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### 1

**Interpretation---war powers authority refers to the President’s authority to execute warfighting operations**

Manget, law professor at Florida State and formerly in the Office of the General Counsel at the CIA, No Date

(Fred, “Presidential War Powers,” http://media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf)

The fundamental function of the armed forces is to fight or to be ready to fight wars. 40 The Supreme Court has recognized the existence of limited, partial, and undeclared wars:41 Thus, there is a judicially recognized and legitimate activity of the armed services in times of no armed conflict that stems directly from **the war powers authority of the President**. That activity is the preparation for the successful waging of war, which may come in any form or level of conflict. **Any actions of the Executive Branch that** are part of the fundamental functions of the armed services in **ready**ing **for any type of hostility are based on** constitutional **war powers authority of the President**.

Violation---the plan does not restrict executive war power authority---it just moves around oversight jurisdiction

Josh Kuyers, American University Washington College of Law, 4/4/13, CIA or DoD: Clarifying the Legal Framework Applicable to the Drone Authority Debate, nationalsecuritylawbrief.com/2013/04/04/cia-or-dod-clarifying-the-legal-framework-applicable-to-the-drone-authority-debate/

Scholars and practitioners use the term “Title 10 authority” as a catchall phrase to describe the legal authority for military operations. Unfortunately, the use of the term in this way is misleading because “Title 10 – Armed Forces” does not contain actual operational authorities; it merely describes the organizational structure of the Department of Defense. In fact, **the U.S**. military’s true operational **authority stems from the U.S. Constitution and** the President’s **Commander-in-Chief power**.

Like the term “Title 10 authority,” Title 50 authority is a misnomer. Title 50 is often referred to as the CIA’s authority to conduct its intelligence operations and covert actions –like drone strikes. Yet Title 50 of the United States Code is actually titled “War and National Defense.” Thus, it contains much more than just CIA authority. Military personnel can also act under Title 50 authority – a fact often overlooked in news articles and editorials. In fact, the DoD undertakes the majority of intelligence activities under Title 50 authorities.

Like moving drone operations from the CIA to the DoD, the Title 10-Title 50 debate is really about oversight and accountability, particularly congressional oversight.

**Prefer our interpretation ---**

**Limits --- they allow a ton of affs that are just bureaucratic shifts to different agencies or departments --- they also allow any aff that modifies the process by which authority is exercised, while leaving the underlying authority untouched**

Ground --- the core controversy is the President’s authority, not the authority of specific agencies

Topicality is a voting issue, or the aff will read a new uncontested aff every debate

### 2

Legal restraints motivated by conflict narratives cause endless intervention and WMD warfare

John Morrissey, Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. 2011, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” Geopolitics, Volume 16, Issue 2, 2011

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how **the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’;** a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ **– as both a discourse and a technique of government** – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been **made possible by constant reference to a neoliberal ‘project of security’** registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to **critique our contemporary moment’s proliferation of practices of securitization** – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare **focuses “the attention of the world on this or that excess**” whilst simultaneously arming “the most heinous human suffering **in legal privilege”,** redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “**evasion**”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while **parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128**

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and **legally condition the ‘milieux’ of military commanders**; and in so doing they **render operational** **the pivotal spaces of overseas intervention of contemporary US national security conceived** in terms of ‘**global governmentality’**.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective **of risk management”** seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ **of US geopolitics and biopolitics defining the current age of securitization.**

Legal restraints guarantee increasing public resistance and executive secrecy

Michael J. Glennon 14, I-law prof at Tufts, National Security and Double Government, <http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf>

If Bagehot’s theory is correct, the United States now confronts a precarious situation. Maintaining the appearance that Madisonian institutions control the course of national security policy requires that those institutions play a large enough role in the decision-making process to maintain the illusion. But the Madisonians’ role is too visibly shrinking, and the Trumanites’ too visibly expanding, to maintain the plausible impression of Madisonian governance.504 For this reason and others, public confidence in the Madisonians has sunk to new lows.505 The Trumanites have resisted transparency far more successfully than have the Madisonians, with unsurprising results. The success of the whole dual institutional model depends upon the maintenance of public enchantment with the dignified/ Madisonian institutions. This requires allowing no daylight to spoil their magic,506 as Bagehot put it. An element of mystery must be preserved to excite public imagination. But transparency—driven hugely by modern internet technology, multiple informational sources, and social media— leaves little to the imagination. “The cure for admiring the House of Lords,” Bagehot observed, “was to go and look at it.”507 The public has gone and looked at Congress, the Supreme Court, and the President, and their standing in public opinion surveys is the result**.** Justices, senators, and presidents are not masters of the universe after all, the public has discovered. They are just like us. Enquiring minds may not have read enough of Foreign Affairs508 to assess the Trumanites’ national security polices, but they have read enough of People Magazine509 to know that the Madisonians are not who they pretend to be. While the public’s unfamiliarity with national security matters has no doubt hastened the Trumanites’ rise, too many people will soon be too savvy to be misled by the Madisonian veneer,510 and those people often are opinion leaders whose influence on public opinion is disproportionate to their numbers. There is no point in telling ghost stories, Holmes said, if people do not believe in ghosts.511

It might be supposed at this point that the phenomenon of double government is nothing new. Anyone familiar with the management of the Vietnam War 512 or the un-killable ABM program 513 knows that double government has been around for a while. Other realms of law, policy, and business also have come to be dominated by specialists, made necessary and empowered by ever-increasing divisions of labor; is not national security duality merely a contemporary manifestation of the challenge long posed to democracy by the administrative state-cum-technocracy?515 Why is national security different?

There is validity to this intuition and no dearth of examples of the frustration confronted by Madisonians who are left to shrug their shoulders when presented with complex policy options, the desirability of which cannot be assessed without high levels of technical expertise. International trade issues, for example, turn frequently upon esoteric econometric analysis beyond the grasp of all but a few Madisonians. Climate change and global warming present questions that depend ultimately upon the validity of one intricate computer model versus another. The financial crisis of 2008 posed similar complexity when experts insisted to hastily-gathered executive officials and legislators that—absent massive and immediate intervention—the nation’s and perhaps the world’s entire financial infrastructure would face imminent collapse.516 In these and a growing number of similar situations, the “choice” madeby the Madisoniansis increasingly hollow; the real choices are made by technocrats who present options to Madisonians that the Madisonians are in no position to assess. Why is national security any different?

It is different for a reason that I described in 1981: the organizations in question “do not regulate truck widths or set train schedules. They have the capability of radically and permanently altering the political and legal contours of our society.”517 An unrestrained security apparatus has throughout history been one of the principal reasons that free governments have failed. The Trumanite network holds within its power something far greater than the ability to recommend higher import duties or more windmills or even gargantuan corporate bailouts: it has the power to kill and arrest and jail, the power to see and hear and read peoples’ every word and action, the power to instill fear and suspicion, the power to quash investigations and quell speech, the power to shape public debate or to curtail it, and the power to hide its deeds and evade its weak-kneed overseers. It holds, in short, the power of irreversibility. No democracy worthy of its name can permit that power to escape the control of the people.

It might also be supposed that existing, non-Madisonian, external restraints pose counterweights that compensate for the weakness of internal, Madisonian checks. The press, and the public sentiment it partially shapes, do constrain the abuse of power—but only up to a point. To the extent that the “marketplace of ideas” analogy ever was apt, that marketplace, like other marketplaces, is given to distortion. Public outrage is notoriously fickle, manipulable, and selective, particularly when driven by anger, fear, and indolence. Sizeable segments of the public—often egged on by public officials—lash out unpredictably at imaginary transgressors, failing even in the ability to identify sympathetic allies.518 "[P]ublic opinion," Sorensen wryly observed, "is not always identical with the public interest."519 The influence of the media, whether to rouse or dampen, is thus limited. The handful of investigative journalists active in the United States today are the truest contemporary example of Churchill's tribute to the Royal Air Force.520 In the end, though, access remains everything to the press. Explicit or implicit threats by the targets of its inquiries to curtail access often yield editorial acquiescence. Members of the public obviously are in no position to complain when a story does not appear. Further, even the best of investigative journalists confront a high wall of secrecy**.** Finding and communicating with (on deep background, of course) a knowledgeable, candid source within an opaque Trumanite network resistant to efforts to pinpoint decision-makers 521 can take years. Few publishers can afford the necessary financial investment; newspapers are, after all, businesses, and the bottom line of their financial statements ultimately governs investigatory expenditures. Often, a second corroborating source is required. Even after scaling the Trumanite wall of secrecy, reporters and their editors often become victims of the deal-making tactics they must adopt to live comfortably with the Trumanites. Finally, members of the mass media are subject to the same organizational pressures that shape the behavior of other groups. They eat together, travel together, and think together. A case in point was the Iraq War. The Washington Post ran twenty seven editorials in favor of the war along with dozens of op-ed pieces, with only a few from skeptics.522 The New York Times, Time, Newsweek, the Los Angeles Tunes, and the Wall Street Journal all marched along in lockstep.523 As Senator Eugene McCarthy aptly put it, reporters are like blackbirds; when one flies off the telephone wire, they all fly off.524

More importantly, the premise—that a vigilant electorate fueled by a skeptical press together will successfully fill the void created by the hollowed-out Madisonian institutions—is wrong.525 This premise supposes that those outside constraints operate independently, that their efficacy is not a function of the efficacy of internal, Madisonian checks.526 But the internal and external checks are woven together and depend upon one another.527 Non-disclosure agreements (Judicially-enforced gag orders, in truth) are prevalent among those best positioned to criticize/28 Heightened efforts have been undertaken to crush vigorous investigative journalism and to prosecute and humiliate whistleblowers and to equate them with spies under the espionage laws. National security documents have been breathtakingly over-classified. The evasion of Madisonian constraints by these sorts of policies has the net effect of narrowing the marketplace of ideas, curtaining public debate, and gutting both the media and public opinion as effective restraints.529 The vitality of external checks depends upon the vitality of internal Madisonian checks, and the internal Madisonian checks only minimally constrain the Trumanites.

Some suggest that the answer is to admit the failure of the Madisonian institutions, recognize that for all their faults the external checks are all that really exist, acknowledge that the Trumanite network cannot be unseated, and try to work within the current framework.530 But the idea that external checks alone do or can provide the needed safeguards is false**.** If politics were the effective restraint that some have argued it is,531 politics—intertwined as it is with law—would have produced more effective legalist constraints. It has not. The failure of law is and has been a failure of politics. If the press and public opinion were sufficient to safeguard what the Madisonian institutions were designed to protect, the story of democracy would consist of little more than a series of elected kings, with the rule of law having frozen with the signing of Magna Carta in 1215. Even with effective rules to protect free, informed, and robust expression—which is an enormous assumption—public opinion alone cannot be counted upon to protect what law is needed to protect. The hope that it can do so recalls earlier reactions to Bagehot’s insights—the faith that “the people” can simply “throw off” their “deferential attitude and reshape the political system,” insisting that the Madisonian, or dignified, institutions must “once again provide the popular check” that they were intended to provide.532

That, however, is exactly what many thought they were doing in electing Barack Obama as President. The results need not be rehearsed; little reason exists to expect that some future public effort to resuscitate withered Madisonian institutions would be any more successful. Indeed, the added power that the Trumanite network has taken on under the BushObama policies would make that all the more difficult. It is simply naive to believe that a sufficiently large segment of informed and intelligent voters can somehow come together to ensure that sufficiently vigilant Madisonian surrogates will somehow be included in the national security decisionmaking process to ensure that the Trumanite network is infused with the right values. Those who believe that do not understand why that network was formed, how it operates, or why it survives. They want it, in short, to become more Madisonian. The Trumanite network, of course, would not mind appearing more Madisonian, bul its enduring ambilion is lo become, in reality, less Madisonian.

It is not clear what precisely might occur should Bagehot's cone of government "fall to earth." United States history provides no precedent. One possibility is a prolongation of what are now long-standing trends, with the arc of power continuing to shift gradually from the Madisonian institutions to the Trumanite network. Under this scenario, those institutions continue to subcontract national security decisionmaking to the Trumanites; a majority of the public remains satisfied with tradeoffs between liberty and security; and members of a dissatisfied minority are at a loss to know what to do and are, in any event, chilled by widely-feared Trumanite surveillance capabilities. The Madisonian institutions, in this future, fade gradually into museum pieces, like the British House of Lords and monarchy; Madisonians kiss babies, cut ribbons, and read Trumanite talking points, while the Trumanite network, careful to retain historic forms and familiar symbols, takes on the substance of a silent directorate.

Another possibility, however, is that the fall to earth could entail consequences that are profoundly disruptive, both for the government and the people. This scenario would be more likely in the aftermath of a catastrophic terrorist attack that takes place in an environment lacking the safety-valve checks that the Madisonian institutions once provided. In this future, an initial "rally round the flag" fervor and associated crack-down are followed, later, by an increasing spiral of recriminatory reactions and counter-reactions. The government is seen increasingly by elements of the public as hiding what they ought to know, criminalizing what they ought to be able to do, and spying upon what ought to be private. The people are seen increasingly by the government as unable to comprehend the gravity of security threats, unappreciative of its security-protection efforts, and unworthy of its own trust. Recent public opinion surveys are portentous. A September 2013 Gallup Poll revealed that Americans' trust and confidence in the federal government's ability to handle international problems had reached an all-time low;533 a June 2013 Time magazine poll disclosed that 70% of those age eighteen to thirty-four believed that Edward Snowden "did a good thing" in leaking the news of the NSA's surveillance program.534 This yawning attitudinal gap between the people and the government could reflect itself in multiple ways. Most obviously, the Trumanite network must draw upon the U.S. population to fill the five million positions needed to staff its projects that require security clearances.535 That would be increasingly difficult, however, if the pool of available recruits comprises a growing and indeterminate number of Edward Snowdens—individuals with nothing in their records that indicates disqualifying unreliability but who, once hired, are willing nonetheless to act against perceived authoritarian tendencies by leaving open the vault of secrecy.

A smaller, less reliable pool of potential recruits would hardly be the worst of it, however. Lacking perceived legitimacy, the government could expect a lesser level of cooperation, if not outright obstruction, from the general public. Many national security programs presuppose public support for their efficient operation. This ranges from compliance with national security letters and library records disclosure under the PATRIOT Act to the design, manufacture, and sale of drones, and cooperation with counterintelligence activities and criminal investigations involving national security prosecutions. Moreover, distrust of government tends to become generalized; people who doubt governmental officials' assertions on national security threats are inclined to extend their skepticism.

Governmental assurances concerning everything from vaccine and food safety to the fairness of stock-market regulation and IRS investigations (not without evidence536) become widely suspect. Inevitably, therefore, daily life would become more difficult. Government, after all, exists for a reason. It carries out many helpful and indeed essential functions in a highly specialized society. When those functions cannot be fulfilled, work-arounds emerge, and social dislocation results. Most seriously, the protection of legitimate national security interests would itself suffer if the public were unable to distinguish between measures vital to its protection and those assumed to be undertaken merely through bureaucratic inertia or lack of imagination.

The government itself, meanwhile, could not be counted upon to remain passive in the face of growing public obduracy in response to its efforts to do what it thinks essential to safeguard national security. Here we do have historical precedents, and none is comfortably revisited. The Alien and Sedition Acts in the 1790s;537 the Palmer Raids of 1919 and 1920;538 the round-up of Japanese-American citizens in the 1940s;539 governmental spying on and disruption of civil rights, draft protesters, and anti-war activists in the 1960s and 1970s;540 and the incommunicado incarceration without charges, counsel, or trial of "unlawful combatants" only a few short years ago541—all are examples of what can happen when government sees limited options in confronting nerve-center security threats. No one can be certain, but the ultimate danger posed if the system were to fall to earth in the aftermath of a devastating terrorist attack could be intensely divisive and potentially **destabilizing**—not unlike what was envisioned by conservative Republicans in Congress who opposed Truman's national security programs when the managerial network was established.542 It is therefore appropriate to move beyond explanation and to turn to possibilities for reform—to consider steps that might be taken to prevent the entire structure from falling to earth.

Vote neg to debase the aff’s reliance securitized law in favor of democratic restraints on the President

Stephanie A. Levin 92, law prof at Hampshire College, Grassroots Voices: Local Action and National Military Policy, 40 Buff. L. Rev. 372

In this sense, what is important about federalism is not that it locates power "here" or "there" — not that some things are assigned irretrievably to the federal government or others to the states — but that it creates a tension about power, so that there are competing sources of authority rather than one unitary sovereign. Hannah Arendt has written that "perhaps the greatest American innovation in politics as such was the consistent abolition of sovereignty within the body politic of the republic, the insight that in the realm of human affairs sovereignty and tyranny are the same."194 Akhil Amar has expressed what is actually the same basic insight in a very different formulation, writing that the American innovation was to place sovereignty "in the People themselves. "I9S Whether one views unitary sovereignty as abolished or relocated to the people, the key point is that it is no longer considered to be in any unitary government. Governmental institutions are divided and kept in tension. At the federal level, this is the familiar doctrine of separation of powers. The same principle animates federalism. The tension is valued because it creates space for the expression of suppressed viewpoints and helps to prevent any one orthodoxy from achieving complete hegemony. Amar sums up the contribution that this governmental innovation makes to the liberty of the people by writing: "As with separation of powers, federalism enabled the American People to conquer government power by dividing it. Each government agency, state and national, would have incentives to win the principal's affections by monitoring and challenging the other's misdeeds."196 This is a compelling insight, but the way Professor Amar has framed it presents two difficulties for present purposes. First, by naming only the "state" and "national" governments, it ignores the field of local government action, a field particularly accessible to the direct involvement of the very citizens who constitute Amar's sovereign "People."197 Second, by making the subject of the verb the "government agency," the sentence makes it sound as if it were the "government agency" which acts, rather than recognizing that it is people who act though the agencies of government. Since the focus here is on federalism as a means of fostering civic participation, both of these qualifications are crucial. While state government will sometimes be an excellent locus for citizen action, often local government will provide the best forum for ordinary citizens to find their voices in civic conversation. And because the value of federalism for our purposes is in the enhanced opportunities it provides for citizen participation in policy development, the focus must be not on government institutions acting, but on people acting through them. In summary, three key attributes of participatory federalism must be highlighted. The first is that what is most important is not where government power is assigned — to the federal government, the states, or the localities — but the very fact that there are shared and overlapping powers. This dispersion of power means that the citizen is better protected from the dangers that are inherent in being subject to any one unitary sovereign.198 A second key attribute is that the value of this federalism lies not in the empowerment of government, but in the empowerment of people. Its animating purpose is not to add to or detract from the powers of any particular level of government, but to provide the most fruitful arrangements for enhancing the possibility of genuine citizen control over government. Third, the only meaningful measure of the success or failure of this type of federalism is the extent to which it contributes to increased opportunities for citizens to have a voice in government. This must be not at the level of deceptive abstraction — "the People speak" — but at the very concrete level of actual people with actual voices. The goal is for more people to be able to speak up in settings more empowering than their living rooms — and certainly state and local governments, while not the only possible settings, provide such an opportunity. In conclusion, these general principles of participatory federalism must be linked to the specific case of federalism in connection with military policy. The constitutional arrangements concerning military power which were described in Section II fit with these three attributes of participatory federalism quite well. The first attribute calls for dispersing power by sharing it. As has already been suggested, the military arrangements in the Constitution were designed to achieve exactly this sort of liberating tension between the national government's military powers and the decentralized state and locally-controlled institutions by which these powers were to be carried out. The second attribute calls for empowering people rather than governmental institutions. Here, too, the constitutional arrangements seem to fit. The purpose of the grants of power in the relevant constitutional clauses was not to endow any unit of government with the prerogatives of military power for its own sake. The reason for creating these powers was not to strengthen government but to protect the citizenry — to "provide for the common defense." Given this, it seems anomalous for the federal government — or any branch of the American government — to claim a right to control or use military violence as an inherent attribute of sovereignty.'99 The only justification for this power is in whether it contributes to the security of the citizens. Finally, the idea that federalism should serve the purpose of enhancing citizen voice can also be linked to decentralized arrangements for the control of military power. In the eighteenth century, as I have suggested earlier, the mechanism for expressing "voice" was physical: the militiamember showed up at muster, rifle on shoulder, to participate bodily in a "conversation" about military force.200 Today, it can be hoped that our civic conversation can be more verbal. However, we should translate the underlying meaning of the eighteenth century mechanism — a meaning of citizen participation and consent — into a modality more appropriate to contemporary life rather than relinquish it altogether. I would argue that such a translation leads to three central conclusions. The first is theoretical: we must challenge those mental preconceptions which favor totally centralized power in the military policy arena. We must stop seeing control over military power as belonging "naturally" to the federal government and even more narrowly to the executive branch within it. Instead, we must reconceptualize our understanding of the national arrangements to envision a dynamic and uncertain balance among different sources of power, not only among the three branches of the federal government, but between centralized and decentralized institutions of government as well.201 While the role of the federal government is, of course, crucial, the roles of the states and localities are more than interstitial and should not be allowed to atrophy. Only in this dynamic tension does the best protection for the citizenry lie.

