputation of the US and the EU in the world, seriously damaged the perceived credibility of the IAEA, and harmed millions of Iranian civilians through international sanctions that courts in the EU have repeatedly found to be unlawful.

#### Prefer our ev, bargaining theory means Rouhani has no incentive to send costly signals – but his attempt to marginalize the IRGC proves he’s put it all on the line. Their ev is just neocon posturing.

**Walt, 9/20/13 –** Robert and Renée Belfer professor of international relations at Harvard University (Stephen, “Is the Iranian President Sincere in Wanting a Nuclear Deal?”

<http://walt.foreignpolicy.com/posts/2013/09/20/is_rouhani_sincere_iran_nuclear_deal>

By all indications, Iran's new president wants a deal with the United States on its nuclear program and has the authority to negotiate one. As predictably as the sunrise, hard-liners in the United States and Israel are dismissing the possibility on various grounds. Indeed, about 10 minutes after President Hasan Rouhani was elected, they began describing him as a "wolf in sheep's clothing" and suggesting that nothing had changed. Then, after Rouhani unleashed a wave of conciliatory actions, skeptics like Israeli Prime Minister Benjamin Netanyahu responded by proposing a new set of deal-breaking conditions, and other Israeli officials suggested that time had already run out and that further diplomacy was a waste of time.

Given that these are the same people and organizations that have been pushing for military action against Iran for some time, it is hardly surprising that they pooh-pooh the prospect of diplomacy now. But notice that their core position is fundamentally contradictory: They have been saying for years that only sustained outside pressure will get Iran to "say uncle." So the United States and the European Union have ramped up sanctions and made repeated threats to use force. Surprise, surprise: Iran's new leaders are now saying they want a deal, precisely the response that this pressure was supposed to produce. If the hawks were consistent, they would at a minimum recommend that we explore the possibility carefully. Instead, they are trying to make sure that the United States continues to demand complete Iranian capitulation (or maybe even regime change). This tells you all you need to know about their sincerity and why Barack Obama shouldn't pay them the slightest attention.

In fact, the United States and Iran are facing a classic problem in international relations (and other forms of bargaining): Given that an adversary could be bluffing or dissembling, how do you know when a seemingly friendly gesture is sincere? Political scientist Robert Jervis explored this issue in depth in The Logic of Images in International Relations (1970) and drew a nice distinction between "signals" (i.e., actions that contain no inherent credibility) and "indices," which he defined as "statements or actions that carry some inherent evidence that the image projected is correct."

More recently, this basic idea was resurrected in economics (and borrowed by IR scholars) in the notion of a "costly signal." Unlike "cheap talk," a costly signal is an action that involves some cost or risk for the sender and therefore is one that the sender would be unlikely to make if they didn't really mean it. A classic example was Anwar Sadat's 1977 offer to fly to Jerusalem and speak directly to the Israeli Knesset in search of a peace deal. Because this move was obviously a risky step for Sadat (who was condemned throughout the Arab world), his Israeli counterparts had good reason to believe that his desire for peace was genuine.

So should we take Rouhani's overtures seriously? I think we should. As noted above, the possibility that Iran is genuinely interested in a deal is inherently credible, because we have in fact been squeezing the Iranians quite hard. To repeat: Isn't what they are now doing exactly what we've been trying to achieve? Equally important is that Iran has taken a wide range of actions that were not cost-free. First, Rouhani and Foreign Minister Mohammad Javad Zarif have been granted enhanced authority to negotiate a deal, and Rouhani has appointed officials who favor negotiations and are familiar to their American interlocutors. Any time you pick one set of officials over another, there are political costs involved. Supreme Leader Ali Khamenei has publicly stated that Iran should show "heroic flexibility," thereby lending his own authority to this effort. And this has all been done in public view, making it harder for Iran's leaders to reverse course on a whim.

Equally important is that the supreme leader has also endorsed Rouhani's position that the hard-line Islamic Revolutionary Guard Corps (IRGC) stay out of political matters such as this one. This step reminds us that Rouhani (and possibly Khameini himself) faces some internal opposition to a more conciliatory stance. Paradoxically, the fact that they have to override hard-liners at home is evidence of their sincerity: Pushing the IRGC to the sidelines is a "costly signal" that they are serious.

Iran has also taken some physical actions that indicate openness toward a deal. The International Atomic Energy Agency reports that Iran has slowed its accumulation of 20 percent enriched uranium, in effect remaining shy of the threshold needed to produce a bomb, and that Iran is still not operating all of its installed centrifuges. And Rouhani has publicly reiterated Iran's long-standing position that it is not going to acquire nuclear weapons, thereby increasing the diplomatic price it would pay if those words proved hollow.

Last but not least, Iran has also taken some more symbolic gestures, such as the release of human rights lawyer Nasrin Sotoudeh, Rouhani's public greeting to world Jewry on Rosh Hashanah, the implicit repudiation of former President Mahmoud Ahmadinejad's questioning of the Holocaust, and the condemnation of chemical weapons use in Syria. Here it is also noteworthy that former President Ali Akbar Hashemi Rafsanjani, a longtime ally and associate of Rouhani, publicly blamed Syrian President Bashar al-Assad for the attacks and even compared him to Saddam Hussein. Skeptics might deride all these developments as "cheap talk," but in the context of Iranian domestic politics, they are not without consequences. Among other things, these various gestures have made Rouhani & Co. more vulnerable to a hard-line backlash in the event that their more conciliatory approach leads nowhere.

