Abstract — The apparent use of chemical weapons by the Assad regime in Syria and the potential development of nuclear weapons by Iran have brought “red lines” to the forefront of public discourse and policy-making. In the former, U.S. President Obama threatened retaliatory measures were Syria ever to use chemical weapons against rebels in its civil war. Earlier, Israeli Prime Minister Netanyahu literally drew a red line on a chart during his speech at the United Nations, indicating that Iran would not be permitted to move beyond a given stage of uranium enrichment with an implied threat of military action should that line be crossed.

Although much attention has been directed to the politics surrounding red line threats and their potential effectiveness, little or no consideration has been given to how international law conditions such threats and the options available when target states cross those lines. Although the use of red lines has long been a fixture of international relations, and has been particularly prominent in cases involving the potential development or use of chemical, biological, radiological, or nuclear (CBRN) weapons, existing international legal rules make the use of such lines of questionable strategic value. Indeed, they complicate the ability of actors to draw those lines in the first place. They also restrict the options available to actors in carrying out responses.

Todd Robinson is a PhD candidate in Political Science and a Graduate Research Affiliate of the program on Arms Control, Disarmament, and International Security (ACDIS) at the University of Illinois. His research interests focus on non-traditional security issues, including nuclear proliferation, the diffusion of technology, and space policy.

Paul F. Diehl is Henning Larsen Professor of Political Science at the University of Illinois. His recent books include International Mediation (2012), The Dynamics of International Law (2010), and Evaluating Peace Operations (2010).

Tyler Pack is a PhD candidate in Political Science at the University of Illinois. His research interests focus on the decision of states to move between cooperative bargaining approaches and coercive diplomacy.
when those red lines are crossed. International law often proscribes specific actions or behaviors that states may adopt when responding to the crossing of said lines, thus hampering state’s ability to respond.

International legal limits on drawing red lines are more than subjects for esoteric debate. Policy makers consider those rules in making decisions about threatening and actually responding to undesirable behavior, although we recognize the legal considerations are not always determinative or even the most important factor. Following the use of chemical weapons in Syria, President Obama specifically cited international law as a key consideration: “My Syrian red line is conditional on international cooperation and law.” Even if international law is not the driving force behind decisions, the ability to cite international law as a justification assists leaders in selling actions to domestic political audiences who might be skeptical of taking military action in the absence of an immediate threat.

The credibility of the response threat is diminished when such actions will themselves be contrary to international law. Red line targets might discount the likelihood that its opponent will actually carry out the threat if it’s against international law; this uncertainty might make a party more likely to cross the red line as its benefit-cost calculation might shift in favor of continuing with the development or actually using CBRN weapons. Carrying out threats in violation of international law brings certain reputational costs that affect a state’s ability to gain cooperation from others in the future. Furthermore, violating international law in carrying out a red line threat might shift global attention and condemnation onto the responder and away from the original violator. Thus, Israel has repeatedly been the focal point of criticism for its retaliatory raids against targets in Gaza and in southern Lebanon even as its actions were in response to illegal rockets’ attacks from those areas.

We begin our analysis with a discussion of red lines and their purposes.

What are Red Lines and Why Are They Used?

The use of the term “red line” in discussions of foreign policy may be a relatively recent phenomenon, but the concept itself dates back as far as threats themselves. In foreign policy, the use of threatened force to achieve policy goals is known as coercive diplomacy, the success of which depends on a state’s ability to threaten retaliation or punishment credibly and whether the magnitude of the punishment costs are sufficient to induce compliance.
Red lines are a form of coercive diplomacy whereby statements or communications are made that specify actions or behavior that, if adopted, may result in the imposition of punishment or some other form of response by a sender state, or group of states, against a target state or states. In specifying actions or behavior that will lead to punishment, red lines clearly delineate compliance—with a demand for certain actions—from noncompliance. Red lines are employed to alter, or in some other way affect, the decision-making of another country over a specific issue. The issue in question influences not only the likelihood of a red line being used, but also the form a red line might take.

Coercive diplomacy divides into two distinct categories: deterrent and compellent threats—each of which applies to certain circumstances and follows a different logic. Deterrent threats attempt to maintain the status quo while compellent threats seek to alter it in favor of the threatening party. Deterrence employs military threats to convince a potential aggressor that any attempt to change the status quo will be prohibitively costly and likely to fail, the classic case being the threat of nuclear retaliation if attacked with either conventional or military force. A state can issue deterrent threats to prevent aggression aimed at its own territory (direct deterrence) or the territory of another state or entity (extended deterrence), including the territory of the target state, in the case of red lines pronounced against the use of chemical or biological weapons against a state’s own population. Furthermore, deterrence can aim to head off an urgent threat of aggression (immediate deterrence) or to prevent the occurrence of such threats altogether (general deterrence). Red lines can be associated with any of the four types of deterrence resulting from combinations of these two dimensions.