### 3

Congressional restraints spill over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

That goes nuclear

Li ‘9

Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### 4

#### Sanctions are failing, but GOP is trying to revive the push

Greg Sargent, WaPo, 2/3/14, Another big blow to the Iran sanctions bill, www.washingtonpost.com/blogs/plum-line/wp/2014/02/03/another-big-blow-to-the-iran-sanctions-bill/

**The push for a new Iran sanctions bill may have stalled in the Senate, but it’s still alive and kicking** in the House, where **leaders are telling members such a measure could still be considered** this year. Indeed, proponents of more sanctions appear to be clinging to the hope that if something passes the House with broad bipartisan support, it could pressure the Senate to act. But here’s something that could help block that from happening — in the process delivering yet another big blow to the prospects of a new Iran sanctions measure. I’m told more than 70 House Dems — from a diverse ideological background — have now signed a new letter coming out against any new sanctions measure and calling for diplomacy to be given a chance. This represents the first public statement from House Dems **en masse** against the measure and for diplomacy, matching what we’ve been seeing in the Senate. Here’s the text, which hasn’t yet been released but was sent over by a source: Dear Mr. President: As Members of Congress — and as Americans — we are united in our unequivocal commitment to prevent Iran from obtaining a nuclear weapon. The proliferation of nuclear weapons in the Middle East would threaten the security of the United States and our allies in the region, particularly Israel. The ongoing implementation of the Joint Plan of Action agreed to by Iran and the “P5+1 nations last November increases the possibility of a comprehensive and verifiable international agreement. We understand that there is no assurance of success and that, if talks break down or Iran reneges on pledges it made in the interim agreement, Congress may be compelled to act as it has in the past by enacting additional sanctions legislation. At present, however, we believe that Congress must give diplomacy a chance. A bill or resolution that risks fracturing our international coalition or, worse yet, undermining our credibility in future negotiations and jeopardizing hard-won progress toward a verifiable final agreement, must be avoided. We remain wary of the Iranian regime. But we believe that robust diplomacy remains our best possible strategic option, and we commend you and your designees for the developments in Geneva. Should negotiations fail or falter, nothing precludes a change in strategy. But we must not imperil the possibility of a diplomatic success before we even have a chance to pursue it. Dem Rep. Lloyd Doggett — a senior member of the House Ways and Means Committee who spearheaded this letter along with Dem Rep. David Price – tells me in a statement: “Iranian hard liners may ultimately obstruct a meaningful permanent agreement, but Congress should not give them a pretext for doing so. The support for this letter from a broad and growing coalition of more than 70 Members sends a strong signal that Democrats stand for peace and diplomacy.” Aides who have seen the letter tell me it’s been signed by some prominent Jewish Democrats and at least one member of the Dem leadership (James Clyburn). This comes after former Secretary of State Hillary Clinton (belatedly) weighed in against the sanctions bill, another blow to its prospects. While it does appear that the push for a sanctions vote has run aground, **it’s worth reiterating** that if something goes wrong in the talks, those who want a vote — including **Republicans** who **appear to be using this as a way to divide Dems**, **and** Democrats who refuse to be swayed by the administration’s insistence that a vote could derail diplomacy — **could have a hook to** revive their push. Eric Cantor is still said to want to move an Iran sanctions bill, and Dems have been wary of the possibility that Steny Hoyer — the number two Dem in the House — could join Cantor’s effort, thus giving it bipartisan legitimacy and perhaps leading more Dems to support it. The new letter from around six dozen House Dems opposing such a move could make that outcome that much less likely — particularly if it continues to pick up more signatures.

#### The plan’s authority restriction is a loss for Obama—causes defections

Dr. Andrew J. Loomis, Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, 3/2/2007, Leveraging legitimacy in the crafting of U.S. foreign policy, 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.

#### The GOP will exploit this to flip Democratic votes on Iran—causes sanctions

Josh Rogin, Daily Beast, 2/5/14, GOP Will Force Reid to Save Obama’s Iran Policy—Over and Over Again, www.thedailybeast.com/articles/2014/02/05/gop-will-force-reid-to-save-obama-s-iran-policy-over-and-over-again.html

Dozens of Republican senators joined Wednesday to demand that Harry Reid allow a floor vote on a new Iran sanctions bill. If he doesn’t, they are planning to make his life miserable.

The Republican Senate caucus is planning to use every parliamentary trick in the book to push Senate Majority Leader Harry Reid to allow a floor vote on a new Iran sanctions bill that the Obama administration strenuously opposes. The Obama White House has succeeded in keeping most Democrats in line against supporting quick passage of the “Nuclear Weapon Free Iran Act,” which currently has 59 co-sponsors, including 13 Democrats. Reid has faithfully shelved the bill, pending the outcome of negotiations between Iran and the world’s major powers—the so-called “P5+1.” But tomorrow, Republicans plan to respond by using an array of floor tactics—including bringing up the bill and forcing Reid to publicly oppose it—as a means of putting public pressure on Reid and Democrats who may be on the fence. “Now we have come to a crossroads. Will the Senate allow Iran to keep its illicit nuclear infrastructure in place, rebuild its teetering economy and ultimately develop nuclear weapons at some point in the future?” 42 GOP senators wrote in a letter sent to Reid late Wednesday and obtained by The Daily Beast. “The answer to this question will be determined by whether you allow a vote on S. 1881, the bipartisan Nuclear Weapon Free Iran Act, which is cosponsored by more than half of the Senate.” The GOP letter calls on Reid to allow a vote on the bill during the current Senate work period—in other words, before the chamber’s next recess. Senate GOP aides said that until they get a vote, **GOP senators are planning to** use a number of procedural tools at their disposal to **keep this issue** front and center **for Democrats**. Since the legislation is already on the Senate’s legislative calendar, any senator can bring up the bill for a vote at any time and force Democrats to publicly object. Senators can also try attaching the bill as an amendment to future bills under consideration. Senate Minority Leader Mitch McConnell has been a harsh critic of Reid’s shelving of the bill, so he could demand a vote on it as a condition of moving any other legislation. If those amendments are blocked by Reid, Senators can then go to the floor and make speech after speech calling out Reid for ignoring a bill supported by 59 senators—and calling on fence-sitting Democrats to declare their position on the bill. “This letter is a final warning to Harry Reid that if Democrats want to block this bipartisan legislation, they will own the results of this foreign policy disaster,” one senior GOP senate aide said. The Republican senators believe, based on recent polls, that the majority of Americans support moving forward with the Iran sanctions bill now. They also believe that if Reid did allow a vote, the bill would garner more than the 59 votes of its co-sponsors and that Democrats vulnerable in 2014 races would support it, **pushing the vote total past a veto-proof two-thirds supermajority**.

#### New sanctions cause negotiation collapse and Middle East War

Rachel Kleinfeld, Carnegie Endowment For International Peace, 1/31/14, Sanctions Could Disrupt Negotiations With Iran, carnegieendowment.org/2014/02/03/sanctions-could-disrupt-negotiations-with-iran/h02v

Facing skyrocketing inflation, a collapsing currency and a sudden loss of imported goods, Iranians voted last year to kick out Mahmoud Ahmadinejad and elected a government they thought might jump-start their economy.

The new government of President Hassan Rouhani is not "moderate" - but it is practical**. It would like a nuclear weapon, but it wants economic relief more**. Rouhani knows his only bargaining chip to end sanctions is to stop the nuclear weapons program.

But the Rouhani government is on a short leash. Iran's supreme leader, Ali Khamenei, holds the ultimate power - and he is skeptical that a deal can be struck. Hardliners in Iran who benefit from sanctions are against it, as are many in the U.S. Congress. Khamenei needs to walk a careful line: If he looks like he's capitulating too much, then he'll face domestic backlash. He knows he has only a few months to deliver.

That is why the congressional threat of more sanctions - even if they take effect only if the deal fails - is so dire. Hardliners and Khamenei will take such legislation as proof that the United States wants regime change, not an end to Iran's nuclear program. Rouhani himself has said that if sanctions legislation passes, negotiations are off.

So why have more than 50 senators signed up as co-sponsors of new sanctions? Some do want regime change. So would we all - Iran is a noxious, terrorist-supporting, human-rights-destroying government. But regime change wouldn't end the security threat. Even the "Green Movement" that marched for democracy a few years ago wanted to obtain a nuclear weapon.

Others think that sanctions got Iran to the negotiating table, so more sanctions will push them even harder. This is a miscalculation. Negotiations have begun. Iran has allowed nuclear inspectors to seal up their nuclear plants. More sanctions will simply seem like bad faith on our part. They also could provide the excuse other countries are looking for to break with the sanctions regime. Bans on oil imports are causing real economic hardship to allies such as Japan who depended on Iran for much of their energy, and export bans are hurting European companies desperate to restart growth. If the United States looks like the bad guy, these governments are likely to give in to domestic pressure and reduce their sanctions against Iran.

Finally, the American Israel Public Affairs Committee is lobbying Congress hard with the message that a vote against sanctions is a vote against Israel. To me, as a Jew and a Zionist, this is not only hogwash: It is allowing an unelected American nongovernmental organization to wrap itself in the Israeli flag while suggesting actions that threaten Israel.

**If we cannot end Iran's nuclear program with diplomacy, we will end it through war**. Two years ago, the national security organization I founded worked with Pentagon planners on a simulation game to look at what would happen after the United States bombed Iran. In all the possible scenarios, Iran was likely to do one thing: attack Israel to open up a two-front war and further drag America into conflict in the Middle East. A vote for sanctions at this point is a vote for war - and for Iranian missile attacks on Israel.

#### Nuclear war

James A. **Russell,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

### 5

The executive branch should establish ex ante transparency of targeted killing standards and procedures and restrict targeted killing s to clear and convincing instances of threat determined using a quantum of information framework.

The executive branch should end targeted killings by the Central Intelligence Agency using remotely piloted aircraft systems and only claim authority for targeted killing under Title 50 authority.

The United States Congress should create an intelligence appropriation mechanism distinct from defense appropriations. Through this mechanism, the United States Congress should substantially increase funding for CIA intelligence operations.

Transparency creates accountability and solves drone overuse

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

4. Procedural Requirements

Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164

Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165

Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action.

a. Ex Ante Procedures

Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.

These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169

Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court.

An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174

Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176

Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria.

The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.

Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target.

That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.

Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse.

Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.

Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189

It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.

Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants.

In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195

While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.

b. Ex Post Review

For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target's life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism. n197 At a minimum, the relevant Inspectors General should engage in regular and extensive reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful and often more searching inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decisionmaking, thereby providing a self-correcting mechanism.

Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations. n198

The CP appropriations reform and funding increase resolves CIA intelligence tradeoffs—specifically resolves CIA over-focus on DOD programs

Marshall C. Erwin, Analyst in Intelligence and National Security, Sept. 2013, Intelligence Spending and Appropriations: Issues for Congress, https://www.fas.org/sgp/crs/intel/R42061.pdf

A key issue here is the potential for competing goals and different priorities that may derive from the respective roles of the DNI and the Secretary of Defense in preparing the annual budgets for intelligence agencies and for allocating appropriated funds for intelligence activities within national-level DOD agencies. The “does not abrogate” language creates a level of ambiguity regarding the respective budgetary authorities of the DNI and Secretary of Defense. While the DNI effectively has authority over the NIP today, in the event of major changes to the budgets of the DOD component of the intelligence community, this ambiguity in the statute could result in challenges to the DNI’s stewardship of the intelligence community. Even absent such changes, the fact that much of the NIP is buried within the defense budget might complicate budget formulation and execution. Some observers have suggested that intelligence appropriations should be separated from defense appropriations and that Congress should consider a separate appropriations act (or a separate title in a larger appropriations act) for intelligence. Others have suggested establishing separate intelligence appropriations subcommittees. Such approaches, proponents maintain, **would provide a better opportunity for Congress to consider the national intelligence effort as a collective whole and give the DNI a greater role in** ensuring that government-wide requirements are not sacrificed **to meet the** immediate **needs of DOD programs**. On the other hand, skeptics argue that these changes would provide the DNI no new insights that he cannot currently obtain, and that they would complicate ties between intelligence programs and closely related non-intelligence DOD programs such as satellite launch programs. Sections below discuss these proposals in more detail. An Intelligence Title Within Defense Appropriations Acts? One option for policy makers would be for defense appropriations subcommittees, as presently constituted, to report a defense appropriation bill that would include a separate title for the NIP. Current defense appropriations bills include a Title VII, Related Agencies, that provides funding for the CIA Retirement and Disability System Fund and for the Intelligence Community Management Account (which includes the Office of the DNI and the National Counterterrorism Center (NCTC)).38 A new title could be established, or Title VII could be expanded, to include all NIP funding, with corresponding reductions in other defense accounts. This approach would give greater visibility to NIP funding and would not necessarily require separate 302(b) allocations, which set limits for each appropriations subcommittee as part of the congressional budget process. A major advantage of this approach is that it would require fewer changes to the intelligence appropriations process compared to the two proposals discussed below. A Separate Intelligence Appropriations Act? The 9/11 Commission, in addition to recommending that amounts appropriated for national intelligence be disclosed, urged that “Congress should pass a separate appropriations act for intelligence, defending the broad allocation of how these tens of billions of dollars have been assigned among the varieties of intelligence work.”39 Overall amounts requested and appropriated are now made public.40 This development arguably facilitates the preparation of a separate intelligence appropriations act. The option of a stand-alone intelligence appropriations act would entail the separation of appropriations for the NIP from the DOD budget. Although not calling for a separate appropriations bill, DNI Clapper spoke favorably of separating the NIP from the DOD budget during his confirmation hearing as DNI in July 2010. Responding to a question from Senator Russ Feingold, DNI Clapper stated: I would support and I’ve also been working and have had dialogue with actually taking the National Intelligence Program out of the DOD budget since the reason, the original reason for having it embedded in the department’s budget was for classification purposes. Well, if it’s going to be publicly revealed, that purpose goes away. And it also serves the added advantage of reducing the topline of DOD department budget, which is quite large, as you know and that’s a large amount of money that the department really has no real jurisdiction over.41

### Cia adv

CIA will circumvent

Alston, professor – NYU Law, ‘11

(Philip, 2 Harv. Nat'l Sec. J. 283)

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute, ensure that the courts have indeed allowed the CIA to fall into a convenient legal **grey hole**. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450 In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

CIA is effective now --- drone shift not key

Willing 13 (Richard, “The Way of the Knife: The CIA, a Secret Army, and a War at the Ends of the Earth”, Book Review, https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol-57-no-3/the-way-of-the-knife-the-cia-a-secret-army-and-a-war-at-the-ends-of-the-earth.html)

“Everything is backwards,” former CIA lawyer W. George Jameson is quoted as saying. “You’ve got an intelligence agency fighting a war and a military organization trying to gather on-the-ground intelligence.” (314) Perhaps this is so, especially for those overly concerned by organizational charts. But the fact remains that the CIA did continue to collect and analyze, and the military did its share of fighting (recall that a Navy SEAL team, not a CIA unit, carried out the raid on Bin Ladin’s compound). Organizational “bleed” or not, **the combined efforts of the Intelligence Community, with the CIA in the lead, and the American military largely** have been getting the job done over the past 10 years. Mazzetti gives this little consideration, leaving the reader to wonder what other inconvenient truths were cast aside as he assembled his book?