### veto override

#### 1nc Merry says that even though the bill might pass, he’ll veto and rally the public to prevent override – it will be a tough fight against the Israel lobby but with sustained pressure, he’ll win.

#### 2 filters:

#### First, the GOP doesn’t matter – they’re voting for Iran sanctions. 1nc Lobe says the question is whether Obama gets enough Dems to support him over the Israel lobby – and that comes down to personal influence with them. So general ev about Obama’s PC or thumpers are irrelevant – because they’re about his ability to pass legislation over GOP opposition – not to call in favors to block a veto override.

#### Second, err neg on veto overrides – Lobe says it will be a tough fight but the dynamics of an override are tough – so as long as Obama doesn’t further harm his positions, he’ll win

**Lindsay, 11/25/13 -** Senior Vice President, Director of Studies, and Maurice R. Greenberg Chair at the Council on Foreign Relations(James, “Will Congress Overrule Obama’s Iran Nuclear Deal?” <http://blogs.cfr.org/lindsay/2013/11/25/will-congress-overrule-obamas-iran-nuclear-deal/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+jlindsay+%28James+M.+Lindsay%3A+The+Water%27s+Edge%29>)

Does this mean that Congress is going to take Iran policy out of Obama’s hands? Not quite. Any sanctions bill could be vetoed, something the president presumably would do to save his signature diplomatic initiative. The odds that sanctions proponents could override a veto aren’t good. Congress hasn’t overridden one in foreign policy since it imposed anti-apartheid sanctions on South Africa over Ronald Reagan’s objections back in 1986. In that respect, Obama is in a much stronger position than he was back in September when he sought to persuade Congress to authorize a military strike on Syria. Then the difficulties of passing legislation worked against him; now they work for him.

One reason Obama should be able to make a veto stick is party loyalty. Many congressional Democrats won’t see it in their interest to help Republicans rebuke him, and he only needs thirty-four senators to stand by him. Senator Reid has already begun to soften his commitment to holding a sanction vote. As Majority Leader he has considerable freedom to slow down bills and to keep them from being attached to must-pass legislation that would be politically hard for Obama to veto.

#### PC is key – 30 Democratic Senators are in play and open to persuasion

**Sargent, 12/20/13** – write the Plum Line blog for the Washington Post (Greg, “Divide deepens among Democrats on Iran” <http://www.washingtonpost.com/blogs/plum-line/wp/2013/12/20/divide-deepens-among-democrats-on-iran/>)

That raises an interesting question: What if this bill comes to a vote and goes down in the Senate?

Already, Democrats are divided on the push for a new sanctions bill. Senators Robert Menendez and Chuck Schumer are leading the push for the bill, and they have been joined by 11 other Democratic Senators. On the other hand, 10 Dem Senators — all committee chairs — have come out against the sanctions bill, arguing in a letter to Harry Reid that “new sanctions would play into the hands of those in Iran who are most eager to see the negotiations fail.”

That leaves at least 30 Dem Senators who may be up for grabs.

This means that, in addition to the organizing that Boxer is undertaking, you’re all but certain to see more pressure be brought to bear on Democrats to back off of Congressional action right now. (There is also pressure on them to support the new sanctions bill, but the organizing that’s taking place against it is getting less attention.) As HuffPo reported yesterday, liberal groups like MoveOn and CREDO are already pillorying senators Menendez and Schumer for undermining the negotiations and playing into GOP efforts to fracture Dem unity on Iran. Pressure will probably be brought to bear on undecided Dems, too.

Senate aides say they are not ready to predict whether the Iran sanctions bill will or won’t pass. Right now 13 Republicans have signed on to the Menendez-Schumer bill. But you could conceivably see Republican Senators like Rand Paul and Mike Lee, who have been more suspicious of the use of American power abroad than neocons or GOP internationalists have traditionally been, come out against the bill. I’ve asked Senator Paul’s office where he stands and haven’t received an answer. What will he say?

There will also be tremendous pressure brought to bear from both sides on Harry Reid, who has yet to say whether he’ll allow it to come to a vote. If more Dems come out against the bill, it will become harder for him to bring it to a vote.

It remains very possible that the bill will pass the Senate, and if the White House is right, that could imperil the chances of a long term diplomatic breakthrough. But it’s also possible the bill will fail, which would be a major rebuke to the hawks.

#### And capital is key to that effort – it’s not just about bargaining – it’s about focus – the plan’s expenditure prevents Obama from maintaining a consistent message and it means he’ll lose the ability to ask for favors

**Moore, 9/10/13 -** Guardian's US finance and economics editor.(Heidi, “Syria: the great distraction” The Guardian, <http://www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester>)

Political capital – the ability to horse-trade and win political favors from a receptive audience – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. That's exactly the reason the White House should stop proposing policies as if it is scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time.