Red lines can also serve a compellent purpose if the “noncompliance line” is drawn at a point that differs either from the current status quo or the expected future status quo. Israel’s red line on Iran’s production of highly enriched uranium is an example of a state drawing a line in anticipation of future behavior. A state issues a compellent red line to introduce a demand for change that will be met with punishment unless the demand is satisfied by the target state (e.g., in 1998 Turkey demanded that Syria expel the Kurdish PKK group from its territory). Unlike deterrent red lines, which are drawn and then held passively for an indefinite period, compellent red lines tend to be more time bound. Compellent threats generally come with a deadline, beyond which inactivity or insufficient compliance with the demand will be punished, such as the case with the current red line for Syria and the abandoning of their chemical weapons capabilities. Because compellent threats require clear compliance with specific demands, success is easier to recognize than with deterrence. In deterrence, even if the undesired action does not occur it does not necessarily follow that the red line threat was responsible.

**Legal Problems with Drawing CBRN Red Lines**

Although red lines may be employed over a variety of issue areas, they are particularly salient and common in situations involving CBRN weapons. Red lines in this context tend to focus either on the production of CBRN weapons or their use. For the former, because of the dual-use many of the technologies required for the production of
CBRN weapons, red lines are often used to deter the acquisition or development of those technologies either most conducive for the production of such weapons, or most reflective of a militarily oriented production capability. These red lines compel the target state to accept a level of development that might be regarded as suboptimal.

Red lines for nuclear weapons, for example, generally focus on restricting those actions that distinguish the development of a strictly civilian/commercial capability from a dual-use or overtly military capability. It is more likely that red lines would be placed at earlier stages of development, such as on the production of significant quantities of highly enriched uranium or plutonium-239. Setting these early red lines acknowledges there is still some likelihood a state that crosses such a line may not be seeking nuclear weapons production capability. Alternatively, red lines may be placed on specific behaviors, such as purposeful concealment of nuclear-related activities. The United States issued three red line ultimatums to Taiwan in the late 1970s intended to prevent the enrichment of uranium and the reprocessing of plutonium.

Because international law puts few restrictions on peaceful nuclear energy production, finding an optimal point at which to draw red lines proves challenging. Under the Nuclear Non-Proliferation Treaty (NPT), only the actual production of nuclear weapons is prohibited. States may therefore claim a right to develop or acquire any nuclear-related technologies or level of capability they desire. At the same time, very few activities—other than those late in the nuclear weapons development process, such as the manufacture of plutonium metal—cannot be explained away as civilian or commercial in intent. Yet if a state wishes to prevent another state’s acquisition of nuclear weapons, issuing a red line for this late stage may have little impact on preventing their acquisition of a nuclear weapons production capability and proliferating states have the legal right to go right up to the threshold of nuclear weapons production.

International law also expresses ambiguity about the legality of red line threats themselves—much less about carrying them out. Threats involving military force are illegal under Article
2 (4) of the UN Charter. The International Court of Justice issued an advisory opinion in which it did not render a judgment on whether deterrent threats were legal or not. Thus, certain kinds of red line threats might be beyond the scope of law, although the specifics are yet to be legally determined.

A similar dynamic exists for the acquisition or production of biological, chemical, and radiological weapons and again stems from dual-use character and international law that permits peaceful activities. Many of the necessary requirements for the production of these weapons can be gained as byproducts of—or under the guise of—civilian or commercial processes. The components necessary for the manufacture of chemical weapons, for example, are also used in industrial processes. This not only makes them widely available, but also makes distinguishing between civilian/commercial and military activities difficult. Furthermore, states are afforded the right to develop and possess the majority of these chemicals under the terms of the Chemical Weapons Convention (CWC), so long as they are not used in the production of chemical weapons. States seeking to limit the production of chemical weapons are therefore most likely to act to deter the weaponization of toxic chemicals (and biological agents, as in the production of biological agents); yet the lion’s share of the work in producing chemical weapons is in the production of the chemicals themselves, not in their weaponization. Unlike the production of nuclear weapons and the production of weapons-usable materials, however, there is no logical earlier stage where red lines might be used. This is also the case for radiological weapons. It is perhaps for this reason that red lines for chemical, biological, and radiological weapons focus more on their use than on their production. On that point, international law is clear, prohibiting the use of these weapons under any circumstance.