CIA involvement in drones is inevitable and there’s no impact

Greg Miller, Foreign Policy Writer, 11/25/13 [“CIA remains behind most drone strikes, despite effort to shift campaign to Defense,” http://www.washingtonpost.com/world/national-security/cia-remains-behind-most-drone-strikes-despite-effort-to-shift-campaign-to-defense/2013/11/25/c0c07a86-5386-11e3-a7f0-b790929232e1\_story.html]

When missiles fired by CIA drones slammed into Yemen and Pakistan last week, the attacks ended a period of relative quiet for the Obama administration’s lethal counterterrorism program. They also served as a reminder that the CIA is not ready to relinquish its role in the drone war.¶ Six months after President Obama signaled his desire to shift the campaign to the Defense Department, the CIA’s drone operations center in Langley, Va., is still behind the vast majority of strikes.¶ And although senior CIA and Pentagon officials have held meetings in recent months aimed at finding a way for the military’s elite U.S. Joint Special Operations Command (JSOC) to take over the job, U.S. officials said the White House vision is **a distant goal**.¶ The emerging plan is likely to allow the CIA to maintain its drone fleet and stay deeply involved in targeted killing operations, even if the final step in any strike sequence is eventually handled by someone wearing a U.S. military uniform, said officials who spoke on the condition of anonymity to discuss internal deliberations.¶ U.S. officials said the discussions between the CIA and the Pentagon have involved CIA Director John Brennan; his deputy, Avril Haines; and Michael G. Vickers, the undersecretary of defense for intelligence, who previously worked at the CIA.¶ The talks are focused on finding a way to merge key aspects of the CIA’s drone operations with those of JSOC, so that both sides are deeply and simultaneously involved in nearly every strike, officials said.¶ “The goal is a find, fix and finish process that features seamless cooperation and robust integration between CIA and DOD,” a senior U.S. intelligence official said, using terminology that has become nearly ubiquitous among CIA and U.S. military operatives for the three-step sequence of lethal strikes.¶ **Even if JSOC takes over sole responsibility** for the “finish,” the intelligence official said, “Brennan has said from the very beginning that the **agency contributes important tools to the nation’s counterterrorism capacity** . . . the so-called find and fix.”¶ The effort is beset by technical snags. Despite their overlapping “orbits” in Yemen, the CIA and JSOC employ different surveillance equipment on their drone fleets. They also rely on separate and sometimes incompatible communications networks to transmit video feeds and assemble intelligence from multiple streams in the moments before a strike.¶ Brennan met twice with senior officials at the Pentagon this month “to better integrate CIA and DOD counterterrorism efforts,” the intelligence official said.¶ The push to get the CIA out of large-scale lethal operations “is a goal broadly shared within the administration” but “proving difficult to accomplish,” said Rep. Adam B. Schiff (D-Calif.), a member of the House Intelligence Committee. Even when it happens, he said, “**it isn’t going to mean** that either the intelligence community or the Department of Defense make **a clean break**.”¶ That prospect could undermine a main rationale for the switch: the conviction among many senior administration officials that the CIA should return its focus to its mission of intelligence-gathering.¶ During his confirmation hearing before the Senate Intelligence Committee this year, Brennan described the drone program as “an aberration” from the agency’s historic role and seemed to signal that he intended to preside over an unambiguous shift back. “The CIA should not be doing traditional military activities and operations,” he said.¶ **The lack of significant progress toward that aim has raised questions among some about whether Brennan’s enthusiasm for ending CIA strikes has waned since he made the switch from senior White House adviser to CIA director**.¶ One senior administration official said Brennan had “gone native” since moving into the director’s office on the CIA’s seventh floor.¶ U.S. officials close to Brennan disputed that characterization, saying he remains committed to the White House goal. But they acknowledged that there is no timetable for reaching it and that Brennan never envisioned a complete CIA withdrawal from the drone program.¶ When Brennan speaks of “traditional” military activities, he “is referring to the military conducting lethal ‘finishing’ operations, i.e. ‘dropping ordnance,’ ” the intelligence official said, meaning the agency would remain involved in tracking terrorist groups and identifying targets even if it ultimately surrendered its authority to execute strikes.¶ “There has been no change in policy since the president’s speech in May” at the National Defense University, White House spokeswoman Caitlin Hayden said. “I’m not going to speculate on how long the transition will take, but we’re going to ensure that it’s done right and not rushed.”¶ The outcome has significant implications for U.S. counterterrorism strategy, as well as the CIA’s identity. The agency, which rarely carried out lethal operations during most of its history, was transformed into a paramilitary force over the past 12 years, with its own fleet of armed aircraft.¶ Since 2004, the United States has launched 433 drone strikes in Pakistan and Yemen, according to the Long War Journal Web site. The CIA has carried out the vast majority of them, killing more than 2,200 militants and as many as 400 civilians in Pakistan alone, according to a recent report by a United Nations human rights investigator. U.S. officials have insisted that the civilian casualty count is far lower but have never released a figure.¶ In his confirmation hearing, Brennan voiced concern that the drone war had absorbed too much of the agency’s resources and attention, creating potential gaps in the nation’s understanding of critical developments overseas, including the political turmoil that has swept across the Middle East as part of the Arab Spring.¶ “The principal mission of the agency is to collect intelligence,” Brennan testified, adding that one of his first priorities as director would be to examine “whether or not there has been too much of an emphasis on the CT front.”¶ U.S. officials said that Brennan, now in his eighth month on the job, **is continuing to assess the agency’s posture and allocation of resources, and has made significant adjustments**. But current and former U.S. officials said they have seen little indication that the CIA’s counterterrorism focus and its role in targeted killing have been curtailed.¶ “It has been business as usual,” said a former senior U.S. intelligence official familiar with CIA operations overseas.¶ The number of strikes has declined this year, in part because of stricter targeting criteria imposed by Obama in May.¶ But at a time when U.S. spy agencies are facing their first budget cuts in more than a decade, the CIA’s Counterterrorism Center — which swelled to about 3,000 employees after the Sept. 11, 2001, attacks — has been shielded from reductions in resources or personnel.¶ And although Brennan has made personnel moves across most of the CIA’s major divisions, he has left the leadership ranks of the agency’s Counterterrorism Center intact. Among those still in place is the chief of the center, who has led the CIA’s drone operations for the past seven years and is described as fiercely opposed to giving up the agency’s role.

No nuclear lashout

Neely 13 (Meghan, research intern for the Project on Nuclear Issues, 21 March 2013, “Doubting Deterrence of Nuclear Terrorism,” CSIS, http://csis.org/blog/doubting-deterrence-nuclear-terrorism)

Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely. Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons. Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public.

Data disproves hegemony impacts

Fettweis, 11

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

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

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

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

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

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

No challengers

Kaplan, senior fellow – Center for a New American Security, and Kaplan, frmr. vice chairman – National Intelligence Council, ‘11

(Robert D and Stephen S, “America Primed,” *The National Interest*, March/April)

But in spite of the seemingly inevitable and rapid diminution of U.S. eminence, to write America’s great-power obituary is beyond premature. The United States remains a highly capable power. Iraq and Afghanistan, as horrendous as they have proved to be—in a broad historical sense—are still relatively minor events that America can easily overcome. The eventual demise of empires like those of Ming China and late-medieval Venice was brought about by far more pivotal blunders.

Think of the Indian Mutiny against the British in 1857 and 1858. Iraq in particular—ever so frequently touted as our turning point on the road to destruction—looks to some extent eerily similar. At the time, orientalists and other pragmatists in the British power structure (who wanted to leave traditional India as it was) lost some sway to evangelical and utilitarian reformers (who wanted to modernize and Christianize India—to make it more like England). But the attempt to bring the fruits of Western civilization to the Asian subcontinent was met with a violent revolt against imperial authority. Delhi, Lucknow and other Indian cities were besieged and captured before being retaken by colonial forces. Yet, the debacle did not signal the end of the British Empire at all, which continued on and even expanded for another century. Instead, it signaled the transition from more of an ad hoc imperium fired by a proselytizing lust to impose its values on others to a calmer and more pragmatic empire built on international trade and technology.1 There is no reason to believe that the fate of America need follow a more doomed course.

Yes, the mistakes made in Iraq and Afghanistan have been the United States’ own, but, though destructive, they are not fatal. If we withdraw sooner rather than later, the cost to American power can be stemmed. Leaving a stable Afghanistan behind of course requires a helpful Pakistan, but with more pressure Washington might increase Islamabad’s cooperation in relatively short order.

In terms of acute threats, Iran is the only state that has exported terrorism and insurgency toward a strategic purpose, yet the country is economically fragile and politically unstable, with behind-the-scenes infighting that would make Washington partisans blanch. Even assuming Iran acquires a few nuclear devices—of uncertain quality with uncertain delivery systems—the long-term outlook for the clerical regime is itself unclear. The administration must only avoid a war with the Islamic Republic.

To be sure, America may be in decline in relative terms compared to some other powers, as well as to many countries of the former third world, but in absolute terms, particularly military ones, the United States can easily be the first among equals for decades hence.

China, India and Russia are the only major Eurasian states prepared to wield military power of consequence on their peripheries. And each, in turn, faces its own obstacles on the road to some degree of dominance.

The Chinese will have a great navy (assuming their economy does not implode) and that will enforce a certain level of bipolarity in the world system. But Beijing will lack the alliance network Washington has, even as China and Russia will always be—because of geography—inherently distrustful of one another. China has much influence, but no credible military allies beyond possibly North Korea, and its authoritarian regime lives in fear of internal disruption if its economic growth rate falters. Furthermore, Chinese naval planners look out from their coastline and see South Korea and a string of islands—Japan, Taiwan and Australia—that are American allies, as are, to a lesser degree, the Philippines, Vietnam and Thailand. To balance a rising China, Washington must only preserve its naval and air assets at their current levels.

India, which has its own internal insurgency, is bedeviled by semifailed states on its borders that critically sap energy and attention from its security establishment, and especially from its land forces; in any case, India has become a de facto ally of the United States whose very rise, in and of itself, helps to balance China.

Russia will be occupied for years regaining influence in its post-Soviet near abroad, particularly in Ukraine, whose feisty independence constitutes a fundamental challenge to the very idea of the Russian state. China checks Russia in Central Asia, as do Turkey, Iran and the West in the Caucasus. This is to say nothing of Russia’s diminishing population and overwhelming reliance on energy exports. Given the problems of these other states, America remains fortunate indeed.

The United States is poised to tread the path of postmutiny Britain. America might not be an empire in the formal sense, but its obligations and constellation of military bases worldwide put it in an imperial-like situation, particularly because its air and naval deployments will continue in a post-Iraq and post-Afghanistan world. No country is in such an enviable position to keep the relative peace in Eurasia as is the United States—especially if it can recover the level of enduring competence in national-security policy last seen during the administration of George H. W. Bush. This is no small point. America has strategic advantages and can enhance its power while extricating itself from war. But this requires leadership—not great and inspiring leadership which comes along rarely even in the healthiest of societies—but plodding competence, occasionally steely nerved and always free of illusion.

Salhani ev is pseudo-journalism on oilprice.com

Cyber war infeasible

Clark, MA candidate – Intelligence Studies @ American Military University, senior analyst – Chenega Federal Systems, 4/28/’12

(Paul, “The Risk of Disruption or Destruction of Critical U.S. Infrastructure by an Offensive Cyber Attack,” American Military University)

The Department of Homeland Security worries that our critical infrastructure and key resources (CIKR) may be exposed, both directly and indirectly, to multiple threats because of CIKR reliance on the global cyber infrastructure, an infrastructure that is under routine cyberattack by a “spectrum of malicious actors” (National Infrastructure Protection Plan 2009). CIKR in the extremely large and complex U.S. economy spans multiple sectors including agricultural, finance and banking, dams and water resources, public health and emergency services, military and defense, transportation and shipping, and energy (National Infrastructure Protection Plan 2009). The disruption and destruction of public and private infrastructure is part of warfare, without this infrastructure conflict cannot be sustained (Geers 2011). Cyber-attacks are desirable because they are considered to be a relatively “low cost and long range” weapon (Lewis 2010), but prior to the creation of Stuxnet, the first cyber-weapon, the ability to disrupt and destroy critical infrastructure through cyber-attack was theoretical. The movement of an offensive cyber-weapon from conceptual to actual has forced the United States to question whether offensive cyber-attacks are a significant threat that are able to disrupt or destroy CIKR to the level that national security is seriously degraded. It is important to understand the risk posed to national security by cyber-attacks to ensure that government responses are appropriate to the threat and balance security with privacy and civil liberty concerns. The risk posed to CIKR from cyber-attack can be evaluated by measuring the threat from cyber-attack against the vulnerability of a CIKR target and the consequences of CIKR disruption. As the only known cyber-weapon, Stuxnet has been **thoroughly analyzed** and **used as a model** for predicting future cyber-weapons. The U.S. electrical grid, a key component in the CIKR energy sector, is a target that has been analyzed for vulnerabilities and the consequences of disruption predicted – the electrical grid has been used in multiple attack scenarios including a classified scenario provided to the U.S. Congress in 2012 (Rohde 2012). Stuxnet will serve as the weapon and the U.S. electrical grid will serve as the target in this risk analysis that concludes that there is a low risk of disruption or destruction of critical infrastructure from a an offensive cyber-weapon because of the complexity of the attack path, the limited capability of non-state adversaries to develop cyber-weapons, and the existence of multiple methods of mitigating the cyber-attacks. To evaluate the threat posed by a Stuxnet-like cyber-weapon, the complexity of the weapon, the available attack vectors for the weapon, and the resilience of the weapon must be understood. The complexity – how difficult and expensive it was to create the weapon – identifies the relative cost and availability of the weapon; inexpensive and simple to build will be more prevalent than expensive and difficult to build. Attack vectors are the available methods of attack; the larger the number, the more severe the threat. For example, attack vectors for a cyberweapon may be email attachments, peer-to-peer applications, websites, and infected USB devices or compact discs. Finally, the resilience of the weapon determines its availability and affects its usefulness. A useful weapon is one that is resistant to disruption (resilient) and is therefore available and reliable. These concepts are seen in the AK-47 assault rifle – a simple, inexpensive, reliable and effective weapon – and carry over to information technology structures (Weitz 2012). The evaluation of Stuxnet identified malware that is “unusually complex and large” and required code written in multiple languages (Chen 2010) in order to complete a variety of specific functions contained in a “vast array” of components – **it is one of the most complex threats ever analyzed by Symantec** (Falliere, Murchu and Chien 2011). To be successful, Stuxnet required a **high** **level of technical knowledge across multiple disciplines**, a laboratory with the target equipment configured for testing, and a foreign intelligence capability to collect information on the target network and attack vectors (Kerr, Rollins and Theohary 2010). The malware also needed careful monitoring and maintenance because it could be easily disrupted; as a result Stuxnet was developed with a high degree of configurability and was upgraded multiple times in less than one year (Falliere, Murchu and Chien 2011). Once introduced into the network, the cyber-weapon then had to utilize four known vulnerabilities and four unknown vulnerabilities, known as zero-day exploits, in order to install itself and propagate across the target network (Falliere, Murchu and Chien 2011). Zero-day exploits are **incredibly difficult to find** and fewer than twelve out of the 12,000,000 pieces of malware discovered each year utilize zero-day exploits and this rarity makes them valuable, zero-days can fetch $50,000 to $500,000 each on the black market (Zetter 2011). The use of four rare exploits in a single piece of malware is “unprecedented” (Chen 2010). Along with the use of four unpublished exploits, Stuxnet also used the “first ever” programmable logic controller rootkit, a Windows rootkit, antivirus evasion techniques, intricate process injection routines, and other complex interfaces (Falliere, Murchu and Chien 2011) all **wrapped up in “layers of encryption** like Russian nesting dolls” (Zetter 2011) – including custom encryption algorithms (Karnouskos 2011). As the malware spread across the now-infected network it had to utilize additional vulnerabilities in proprietary Siemens industrial control software (ICS) and hardware used to control the equipment it was designed to sabotage. Some of these ICS vulnerabilities were published but some were unknown and **required such a high degree of inside knowledge** that there was speculation that a Siemens employee had been involved in the malware design (Kerr, Rollins and Theohary 2010). The unprecedented technical complexity of the Stuxnet cyber-weapon, along with the extensive technical and financial resources and foreign intelligence capabilities required for its development and deployment, indicates that the malware was likely developed by a nation-state (Kerr, Rollins and Theohary 2010). Stuxnet had very limited attack vectors. When a computer system is connected to the public Internet a host of attack vectors are available to the cyber-attacker (Institute for Security Technology Studies 2002). Web browser and browser plug-in vulnerabilities, cross-site scripting attacks, compromised email attachments, peer-to-peer applications, operating system and other application vulnerabilities are all vectors for the introduction of malware into an Internetconnected computer system. Networks that are not connected to the public internet are “air gapped,” a technical colloquialism to identify a physical separation between networks. Physical separation from the public Internet is a common safeguard for sensitive networks including classified U.S. government networks. If the target network is air gapped, infection can only occur through physical means – an infected disk or USB device that **must be physically introduced** into a possibly access controlled environment and connected to the air gapped network. The first step of the Stuxnet cyber-attack was to initially infect the target networks, a difficult task given the probable disconnected and well secured nature of the Iranian nuclear facilities. Stuxnet was introduced via a USB device to the target network, a method that suggests that the attackers were familiar with the configuration of the network and knew it was not connected to the public Internet (Chen 2010). This assessment is supported by two rare features in Stuxnet – having all necessary functionality for industrial sabotage fully embedded in the malware executable along with the ability to self-propagate and upgrade through a peer-to-peer method (Falliere, Murchu and Chien 2011). Developing an understanding of the target network configuration was a significant and daunting task based on Symantec’s assessment that Stuxnet repeatedly targeted a total of five different organizations over nearly one year (Falliere, Murchu and Chien 2011) with physical introduction via USB drive being the only available attack vector. The final factor in assessing the threat of a cyber-weapon is the resilience of the weapon. There are two primary factors that make Stuxnet **non-resilient**: the complexity of the weapon and the complexity of the target. Stuxnet was highly customized for sabotaging specific industrial systems (Karnouskos 2011) and needed a large number of very complex components and routines in order to increase its chance of success (Falliere, Murchu and Chien 2011). The **malware required eight vulnerabilities** in the Windows operating system **to succeed** and therefore would have failed if those vulnerabilities had been properly patched; four of the eight vulnerabilities were known to Microsoft and subject to elimination (Falliere, Murchu and Chien 2011). Stuxnet also required that two drivers be installed and required two stolen security certificates for installation (Falliere, Murchu and Chien 2011); driver installation would have failed if the stolen certificates had been revoked and marked as invalid. Finally, the configuration of systems is ever-changing as components are upgraded or replaced. There is no guarantee that the network that was mapped for vulnerabilities had not changed in the months, or years, it took to craft Stuxnet and successfully infect the target network. Had specific components of the target hardware changed – the targeted Siemens software or programmable logic controller – the attack would have failed. Threats are less of a threat when identified; this is why zero-day exploits are so valuable. Stuxnet went to great lengths to hide its existence from the target and utilized multiple rootkits, data manipulation routines, and virus avoidance techniques to stay undetected. The malware’s actions occurred only in memory to avoid leaving traces on disk, it masked its activities by running under legal programs, employed layers of encryption and code obfuscation, and uninstalled itself after a set period of time, all efforts to avoid detection because its authors knew that detection meant failure. As a result of the complexity of the malware, the changeable nature of the target network, and the chance of discovery, Stuxnet is not a resilient system. It is a fragile weapon that required an investment of time and money to constantly monitor, reconfigure, test and deploy over the course of a year. There is concern, with Stuxnet developed and available publicly, that the world is on the brink of a storm of highly sophisticated Stuxnet-derived cyber-weapons which can be used by hackers, organized criminals and terrorists (Chen 2010). As former counterterrorism advisor Richard Clarke describes it, there is concern that the technical brilliance of the United States “has created millions of potential monsters all over the world” (Rosenbaum 2012). Hyperbole aside, technical knowledge spreads. The techniques behind cyber-attacks are “constantly evolving and making use of lessons learned over time” (Institute for Security Technology Studies 2002) and the publication of the Stuxnet code may make it easier to copy the weapon (Kerr, Rollins and Theohary 2010). **However**, this is something of a zero-sum game because knowledge works both ways and cyber-security techniques are also evolving, and “understanding attack techniques more clearly is the first step toward increasing security” (Institute for Security Technology Studies 2002). Vulnerabilities are discovered and patched, intrusion detection and malware signatures are expanded and updated, and monitoring and analysis processes and methodologies are expanded and honed. Once the element of surprise is lost, weapons and tactics are less useful, this is the core of the argument that “uniquely surprising” **stratagems like Stuxnet are single-use**, like Pearl Harbor and the Trojan Horse, the “very success [of these attacks] precludes their repetition” (Mueller 2012). This paradigm has already been seen in the “son of Stuxnet” malware – named Duqu by its discoverers – that is based on the same modular code platform that created Stuxnet (Ragan 2011). With the techniques used by Stuxnet now known, other variants such as Duqu are being discovered and countered by security researchers (Laboratory of Cryptography and System Security 2011). It is obvious that the effort required to create, deploy, and maintain Stuxnet and its variants is massive and it is not clear that the rewards are worth the risk and effort. Given the location of initial infection and the number of infected systems in Iran (Falliere, Murchu and Chien 2011) it is believed that Iranian nuclear facilities were the target of the Stuxnet weapon. A significant amount of money and effort was invested in creating Stuxnet but yet the expected result – assuming that this was an attack that expected to damage production – was minimal at best. Iran claimed that Stuxnet caused only minor damage, probably at the Natanz enrichment facility, the Russian contractor Atomstroyeksport reported that no damage had occurred at the Bushehr facility, and an unidentified “senior diplomat” suggested that Iran was forced to shut down its centrifuge facility “for a few days” (Kerr, Rollins and Theohary 2010). Even the most optimistic estimates believe that Iran’s nuclear enrichment program was only delayed by months, or perhaps years (Rosenbaum 2012). The actual damage done by Stuxnet is not clear (Kerr, Rollins and Theohary 2010) and the primary damage appears to be to a higher number than average replacement of centrifuges at the Iran enrichment facility (Zetter 2011). Different targets may produce different results. The Iranian nuclear facility was a difficult target with limited attack vectors because of its isolation from the public Internet and restricted access to its facilities. What is the probability of a successful attack against the U.S. electrical grid and what are the potential consequences should this critical infrastructure be disrupted or destroyed? An attack against the electrical grid is a reasonable threat scenario since power systems are “a high priority target for military and insurgents” and there has been a trend towards utilizing commercial software and integrating utilities into the public Internet that has “increased vulnerability across the board” (Lewis 2010). Yet the increased vulnerabilities are mitigated by an increased detection and deterrent capability that has been “honed over many years of practical application” now that power systems are using standard, rather than proprietary and specialized, applications and components (Leita and Dacier 2012). The security of the electrical grid is also enhanced by increased awareness after a smart-grid hacking demonstration in 2009 and the identification of the Stuxnet malware in 2010; as a result the public and private sector are working together in an “unprecedented effort” to establish robust security guidelines and cyber security measures (Gohn and Wheelock 2010).