#### Political capital is key to the credibility of the veto threat

**Slezak, 7 -** University of California, Los Angeles(Nicole, “The Presidential Veto: A Strategic Asset,” <http://www.thepresidency.org/storage/documents/Vater/Slezak.pdf>)

Spitzer states that the veto is the “key presidential weapon,”13 and I suggest that it offers him a strategy to take both the defensive and the offensive against an often divided and combative Congress. The president takes the defensive by waiting for legislation to be sent to him from Congress and then vetoing legislation that is unacceptable and offensive to his administration’s goals. The veto is a way for the president to “go public” and to show his dislike for the legislation through his veto message. In addition, he can prove to Congress that unless they amend the legislation in accordance with his suggestions, he will not pass the bills that they send him. Gattuso speaks on this matter by stating, “The veto, moreover, is a very effective device for grabbing the public’s attention and focusing it on the President’s struggle to pursue policies on behalf of all the people and against special interests. A veto message may be a President’s most effective bully pulpit.”14

However, the veto is more than a tool to block, and the president may also take the offensive by using the veto threat. Aside from the conventional use of the veto (blocking legislation from passing), it can also be used in this more subtle and less potentially damaging way. The veto threat is a special tool that allows the president to warn Congress of a veto before the legislation is even presented to him. The veto threat stems from the power that the veto has built over the centuries and which relies heavily on a president’s possession of political capital. If the president is in the fourth year of his term, when Congress is most likely to be confrontational, the president should not use the veto threat as often as he did in the first year of his term. This is due to the fact that when a president enters office he is riding on the mandate of his election and has a large amount of political capital to spend. This is why Spitzer warns that, “like a veto itself, a threat applied too often loses its potency, and a threat not considered credible is not a threat at all.”15

Once the president makes the decision to make a veto threat and does so, there are four outcomes that are possible. Congress can decide to shape the legislation in a manner that is acceptable to the president so that he will sign it into public law, Congress can construct a compromise with the president and pass an altered bill, the president can give in and sign the bill if Congress sends it unchanged, or neither side can compromise and will lead to Congress passing the bill unchanged and the president vetoing it.16

In order to take advantage of the strategic uses of the veto, both in its defensive and offensive applications, it must be determined what factors lead a president to veto or pass legislation. To do this, I will assess what factors scholars believe influence a president’s decision to veto legislation. To determine if these widely supported factors are important in the president’s decision to veto, they will be tested to determine whether they are statistically significant. Once it is known what factors truly cause the president to veto legislation, and which actually matter, it will help the president create a reliable veto strategy. The veto strategy is a model to help the president assess when the use of the veto will maximize effectiveness. This allows the president to calculate when it is an opportune time to risk political capital and a potential override in order to veto legislation, or when he should avoid losing capital and attempt to bargain with Congress or simply pass legislation.

### thumpers

#### Thumpers don’t apply because they don’t implicate Senate Dems – they’re about fights with the GOP, who 1nc Lobe says will vote for sanctions no matter what – our disad is about how successful Obama will be in convincing Democrats to back off

#### Top of the agenda

**Egelko, 12/26/13** (Bob, San Francisco Chronicle, “Feinstein, Boxer side with Obama in Iran sanctions dispute” <http://blog.sfgate.com/nov05election/2013/12/26/feinstein-boxer-side-with-obama-in-iran-sanctions-dispute/>

A showdown is looming in the Senate next month over increased U.S. sanctions on Iran that could unravel a tentative international agreement over Iranian nuclear development, with President Obama on one side and Israel on the other. And California’s senators, Democrats Dianne Feinstein and Barbara Boxer, usually staunch allies of Israel, are both siding with Obama.

The Nov. 24 agreement requires Iran to freeze its nuclear program, halt work on a heavy-water reactor and stop enriching uranium beyond 5 percent of purity, far below the weapons-grade level. It also provides for daily inspections by international weapons monitors. In exchange, the international community agreed to suspend some of the sanctions, to the tune of $7 billion a year, that have frozen transactions with Iranian oil, banking and other industries. The six-month deal, intended as a prelude to a long-term agreement, was approved by Iran’s new president, Hassan Rouhani, and the U.S., Great Britain, Russia, China, France and Germany.

The agreement was immediately denounced by Israeli President

Benjamin Netanyahu as a sham that would allow Iran to develop nuclear weapons. Israel, which has the only nuclear arsenal in the Middle East, has threatened a pre-emptive military strike on Iran’s nuclear facilities. Meanwhile, Israel’s U.S.-based lobbyists, led by the American Israel Public Affairs Committee, are backing a sanctions bill in the Senate that has divided the Democratic Party.

The bill would impose additional economic sanctions if Iran either fails to comply with the terms of the six-month agreement or, more significantly, refuses to dismantle its entire uranium enrichment program within a year. Another provision would require the United States to provide economic and military support if Israel was “compelled to take military action in legitimate self-defense” against what the bill describes as Iran’s nuclear weapons program.

The bipartisan measure has 26 cosponsors, led by Senate Foreign Relations Committee Chairman Robert Menedez, D-N.J., and Sen. Mark Kirk, R-Ill. Another cosponsor is the Senate’s third-ranking Democrat, Chuck Schumer of New York.

“A credible threat of future sanctions will require Iran to cooperate and act in good faith at the negotiating table,” Menendez said in a statement.

But Rouhani said the legislation, if passed, would be a deal-breaker, and Obama has promised to veto it if it reaches his desk. Last week, 10 Senate Democratic committee chairs sent a letter to Majority Leader Harry Reid, D-Nev., urging him to keep the bill from coming to a vote.

The signers included Feinstein, chairwoman of the Intelligence Committee, Boxer, head of Environment and Public Works, and Sen. Tim Johnson of South Dakota, whose Banking Committee would normally hear the bill. The letter cited a recent U.S. intelligence assessment that concluded new sanctions “would undermine the prospects for a successful comprehensive nuclear agreement with Iran.”

Reid kept the bill off the pre-holiday calendar, but Menendez and Kirk plan to bring it up once Congress reconvenes Jan. 6. With Republicans solidly in support and congressional elections looming, the measure — in addition to its international consequences — could pose political problems for the Democrats.