**Legal Limitations When Red Lines Are Crossed**

If international law creates difficulties in setting red lines for the development of CBRN weapons, it imposes even greater constraints on the ability of states to carry out the threats when those red lines are crossed. Generally speaking, when target states take actions that go beyond the limits imposed by others, the responses of individual states and the international community fall on the coercive side of the foreign policy menu, ranging from sanctions to military force, although certain legal instruments might also be available.

Unless they are forbidden by existing agreements (e.g., a trade treaty), economic and other sanctions against norm-breaking states are permitted by international law. Yet use of sanctions against red line-crossing states are only an available form of response for those states that have some sort of economic relationship, such as mutual trade or shared membership in international financial institutions. For example, in 1992 the United States threatened sanctions against Algeria—with whom they had substantial economic relations—over its secret construction of a heavy water reactor. This threat played a major role in leading Algeria to sign and ratify both the Non-Proliferation Treaty and an IAEA Safeguards Agreement. In many cases, however, such relationships do not exist, making it unlikely that economic sanctions will be used as punishment or retaliation for the crossing of a red line. Case in point, North Korea does not trade
extensively with other states, at least overtly, and thus economic sanctions imposed for its nuclear activities are likely to be more symbolic (e.g., restricting imports of luxury goods) than substantive.

Multilateral sanctions require the sending state(s) either gaining agreement from other states informally or obtaining authorization from a collective body. The latter is conditioned by the legal rules of the organization, which might impose norms of unanimity of action (e.g., European Union) or place procedural impediments in the way of collective action. The United Nations is illustrative, in that impositions of economic sanctions normally require approval of the Security Council. As demonstrated in the cases of Sudan, Bosnia, and Syria, the Security Council often reaches a stalemate. The need for nine affirmative votes from members of the Council and for the absence of a veto by any permanent member impedes multilateral sanctions. In many cases, the target state may safely assume that crossing the red line will result in sanctions only from the threat-sending state.

Threatening sanctions against red line violators might also be an ineffectual deterrent because violators often are already under heavy sanctions. The failure of extant sanctions to compel or deter behavior is one of the primary motivators of red line threats. At that point, few painful additional sanctions remain, and it is clear that those additional measures will not represent much of a punishment. Iran and Syria are already under crippling sanctions from the West, and there is little more that could be done to those states, short of military action.

More common than sanctions is the threat of military force following crossing the red lines; destroying nuclear facilities in an air strike is an example. Yet international legal rules are especially restrictive in allowing the military force as a response. Traditional law allows military force only in support of a right of self-defense; such a right is only operative in the face of an “armed attack,” and cannot be used preemptively or preventively. Yet redlining is distinct from traditional deterrence of an attack and involves preventing action well short of an actual attack against the sender or an ally. Recent redlining has dealt with nuclear or chemical weapons development, not a military attack. Furthermore, unilateral humanitarian intervention and the “responsibility to protect” are not yet embedded as international legal rights and obligations, and are thus questionable as legal justification for military action after a red line violation. Legal authorization for military force, in the absence of self-defense, could be approved by the UN Security Council, as was the case in the Libyan civil war. Yet, as noted above, the legal requirements for approval in that body make it highly unlikely that it will be given in many, if any, future cases.

Even in the case of the use of chemical weapons in Syria, a war is ongoing and international law restricts the actions that third party states can undertake in civil wars. Generally they are prohibited from military intervention or from supplying military aid.
Thus, American military strikes against the Assad government would under virtually any scenario be illegal, even as it might have been prompted by the international legal violation of using chemical weapons.

Attacking such facilities might also result indirectly in civilian casualties. For example, bombing Syrian chemical weapons facilities might have resulted in the release of chemical agents into the atmosphere, resulting in civilian deaths, perhaps even in excess of those killed in the original chemical weapons usage.

Should states ignore limitations on military force initiation (jus ad bello), there are still international legal limitations on how military force would be used (jus in bello). Military action is supposed to be “proportional” to the original offense, and this has been operationally defined in terms of the number of deaths in the original incident. Yet this standard makes little sense when applied to red lines that involve only the development of certain CBRN weapons, short of their use. Almost any military response is likely to involve loss of life and damage, making the use of force illegal even if it had been legally authorized. The use of military force also must take care not to target civilians or indiscriminately result in their harm. This is difficult in any armed response that is directed at weapons production facilities that are often located in or near populated areas.