Networks are safe—nobody has the means

Gray 13

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It is one thing to be able to be an electronic nuisance, to annoy, disrupt, and perhaps delay. But it is quite another to be capable of inflicting real persisting harm on the fighting power of an enemy. Critically important military computer networks are, of course, accessible neither to the inspired amateur outsider, nor to the malignant political enemy. Easy passing reference to a hypothetical “cyber Pearl Harbor” reflects both poor history and ignorance of contemporary military common sense. Critical potential military (and other) targets for cyber attack are extremely hard to access and influence (I believe and certainly hope), and the technical knowledge, skills, and effort required to do serious harm to national security is forbiddingly high. This is not to claim, foolishly, that cyber means absolutely could not secure near-catastrophic results. However, it is to say that such a scenario is extremely improbable. Cyber defense is advancing all the time, as is cyber offense, of course. But so discretionary in vital detail can one be in the making of cyberspace, that confidence—real confidence—in cyber attack could not plausibly be high. It should be noted that I am confining this particular discussion to what rather idly tends to be called cyber war. In political and strategic practice, it is unlikely that war would or, more importantly, ever could be restricted to the EMS. Somewhat rhetorically, one should pose the question: Is it likely (almost anything, strictly, is possible) that cyber war with the potential to inflict catastrophic damage would be allowed to stand unsupported in and by action in the other four geographical domains of war? I believe not.

Defense is dominant

**Rid 12** (Thomas Rid, reader in war studies at King's College London, is author of "Cyber War Will Not Take Place" and co-author of "Cyber-Weapons.", March/April 2012, “Think Again: Cyberwar”, http://www.foreignpolicy.com/articles/2012/02/27/cyberwar?page=full)

"Cyberweapons Can Create Massive Collateral Damage." Very unlikely. When news of Stuxnet broke, the New York Times reported that the most striking aspect of the new weapon was the "collateral damage" it created. The malicious program was "splattered on thousands of computer systems around the world, and much of its impact has been on those systems, rather than on what appears to have been its intended target, Iranian equipment," the Times reported. Such descriptions encouraged the view that computer viruses are akin to highly contagious biological viruses that, once unleashed from the lab, will turn against all vulnerable systems, not just their intended targets. But this metaphor is deeply flawed. As the destructive potential of a cyberweapon grows, the likelihood that it could do far-reaching damage across many systems shrinks. Stuxnet did infect more than 100,000 computers -- mainly in Iran, Indonesia, and India, though also in Europe and the United States. But it was so specifically programmed that it didn't actually damage those machines, afflicting only Iran's centrifuges at Natanz. The worm's aggressive infection strategy was designed to maximize the likelihood that it would reach its intended target. Because that final target was not networked, "all the functionality required to sabotage a system was embedded directly in the Stuxnet executable," the security software company Symantec observed in its analysis of the worm's code. So yes, Stuxnet was "splattered" far and wide, but it only executed its damaging payload where it was supposed to. Collateral infection, in short, is not necessarily collateral damage. A sophisticated piece of malware may aggressively infect many systems, but if there is an intended target, the infection will likely have a distinct payload that will be harmless to most computers. Especially in the context of more sophisticated cyberweapons, the image of inadvertent collateral damage doesn't hold up. They're more like a flu virus that only makes one family sick. "In Cyberspace, Offense Dominates Defense." Wrong again. The information age has "offense-dominant attributes," Arquilla and Ronfeldt wrote in their influential 1996 book, The Advent of Netwar. This view has spread through the American defense establishment like, well, a virus. A 2011 Pentagon report on cyberspace stressed "the advantage currently enjoyed by the offense in cyberwarfare." The intelligence community stressed the same point in its annual threat report to Congress last year, arguing that offensive tactics -- known as vulnerability discovery and exploitation -- are evolving more rapidly than the federal government and industry can adapt their defensive best practices. The conclusion seemed obvious: Cyberattackers have the advantage over cyberdefenders, "with the trend likely getting worse over the next five years." A closer examination of the record, however, reveals three factors that put the offense at a disadvantage. First is the high cost of developing a cyberweapon, in terms of time, talent, and target intelligence needed. Stuxnet, experts speculate, took a superb team and a lot of time. Second, the potential for generic offensive weapons may be far smaller than assumed for the same reasons, and significant investments in highly specific attack programs may be deployable only against a very limited target set. Third, once developed, an offensive tool is likely to have a far shorter half-life than the defensive measures put in place against it. Even worse, a weapon may only be able to strike a single time; once the exploits of a specialized piece of malware are discovered, the most critical systems will likely be patched and fixed quickly. And a weapon, even a potent one, is not much of a weapon if an attack cannot be repeated. Any political threat relies on the credible threat to attack or to replicate a successful attack. If that were in doubt, the coercive power of a cyberattack would be drastically reduced.

Reject their ev - it's exaggerated and financially biased

Rid 13

Thomas Rid, Reader in War Studies at King's College London, His most recent book is Cyber War Will Not Take Place, also a non-resident fellow at the Center for Transatlantic Relations in the School for Advanced International Studies, Johns Hopkins University, PhD in political science from Humboldt University of Berlin, OC Register, March 15, 2013, "Thomas Rid: Hype, fear-mongering hurts cyberwar", http://www.ocregister.com/articles/systems-499977-cyber-control.html

LONDON – The White House likes a bit of threat. In his State of the Union address, Barack Obama wanted to nudge Congress yet again into passing meaningful legislation. The president emphasized that America's enemies are "seeking the ability to sabotage our power grid, our financial institutions and our air traffic control systems." After two failed attempts to pass a cybersecurity act in the past two years, he added swiftly: "We cannot look back years from now and wonder why we did nothing in the face of real threats to our security and our economy."

Fair enough. A bit of threat to prompt needed action is one thing. Fear-mongering is something else: counterproductive. Yet too many a participant in the cybersecurity debate reckon that puffery pays off.

The Pentagon, no doubt, is the master of razzmatazz. Leon Panetta set the tone by warning again and again of an impending "cyber Pearl Harbor." Just before he left the Pentagon, the Defense Science Board delivered a remarkable report, "Resilient Military Systems and the Advanced Cyber Threat." The paper seemed obsessed with making yet more drastic historical comparisons: "The cyber threat is serious," the task force wrote, "with potential consequences similar to the nuclear threat of the Cold War." The manifestations of an all-out nuclear war would be different from cyberattack, the Pentagon scientists helpfully acknowledged. But then they added, gravely, that "in the end, the existential impact on the United States is the same."A reminder is in order: The world has yet to witness a single casualty, let alone fatality, as a result of a computer attack. Such statements are a plain insult to survivors of Hiroshima. After all, a bit of fear helps to claim – or keep – scarce resources when austerity and cutting seems out-of-control. The report recommended allocating the stout sum of $2.5 billion for its top two priorities alone, protecting nuclear weapons against cyberattacks and determining the mix of weapons necessary to punish all-out cyber-aggressors.

Then there are private computer security companies. Such firms, naturally, are keen to pocket some of the government's money earmarked for cybersecurity. And hype is the means to that end. Which leads to the next point: The media want to sell copy through threat inflation. "In Cyberspace, New Cold War," the headline writers at the Times intoned in late February. "The U.S. is not ready for a cyberwar," shrieked the Washington Post earlier this week. Instead of calling out the above-mentioned Pentagon report, the paper actually published two supportive articles on it and pointed out that a major offensive cyber capability now seemed essential "in a world awash in cyber-espionage, theft and disruption."

The Post should have reminded its readers that the only military-style cyberattack that has actually created physical damage – Stuxnet – was actually executed by the United States government.

Finally, the intelligence community tags along with the hype because the NSA and CIA are still traumatized by missing 9/11. Missing a "cyber 9/11" would be truly catastrophic for America's spies, so erring on the side of caution seems the rational choice.

This means that the quality of the public debate suffers, as experts as well as journalists have no choice but to rely on industry reports of sometimes questionable quality or anonymous informants whose veracity is hard to assess.

### terror adv

Drones are sustainable—US government won’t react to backlash

Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/13, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. **Unfortunately for its proponents, it has no currency among the three branches of government** of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation. There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

No foreign backlash—their author

Byman 13 (Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, Foreign Affairs, “Why Drones Work: The Case for Washington’s Weapon of Choice”, July/August 2013, ZBurdette)

FOREIGN FRIENDS

It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program’s negative publicity: “In Pakistan, things fall out of the sky all the time,” he reportedly remarked. Yemen’s former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States’ involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that “they pinpoint the target and have zero margin of error, if you know what target you’re aiming at.” As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan’s army chief, Ashfaq Parvez Kayani, privately asked U.S. military leaders in 2008 for “continuous Predator coverage” over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted “goodwill kills” against Pakistani militants who threatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, “We’ll protest [against the drone program] in the National Assembly and then ignore it.” Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by **anti-drone organizations**, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as seal team raids or cruise missile strikes, would make the United States more popular.

Doesn’t solve terrorism

Arquilla, professor of defense analysis – U.S. Naval Postgraduate School, 6/3/’13

(John, “Drones Are Too Slow to Kill Terrorists,” Foreign Policy)

Sadly, political acumen all too often makes for poor strategy -- as it surely does in this case. In the matter of drones, the problem is that the instrument itself -- an unmanned but armed aircraft -- has very serious operational and ethical constraints. During the past decade, over 400 drone attacks have taken place -- the vast majority on President Obama's watch, most of them striking on sovereign Pakistani territory. This is simply too slow a tempo, allowing enemy networks plenty of time to absorb whatever losses are inflicted and to recover from them. The problematic aerial offensive also comes at the serious cost of creating both outrage and instability in the countries where innocents are sometimes killed in drone attacks -- particularly in places targeted for "signature strikes," where those in the crosshairs simply fit a suspicious profile. The focus on "high-value targets" is closely related to the dependence on the use of drones, as the air attacks generally aim at hitting al Qaeda leaders. But this, too, is a case of going down a rabbit hole. For in a network -- a loose-jointed, very flat organizational form -- everybody is No. 3. Even the loss of No. 1, Osama bin Laden, has had little overall effect on al Qaeda, which has been able to return to Iraq, join the fight in Syria, keep up operations in Yemen and Somalia, and expand to Libya, Mali, and Nigeria -- among other places. Former Secretary of Defense Leon Panetta was fond of saying that al Qaeda was "on the verge of strategic defeat." Hardly. As the State Department's Country Reports on Terrorism, released late last week, points out, al Qaeda remains a serious threat, mostly due to its "decentralized, dispersed structure." Another pillar of President Obama's strategy, the call to address the grievances that give rise to terrorism, is a real head-scratcher, too. If all the people around the world who were subject to chronic poverty, misrule, and sheer, unrelenting injustice were to turn to terrorism, there would be more terrorists than ordinary citizens in any global census. The fact of the matter is that most who suffer do so without resort to the murder of innocents as a means of expressing their outrage. And the sources of grievances are so deeply rooted in specific cultures and their historical paths of development that to "address" them, as the president wishes, would call for nothing short of creating the kind of "new world order" that Bush the Elder envisioned and briefly thought might be possible some 20 years ago. The idea was DOA. It's still dead. Further, the notion of mending grievances, to my mind the most troubling aspect of the Obama strategy, was advanced in the speech at the National Defense University without reference at all to the possibility that American actions in the world might possibly be a real source of grievance. For example, the invasion of Iraq in 2003 remains a highly questionable use of force, and images from the conflict there have no doubt proved valuable recruiting tools for al Qaeda. And the president's rather obtuse insistence that the war in Iraq has ended can only inflame the wound and deepen the sense of grievance, given the continuing, rising level of violence plaguing that very sad land. For all the flawed thinking reflected in President Obama's speech and the strategy it described, he made one powerful point: Our fundamental goal must be to "dismantle terrorist networks." However, his insight was watered down by a seeming lack of urgency in pursuing this goal and an apparent willingness to scale down our efforts in the war on terror while relying more on allies. Truly, allies are good to have, and they should be cultivated and motivated. But not with the idea that this somehow allows the United States to do less. For it will take all the best efforts of a global counterterrorism coalition operating in high gear to disrupt and destroy the rising dark networks spawned by al Qaeda. And it should be realized that time is on the terrorists' side. The longer they stay on their feet and fighting, the closer they come to acquiring true weapons of mass destruction. Radiological, chemical, or biological attack capabilities in the hands of a dispersed network would upend any notion of world order, because a network is simply not susceptible to the kind of retaliatory punitive threats that nations are. The prospect of mutual assured destruction may keep the thousands of Russian and American nuclear warheads safely locked away forever, but an al Qaeda network with just a few nukes would enjoy enormous coercive power over the world's nations. The irony of the situation is that President Obama has identified the right goal -- focusing on enemy networks -- but he has chosen almost all **the wrong means** by which to seek their disruption. Drones are too slow-acting, strategically, and create their own "drag" in the form of outrage at collateral damage. Targeting enemy leaders is highly unlikely to defeat networks whose cells operate with high degrees of autonomy. And the effort to identify and ameliorate grievances is inherently quixotic and, in fact, undercut by the damage caused by some of our own policies (like the invasion of Iraq).

No risk of nuclear terror

**Mueller 10** (John, professor of political science at Ohio State, Calming Our Nuclear Jitters, Issues in Science and Technology, Winter, <http://www.issues.org/26.2/mueller.html>)

Politicians of all stripes preach to an anxious, appreciative, and very numerous choir when they, like President Obama, proclaim atomic terrorism to be “the most immediate and extreme threat to global security.” It is the problem that, according to Defense Secretary Robert Gates, currently keeps every senior leader awake at night. This is hardly a new anxiety. In 1946, atomic bomb maker J. Robert Oppenheimer ominously warned that if three or four men could smuggle in units for an atomic bomb, they could blow up New York. This was an early expression of a pattern of dramatic risk inflation that has persisted throughout the nuclear age. In fact, although expanding fires and fallout might increase the effective destructive radius, the blast of a Hiroshima-size device would “blow up” about 1% of the city’s area—a tragedy, of course, but not the same as one 100 times greater. In the early 1970s, nuclear physicist Theodore Taylor proclaimed the atomic terrorist problem to be “immediate,” explaining at length “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time he thought it was already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.” Three decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, the likelihood that a group could surmount a series of them quickly becomes vanishingly small. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion. Other routes would-be terrorists might take to acquire a bomb are even more problematic. They are unlikely to be given or sold a bomb by a generous like-minded nuclear state for delivery abroad because the risk would be high, even for a country led by extremists, that the bomb (and its source) would be discovered even before delivery or that it would be exploded in a manner and on a target the donor would not approve, including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence. The terrorist group might also seek to steal or illicitly purchase a “loose nuke“ somewhere. However, it seems probable that none exist. All governments have an intense interest in controlling any weapons on their territory because of fears that they might become the primary target. Moreover, as technology has developed, finished bombs have been out-fitted with devices that trigger a non-nuclear explosion that destroys the bomb if it is tampered with. And there are other security techniques: Bombs can be kept disassembled with the component parts stored in separate high-security vaults, and a process can be set up in which two people and multiple codes are required not only to use the bomb but to store, maintain, and deploy it. As Younger points out, “only a few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” There could be dangers in the chaos that would emerge if a nuclear state were to utterly collapse; Pakistan is frequently cited in this context and sometimes North Korea as well. However, even under such conditions, nuclear weapons would probably remain under heavy guard by people who know that a purloined bomb might be used in their own territory. They would still have locks and, in the case of Pakistan, the weapons would be disassembled. The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years,” but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda’s desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as “academic” in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda’s bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a “nuclear-related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons-related issues.” Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, “If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent.” Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaeda’s nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face.” Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although “it is likely that al Qaeda central has considered the option of using non-conventional weapons,” there is “little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.” She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban’s distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any “threat,” particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.” In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones. Glenn Carle, a 23-year CIA veteran and once its deputy intelligence officer for transnational threats, warns, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed, and miserable opponents that they are.” al Qaeda, he says, has only a handful of individuals capable of planning, organizing, and leading a terrorist organization, and although the group has threatened attacks with nuclear weapons, “its capabilities are far inferior to its desires.” Policy alternatives The purpose here has not been to argue that policies designed to inconvenience the atomic terrorist are necessarily unneeded or unwise. Rather, in contrast with the many who insist that atomic terrorism under current conditions is rather likely— indeed, exceedingly likely—to come about, I have contended that it is hugely unlikely. However, it is important to consider not only the likelihood that an event will take place, but also its consequences. Therefore, one must be concerned about catastrophic events even if their probability is small, and efforts to reduce that likelihood even further may well be justified. At some point, however, probabilities become so low that, even for catastrophic events, it may make sense to ignore them or at least put them on the back burner; in short, the risk becomes acceptable. For example, the British could at any time attack the United States with their submarine-launched missiles and kill millions of Americans, far more than even the most monumentally gifted and lucky terrorist group. Yet the risk that this potential calamity might take place evokes little concern; essentially it is an acceptable risk. Meanwhile, Russia, with whom the United States has a rather strained relationship, could at any time do vastly more damage with its nuclear weapons, a fully imaginable calamity that is substantially ignored. In constructing what he calls “a case for fear,” Cass Sunstein, a scholar and current Obama administration official, has pointed out that if there is a yearly probability of 1 in 100,000 that terrorists could launch a nuclear or massive biological attack, the risk would cumulate to 1 in 10,000 over 10 years and to 1 in 5,000 over 20. These odds, he suggests, are “not the most comforting.” Comfort, of course, lies in the viscera of those to be comforted, and, as he suggests, many would probably have difficulty settling down with odds like that. But there must be some point at which the concerns even of these people would ease. Just perhaps it is at one of the levels suggested above: one in a million or one in three billion per attempt.