#### The vote will be soon

**Kahl, 12/31/13 -** Colin H. Kahl is an associate professor in Georgetown University’s Edmund A. Walsh School of Foreign Service and a senior fellow and director of the Middle East Security Program at the Center for a New American Security. From 2009 to 2011, he was the Deputy Assistant Secretary of Defense for the Middle East (“The Danger of New Iran Sanctions” The National Interest,<http://nationalinterest.org/commentary/the-danger-new-iran-sanctions-9651>

The Geneva “interim” agreement reached in November between Iran and the so-called P5+1 (the United States, Britain, China, France, Germany, and Russia) freezes Tehran’s nuclear program in exchange for modest sanctions relief, with the goal of enabling further talks to comprehensively resolve one of the world's thorniest challenges. Yet despite the landmark accord, more than two dozen Senators introduced legislation on December 19 to impose new oil and financial sanctions on Iran. The Senate could vote on the measure soon after it returns from recess in January. Powerful lobby organizations are mobilized in support of the bill, and it could certainly pass.

## 1nr

### no terrorism

#### Their evidence is alarmism --- overstates strength of terrorists

**Mueller and Stewart 12** (John, Senior Research Scientist at the Mershon Center for International Security Studies, Adjunct Professor in the Department of Political Science, Ohio State University, Senior Fellow at Cato Institute, and Mark G., Australian Research Council Professorial Fellow, Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, “The Terrorism Delusion,” International Security, Volume 37, Issue 1, Summer 2012, pg. 81-110, Project Muse)

People such as Giuliani and a whole raft of “**security experts**” have **massively exaggerate**d the capacities and the **dangers presented by** what they have often called “**the universal adversary**” both in its domestic and in its international form. The Domestic Adversary To assess the danger presented by terrorists seeking to attack the United States, we examined the fifty cases of Islamist extremist terrorism that have come to light since the September 11 attacks, whether based in the United States or abroad, in which the United States was, or apparently was, targeted. These cases make up (or generate) the chief terrorism fear for Americans. Table 1 presents a capsule summary of each case, and the case numbers given throughout this article refer to this table and to the free web book from which it derives.7 In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8 This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme. In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.” In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12 The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14 In addition, although some of the plotters in the cases targeting the United States harbored **visions** of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all **were nothing more than wild fantasies**, **far beyond** the plotters’ **capacities** however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15 Although the efforts of would-be terrorists have often seemed pathetic, even comical or absurd, the comedy remains a dark one. Left to their own devices, at least a **few of these** often **inept and** almost always **self-deluded individuals could** eventually have **commit**ted some **serious**, if small-scale, **damage**.

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really? While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place. But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use. Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis. The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude: [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence. From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation. This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### Most recent evidence

Zero risk of acquisition – miniaturization and enrichment are too difficult – even Al Qaeda sucks at it after years of trying

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Contrary to their popular portrayal in Hollywood, nuclear bombs are actually both difficult to manufacture and challenging to effectively deploy, making it virtually impossible for terrorist groups to acquire them. Nuclear devices initiate nuclear chain reactions, and these reactions generate roughly a million times more energy than comparable chemical reactions. The enrichment of Uranium is probably the most complex aspect of building a nuclear device; It presents numerous challenges for any nation in developing a nuclear programme. The concept requires separating a heavier isotope (atoms of the same element having a different number of neutrons) of uranium from a lighter isotope of uranium in order to enrich or purify the stock to higher than 80% of U235 - sufficient for use in weapons. Achieving this separation on a suitably refined level differentiated by only a few subatomic particles is an extremely complicated process. A series of centrifuges carry out the delicate task of separating isotopes, these are finely tuned machine components, able to spin at high speeds while fully containing and separating highly corrosive gas. It is the combination of appropriate calibration and rotational speed that allow for enrichment to take place, low-quality bearings just would not do the job. Thereafter fabricating fissile material and developing either a gun-type device or implosion device is a process only 9-10 nations in the world have accomplished. South Africa has since renounced it, whilst North Korea is still working on it.[2] Today nuclear warheads sit in missiles and this would be another challenge any nation would face, i.e. delivering a bomb to its intended target. The components of the bomb that actually initiate a nuclear explosion must be miniaturized in order to be placed in a missile. Modern missiles are smaller than a human being weighing only a few hundred pounds. Actually getting a warhead down to this size is no simple exercise. It requires, among other things, precision manufacturing, exceptional quality control and a good understanding of nuclear physics. All of this would be after decades of testing to ensure detonation upon delivery. Building a Nuclear weapon requires a comprehensive commitment from any nation for its national resources to be deployed in such a manner. It is not just about one facility, it needs an industrial base. A nuclear program requires long term facilities, which are very energy intensive, years of experimentation, fissionable material and high grade industrial machinery. All of this is beyond most countries let alone terrorist groups. In the case of al Qaeda, even after immense security, sanctuary and financial backing they have been unable to produce a crude nuclear device in any meaningful way.