Standard international law permits aggrieved parts to retaliate in kind when violations of certain kinds of agreements (e.g., trade), and such reciprocity is one of the bases for ensuring compliance with international law rules. The ability to deter the use of nuclear weapons has always rested on the ability of a state to both demonstrate their retaliatory capability and communicate their willingness to use said capability if and when a pronounced red line is crossed. Whether this logic extends to the deterrence of the use of chemical, biological, or radiological weapons is questionable, given that the logic of deterrence rests on the assumption that the responding state responds in a like manner.

Nevertheless, international arms control agreements do not permit responses in kind from aggrieved parties, except in self-defense and uses of CBRN weapons generally do not have a defensive, as opposed to deterrent, character. Regardless, using such weapons by third parties to a conflict, as many red line sending states will be, is never justified under international law. International law on the conduct of war has been formulated with the underlying principles of limiting the use of force in all circumstances and preventing the escalation of conflicts. Of course, even if retaliation in kind were permitted under international law, this would not even be possible for most states as the Chemical Weapons Convention prohibits the possession of such agents, making such retaliation impossible. The net effect, however, is that international law restricts
the responses in light of red line violations and thereby undermines the credibility of
the initial red line threats.

If international law severely constrains military responses to red line violations, what
legal options are available? Generally, states can pursue adjudicatory strategies, but
these are also hampered by the rules and practices of the main legal institutions for
such disputes, namely the International Court of Justice and the International Criminal
Court respectively. We note at the beginning that these institutions are only available
for legal disputes, namely those that might involve a violation of international law. Yet
as noted in the previous section, many red lines are drawn to deter behavior that is
permitted by such law, albeit undesirable for political or other reasons.

A state could bring a case to the International Court of Justice if a red line involving a
violation of international law, especially a treaty obligation, has occurred. Yet the red
line sending state has to have suffered some harm as the plaintiff and it is not always
clear that this would be the case; the development of nuclear weapons or the use of
biological or chemical agents against a domestic population does not produce a direct
harm to a third-party state. Furthermore, the Court must have jurisdiction to hear the
case and this is defined by the scope of acceptance, as modified by any reservations,
of the Court made by the disputants. Historically, relatively few cases have made their
way to the ICJ, 154 contentious and advisory opinions since 1946, or barely more
than two per year. Such cases have also been largely over “low politics” issues such as
maritime rights and debt, and among states with mostly friendly relations, as opposed
to the kinds of issues and disputants that characterize the drawing and crossing of red
lines. ICJ processes are also notoriously slow, perhaps desirable for cooling-off periods,
but counter-productive in terms of halting behavior such as weapons development,
which might proceed unabated during the legal process. Ultimately, implementation
of rulings of the Court depend on the cooperation of the parties or Security Council
enforcement; the former might be moot if the red line has already been crossed and
problems with the latter have been repeatedly noted above and will again provide a
legal constraint in the following discussion.

The International Criminal Court is available to prosecute individuals, specifically
national leaders, whose red line crossing actions fall under the jurisdiction of that court.
Yet the crimes for which prosecution is possible include a narrow set of war crimes,
such as aggression, genocide, and crimes against humanity. Perhaps only the use of
CBRN weapons, as opposed to their development, would qualify; in recent times,
only chemical weapons in use in Syria would fall under this definition. Thus, legal
jurisdiction limits make this option likely to be an exception at best, if available at all.

For those instances that do fall under the ICC scope, other jurisdiction and procedural
rules of the Court hamper the effectiveness of red line threats. Only 122 states (out of
nearly 200) are parties to the Rome Statute and this has several implications for dealing
with red line crossing behavior. First, the Court has jurisdiction only over crimes on
the territory of member states or persons who are nationals of those states. Yet more
than 70 states have declined to join the Court and these include many key states that
might be the subject of red line threats, including Pakistan and all Middle Eastern
states (except Jordan). In addition, members of the African Union are considering a
mass withdrawal from the ICC for what they perceive as bias against activities on their
continent and a blind eye toward crimes elsewhere. Thus, the ICC might be legally
restricted in dealing with red line crimes occurring in several geographic regions and
involving the states most likely to be the targets of red line threats. The only alternative
is if a case is referred to the Court by the Security Council, and it has done so only once
(Sudan) and is hamstrung by the political differences among its permanent members.