No retaliation

Smith and Herron 5, \*Professor, University of Oklahoma, \* University of Oklahoma Norman Campus, (Hank C. Jenkins-Smith, Ph.D., and Kerry G., "United States Public Response to Terrorism: Fault Lines or Bedrock?" Review of Policy Research 22.5 (2005): 599-623, <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=hjsmith>)

Our final contrasting set of expectations relates to the degree to which the public will support or demand retribution against terrorists and supporting states. Here our data show that support for using conventional United States military force to retaliate against terrorists initially averaged above midscale, but did not reach a high level of demand for military action. Initial support declined significantly across all demographic and belief categories by the time of our survey in 2002. Furthermore, panelists both in 2001 and 2002 preferred that high levels of certainty about culpability (above 8.5 on a scale from zero to ten) be established before taking military action. Again, we find the weight of evidence supporting revisionist expectations of public opinion.

Overall, these results are inconsistent with the contention that highly charged events will result in volatile and unstructured responses among mass publics that prove problematic for policy processes. The initial response to the terrorist strikes demonstrated a broad and consistent shift in public assessments toward a greater perceived threat from terrorism, and greater willingness to support policies to reduce that threat. But even in the highly charged context of such a serious attack on the American homeland, the overall public response was quite measured. On average, the public showed very little propensity to undermine speech protections, and initial willingness to engage in military retaliation moderated significantly over the following year.

Perhaps most interesting is that the greatest propensity to change beliefs between 2001 and 2002 was evident among the best-educated and wealthiest of our respondents— hardly the expected source of volatility, but in this case they may have represented the leading edge of belief constraints reasserting their influence in the first year following 9/11. This post-9/11 change also reflected an increasing delineation of policy preferences by ideological and partisan positions. Put differently, those whose beliefs changed the most in the year between surveys also were those with the greatest access to and facility with information (the richest, best educated), and the nature of the changes was entirely consistent with a structured and coherent pattern of public beliefs. Overall, we find these patterns to be quite reassuring, and consistent with the general findings of the revisionist theorists of public opinion. Our data suggest that while United States public opinion may exhibit some fault lines in times of crises, it remains securely anchored in bedrock beliefs.

No accidents

**Slocombe 9**

Frmr Under Secretary of Defense for Policy; Caplin & Drysdale Attorneys (Walter, De-Alerting: Diagnoses, Prescriptions, and Side-Effects, <http://www.ewi.info/system/files/Slocombe.pdf>,)

Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that even if a nuclear-armed missile were launched, it would go not to a “real” target in another country but – at least in the US case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack.6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use. The drawback from a deterrence and operational point of view is, of course, that the system for transmitting the information must not be susceptible of interruption – that is, there must be assurance that an authorized decision maker will be able to act and have the decision – and the accompanying authenticated orders and unlock combinations – communicated to and received by the operators of the weapon systems. Accordingly, a system of combination-locked safeties requires a highly survivable network for decision and communication with the operators. Otherwise there would be pressures for early transmission of the codes, with their insertion subject to a later execute order or even more dangerous, pre-delegation of authority to issue the execute orders. In this, as in other aspects of measures to meet the “never” requirement, a highly capable and highly survivable command and control system is essential.

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**It is a shift of the same authority**

**Schmitt 1/16/14** (Eric, New York Times, “Congress Restricts Drones Program Shift”, http://www.nytimes.com/2014/01/17/us/politics/congress-restricts-drones-program-shift.html?\_r=0)

At the time, administration officials said that authority over most of the drone strikes would gradually shift to the Pentagon from the C.I.A., a move officials said was intended partly to lift the shroud of secrecy from the targeted killing program.

**title 50 / title 10 question isn’t the source of authority --- their author**

**Chesney 12** (2012, Robert, Charles I. Francis Professor in Law at the University of Texas School of Law, non-resident Senior Fellow of the Brookings Institution, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” JOURNAL OF NATIONAL SECURITY LAW &POLICY, Vol. 5:539)

It is worth pausing to clarify the meaning of Title 10 and Title 50 authority. Title 10 of the U.S. Code contains the bulk of the statutes that regulate the armed services, and the phrase accordingly is routinely used as a shorthand for the proposition that the military has domestic law authorization to carry out certain activities. That usage in fact is imprecise. Regarding the use of military force, as in the context of the conflict with al Qaeda, **the actual domestic law source of the military’s authority is found not in Title 10 but, rather, in either statutory authorizations for using such force (such as the AUMF) or the executive branch’s inherent authority (and duty) to use force in national self-defense** (founded in Article II of the Constitution). Nonetheless, Title 10 authority is commonly used in the argot of national security law as a way of referring to quintessentially military activity. Title 50 is a portion of the U.S. Code that contains a diverse array of statutes relating to national security and foreign affairs. These include the standing affirmative grants of authority through which Congress originally empowered the CIA to carry out its various functions. That set in turn includes the sweeping language of the so-called fifth function, which the executive branch has long construed to grant authority to engage in covert action. Separately, Title 50 also contains the statutes that define covert action, require presidential findings in support of them, and oblige notification of them to SSCI and HPSCI. As a result, Title 50 authority has also become a shorthand, in this case one that refers to the domestic law authorization for engaging in quintessential intelligence activities such as intelligence collection and covert action.

**Title 50 is the source of CIA authority, not executive authority**

**Chesney 12** – (2012, Robert, Charles I. Francis Professor in Law at the University of Texas School of Law, non-resident Senior Fellow of the Brookings Institution, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” JOURNAL OF NATIONAL SECURITY LAW &POLICY, Vol. 5:539)

Leon Panetta appeared on PBS Newshour not long after the raid that killed Osama bin Laden.1 He was the Director of the Central Intelligence Agency at that time, and during the course of the interview he took up the question of the CIA’s role in the attack. It had been “a ‘title 50’ operation,” he explained, invoking the section of the U.S. Code that authorizes the activities of the CIA.2 As a result, Panetta added, he had exercised overall “command.”3

**Reasonability is impossible – it’s arbitrary and undermines research and preparation**

Resnick, assistant professor of political science – Yeshiva University, ‘1

(Evan, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2)

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

### 2nc ov

Advantage one author concludes transparency resolves backlash to the drone program

Micah Zenko, Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations, January 2013, “Reforming U.S. Drone Strike Policies,” CFR Special Report #65, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎

Recommendations

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease).

Transparency and self-restraint solve U.S. and global norms

Zenko, Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations, January 2013

(Micah, “Reforming U.S. Drone Strike Policies,” CFR Special Report #65, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone prolifera- tion and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international norma- tive framework, and U.S. compliance with that framework, would pre- serve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.

In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would under- mine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama admin- istration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

Executive Branch

The president of the United States should

■■ limit targeted killings to individuals who U.S. officials claim are being targeted—the leadership of al-Qaeda and affiliated forces or individ- uals with a direct operational role in past or ongoing terrorist plots against the United States and its allies—and bring drone strike prac- tices in line with stated policies;

■■ either end the practice of signature strikes or provide a public account- ing of how it meets the principles of distinction and proportionality that the Obama administration claims;

■■ review its current policy whereby the executive authority for drone strikes is split between the CIA and JSOC, as each has vastly different legal authorities, degrees of permissible transparency, and oversight;

■■ provide information to the public, Congress, and UN special rappor- teurs—without disclosing classified information—on what proce- dures exist to prevent harm to civilians, including collateral damage mitigation, investigations into collateral damage, corrective actions based on those investigations, and amends for civilian losses; and

■■ never conduct nonbattlefield targeted killings without an account- able human being authorizing the strike (while retaining the poten- tial necessity of autonomous decisions to use lethal force in warfare in response to ground-based antiaircraft fire or aerial combat).

Waxman’s warrant for DOD solvency is transparency, we fiat around that [READ BLUE!]

**Waxman 13** – (3/20, Matthew, law professor at Columbia Law School, co-chair, Roger Hertog Program on Law and National Security, Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations, member of the Hoover Institution Task Force on National Security and Law, “Going Clear,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/03/20/going\_clear?wp\_login\_redirect=0)

Although technically "covert" and carried out under statutory and presidential authorities designed to preserve "plausible deniability," it's an open secret that the CIA has been conducting counterterrorism strikes in places like Pakistan and Yemen. The U.S. military conducts similar strikes, usually through Joint Special Operations Command, including in Yemen and Somalia. Many argue that these strikes are illegal or counterproductive -- regardless of who conducts them -- because they deny targeted suspects legal process, violate national sovereignty, cause collateral damage, and fuel radicalism. Others believe, however, that these problems are compounded when the CIA is in charge because of the secrecy and impunity with which it operates.

In truth, critics often underestimate oversight of CIA activities and overestimate the openness of military operations. Even if the Pentagon conducts all U.S. drone strikes, the operational details will still be shrouded in secrecy, the CIA will still provide targeting information, and much of the congressional oversight will still be conducted behind closed doors (though it will shift from the intelligence committees to the armed services committees). The CIA is also subject to some statutory congressional reporting requirements that the Defense Department is not. That said, moving all strikes under Defense Department control and eliminating their officially covert status will probably allow executive branch officials and members of Congress to **speak more clearly and openly about general policy** in this area.

With regard to the legal rules that govern targeting, it may be that shifting operations to the Defense Department will promote stricter compliance. In a 2012 speech, the CIA general counsel stated that the agency conducts its operations "in a manner consistent with the...basic principles in the law of armed conflict" -- not that the CIA is legally required to comply with the rules -- which led many to wonder whether the agency was operating outside their bounds. The military is also much better practiced than the CIA in applying the law of armed conflict and assessing collateral damage. **Even if the CIA has in reality been fully compliant, it is in the U.S. interest to promote these international legal rules by communicating unambiguously and demonstrating its own normative commitment to them**. Those are things that the military is much better able to do, on account of tradition, institutional culture, and legal requirements.

CP makes commanders more effective in target selection—minimizes blowback solves law of war compliance

Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., 2013, Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2179720

Two factors appear to provide an explanation for the increased concern over the threat identification uncertainty in the context of TAC. One of these is beyond the scope of “mitigation solutions,” while the other is not. The first is the increased public awareness and interest in both the legal authority to use military force and the legality of the conduct of hostilities, a factor that inevitably increases the scrutiny on military power under the rubric of TAC. **This pervasive and intense interest in and legal critique of military operations** associated with what is euphemistically called the war on terror **is truly unprecedented**. In this “lawfare” environment, it is unsurprising that government action that deprives individuals of life as a measure of first resort or subjects them to preventive detention that may last a lifetime—often impacting individuals located far beyond a “hot zone” of armed hostilities—generates intense legal scrutiny.60 **This factor**, whether a net positive or negative, is a reality that **is unlikely to abate** in the foreseeable future.

In an article published in the Brooklyn Law Review, I proposed a sliding quantum of information related to the assessment of targeting legality based on relative proximity to a “hot zone.”62 In essence, I proposed that when conducting operations against unconventional non-State operatives, the reasonableness of a target legality judgment requires increased informational certainty the more attenuated the nominated target becomes to a zone of traditional combat operations. The concept was proposed as a measure to mitigate the increased risk of targeting error when engaging an unconventional belligerent operative in an area that itself does not indicate belligerent activity. Jennifer Daskal offers a similar proposal in her article, The Geography of the Battlefield.63 Daskal presents a more comprehensive approach to adjusting the traditional targeting framework when applied to the TAC context. Both of these articles seek to **mitigate the consequence** of applying broad LOAC authority against a dispersed and unconventional enemy; both methods that should continue to be explored.

[Note: This clarifies Corn is talking about proposals that seek to legally limit TAC authority (transnational armed conflict) – that is referring to the “armed conflict” legal apparatus that regulates the US armed conflict against AQ, which allows for the use of force and what not. If the US did legally confine the armed conflict, then law enforcement and human rights law would apply outside of the battlefield. Clearly, that is not the plan, as we only add a mitigation measure to a single armed conflict operation.]

### At: goldsmith

Says plan doesn’t solve

**Goldsmith 13** (5/1, Jack, Henry L. Shattuck Professor at Harvard Law School, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust.

Transparency solves

John Harwood, Major, J.D. and LL.M., Judge Advocate in USAF, Fall 2012, ARTICLE: KNOCK, KNOCK; WHO'S THERE? ANNOUNCING TARGETED KILLING PROCEDURES AND THE LAW OF ARMED CONFLICT, 40 Syracuse J. Int'l L. & Com. 1

While the law may not require states to publicly disclose their targeting procedures and an analysis for each individual targeted killing during armed conflict, as a matter of policy **the U.S. should provide enough information to allow the public to be satisfied that the government is fulfilling its international obligations**. The speeches of the nation's prominent national security lawyers are a good start; however, the government should continue to provide information on the processes and procedures of the targeted killing program, where operational and intelligence considerations allow.

As a beginning point, now that the existence of the targeted killing program is an acknowledged fact, the government should disclose whether the legal structures of aerial targeting are being followed by all the departments and agencies of the government who are engaged in targeted killings. The legal principles that the Air Force and the Department of Defense follow in aerial targeting are well-known and publicly available. While our enemies have occasionally sought to use our adherence to lawful targeting procedures to their benefit, n114 this openness has not been shown to be a hindrance to air-based military operations. n115

Second, the government should discuss in general terms the process of vetting targets and approving them for targeted killing. While covertness and operational security should protect the disclosure of the details of any individual strike, a general description of the procedures would "credibly convey to the public that [the government's] decisions about who is being targeted - [\*26] especially when the target is a U.S. citizen - are sound." n116 The basis of these disclosures, however, should be rooted in policy - as shown, there is no requirement under LOAC to divulge military targeting procedures during an armed conflict.

VI. Conclusion

International observers and human rights groups have rightly scrutinized targeted killing programs for compliance with international law. All programs, procedures, and operations should be subject to rigorous scrutiny; as noted by Mr. Brennan, "there is no more consequential a decision than deciding whether to use lethal force against another human being." n117 Because the subject matter is so weighty, there are no sacred cows in armed conflict. Too often, however, IHRL has been the prism through which criticism of the targeted killing program has come. Rather than providing a license to kill, as is feared by Alston and others, LOAC provides a robust legal framework for analyzing the legality of targeted killings.

To its credit, the **Obama** administration **has taken steps to reassure the public that the targeted killing program is being conducted in a lawful manner**; most notably by dispatching high-level officials and attorneys to speak openly and publicly. There is more that could be done, however, without compromising intelligence and ongoing operations. The administration could begin by requiring the CIA to conduct all aerial targeting in accordance with the well-established principles of military aerial targeting, and then publicize this requirement. This would rebut the claim that the CIA's operational-level targeting decisions are being made in a lawless vacuum.

Also, the administration could provide a basic, on-the-record description of the strategic-level target vetting process, rather than the non-specific "just trust us" statements previously made by Mr. Brennan and others. n118 While **these steps** may not placate the [\*27] critics of targeted killing, and fall far short of what Professor Alston calls for, they **would** help to reassure the public and the international community that the U.S. is committed to the rule of law during armed conflict.

### Signal – 2NC

CP sends the most powerful signal (while avoiding Congressional confrontation)

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

Obama key to signal and sustainability

Singer, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/’13

(Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620)

It is time for a new approach. And all that is required of the President is to do the thing that he does perhaps best of all: to speak.

Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war.

While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.

The U.S. military’s unmanned systems, popularly known as “drones,” now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.

This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called “shadow wars.” These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world’s first known use of a specially designed cyber weapon.

Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies.

This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.

But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.

By acting but barely explaining our actions, we’re creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.

In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.

Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power.

The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.

Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either.

Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the “not sure” category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.

The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an “Alice in Wonderland” feel.

The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons.

These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the much-needed stamp of the President’s voice and authority, which is essential to turn tentative first steps into established policy.

Much remains to be done — and said — out in the open.

This is why it’s time for Obama’s voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons.

The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.

But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.

It’s also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.

The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?

There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.

And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way.

Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner!

The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

### At: harris

**Not a solvency deficit ---**

**First --- Their card is talking about CIA recommendations that are thousands of pages and vague. The CP is short. It establishes a CLEAR boundary between CIA and DOD. No rational explanation of why their cards discussing cold war apply**

**Harris 05** – (2005, Grant, JD candidate at time of publication, expected same year, post-graduation: Special Assistant to the President and Senior Director for African Affairs, former Deputy Chief of Staff and Counselor to Susan E. Rice, the U.S. Ambassador to the United Nations and a member of President Obama’s Cabinet, “The CIA Mandate and the War on Terror,” Yale Law & Policy Review Vol. 23:529, 2005)

The thousands of pages of reports and recommendations made by the various commissions of the 1970s suggest that the vague terminology of the CIA mandate was an important cause of CIA abuses perpetrated during the Cold War. The lack of clear boundaries of authority provided no clear guideposts to prevent good-faith efforts to protect the nation's security from crossing the line to become overzealous and unnecessarily infringe civil liberties. Similarly, statutory ambiguity provided fertile ground for political abuse of the Agency at the behest of the highest levels of government. The abuses were caused by a mix of convenient and disingenuous interpretations of the CIA mandate and outright violations of the law. For these reasons, clarified statutory limits as proposed in Part IV of this Note would provide better boundaries for well-intentioned activities as well as a more meaningful shield by which the CIA could ward off bad-faith directives intended to serve personal or political ends.