### covert action

#### Covert action statute allows the exec to completely avoid the plan

Lohmann 13 [Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” 1/28, <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>]

The U.S. military—in particular, the Special Operations Command (SOCOM), and its subsidiary entity, the Joint Special Operations Command (JSOC)—is responsible for carrying out military-led targeted killings.¶ Military-led targeted killings are subject to various legal restrictions, including a complex web of statutes and executive orders. For example, because the Covert Action Statute does not distinguish among institutions undertaking covert actions, targeted killings conducted by the military that fall within the definition of “covert action” set forth in 50 U.S.C. § 413(b) are subject to the same statutory constraints as are CIA covert actions. 50 U.S.C. § 413b(e). However, as Robert Chesney explains, many military-led targeted killings may fall into one of the CAS exceptions—for instance, that for traditional military activities—so that the statute’s requirements will not always apply to military-led targetings. Such activities are exempted from the CAS’s presidential finding and authorization requirements, as well as its congressional reporting rules.¶ Because such unacknowledged military operations are, in many respects, indistinguishable from traditional covert actions conducted by the CIA, this exception may provide a “loophole” allowing the President to circumvent existing oversight mechanisms without substantively changing his operational decisions. However, at least some military-led targetings do not fall within the CAS exceptions, and are thus subject to that statute’s oversight requirements. For instance, Chesney and Kenneth Anderson explain, some believe that the traditional military activities exception to the CAS only applies in the context of overt hostilities, yet it is not clear that the world’s tacit awareness that targeted killing operations are conducted (albeit not officially acknowledged) by the U.S. military, such as the drone program in Pakistan, makes those operations sufficiently overt to place them within the traditional military activities exception, and thus outside the constraints of the CAS..

### martin turns

#### The plan isn’t valid under self defense – they are preventative strikes, in the same way as their iran add on is – the 1ac is a recognition of self-defense tareted killing, which is more expansive than the status quo and makes the 1ac indistinct from the bush doctrine - That’s Martin, writing a legal response to the 1ac’s authors -

#### Not a single US drone strike meets the definition of ‘self-defense targeted killing’ – the only effect of the plan is the stance it takes towards legal regimes – means the case is meaningless and if anything wrecks those regimes – only the CP solves

**Martin, 11 -** Associate Professor of Law at Washburn University School of Law (Craig, “GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME” SSRN) **NSA = Non State Actors**

Without going through the analysis for each of these scenarios in detail, we can nonetheless conclude that while it may be possible to justify the use of force against these states on the basis of self-defense, the crucial point is that the justificatory analysis is case-dependent. When the United States engages in strikes that constitute the use of force against each of these states, the claim of the right of self-defense must make specific reference to the armed attacks that justify it, how the group that is the object of the use of force is responsible for the attacks, and how the state in which the group is being targeted can itself be held legally responsible for the operations of that group so as to justify the use of force against the state. The problem with the current U.S. claim of self-defense is that it does none of this, but rather asserts a general right to use force against Al Qaeda, the Taliban, and any other groups associated with them; and against any country in which the members of such groups are located, not based on the state’s actual involvement in the group’s attacks, but merely on it being insufficiently willing or able to suppress the group’s operations.96 It almost goes without saying that the principles of necessity and proportionality cannot be satisfied under such sweeping and general claims of self-defense. It is not possible to demonstrate that the use of force was strictly necessary when there has been no identification of the armed attacks in question, or explanation of how the specific groups being targeted pose the threat of imminent armed attacks, that can only be stopped through the use of force. Similarly, there can be no proportionality analysis without the identification of the harm that would be caused by specific attacks, against which one can compare the harm being inflicted by the defensive use of force.97 Thus, in order to satisfy the necessity and proportionality principles that are at the core of the doctrine, the United States must provide the information required for such analysis. In sum, the U.S. government’s reliance upon self-defense as a justification for the targeted killing policy in countries such as Yemen, Somalia, and Pakistan, at least in the very general terms with which it has been asserted, is not consistent with the principles of self-defense under the jus ad bellum regime. This finding would suggest that, unless and until the administration offers more particularized support for this justification, the ongoing use of missile strikes for the purposes of killing suspected “terrorists,” “militants” and “insurgents” in countries like Somalia, Yemen, and Pakistan, is a violation of the prohibition on the use of armed force. Such a conclusion is troubling enough. But even more important in the long run is the potential harm this continued practice could cause to the jus ad bellum regime, and to the relationship between the jus ad bellum and IHL regimes, to which we turn next.

#### The aff’s recognition of ‘self-defense targeted killing’ authority – even under the plan’s limit – is an expansive version of self-defense that applies outside of armed conflict – this is the more appropriate read on the 1ac Martin ev

**Martin, 11 -** Associate Professor of Law at Washburn University School of Law (Craig, “GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME” SSRN) **NSA = Non State Actors**