Even with a clear legal path to prosecuting individuals, the process is very slow. Cases
must first be investigated by the ICC prosecutor before indictments are brought. Member
states must assist in the capture of indicted suspects, but this has proven
difficult, as illustrated by two cases, that of President Al-Bashir of Sudan (warrant
issued in 2009) and that of Joseph Kony (warrant issued in 2005); neither has been
arrested and, in the case of the former, remains a head of state.

Accordingly, potential defendants of the ICC might find threats of legal prosecution
as less than credible should they cross red lines. The jurisdictional scope of the ICC is
limited to a small set of crimes, legal procedures and practical realities in implementation
suggest that legal responses will be cumbersome with a significant risk of failure.

Conclusion

Red lines, the use of compellent threats to induce or prevent certain behaviors, are a
foreign policy tool that is used with some frequency and success in international affairs
and is particularly salient in cases involving the production or use of CBRN weapons.
International legal rules may complicate the ability of states to make red line threats
and to do so credibly as the law establishes some prohibitions on their execution, as
was the case for the United States and Syria. Currently, there are no international legal
limits on the production of technologies for peaceful nuclear energy projects or on the
production of most chemical or biological agents so long as no weaponization occurs.
This leaves sending states few legal options beyond placing a red line at the production
of nuclear weapons or the clear aggressive use of chemical or biological agents. Even
in the case of anticipating and heading off such illegal actions, red line-setting states
may be barred by international law from issuing compellent threats and must instead
rely on legally ambiguous deterrence.

Even when the action that crosses the red line is in and of itself illegal, as in the case
of the production of certain nuclear materials or the use of any CBRN weapon, there
are still legal limits on a red line-setter’s response. Options for punishing the crossing
of red lines include sanctions, military force, and international adjudication, yet all
have constraints on their use. Sanctions suffer from the fewest legal barriers to use,
but target states are often under some level of sanction already and further multilateral
action against them requires overcoming the collective action problems inherent in
the international system. Both the initiation of force and its application once begun
are highly restricted by international law, regardless of the legality of the sender’s red
line. Adjudication by the ICJ or the ICC is only an applicable strategy if the action that
crossed the red line also violated international law. Even in such seemingly limited
cases, adjudication suffers from jurisdiction issues, deliberately slow procedures, and
some of the same issues with Security Council agreement and enforcement, as do other
methods of punishment.

What might be the solutions to the dilemma of seeking to prevent undesirable behavior,
especially that which violates international law, while being constrained oneself by
that very same international legal system? One choice is to ignore international legal
concerns and move ahead with whatever red line threats and responses are thought to
achieve the preferred goals. This has the advantage of giving great policy flexibility,
but it carries with it some risks. It undermines the legal order that many of the red line
threats are designed to uphold and potentially sets a dangerous precedent for other states
to act in similar fashions that are inconsistent with international law. Illegal threats
and responses might also limit the potential for international support that could be
critical for the target state to comply with the demands or for carrying out responses,
especially those involving military force.

More desirable in some ways would be an alteration of international legal standards
that would permit greater use of military force in particular to support red line threats.
This would enhance their credibility and provide some mechanism for punishment
and redress that are now inadequately provided by diplomacy and adjudication. Of
course this is easier said than done, as such changes cannot be made unilaterally by the
United States or any other state, and it is doubtful that consensus exists to sanction
greater use of military action than is already permitted. There is also the risk that some
states will exploit the opportunities created by more flexible international law and
use of military force that undermines global values and would themselves constitute
threats to international peace and security. It is likely that policy makers will need to
live with the inherent trade-offs that international law mandates in the context of red
line threats.

– Dov Friedman served as Lead Editor for this article.

NOTES

1 For the role of international law, see Stephen Kocs, “Explaining the Strategic Behavior of States: International Law as
Cooperation>
4 Alexander George, Forceful Persuasion: Coercive Diplomacy as an Alternative to War (Washington DC: U.S. Institute of
8 Such international legal limitations share some similarities with ethical standards as outlined in Just War theory (jus
bellum iustum), but these are not synonymous and indeed ethical standards might impose more stringent conditions on
the use of force. For example, see Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977).
9 These responses are not necessarily mutually exclusive.
10 See Article 51 of the UN Charter.
11 Alex Bellamy, “The Responsibility to Protect and the Problem of Military Intervention,” International Affairs 84, no. 4