**Third --- If the CP is vague, then the logic applies to the plan too!**

**Harris 05** – (2005, Grant, JD candidate at time of publication, expected same year, post-graduation: Special Assistant to the President and Senior Director for African Affairs, former Deputy Chief of Staff and Counselor to Susan E. Rice, the U.S. Ambassador to the United Nations and a member of President Obama’s Cabinet, “The CIA Mandate and the War on Terror,” Yale Law & Policy Review Vol. 23:529, 2005)

Vague statutory language proved all too malleable in the face of the nation's overriding fear of communism. The drive to win the Cold War and undefined prohibitions with ambiguous parameters opened the door to creative interpretations of authority. CIA excesses during the Cold War were excused if not encouraged by the drive to defeat communism, which emanated from the country's highest levels of political leadership. This created a situation of lax oversight of CIA activities and a "climate of tolerance" in which there was a "let them do what they need to do to get the job done" ethic in place from the passage of the National Security Act in 1947 until the congressional inquiries of the 1970s. n64

**The plan is net worse**

**Harris, their ev, 5** (2005, Grant, JD candidate at time of publication, expected same year, post-graduation: Special Assistant to the President and Senior Director for African Affairs, former Deputy Chief of Staff and Counselor to Susan E. Rice, the U.S. Ambassador to the United Nations and a member of President Obama’s Cabinet, “The CIA Mandate and the War on Terror,” Yale Law & Policy Review Vol. 23:529, 2005)

Legislative reconsideration of the CIA mandate is not without risk. There may be benefits to retaining a certain level of ambiguity (more often cast as "flexibility" by supporters of this argument) in the language of the National [\*569] Security Act. According to the IC21 Commission: "There is no need to further clarify the National Security Act of 1947, as amended, or the subsequent Executive Orders" because "there is a **flexibility** in these laws that permits a reasonable, but well-bounded, range of interpretation that will **allow for improved cooperation and coordination between law enforcement and intelligence** without blurring important demarcations between the missions and authorities of the two communities." n213 Yet this IC21 recommendation predated September 11 by five years, and the fight against terrorism (as well as other post-Cold War national security priorities) is making such "important demarcations" increasingly difficult to discern. n214 Furthermore, the IC21 Commission conceded that one of the outcomes of the intelligence scandals of the 1970s was a sometimes overly conservative approach toward cooperation between the law enforcement and intelligence communities. n215 Additionally, this "range of interpretation" in the CIA mandate led to interpretations of convenience in the Cold War and leaves us more vulnerable to abuse. n216

Clarification of the CIA mandate could be "overlawyered" and therefore reduce the effectiveness of cooperation between intelligence and law enforcement. A similar result occurred in the aftermath of two banking scandals in the 1980s involving Bank of Credit and Commerce International (BCCI) and Banca Nazionale del Lavoro (BNL). The BCCI and BNL scandals resulted largely from problems in the sharing and management of information between the CIA and law enforcement officials. n217 In the early 1990s, a high-level interagency task force produced recommendations to improve communication between intelligence and law enforcement and created several interagency working groups, including the Joint Task Force on Intelligence and Law Enforcement (JICLE), to further develop those recommendations. JICLE produced memoranda of understanding in the wake of the banking scandals but, according to Jeffrey Smith, General Counsel of the CIA at the time, the JICLE process had "overlawyered it" and "the product was going to "gum up the works' and make cooperation [between intelligence and law enforcement] more difficult." n218 Statutory revision could similarly open the door to overregulation [\*570] or hamper cooperation between law enforcement and intelligence if not done correctly.

### --- Durable Fiat / AT: Rollback

#### And executive orders have the force of law:

Oxford Dictionary of English 2010

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the force of law.

#### CP constrains future Presidents – it creates a legal framework

Brecher, JD University of Michigan, December 2012

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

### AT: Object Fiat

#### Internal constraints are key neg ground – it matches the academic debate

Sinnar, assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1

These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

### CIA

### 2nc doesn’t solve

There won’t be a clean break – cia resources will inevitable be devoted to the drone program

LEIGH MUNSIL, Politico Writer, 11/10 [“Panetta: CIA , DOD both have place in clandestine operations,” http://www.politico.com/blogs/politico-live/2013/11/panetta-cia-dod-both-have-place-in-clandestine-operations-177170.html]

Former Defense Secretary Leon Panetta says there's a place for both the CIA and the Defense Department in clandestine operations like drone strikes.¶ "It is an operation that obviously we made a great deal of progress on at the CIA," said Panetta, who served as the director of the CIA prior to his stint at the head of the Pentagon. The CIA was able to go after top Al Qaeda leadership through clandestine operations, Panetta added.¶ There's also a place for the Defense Department in these operations, Panetta said in an interview aired Sunday on CBS's "Face the Nation," but he didn't go as far as saying that drone strikes should be solely the responsibility of the military.¶ "At the Pentagon, there is a comparable ability to do that," he said. "I think ultimately that the more we can probably put into the military the better, because it's a much more open process. But **there's always going to be a need for the type of clandestine operations that the CIA and the CIA alone can operate**. So I think we are best off if we can maintain both of those capabilities."

The CIA still does 99% of operations – the plan’s “authority” shift is the 1%

Goldsmith 13 (Jack, Harvard Law prof, Lawfare, “No More Drones For CIA”, March 20, http://www.lawfareblog.com/2013/03/no-more-drones-for-cia/#.UvR17\_ldXDU)

That is the title of Dan Klaidman’s important story:

Three senior U.S. officials tell The Daily Beast that the White House is poised to sign off on a plan to shift the CIA’s lethal targeting program to the Defense Department. . . .The proposed plan would unify the command and control structure of targeted killings, and create a uniform set of rules and procedures. The CIA would maintain a role, but the military would have operational control over targeting. Lethal missions would take place under Title 10 of the U.S. Code, which governs military operations, rather than Title 50, which sets out the legal authorities for intelligence activities and covert operations.

Quick reactions:

(1) It is not clear what is at stake here, especially if, as Marc Ambinder reports, the Air Force currently operates and “presses the button that releases the missile” on CIA drones. At least two things appear to be involved in the shift: (a) CIA will no longer be determining who is killed, and (b) CIA might no longer “own” armed drones (Ambinder reports that CIA has 30 UAVs, but it is unclear how many are armed). Presumably CIA will still play a heavy role in the intelligence side of drone strikes – which, as I understand it, is 99% of the operation. In that light, it is unclear what Klaidman entails when he says that “a potential downside of the Agency relinquishing control of the program was the loss of a decade of expertise that the CIA has developed since it has been prosecuting its war in Pakistan and beyond,” and adds that “for a period of transition, CIA operators would likely work alongside their military counterparts to target suspected terrorists.”

### No impact

Reject their ev - it's exaggerated and financially biased

Rid 13

Thomas Rid, Reader in War Studies at King's College London, His most recent book is Cyber War Will Not Take Place, also a non-resident fellow at the Center for Transatlantic Relations in the School for Advanced International Studies, Johns Hopkins University, PhD in political science from Humboldt University of Berlin, OC Register, March 15, 2013, "Thomas Rid: Hype, fear-mongering hurts cyberwar", http://www.ocregister.com/articles/systems-499977-cyber-control.html

LONDON – The White House likes a bit of threat. In his State of the Union address, Barack Obama wanted to nudge Congress yet again into passing meaningful legislation. The president emphasized that America's enemies are "seeking the ability to sabotage our power grid, our financial institutions and our air traffic control systems." After two failed attempts to pass a cybersecurity act in the past two years, he added swiftly: "We cannot look back years from now and wonder why we did nothing in the face of real threats to our security and our economy."

Fair enough. A bit of threat to prompt needed action is one thing. Fear-mongering is something else: counterproductive. Yet too many a participant in the cybersecurity debate reckon that puffery pays off.

The Pentagon, no doubt, is the master of razzmatazz. Leon Panetta set the tone by warning again and again of an impending "cyber Pearl Harbor." Just before he left the Pentagon, the Defense Science Board delivered a remarkable report, "Resilient Military Systems and the Advanced Cyber Threat." The paper seemed obsessed with making yet more drastic historical comparisons: "The cyber threat is serious," the task force wrote, "with potential consequences similar to the nuclear threat of the Cold War." The manifestations of an all-out nuclear war would be different from cyberattack, the Pentagon scientists helpfully acknowledged. But then they added, gravely, that "in the end, the existential impact on the United States is the same."A reminder is in order: The world has yet to witness a single casualty, let alone fatality, as a result of a computer attack. Such statements are a plain insult to survivors of Hiroshima. After all, a bit of fear helps to claim – or keep – scarce resources when austerity and cutting seems out-of-control. The report recommended allocating the stout sum of $2.5 billion for its top two priorities alone, protecting nuclear weapons against cyberattacks and determining the mix of weapons necessary to punish all-out cyber-aggressors.

Then there are private computer security companies. Such firms, naturally, are keen to pocket some of the government's money earmarked for cybersecurity. And hype is the means to that end. Which leads to the next point: The media want to sell copy through threat inflation. "In Cyberspace, New Cold War," the headline writers at the Times intoned in late February. "The U.S. is not ready for a cyberwar," shrieked the Washington Post earlier this week. Instead of calling out the above-mentioned Pentagon report, the paper actually published two supportive articles on it and pointed out that a major offensive cyber capability now seemed essential "in a world awash in cyber-espionage, theft and disruption."

The Post should have reminded its readers that the only military-style cyberattack that has actually created physical damage – Stuxnet – was actually executed by the United States government.

Finally, the intelligence community tags along with the hype because the NSA and CIA are still traumatized by missing 9/11. Missing a "cyber 9/11" would be truly catastrophic for America's spies, so erring on the side of caution seems the rational choice.

This means that the quality of the public debate suffers, as experts as well as journalists have no choice but to rely on industry reports of sometimes questionable quality or anonymous informants whose veracity is hard to assess.

Yes attribution

Baker 13

Stewart Baker is a partner at Steptoe & Johnson in Washington, D.C. He has been general counsel of the National Security Agency and assistant secretary for policy at the Department of Homeland Security, Foreign Policy, June 17, 2013, "The Attribution Revolution", http://www.foreignpolicy.com/articles/2013/06/17/the\_attribution\_revolution\_plan\_to\_stop\_cyber\_attacks?page=full

The good news is that there has been a revolution in our ability to identify cyberspies. It turns out that the same human flaws that make it nearly impossible to completely secure our networks are at work in our attackers too. And, in the end, those flaws will compromise the anonymity of cyberspies.

Call it Baker's Law: "Our security sucks. But so does theirs."

As numerous recent reports show, attackers are only human. They make mistakes when they're in a hurry or overconfident. They leave bits of code behind on abandoned command-and-control computers. They reuse passwords, email addresses, and physical computers. Their remote access tools are full of vulnerabilities. These are openings that we can exploit to trace cyberattacks first to the command and control computers used to carry them out, then to the homes and offices of the hackers that perpetrate them and then, hopefully someday soon, to the customers that sponsor them.

### No accids

No escalation spiral with Russia

**Slocombe 9**

Frmr Under Secretary of Defense for Policy; Caplin & Drysdale Attorneys (Walter, De-Alerting: Diagnoses, Prescriptions, and Side-Effects, <http://www.ewi.info/system/files/Slocombe.pdf>,)

Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that even if a nuclear-armed missile were launched, it would go not to a “real” target in another country but – at least in the US case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack.6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use. The drawback from a deterrence and operational point of view is, of course, that the system for transmitting the information must not be susceptible of interruption – that is, there must be assurance that an authorized decision maker will be able to act and have the decision – and the accompanying authenticated orders and unlock combinations – communicated to and received by the operators of the weapon systems. Accordingly, a system of combination-locked safeties requires a highly survivable network for decision and communication with the operators. Otherwise there would be pressures for early transmission of the codes, with their insertion subject to a later execute order or even more dangerous, pre-delegation of authority to issue the execute orders. In this, as in other aspects of measures to meet the “never” requirement, a highly capable and highly survivable command and control system is essential.

### 2nc no nuke terror

Weak leadership and positioning

**Zenko and Cohen 12**, \*Fellow in the Center for Preventive Action at the Council on Foreign Relations, \*Fellow at the Century Foundation, (Micah and Michael, "Clear and Present Safety," March/April, Foreign Affairs, www.foreignaffairs.com/articles/137279/micah-zenko-and-michael-a-cohen/clear-and-present-safety

 NONE OF this is meant to suggest that the United States faces no major challenges today. Rather, the point is that the problems confronting the country are manageable and pose minimal risks to the lives of the overwhelming majority of Americans. None of them -- separately or in combination -- justifies the alarmist rhetoric of policymakers and politicians or should lead to the conclusion that Americans live in a dangerous world.

Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States' vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States.

According to U.S. officials, al Qaeda's leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is "within reach." The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies.

Too many barriers---have to answer each to win an impact

Friedman 12 (George, January 2012, PhD in Government from Cornell University and founder of Stratfor, *The Next Decade: Empire and Republic in a Changing World,* pgs. 81-82)

The simple answer is that while constructing and deploying a WMD is easy to imagine, it is very difficult to execute. Existing weapons are relatively few, heavily guarded, difficult to move, and likely to kill the terrorist well before the terrorist gets a chance to kill anyone else. There have been many reports of Soviet-era nuclear weapons, and biological and chemical weapons, being available on the black market, but most of the offers were made by intelligence agencies trying to lure terrorists into a trap. If you were a terrorist offered a suitcase nuke by a former Soviet Colonel, how could you possibly tell whether what you were looking at was the real thing or just a box stuffed with wires and blinking lights? The same uncertainty would have to hold for chemical and biological weapons as well. Intelligence services don’t have to know who is selling real WMDs in order to scare away the customers, and the allure of acquiring these weapons contracted considerably when the number of intelligence officers offer them for sales as entrapment outnumbered legitimate offers by one hundred to one. There is, of course, the option of making such a weapon yourself, and every year some undergraduate posts a diagram of how to build a nuclear device. Between that sketch and success are the following steps: acquiring the fissile material, along with all of the necessary circuitry and casings; acquiring the machine needed to machine the fissile material to the precise tolerances needed in order to detonate it; engaging the experts who could actually do these things once you had the material and the equipment; finding a very secure facility where the experts could work and live, and so on. The chances of being detected are compounded at each stage of this tortuous process. Even if you could acquire the highly guarded fissile material, the machines needed for producing a nuclear weapon are highly specialized, and their manufacturers are few and far between. When a private individual shows up with his American Express card to order one of these machines, the chances that he will be detected are very good indeed. With biological and chemical weapons, you add to these the same risks the likelihood that the only person you’ll kill will be yourself and your immediate accomplices. Chemical and biological weapons carry an extra layer of complexity in that they have to be dispersed. When a Japanese group released sarin, an extremely deadly nerve gas, in a Tokyo subway, the contamination remained localized and only a few people were killed, not the substantial numbers the terrorists had hoped for. People always speak of how a speck of this or that could wipe out an entire city. Certainly – but first you have to figure out how to spread it around. Only one country ever produced a nuclear weapon from scratch, and that was the United States. The British got their nukes in compensation for their contribution to the American research effort. The French also acquired the technology from the Americans, which they then regifted to Israel. The Russians stole the knowledge from the Americans, then transferred it to both the Chinese and the Indians. The Chinese gave the technology to the Pakistanis. The point is, the development of these weapons through an independent research program is enormously difficult, which is why Iran is still struggling and North Korea has never gotten it quite right.

Can’t steal a bomb---global nuclear security is increasing---stops terror

NTI 13 (Nuclear Threat Initiative, 30 January 2013, “Global Nuclear Security Gains: NTI Nuclear Materials Security Index, One-Year Progress Report,” http://www.nti.org/analysis/articles/global-nuclear-security-gains-nti-nuclear-materials-security-index-one-year-progress-report/)

In January 2012, the Nuclear Threat Initiative (NTI) released the NTI Nuclear Materials Security Index, a first-of-its-kind public assessment of nuclear materials security conditions in 176 countries – 32 with one kilogram or more of weapons-usable nuclear materials and 144 with less than one kilogram of weapons-usable materials. An updated version of the NTI Index will be released in early 2014. In the meantime, since the completion of the inaugural NTI Index,[1] dozens of countries have taken or pledged to take key steps to strengthen their own nuclear security conditions, diminish opportunities for terrorist access to nuclear materials, and enhance nuclear security around the world. Progress on Reducing the Availability of Nuclear Materials Eliminating weapons-usable nuclear materials is, of course, the most significant step a country can take toward ensuring that terrorists can’t get access to the materials needed to build a nuclear bomb. Since release of the NTI Index: Three countries – Austria, Mexico, and Ukraine – have completely eliminated all weapons-usable nuclear material from their territories. Five more countries – Kazakhstan, Poland, South Africa, Sweden, and Uzbekistan – have reduced their stockpiles of weapons-usable nuclear material. As a result of these actions, now only 28 states have one kilogram or more of these materials, instead of the 32 countries profiled in the 2012 NTI Index. When the second edition of the Index is released in 2014, Austria, Mexico, Ukraine, and Sweden [2] will move off the list of countries with more than one kilogram of weapons-usable nuclear material. This progress builds on steps taken following President Obama’s April 2009 speech in Prague when he initially announced a four-year effort to secure all vulnerable nuclear material worldwide. In addition to the three countries that have eliminated all weapons-usable nuclear material listed above, Chile, Libya, Romania, Serbia, and Turkey as well as Taiwan have eliminated their stocks of weapons-usable nuclear material since April 2009. As a result, there are nine fewer states with weapons-usable nuclear material than in 2009, demonstrating significant, measurable progress in the global effort § Marked 17:22 § to prevent nuclear terrorism. Additional near-term progress is possible. Vietnam, the Czech Republic, Hungary, and Poland have committed to eliminating their remaining weapons-usable nuclear material, and Australia and Italy pledged at the 2012 Nuclear Security Summit in Seoul, South Korea to further reduce their nuclear material stockpiles. New Commitments and Actions The NTI Index also assessed countries’ commitments to global norms, including participation in two key treaties to prevent nuclear terrorism: the Convention on the Physical Protection of Nuclear Material (CPPNM) and the International Convention on the Suppression of Acts of Nuclear Terrorism (ICSANT). Since the completion of the first NTI Index: Côte d'Ivoire and Vietnam acceded to the CPPNM, an agreement vital to enacting security standards for materials in transit. Twelve new countries are now party to the 2005 Amendment to the CPPNM, which obligates state parties to enact standards for nuclear materials in use, in storage, or in transit domestically and requires countries to take criminal action against nuclear thieves, smugglers, and saboteurs. Argentina, Belgium, Georgia, Ghana, Greece, Israel, Lesotho, Luxembourg, Macedonia, Mexico, Sweden, and Vietnam have all taken this important step since the 2012 NTI Index was completed. [3] Five new countries – Australia, Côte d'Ivoire, Malta, Nigeria, and Turkey – are now party to the International Convention on the Suppression of Acts of Nuclear Terrorism (ICSANT), which commits states to criminalize acts of nuclear terrorism and promotes cooperation among countries on investigations and extraditions. NTI anticipates more progress before the release of the 2014 NTI Index, as France has pledged to complete ratification of ICSANT and the 2005 Amendment to the CPPNM and Norway has pledged to ratify ICSANT. In addition to progress in the international legal arena, several countries have taken other steps to enhance global nuclear security: China and India for the first time contributed to the IAEA’s Nuclear Security Fund, which assists states in preventing, detecting, and responding to nuclear terrorism. Kazakhstan, Mexico, and Ukraine joined the G8 Global Partnership Against the Spread of Weapons of Mass Destruction. Japan formed a new independent regulatory agency to address nuclear safety and security, a substantial policy reform.