The United States has been engaging in this practice of using drone-mounted missile systems to kill targeted individuals since at least 2002.98 An increasing number of countries are developing drone capabilities, and other countries have employed different methods of targeted killing that constitute a use of force under jus ad bellum. 99 The evidence suggests that the United States intends to continue and indeed expand the program, and there is a growing body of scholarly literature that either defends the policy’s legality, or advocates adjustment in international law to permit such action. There is, therefore, a real prospect that the practice could become more widespread, and that customary international law could begin to shift to reflect the principles implicit in the U.S. justification and in accordance with the rationales developed to support it. Some of the implications of such an adjustment in the jus ad bellum regime are obvious from the foregoing analysis. As discussed, there would be a rejection of the narrow principle of self-defense in favor of something much closer to the Grotian concept of defensive war, encompassing punitive measures in response to past attacks and preventative uses of force to halt the development of future threats. The current conditions for a legitimate use of force in self-defense, namely the occurrence or imminence of an armed attack, necessity, and proportionality, would be significantly diluted or abandoned. Not only the doctrine of self-defense, but other aspects of the collective security system would be relaxed as well. Harkening back to Grotian notions of law enforcement constituting a just cause for war, the adjusted jus ad bellum regime would potentially permit the unilateral use of force against and within states for the purpose of attacking NSAs as such, in effect to enforce international law in jurisdictions that were incapable of doing so themselves.100 This would not only further undermine the concept of self-defense, but would undermine the exclusive jurisdiction that the U.N. Security Council currently has to authorize the use of force for purposes of “law enforcement” under Chapter VII of the Charter. Thus, both of the exceptions to the Article 2(4) prohibition on the use of force would be expanded. In addition, however, the targeted killing policy threatens to create other holes in the jus ad bellum regime. This less obvious injury would arise from changes that would be similarly required of the IHL regime, and the resulting modifications to the fundamental relationship between the two regimes. These changes could lead to a complete severance of the remaining connection between the two regimes. Indeed, Ken Anderson, a scholar who has testified more than once on this subject before the U.S. Congress,101 has advocated just such a position, suggesting that the United States should assert that its use of force against other states in the process of targeted killings, while justified by the right to self-defense, does not rise to such a level that it would trigger the existence of an international armed conflict or the operation of IHL principles.102 If customary international law evolved along such lines, reverting to gradations in the types of use of force, the change would destroy the unity of the system comprised of the jus ad bellum and IHL regimes, and there would be legal “black holes” in which states could use force without being subject to the limitations and conditions imposed by the IHL regime. The structure of Harold Koh’s two-pronged justification similarly implies a severance of this relationship between jus ad bellum and IHL, albeit in a different and even more troubling way. His policy justification consists of two apparently independent and alternative arguments—that the United States is in an armed conflict with Al Qaeda and associated groups; and that the actions are justified as an exercise of self-defense. The suggestion seems to be that the United States is entitled on either basis to use armed force not just against the individuals targeted, but also against states in which the terrorist members are located. In other words, the first prong of the argument is that the use of force against another sovereign state, for the purposes of targeting Al Qaeda members, is justified by the existence of an armed conflict with Al Qaeda. If this is indeed what is intended by the policy justification, it represents an extraordinary move, not just because it purports to create a new category of armed conflict (that is, a “transnational” armed conflict without geographic limitation),103 but because it also suggests that there need be no jus ad bellum justification at all for a use of force against another state. Rather, the implication of Koh’s rationale is that the existence of an armed conflict under IHL can by itself provide grounds for exemption from the prohibition against the threat or use of force under the jus ad bellum regime. This interpretation of the justifications cannot be pressed too far on the basis of the language of Mr. Koh’s speech alone, which he hastened to explain at the time was not a legal opinion.104 The two justifications could be explained as being supplementary rather than independent and alternative in nature. But the conduct of the United States in the prosecution of the policy would appear to confirm that it is based on these two independent justifications.105 The strikes against groups and states unrelated to the 9/11 attacks could be explained in part by the novel idea that force can be used against NSAs as such, wherever they may be situated. But even assuming some sort of strict liability for states in which guilty NSAs are found, that explanation still does not entirely account for the failure to tie the use of force against the different groups to specific armed attacks launched by each such group. This suggests that the United States is also relying quite independently on the argument that it is engaged in an armed conflict with all of these groups, and that the existence of such an armed conflict provides an independent justification for the use of force against the states in which the groups may be operating. While the initial use of force in jus ad bellum terms is currently understood to bring into existence an international armed conflict and trigger the operation of IHL, the changes suggested by the policy would turn this on its head, by permitting the alleged existence of a “transnational” armed conflict to justify the initial use of force against third states. Whereas the two regimes currently operate as two components of an overall legal system relating to war, with one regime governing the use of force and the other the conduct of hostilities in the resulting armed confl ict, the move attempted by the U.S. policy would terminate these independent but inter-related roles within a single system, and expand the role and scope of IHL to essentially replace aspects of the jus ad bellum regime. This would not only radically erode the jus ad bellum regime’s control over the state use of force, but it could potentially undermine the core idea that war, or in more modern terms the use of force and armed conflict, constitutes a legal state that triggers the operation of special laws that govern the various aspects of the phenomenon. There is a risk of return to a pre-Grotian perspective in which “war” was simply a term used to describe certain kinds of organized violence, rather than constituting a legal institution characterized by a coherent system of laws designed to govern and constrain all aspects of its operation. There is a tendency in the U.S. approach to the so-called “global war on terror” to cherry-pick principles of the laws of war and to apply them in ways and in circumstances that are inconsistent with the very criteria within that legal system that determine when and how it is to operate. This reflects a certain disdain for the idea that the laws of war constitute an internally coherent system of law.106 In short, the advocated changes to the jus ad bellum regime and to the relationship between it and the IHL regime, and thus to the laws of war system as a whole,107 would constitute marked departures from the trajectory the system has been on during its development over the past century, and would be a repudiation of deliberate decisions that were made in creating the U.N. system after the Second World War.108 Th e premise of my argument is not that any return to past principles is inherently regressive. A rejection of recent innovations in favor of certain past practices might be attractive to some in the face of new transnational threats. The argument here is not even to deny the idea that the international law system may have to adapt to respond to the transnational terrorist threat. The point, rather, is that the kind of changes to the international law system that are implicit in the targeted killing policy, and which are advocated by its supporters, would serve to radically reduce the limitations and constraints on the use of force by states against states. The modern principles that are being abandoned were created for the purpose of limiting the use of force and thus reducing the incidence of armed conflict among nations. The rejection of those ideas and a return to older concepts relating to the law of war would restore aspects of a system in which war was a legitimate tool of statecraft, and international armed conflict was thus far more frequent and widespread.109 The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed confl ict with NSAs. Th e problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. Th e expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is signifi cantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifi cations for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed confl ict with NSAs generally.

#### The case turns outweigh their terrorism advantage – the risk of widespread armed conflict is higher

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

#### The premise of the aff is we need to stop using jus ad bellum/self-defense as a justification for our conduct in WAR ZONES where we should be applying the laws of ARMED CONFLICT – they have no answer to the alternative scenario where we use LAW OF WAR justifications in legitimate self-defense attacks – that’s their author. These are total takeouts – by the same token of their alt cause answers, ANY conflation causes blurring via precedent so there is no such thing as sufficient solvency for the aff.

#### Martin is negative evidence – he’s writing about the expanded use of self-defense justifications outside of zones of armed conflict – this destroys their entire legal regimes advantage

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In this chapter I analyze the U.S. claims that the targeted killing policy is justified under the jus ad bellum doctrine of self-defense, and argue that this very broad and general claim, as a basis for strikes against targets in countries that are not sufficiently responsible for the actions of the terrorists, and in which the United States is not clearly a belligerent in an armed conflict, is not consistent with current international law principles. Arguments that the targeted killing policy is unlawful are not of course new or novel—others have already made this point quite persuasively. 5 But the jus ad bellum issues raised by the policy have not received as much attention in the literature as the IHL and IHRL aspects.6 Moreover, in addition to assessing the policy from a jus ad bellum perspective, this chapter considers the impact that the policy may have on the legal regime itself. The manner in which the targeted killing program is being prosecuted, together with its justifications and rationales, may lead to changes to the jus ad bellum regime, and to the nature of the relationship between it and the IHL regime, and my analysis here explores how such changes could have harmful unintended consequences for the entire system of constraints on the use of force and armed conflict. The implications and rationales of the U.S. policy tend to resurrect old principles, some dating back to the medieval period, which are not consistent with the theoretical premises underlying the modern U.N. system. In its efforts to address an admittedly real and present danger of transnational terrorism, the United States may undermine the system that was developed to prevent war among states and thereby increase the risk of international armed conflict, which in the long run is a far graver danger to international society than the threat posed by terrorists.

I. The policy and its justifications

The targeted killing policy is said to be aimed at members of Al Qaeda, the Taliban, and associated forces.7 While primarily explained as being responsive to the planning and perpetration of terrorist attacks, it also clearly includes the targeting of those thought to be involved in the insurgency in Afghanistan, and may include persons involved in the “material support” of terrorism.8 There are features of the policy that are significant for the purposes of the jus ad bellum analysis. The use of methods that would constitute a use of force against the state in which the targets are attacked is important—the use of drone-mounted missile strikes in particular, though the military strike into Pakistan to kill bin Laden raised similar issues. As well, there is the fact that strikes are being made in countries such as Yemen, Somalia, and Pakistan, which were not sufficiently responsible for the operations of the targeted terrorists, and in which the United States is not clearly a belligerent in an armed conflict. These features of the policy trigger the application of the jus ad bellum regime, but in addition the targeted killing strikes have been justified by the United States on the basis of the jus ad bellum doctrine of self-defense.

While the government policy of targeted killing remains technically a covert operation, Harold Koh, then the legal counsel to the Department of State, provided two justifications for the government’s policy of targeted killing in a short official statement in 2010.9 The first was that the United States is engaged in an international armed conflict with Al Qaeda and other forces associated with it, and thus the members of such groups are combatants and legitimate targets under IHL. The second justification offered was that the United States is entitled to use lethal force against such groups as an exercise of the right of self-defense. While Koh did not say so explicitly, this is interpreted to mean that the targeting of members of these groups constitutes a use of force justified by the jus ad bellum right of self-defense provided for in Article 51 of the U.N. Charter. Such targeting is a use of force against the states in which the members of these groups are being targeted, and Koh indicated that among the considerations for each such use of force, were the sovereignty of the state involved, and “the willingness and ability of those states to suppress the threat the target poses.” This was an echo of President George W. Bush’s assertion that “we will make no distinction between the terrorists who committed these acts and those who harbor them.”10

#### Jus ad bellum doesn’t apply to non-state actors outside of armed conflict

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Accepting that attacks by terrorists can constitute an “armed attack” in jus ad bellum terms, however, does not mean that states may use force in self-defense against the terrorist organization as such, in whatever state to which it may have re-located following the attacks, and quite separate and apart from considerations of whether the “host” states bear legal responsibility for the attacks.50 At the outset, it should be recalled that the right to use armed force in self-defense is an exception to a general prohibition on states against the threat or use of force against the territorial integrity or political independence of other states, or in any other manner inconsistent with the purposes of the U.N. Charter.51 The very purpose of the U.N. system is to narrow the legitimate grounds for the use of force and reduce the incidence of armed conflict among states. The jus ad bellum system simply does not contemplate the use of force against NSAs as such. On the other hand, military operations against transnational terrorist groups is necessarily going to occur within the territory of another sovereign state, unless they happen to be on the high seas. Thus, absent the consent of that state, the use of force against the NSA could never actually be just against the NSA in the abstract, but will also constitute a use of force against another state. As we will review, the jus ad bellum system requires a signifi cant degree of involvement by a state in the operations of the NSAs within its territory before the use of force against that state can be justified. That is of course consistent with the purpose of reducing the incidence of war among states.