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#### Deal failure by itself sufficient to trigger miscalc and global war

PressTV, 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.

#### Turns accidents, triggers their Barrett ev

Fraser, former PM of Australia, 7/4/’11

(Malcom, “Dealing with nuclear terror means plants and weapons,” Taipei Times)

Recent history is peppered with a litany of false alerts and near misses, each unforeseen, each a combination of technical and human failure. The growing potential for a nuclear disaster by cyber attack adds to the existential danger.

We now know that just 100 relatively “small” Hiroshima-size nuclear weapons, less than one-thousandth of the global nuclear arsenal, could lift millions of tonnes of dark smoke high into the atmosphere. There, it would abruptly cool and darken the planet, slashing rainfall and food production in successive years — and thus causing worldwide starvation on a scale never before witnessed.

This could result from the arsenals of any of the 10 currently nuclear-armed states, with the exception of North Korea.

Intent, miscalculation, technical failure, cyber attack, or accident could cause the nuclear escalation of a conflict between India and Pakistan, in the Middle East (embroiling Israel’s nuclear weapons), or on the Korean Peninsula. Such outcomes are at least as plausible or likely — if not more so — than a massive earthquake and tsunami causing widespread damage to four Japanese nuclear reactors and their adjacent spent-fuel ponds.

#### Deal failure triggers Israeli strike

Robert Satloff, Feb 2014, Will Israel and the U.S. Break Up over Iran?, www.washingtoninstitute.org/policy-analysis/view/will-israel-and-the-u.s.-break-up-over-iran

Looking forward, even President Obama gave no more than 50/50 odds that U.S. diplomats will reach a comprehensive agreement with Iran. **The alternative would likely be to extend the temporary deal, triggering a deeper crisis with Israel.** That could heighten the potential for a unilateral Israeli military attack on Iran's nuclear sites, with U.S.-Israel ties suffering massive collateral damage. Since Israel needs American support when the dust clears, that might not qualify as the worst of times, but it comes close.

So let's hope 2014 sees U.S. diplomats pulling a nuclear rabbit out of the hat with a final Iran deal that meets Israel's concerns, consigning this moment of crisis to a chapter in some future history book. Otherwise, Israelis will have a lot more on their minds than the price of cottage cheese.

#### Strikes cause extinction

Masko, 2/9/12

[Dave Masko is an Air Force News veteran who's filed stories from Washington, D.C., the Middle East, the Balkans and Europe. These days, he's a freelance writer based in Florence, Oregon. Masko's articles have appeared in European Stars and Stripes, The Washington Post, Rolling Stone and other publications. From 1977-1999 he was a reporter for the Defense Department, <http://www.huliq.com/10282/iran-nuclear-ambitions-alarming-israel-brink-war-say-experts>]

There’s always been the danger of something “going nuclear” in our fragile world where countries such as Iran and Israel seem to like rattling sabers at each other was once viewed as “same old, same old,” by political science experts when referring to these countries threats of war remaining the same. However, it’s not same old, same old, when President Obama told NBC News in a TV interview Feb. 5 that while he does not think Israel has decided whether to attack Iran, the United States is “going to be sure that we work in lockstep as we proceed to try to solve this… hopefully diplomatically.” Thus, if Israel does attack Iran’s nuclear facilities and war breaks out, “even a small-scale, regional nuclear war could produce as many direct fatalities as all of World War II and disrupt the global climate for a decade or more, with environmental effects that could be devastating for everyone on Earth, university researchers have found,” stated a report on the University of California Los Angeles website aasc.ucla.edu; while pointing to “a team of scientists” at Rutgers, the State University of New Jersey; the University of Colorado at Boulder and UCLA who’ve researched the implications of such an attack. What's at stake for the world? Overall, the stakes could not be any greater for a world that fears war after more than 20 years of sabre rattling by Israel over Iran’s nuclear ambitions. In turn, President Obama and other world leaders seem very concerned that it’s not if but when “an Israeli military attack on the Islamic Republic of Iran” will leave in its wake a new war in the Middle East, with more terrorism worldwide laced with even broader economic woes at a time when many countries are already at a breaking point. Moreover, the top U.S. intelligence official told Congress Jan. 31 – in an annual report about threats facing the nation – that “Iran’s leaders seem prepared to attack U.S. interests overseas, particularly if they feel threatened by possible U.S. action.” Jim Clapper, director of National Intelligence, also told the Senate Intelligence Committee Jan. 31 in an MSNBC TV report that America “now faces many interconnected enemies, including terrorists, criminals and foreign powers, who may try to strike via nuclear weapons or cyberspace, with the movement's Yemeni offshoot and ‘lone wolf’ terror attacks posing key threats.” Middle East nuclear confrontation feared “While a regional nuclear confrontation – such as the one feared between Iran and Israel – among emerging third-world nuclear powers might be geographically constrained,” report this noted team of U.S. scientists, “the environmental impacts could be worldwide.” Thus, even the great Atlantic Ocean – that sits between the U.S. and the Middle East – would not buffer the “fallout” that will be in the “global atmosphere” impacting an already fragile world climate situation. While these conclusions of dark days ahead for the world if the so-called “nuclear genie gets out of the bottle” -- by U.S. scientists during a meeting of the American Geophysical Union – was back in 2006, the UCLA website that presented these nuclear war fears, has updated such conclusions about a clear and present danger of possible nuclear confrontation if Israel attacks Iran, and as of Feb. 9, 2012, the news from Israel is not good at all, state experts.

**Turns heg**

**Daremblum 11** (Jaime, Hudson Institute senior fellow, 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.

**Turns terror**

**Brookes 7** (Peter, National security affairs senior fellow, 4-2-07, “Iran Emboldened: Tehran Seeks to Dominate Middle East Politics”, DOA: 10-10-13, <http://www.heritage.org/research/commentary/2007/04/iran-emboldened-tehran-seeks-to-dominate-middle-east-politics>, llc)

According to the U.S. State Department, Iran continues to be the world's most active state sponsor of terrorism. At the request of senior Iranian leadership, Iran's Ministry of Intelligence and Security (MOIS) and Islamic Revolutionary Guard Corps (IRGC) support Palestinian terrorist groups such as Hamas, Palestinian Islamic Jihad, the al Aqsa Martyrs Brigade and the Popular Front for the Liberation of Palestine-General Command with funding, training and weapons. Hezbollah - a Lebanese Shiite terrorist group - is a particular favorite. In fact, Iran established Hezbollah to parry Israel's 1982 invasion of Lebanon. Tehran may fund Hezbollah to the tune of $100 million per year. Last summer, Tehran's military support for Hezbollah was evident. Iran likely gave Hezbollah the green light to ambush an Israeli patrol and kidnap soldiers, which ultimately kicked off the monthlong conflict. In the ensuing days, Hezbollah indiscriminately fired as many as 10,000 Iran-supplied rockets and missiles into Israel. In addition, many were stunned when a C-802 cruise missile struck an Israeli naval vessel off the coast of Lebanon. While the shooter was never identified, the Chinese C-802 is in Iran's inventory. It could have been fired by either Hezbollah or the IRGC. Today, Hezbollah, with Iranian and Syrian support, is threatening to topple Lebanon's democratically elected government unless it is given additional cabinet seats - potentially giving it veto power over Beirut's decisions. Iran would love to add Lebanon to Syria as a client state in its effort to form an arc of Iranian influence across the region. Iran has made a number of not-so-veiled threats that it would deploy its irregular forces and terrorist allies against the U.S. and American interests, if necessary. This is likely not an idle threat. American blood is already on the hands of Iran and its terrorist proxies as a result of the 1983 Beirut Marine barracks attack and the 1996 Khobar Towers bombing in Saudi Arabia, and in Iraq today. It is almost without question that Tehran sees its ability to hold U.S. interests at risk across the globe - including in the U.S. - as leverage against American military action over its nuclear program or meddling in Iraq. Perhaps the most frightening scenario is that Iran might transfer weapons of mass destruction capability to a terrorist ally. While this is risky behavior, it is a possibility. Iran could transfer nuclear capability to a Hezbollah-dominated government in Lebanon, or a Hamas-led Palestinian Authority, significantly increasing the threat to Israeli security. Osama bin Laden has not been shy about his desire for WMD or al-Qaida's readiness to use them. The insurgency's recent use of chlorine gas in Iraq is evidence of a terrorist group's willingness to employ WMD.

### bergen

Their card tagged ‘CIA solves the internal link’ actually says the CIA are total idiots who couldn’t even predict the Arab Spring, which takes out the whole aff

**Bergen 13** – (4/23, Peter, director of the National Security Studies Program at the New America Foundation, research fellow at New York University's Center on Law and Security, former adjunct lecturer at the Kennedy School of Government at Harvard University, former Adjunct Professor at the Paul H. Nitze School of Advanced International Studies at Johns Hopkins University, “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing,” Testimony presented before the U.S. Senate Committee on the Judiciary , Subcommittee on the Constitution, Civil Rights and Human Rights, http://www.judiciary.senate.gov/pdf/04-23-13BergenTestimony.pdf)

Has the increased emphasis at the CIA on targeted killings **hampered the agency’s ability to understand really important political developments in the Muslim world, such as the Arab Spring**? As a senior Obama official has noted : “The CIA missed Tunisia. They missed Egypt. They missed Libya.” Even after the Egyptian revolution occurred , the CIA appears to have entirely missed the fact that the ultra fundamentalist Salafists would do very well at the election box, winning around quarter of the votes in the 2011 parliamentary election, making them the second largest political bloc in Egypt after the Muslim Brotherhood.

### uq outweighs

Rubio rallying supporters

Political News 2/9/14 “Rubio Calls On Reid To Allow A Senate Vote On Iran Sanctions” http://politicalnews.me/?id=27037&pg=1&keys=IRAN-SANCTIONS-WEAPONS-NUCLEAR

U.S. Senator Marco Rubio (R-FL) called on Senate Majority Leader Harry Reid (D-NV) to allow a vote on imposing additional sanctions on Iran for its pursuit of nuclear weapons.

In a letter sent to Reid, Rubio and 41 other Republican senators highlighted the overwhelming bipartisan support for legislation that aims to prevent Iran from ever developing nuclear weapons, while calling on Reid to schedule a vote for the measure immediately.

During a Senate floor speech this morning, Rubio continued to express his concern about the administration’s deal with Iran and the delay in Senate consideration of additional sanctions, condemning Reid’s unprecedented actions to block a vote with such significant, long-term implications for our nation’s security.

“That’s why we want a vote on these sanctions. We don’t have room for error here. We do not have the space to be wrong on this. We can’t afford to be wrong on this,” Rubio said. “Now, there’s no guarantee that sanctions will prevent Iran from going nuclear, but I can tell you, it will make it extremely painful, it will influence their cost-benefit analysis.

“It is ideal to reach a negotiated solution with Iran, but we have to be wise. We have to learn the lessons of history, and we have to understand human nature,” Rubio added. “This administration in Iran, this regime, they want a nuclear weapon because it gives them supremacy in the region and it makes them, they believe, immune to outside pressure and interference in their internal affairs. They are headed for a weapon. They are using these negotiations to buy time.

“There are 59 members of this Senate that have signed onto a sanctions bill, and one person – one senator – is preventing a vote on it. And that is wrong,” Rubio concluded. “So I hope that we can have a vote on the Senate floor on this issue. Let’s have a debate on it. Let’s have a frank and open discussion about it. But why are we preventing that from happening? Why is the Majority Leader preventing that from happening? It is inexcusable, it is unacceptable.”

#### Iran sanctions is an ongoing showdown

Jennifer Rubin, 2/7/14, Menendez’s blasts Obama’s Iran policy, www.washingtonpost.com/blogs/right-turn/wp/2014/02/07/menendezs-blasts-obamas-iran-policy/

The administration has a big problem on Iran. It has for now successfully fended off sanctions, but in doing so it helped forge consensus about the flaws in its approach and set the scene for a major showdown with Congress when, as everyone but Secretary of State John Kerry expects, Iran refuses to agree to even minimal steps to dismantle its nuclear weapons program. In other words, it has set itself up for failure with no back-up plan. Thursday, Sen. Robert Menendez (D-N.J.), denied by his majority leader a vote on a sanctions bill that would pass with more than 70 votes, explained in detail the administration’s gross mishandling of negotiations. It is worth reading in full, but some portions deserve emphasis. After describing in detail the requirements the administration, the United Nations and former administration official Dennis Ross have confirmed are needed to prevent a nuclear-capable Iran, the New Jersey Democrat summed up the flaws in the interim deal:

#### Pro-sanction groups are only tactically retreating—they’ll pounce on the plan

Stephen Collinson, AFP, 1/29/14, Obama repels new Iran sanctions push... for now, news.yahoo.com/obama-repels-iran-sanctions-push-now-032127269.html

President Barack Obama appears to have prevailed, for now, in a campaign to stop Congress from imposing new sanctions on Iran he fears could derail nuclear diplomacy.

Several Democratic senators who previously backed a bipartisan sanctions bill publicly stepped back after Obama threatened a veto during his State of the Union address Tuesday.

Several sources familiar with behind-the-scenes maneuvring say a number of other Democratic senators signed up for more sanctions had privately recoiled from a damaging vote against their own president.

According to some counts in recent weeks, the measure had 59 likely votes, including 16 Democrats, and was even approaching a two-thirds veto-proof majority in the 100-seat Senate.

But **latest developments** appear to **have checked that momentum**.

"I am strongly supporting the bill but I think a vote is unnecessary right now as long as there's visible and meaningful progress" in the Iran negotiations, Senator Richard Blumenthal told AFP, after expressing reservations earlier this month.

Democratic Senator Chris Coons made a similar declaration at a post-State of the Union event hosted by Politico.

"Now is not the time for a vote on an Iran sanctions bill," he said.

Another Democratic Senator, Joe Manchin, hopes Senate Majority Leader Harry Reid will not bring it up.

"I did not sign it with the intention that it would ever be voted upon or used upon while we're negotiating," Manchin told MSNBC television.

"I signed it because I wanted to make sure the president had a hammer if he needed it and showed him how determined we were to do it and use it if we had to."

The White House mounted an intense campaign against a bill it feared would undermine Tehran's negotiators with conservatives back home or prompt them to ditch diplomacy.

Obama aides infuriated pro-sanctions senators by warning the measure could box America into a march to war to halt Tehran's nuclear program if diplomacy died.

The campaign included a letter to Reid from Democratic committee chairs urging a vote be put off.

Another letter was orchestrated from a group of distinguished foreign policy experts.

Multi-faith groups weighed in and coordinated calls from constituents backing Obama on nuclear diplomacy poured into offices of key Democrats.

The campaign appears for now to have overpowered the pro-sanctions push by hawkish senators and the Israel lobby, whose doubts on the Iran nuclear deal mirror those of Israeli Prime Minister Benjamin Netanyahu.

Senator Johnny Isakson, a Republican co-sponsor of the legislation, said: "It looks like we're kind of frozen in place."

Those behind the anti-sanctions campaign though privately concede they may have won a battle, not a war.

'A crucial victory'

**The push for new sanctions will flare again** ahead of the American Israel Public Affairs Committee's (AIPAC) annual conference in March, which Netanyahu is expected to address.

It could also recur if the talks with Iran on a final pact extend past the six-month window set by the interim deal.

But for now, groups that supported the push against sanctions are jubilant.

"This is a major victory, a crucial victory for the American public who don't want to see a war," said Kate Gould of the Friends Committee on National Legislation.

But she warned: "There'll be other efforts to try and sabotage the process."

#### It’s a question of momentum—that can still shift back

Sara Sorcher, National Journal, 1/29/14, Inhofe: Obama 'Naive,' but Winning, on Iran, www.nationaljournal.com/defense/inhofe-obama-naive-but-winning-on-iran-20140129

President Obama used his State of the Union address Tuesday to threaten a veto of any congressional plan to slap Iran with new sanctions, and he just might have gotten his way. The top Republican on the Senate Armed Services Committee thinks Obama is "naive" to believe the U.S. is having any "great success" in persuading Iran to curb parts of its nuclear program—**but he is not optimistic there's enough momentum in the Senate,** all told, **to ram through new sanctions against the wishes of the president.** "[Obama] said last night he would veto any [new sanctions]," Sen. Jim Inhofe said in an interview. "The question is, is there support to override a veto on that? I say, 'No.' " The Nuclear Weapon Free Iran Act, authored by two senators, Illinois Republican Mark Kirk and New Jersey Democrat Robert Menendez, has 59 cosponsors, and includes measures to punish Iran's oil industry if it breaches diplomatic commitments. Inhofe does not believe a vote now would result in the majority necessary to override a presidential veto, because enough Democrats would still side with their president. Even some of the Senate bill's Democratic cosponsors, including Joe Manchin of West Virginia and Christopher Coons of Delaware, have also backed away from the sanctions bill since Obama's speech, The Hill reported. In his address Tuesday night, Obama defended the interim deal, which he said "has halted the progress of Iran's nuclear program--and rolled parts of that program back--for the very first time in a decade." Iran has started eliminating its stockpile of higher levels of enriched uranium, Obama said, and is no longer installing advanced centrifuges. If diplomacy fails, then all options--presumably even military force--remain on the table, Obama promised. "I will be the first to call for more sanctions, and stand ready to exercise all options to make sure Iran does not build a nuclear weapon." Inhofe, though, isn't buying it. New Iranian President Hassan Rouhani is not to be trusted; inspections won't be enough, he said. "They," Inhofe said, referring to the Obama administration, "seem to think, for some reason, that this new president is a president they can talk to, and negotiate with…. This guy, I don't think we can trust him more than anybody else, [even former President Mahmoud] Ahmadinejad." Even though the momentum may be slipping, Inhofe said, Democrats loyal to Obama are quickly becoming "endangered species." So if talks between world powers and Iran fall apart, or new revelations emerge that Iran is breaking its diplomatic commitments, it's possible **the** political winds could shift**. For now, though, Obama may be in the clear**.