#### Adapting jus ad bellum to include self-defense against non-state actors outside of armed conflict wrecks the entire regime for regulating war – it makes it impossible to establish clear limits for what constitute armed conflict

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It may be said in response that IHL has evolved such that states may, as a matter of law, become involved in armed conflict with armed groups that are not representatives of states—that is, in non-international armed conflict. And so, it will be said, in the context of the IHL regime, force is not limited to states or entities with formal legal personality. If IHL could adapt in this way, why not jus ad bellum? But one of the primary criteria for establishing that there is in fact a non-international armed conflict to which the IHL regime applies, is the requirement that the opposing force is an entity that is of sufficient organization and cohesion to constitute an armed group that can be identified by objectively verifiable criteria.74 In other words, there are limits built into the system for determining the kinds of NSA that may become a participant in hostilities. If jus ad bellum were to similarly adapt, there would nonetheless have to be serious consideration of the criteria that would be applied in determining the kinds of NSAs that might be subject to the regime. The question of whether states can use force against non-state entities as such, as a matter of jus ad bellum, is both analogous to and relates in some fundamental ways to the question of whether transnational military operations against terrorist organizations can qualify as an armed conflict for the purposes of IHL—an issue that is no less controversial in the debate over targeted killing. The problem with suggestions that international law should develop in order that a state could use force against an ill-defined collection of amorphous terrorist organizations, and that the state would thereby be in a global armed conflict with such organizations under IHL, is that such developments would undermine the objective criteria for defining both the limits on the use of armed force, and the parameters of armed conflict.

## 2nr

### slager

#### Slager says it’s possible – they don’t solve Israel’s willingness because seen as life or death, only NEGOTIATION success can do that

Under both traditional and alternative analyses, Israel would not be **presently justified** to preemptively strike Iran's nuclear program. Under the customary international law analysis, Israel would not be justified because the threat is not yet imminent: Iran has not demonstrated a clear intent to attack Israel and does not yet have the capability to carry out a nuclear attack. Under Sadoff's proposed framework, Israel would not be justified for many of the same reasons: there is not a sufficient likelihood that an attack would occur. There is room**, however,** for Israel to justify a preemptive strike **under the "preventive" self-defense approach, in which a preemptive strike may occur though the threat is more temporally removed.** n402 This demonstrates the danger inherent in adopting such an approach, which discounts the importance of anticipatory force being used only as a "last resort." An approach that strays too far from existing modern law norms runs the risk of endorsing actions that would be widely viewed as illegitimate. n403 [\*324] An additional consideration is that under a legitimacy argument, the danger that a nuclear Iran poses to global peace and security may be enough to justify a preemptive strike in order to ensure global security. Many nations have indeed spoken out against Iran's development of nuclear weapons. By several accounts, a nuclear-capable Iran would be a serious threat to the entire Middle East region and the world. n404 For example, Algerian ministers claim that once Iran achieves nuclear capability, they will share the technology with "its fellow Muslim nations." n405 **However**, this danger should not be addressed by the unilateral assessment of a paternalistic nation, such as the United States. If the threat Iran poses to global security warrants a preemptive strike, then multilateral action by the U.N. Security Council should be taken. n406 In conclusion, though it is tempting to simply "rewrite the rules" to adapt the traditional international laws to address modern day threats, **doing so would disrupt the international legal order.** **Deficiencies in the modern legal framework should be addressed** incrementally, **with** a priority given to **incorporating legitimacy and creating clear, practicable standards to evaluate use of force in anticipatory self-defense**. Such a framework would clarify the [\*325] present illegitimacy and illegality of an Israeli strike on Iran's nuclear program. Wide recognition of the illegitimacy of a strike would lead to international condemnation, thus foiling the trigger that would lead the world into World War III.

### thumpers

General controversy isn’t enough, our link arguments is about alienating the democrats, not the republicans who are all jazzed up about UI – it’s also only a procedural vote

CNN, 1/4/14 [ 1 day ago Obama: Extend unemployment insurance, <http://politicalticker.blogs.cnn.com/2014/01/04/obama-extend-unemployment-insurance/>]

Senate Majority Leader Harry Reid, D-Nevada, plans to hold the first vote toward renewing the benefits on Monday, the day the Senate returns from its holiday recess. It will be a procedural test of a proposal to stretch the program another three months. Democrats do not yet know whether they have enough Republican support to get the 60 votes necessary to clear the procedural hurdle, a senior leadership aide told CNN. The fight has played out repeatedly over the past few years as the two parties clashed in often dramatic showdowns rife with fiery rhetoric and lengthy filibusters.

#### Its already priced into the agenda – our uniqueness evidence speaks to different legislative priorities – the plan comes out of nowhere, so it triggers the link

#### Plumer speaks to what democrats ARE doing, which doesn’t say backlash

#### WP says Obama is pushing, but doesn’t establish a link magnitude for controversy – our link is larger, which proves the relative risk of the da is still high

#### Doesn’t trigger the senate link

Christian Post, 1/5/14 [http://www.christianpost.com/news/obama-pushes-congress-for-unemployment-benefits-extension-112044/]

Senate Majority Leader Harry Reid, a Democrat, has said he will hold a vote on temporarily extending federal jobless benefits when Congress returns from its holiday recess Monday. The bill will likely pass in the senate. However, the Republican-controlled House is not expected to follow suit, as some GOP leaders argue the benefits were meant to be temporary. Besides, even a three-month temporary extension would add another $25 billion to the federal deficit. Republicans says the cost should be offset by spending cuts elsewhere in the budget.