#### Even if sanctions never pass, GOP would push legislation to constrain negotiations

Laura Rozen, Al-Monitor, 2/4/14, US negotiator hears, amid skepticism, Senate support for diplomacy with Iran, backchannel.al-monitor.com/index.php/2014/02/7686/us-negotiator-hears-amid-skepticism-senate-support-for-iran-diplomacy/#more-7686

With support waning for Iran sanctions legislation, top US Iran negotiator Wendy Sherman and Treasury Undersecretary David Cohen testified on the Iran nuclear deal to the Senate foreign relations panel Tuesday.

Despite sinking prospects for the Iran sanctions bill he co-sponsored, Senate Foreign Relations Committee chair Robert Menendez (D-NJ) expressed continued deep skepticism about the terms of the interim Iran nuclear deal which went into effect on Jan. 20, **and to be looking for ways to constrain the administration’s hand for negotiating** a comprehensive Iran nuclear deal.

#### That kills negotiations

Ryan Costello, National Iranian American Council Policy Fellow, 1/29/14, Obama Warns Congress Off Iran Sanctions, www.huffingtonpost.com/ryan-costello/obama-warns-congress-off\_b\_4686422.html

Let's hope the president's message sinks in, because reflexive congressional support for punishing Iran regardless of the consequences remains one of the key obstacles to shattering 34 years of mutual enmity and securing a nuclear deal -- and the possibility of a brighter future for the people of the United States and Iran. Over the past few weeks, a determined push by Sens. Robert Menendez and Mark Kirk to impose new sanctions on Iran gathered 59 cosponsors (16 Democrats, 43 Republicans), before stalling in the face of determined opposition from Senate Democrats and the looming threat of a presidential veto. Now, cosponsors of the sanctions bill, including Sens. Joe Manchin and Richard Blumenthal have indicated that the bill shouldn't come up for a vote. Supporters are falling off, not joining. There were numerous problems with the Menendez-Kirk bill, including that it would violate the terms of the nuclear agreement by imposing new sanctions, despite the U.S. promising, along with our negotiating partners, to abstain from doing so in the first phase of the nuclear agreement. To delay the implementation of those sanctions, the president would have to certify measures above and beyond what Iran agreed to in the nuclear deal, including certifying that Iran is not conducting missile tests or supporting terrorist groups. Further, the bill would set unnecessary and unattainable red lines for a final deal, including that Iran must dismantle its entire enrichment infrastructure -- violating a clear Iranian red line in talks. Now opponents of diplomacy are seeking to scrap the sanctions provisions of the bill and move forward with congressional resolutions that define expectations for the end game. This would provide an opportunity for opponents of diplomacy and a nuclear deal -- both inside and outside Congress -- to sabotage negotiations by setting unrealistic expectations. Any language requiring Iran to dismantle facilities or certain numbers of centrifuges, for example, or mandating that Iran abandon any enrichment capacity -- would reduce leverage for a final deal and make one more difficult, if not impossible, to attain. Congress shouldn't make our negotiators' job more difficult than it already is. Ultimately, Congress needs to move away from threatening to play spoiler to making sure the President has the authority to leverage existing sanctions in exchange for concrete nuclear concessions. With decades of congressional sanctions on the books, including recent sanctions that only provide the president with temporary waiver authorities, Congress needs to work with the administration in order to obtain the authority to permanently lift sanctions to extract the best deal possible. Such a move would provide clear assurances that we can uphold our end of the bargain. Without those assurances, our negotiators have a weak hand and might only be able to obtain a weak and reversible deal that distances but fails to eliminate the threats of war and an Iranian nuclear weapon.

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#### Obama avoiding controversial fights and loses

Darrell Delamaide, Market Watch, 1/29/14, Obama’s State of the Union: The Audacity of Caution, www.marketwatch.com/story/obama-skirts-controversy-in-timid-election-year-speech-2014-01-29?pagenumber=1

The speech, in short, followed the “first, do no harm” principle. With Democrats facing an uphill battle in midterm elections this year to retain control of the Senate and hold their own in the House, Obama seemed determined to do no further damage to the Democratic brand.

By the same token, he was not whiny or apologetic or resigned. Limited as the scope for action through executive order is, it at least keeps him from appearing as a loser in his battle with Republican lawmakers.

He did call on Congress to restore long-term unemployment insurance that just expired for 1.6 million people and to expand the earned income tax credit. And he promised to veto any bill that sought to impose new sanctions on Iran while the administration is negotiating a way to contain that country’s nuclear program.

It was a cautious, even timid, speech from a politician whose modus operandi — aside from sweeping rhetoric in his presidential campaigns — has been very cautious.

This State of the Union was seen by many as Obama’s last chance to give himself some breathing room in his second term to cement his legacy. With its upbeat and confident tone, its determination to avoid confrontation and skip over controversy, it may have — barely — done that.

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Here’s their whole card

Huey-Burns 2-6 (Caitlin,- Political Reporter for RealClearPolitics. Before joining RealClearPolitics, she wrote for the politics and policy channel of U.S. News “Jobless Benefits Extension Fails in Senate”)

A second attempt to restore benefits for the long-term unemployed failed in the Senate on Thursday -- just shy of clearing a key procedural hurdle. The 58-40 cloture vote on the $6 billion measure to extend jobless aid (which lapsed at the end of December) for three months to roughly 1.7 million Americans delivered a blow to a key Obama administration agenda item, as the president pushed for an extension in his State of the Union address last month.

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Only dems matter – the plan causes infighting

Bennett 13 (John, Defense News, “White House Quietly Shifts Armed Drone Program from CIA to DoD”, May. 24, http://www.defensenews.com/article/20130524/DEFREG02/305240010/White-House-Quietly-Shifts-Armed-Drone-Program-from-CIA-DoD)

The decision is a landmark change in America’s 12-year fight against al-Qaida and raises new legal and operational questions while solving others. **The shift could set off a** bitter congressional turf war **among the leaders of the committees** that oversee the military and intelligence community, who already have sparred over the issue.

**Either way, Obama ends up the loser**

Auner 1/21/14 (Eric, World Politics Review, “Congress Resists Pentagon Drone Oversight as U.S. and Partners Continue Targeted Killings”, http://www.worldpoliticsreview.com/trend-lines/13513/congress-resists-pentagon-drone-oversight-as-u-s-and-partners-continue-targeted-killings)

Micah Zenko of the Council on Foreign Relations, who has argued that lead authority for drone strikes should be consolidated under the Defense Department, explains that placing the program under Pentagon control “would allow the program to be defended publicly,” which is not the case for the covert drone program controlled by the CIA. He adds that the move would not necessarily have operational implications for how the program is carried out.

But in general, he suggests, there is little appetite among lawmakers on either side of the aisle to enact major reforms to U.S. targeted killing programs or to significantly increase oversight.

Although the Senate Intelligence Committee approved a plan to improve government oversight of U.S. drone strikes in November, the current partisan configuration may make it less likely that Congress will oppose drone strikes and other methods of targeted killing. Democrats hesitate to oppose their own party’s president, and many conservatives cheer a vigorous prosecution of the fight against terrorism.

But a lack of interest in major reform may also reflect a level of basic agreement in Washington on the efficacy of targeted strikes as a counterterrorism tool.

According to Clint Watts of the Homeland Security Policy Institute at George Washington University, although the frequency of their use has gone down over the past two years, targeted killings via drone are still “the best available option of interdicting terrorists that produces the fewest civilian casualties.” He says that media accounts frequently exaggerate the extent of collateral damage from drone strikes and usually fail to consider the consequences of alternative strategies for going after terrorists.

Other approaches, such as “clear, hold and build” counterinsurgency operations and funding local militias, can also cause collateral damage and generate instability in sensitive areas, Watts explains. Moreover, with the domestic controversy over detaining suspected terrorists, the military feels more constrained in its ability to capture suspected terrorists alive.

The United States has pursued a range of different types of cooperation with several partner countries in terms of drone strikes, which have taken place in Afghanistan and Pakistan, as well as Yemen, where 450 militants were killed in strikes in 2012 and 119 in 2013, according to the New America Foundation. But Zenko has also cataloged other instances of the U.S. assisting allies in carrying out lethal operations, including assisting the French in Mali and the Ugandan government in its fight against the Lord’s Resistance Army.

The U.S. government has also provided extensive assistance to the Colombian government in its fight against the FARC and ELN rebel groups in the form of precision-guided bombs, helicopters and targeting data, as well as direct assistance from U.S. personnel and contractors. In addition, the United States has provided Colombia with information gleaned from signal intercepts by the National Security Administration, according to an investigation published by the Washington Post last month.

In general, Watts says, this more “hands off” approach won’t be subject to the same level of scrutiny as those targeted killing activities directly carried out by the United States. “Americans tend to be more comfortable with operations carried out by proxy,” he explains.

Going forward, Watts predicts, the use of targeted killings may decrease further. “We’ve already eliminated a lot of the most urgent targets,” he says. Moreover, U.S. counterterrorism efforts may become more focused on capturing high-value targets alive, as was seen in October during a successful operation in Libya and a raid in Somalia that failed to capture its intended target.

Even as U.S. decision-makers show little stomach for costly interventions abroad, there is still broad agreement that al-Qaida and other terrorist and militant groups pose a threat to the United States and its allies. Targeted killings, whether carried out by the U.S. directly or through the efforts of partner governments, will almost certainly remain a tempting alternative.

The plan’s restriction on Obama’s authority independently scuttles negotiations—Rouhani won’t see executive commitments as credible

Jon Alterman, CSIS Global Security Chair and Middle East Program Director, 9/4/13, US-Iran Nuclear Deal Hinges On Syria Vote, www.al-monitor.com/pulse/originals/2013/09/us-iran-nuclear-deal-hinges-on-syria-vote.html

**Focusing** solely **on** events in **Syria**, **however, misses a large part of the Iranian calculus, if not the largest**. What really matters to Iran is how successful Obama is in winning congressional support for his Syria policy. If he fails, it will deal a double blow to the president. Not only will the Iranian government dismiss the possibility of negotiations with his administration, it will also **conclude that Obama can be defied with impunity**. The international cost of domestic political failure would be profound.

To start, it is worth noting the extent to which foreign governments are sophisticated consumers of American political information. Decades of international cable news broadcasts and newspaper websites have brought intimate details of US politics into global capitals. Foreign ministers in the Middle East and beyond are US news junkies, and they seem increasingly distrustful of their embassies. For key US allies, the foreign minister often seems to have made him- or herself the US desk officer. Most can have a quite sophisticated discussion on congressional politics and their impact on US foreign relations.

The Iranian government is no exception. While former president Mahmoud Ahmedinejad was emotional and shrill in his opposition to the United States, there remains in Iran a cadre of Western-trained technocrats, fluent in English and nuanced in their understanding of the world. President Hassan **Rouhani has surrounded himself with such people**, and Supreme Leader Ayatollah Ali Khamenei has charged them with investigating a different relationship between Iran and the United States.

As they do so, they cannot help but be aware that on the eve of Rouhani’s inauguration, the US House of Representatives voted 400–20 to impose stiff additional sanctions on Iran. The House saw Rouhani’s electoral victory as a call for toughness, not potential compromise.

If Iran were to make concessions in a negotiation with the United States, they would surely seek sanctions relief and other actions **requiring congressional approval**. To make such concessions to Obama, they would need some confidence that he can deliver. **A president who cannot bring around** a hostile **Congress is not a president with whom it is worth negotiating**.

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Jon Alterman, CSIS Global Security Chair and Middle East Program Director, 9/4/13, US-Iran Nuclear Deal Hinges On Syria Vote, www.al-monitor.com/pulse/originals/2013/09/us-iran-nuclear-deal-hinges-on-syria-vote.html

There is, however, an even more stark consequence of Obama losing the Syria vote in Congress. Should the White House, with its immense power and prestige, fail to build sufficient support, leaders around the world will conclude that this president can be defied with impunity. If he cannot win the support of those close to him, what hope does he have of winning over those at a distance?

The consequence here would be a combination of much more difficult diplomacy and even more bad behavior around the world that requires diplomacy to address. **Hard-liners in Iran and their allies around the Middle East would certainly be** emboldened**, and regional states would be far less likely to rely on US cues in managing their own issues**. Arab-Israeli negotiations, as well, would be dealt a fundamental blow, as each party would retreat to its own maximal position. **China, Russia and a host of other countries are watching closely as well.**

### at: cia pounder

The bill left Obama significant flexibility to avoid controversy

By [Eric Schmitt](http://topics.nytimes.com/top/reference/timestopics/people/s/eric_schmitt/index.html) 1-16, Congress Restricts Drones Program Shift, New York Times, JAN. 16, 2014, <http://www.nytimes.com/2014/01/17/us/politics/congress-restricts-drones-program-shift.html>

WASHINGTON — In an unusual move, Congress is placing restrictions on the Obama administration’s plan to shift responsibility for armed [drones](http://topics.nytimes.com/top/reference/timestopics/subjects/u/unmanned_aerial_vehicles/index.html?inline=nyt-classifier) more toward the military and away from the [C.I.A.](http://topics.nytimes.com/top/reference/timestopics/organizations/c/central_intelligence_agency/index.html?inline=nyt-org), congressional and administration officials said Thursday.

Lawmakers inserted wording into a classified annex to the $1.1 trillion [federal budget](http://topics.nytimes.com/top/reference/timestopics/subjects/f/federal_budget_us/index.html?inline=nyt-classifier) approved by Congress this week that would make it more difficult to transfer control over the drone campaign or the authority to carry out strikes.

The scope of the restrictions remained unclear because of their classification. But the provision does not appear to entirely block a shift described last May by administration officials as a ramification of [President Obama](http://topics.nytimes.com/top/reference/timestopics/people/o/barack_obama/index.html?inline=nyt-per)’s intention to move the country off a decade-long war footing.

Lawmakers allowed the president to waive the constraints under certain circumstances or to permit the transfer if the administration certifies that the military meets certain standards in drone operations, congressional aides said Thursday.

Senator John McCain supports the Obama administration’s plans to shift responsibility for drone strikes to the military. Yuri Gripas/Reuters

Even before the new provision in the budget bill, administration and congressional officials said the schedule for shifting control to the military was being revised — if not shelved.

“D.O.D. has some work to do,” a senior House Intelligence Committee staff aide said Thursday, referring to the Department of Defense. “It’s a lot more challenging than they thought.”

But the measure, [first reported on The Washington Post’s website](http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84_story.html) on Wednesday night, is a rare move by Congress to dictate how covert operations like the drone program are carried out. It also reflects the simmering suspicion among many lawmakers on the Intelligence Committees that the military’s Joint Special Operations Command is not up to the task of killing terrorism suspects with Predator or Reaper drones, a notion the Pentagon rejects.

That skepticism was underscored on Dec. 12, when a strike by the United States military, launched from a base in Djibouti, killed at least a half-dozen innocent people in Yemen, according to a number of tribal leaders and witnesses, and provoked a storm of outrage in the country.

The murky details surrounding the strike have raised questions about how rigorously American officials are applying the standards for lethal strikes that Mr. Obama outlined in a speech on May 23 at the National Defense University — and whether such standards are even possible in such a remote and opaque environment.

At the time, administration officials said that authority over most of the drone strikes would gradually shift to the Pentagon from the C.I.A., a move officials said was intended partly to lift the shroud of secrecy from the targeted killing program.

But nearly eight months later, the C.I.A. still carries out a majority of drone strikes in Yemen, with the remotely piloted aircraft taking off from a base in the southern desert of Saudi Arabia.

Spokesmen for the White House, the C.I.A. and the congressional committees responsible for the language declined to comment on Thursday.

“The president when he spoke at N.D.U. was very clear about his desire to be as transparent as possible with respect to those operations,” Rear Adm. John Kirby, the Defense Department press secretary, told reporters on Thursday, declining to discuss the specific congressional provision. “That’s a message that we got loud and clear here in the Pentagon.”

That is a sentiment shared by many on Capitol Hill. Senator Patrick J. Leahy, a Vermont Democrat on the Appropriations Committee, told MSNBC on Thursday, “There should be far better control of what we do with our drones.”

### me war

Best studies

Russell, senior lecturer, National Security Affairs – Naval Postgraduate School, managing editor – Strategic Insights, ‘7

(James A, “REGIONAL THREATS AND SECURITY STRATEGY: THE TROUBLING CASE OF TODAY’S MIDDLE EAST,” Strategic Studies Institute)

The World Economic Forum reports all note the threat posed by geopolitical instability in the Middle East to global security. That geopolitical instability flows from a discombobulated regional environment that is still rearranging itself in the aftermath of the Iraq invasion—the most important regional event since the Six-Day War in 1967. The Iraq war has altered the distribution of power throughout the region, with a number of critical external and internal elements pressuring regional governing elites:17

• The perceived decline in U.S. global military power and political influence and a consequent loss of credibility in the American extended deterrent. The global decline in U.S. political influence is mirrored in the region—and has been particularly exacerbated by the Iraq invasion and its distraction from a more constructive involvement in the Arab-Israeli dispute.

• The emergence of an alliance of powerful state and nonstate actors: Iran, Syria, Hezbollah, Hamas, and various Shi’ite-based militias and political organizations in Iraq. Various of these actors have successfully portrayed themselves as representatives of a “successful” resistance movement opposed to Israel and the United States in Iraq, Lebanon, and the occupied territories. The new-found public legitimacy and popularity of these actors represent a profound challenge to the established ruling elites.

• The Sunni state elites of the Eastern Mediterranean and Gulf states now confront an ascendant Irandominated

Shia bloc. As a result, they are scrambling to build a series of balancing political relationships to fill the vacuum created by the loss of U.S. influence and the necessity for them to distance themselves from Washington.

Iran’s so far successful defiance of the United States and the international community in its relentless movement toward acquiring a nuclear capability.

Its achievement of nuclear status is one aspect of its enhanced regional power and influence in the aftermath of the Iraq invasion. Iran now arguably exercises a preponderant influence in

Iraq—particularly in the south.

• Strengthened Islamist political movements throughout the region. These must now be accommodated by regional regimes.

• Anxious regional oil producers. While still dependent on U.S. military protection, they are actively building political, economic, and military partnerships with outside powers such as India, China, Russia, and Pakistan.